

legislative sphere. He will recruit for certain services in the Federation and in the Provinces, and will regulate their conditions of service.¹ In matters of finance, the control of the Secretary of State is restricted to the non-votable heads of expenditure in the central and provincial budgets and such other sums of money as may be required by the Governor-General and the Governors in discharge of their special responsibilities. These cover over 80 per cent of the federal revenues and 50 per cent of the provincial revenues. The coinage and currency of the Federation and the Reserve Bank of India are also subject to his control. The powers of the Secretary of State in Council to borrow on the security of the revenues of India will cease, but during the period of transition, i.e. the period which elapses between the commencement of Part III of the Act and the inauguration of the Federation, the Secretary of State is authorized to contract loans on behalf of the Governor-General in Council, in the United Kingdom, with the sanction of Parliament.² Even under the Act, the Secretary of State possesses considerable powers in relation to the affairs of India.

The Secretary of State has been empowered to appoint not less than three and not more than six persons for the purpose of advising him, at least one half of whom for the time being holding office as advisers must have held office for ten years under the Crown in India. It will be the duty of the persons so appointed to advise the Secretary of State on any matter relating to India on which he may seek their advice. Except as otherwise provided in this Act, it is within the discretion of the Secretary of State whether he consults his advisers either collectively or individually or not at all. Even when he does consult them, he is not bound to act on their advice save as otherwise provided.³ So long as he remains the authority charged with the control of any members of the Public Services in India, he must lay before his advisers, and obtain the concurrence of a majority of them to, the draft of any rules which he proposes to make under the Act for the purpose of regulating the conditions of service, and any order which he proposes to make upon an appeal to him from any member of the Service, which he controls. This secures to the Services the safeguards which they at present enjoy through the Council of India.

The expenses of the India Office establishment have hitherto been a charge on the revenues of India, but an annual grant in aid of £150,000 is made by the Treasury. But under the new Act, the expenses of the India Office will be included in the Civil Service estimates of the United Kingdom, but Indian revenues would contribute a grant in aid, in respect of the agency functions which the Secretary of State and his department will continue to act on behalf of the Governments in India. Suitable provisions have been made in the Act for compensating those members of the staff of the India Office who may be prejudicially affected by the changes brought about by the Act.⁴

Part XI comes into force from 1 April, 1937.

Advisers to
Secretary of
State

278.—(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

¹ See Part X, Chapter II.

² See ss. 261 and 278 (6).

³ See ss. 161 and 315.

⁴ See s. 282.

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 appointment was domiciled in India a subsistence allowance of six hundred pounds a year.

(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 subsection '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.

Existing
accounts of
Secretary of
State in
Council
with Bank
of England

279.—(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.

Organisa-
tion and
expenses of
India Office

280.—(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 periodi-

cal or other sums as may from time to time be agreed between the Governor-General and the Treasury in respect of so much of the expenses of the department of the Secretary of State as is attributable to the performance on behalf of the Federation of such functions as it may be agreed between the Secretary of State and the Governor-General that that department should so perform.

281.—(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.

Transfer of
existing
personnel

(2) Subject as hereinafter provided, the provisions of the Superannuation Acts, 1834 to 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 to 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 subsection 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 to 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.

Any such commutation shall be made upon such conditions as His Majesty in Council may direct, not being more favourable than the conditions which would have applied to the person in question if he had retired from the establishment of the Secretary of State in Council.

See the Government of India (India Office Pensions) Order, 1936. Commutation of superannuation allowances, compensation allowances and retiring allowances under Cl. (6) of the section are regulated by paragraph 5 of the Order.

Contributions from revenues of Federation

282.—(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 to 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.

For provision for the payment out of the revenues of the Federation of allowances under Cl. (1) of this section, see the Government of India (India Office Pensions) Order, 1936.

283.—(1) The liability for payment of any super-annuation 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 a 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 those allowances and gratuities shall be charged upon the revenues of the Federation.

Liability for pensions in respect of service before commencement of Part III

(2) The provisions of subsection (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 III of this Act as is mentioned in the said subsection (1).

Persons who immediately before the commencement of Part III of this Act, were members of the staff of the Auditor of the Accounts of the Secretary of State in Council, are to become members of the staff of the Auditor of Indian Home Accounts. See ss. 251 and 252.

Provision
as to certain
India Office
provident
funds

284. 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.

PART XII
MISCELLANEOUS AND GENERAL

PART XII

MISCELLANEOUS AND GENERAL

The Crown and the Indian States

285. Subject in the case of a Federated 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.

Saving for rights and obligations of the Crown in its relations with Indian States

The new Act can only affect the Indian States who have joined the Federation, to the extent of the provisions of the Instrument of Accession and no further. Apart from the matters which the Ruler accepts in the Instrument as matters in respect of which the Federal Legislature may make laws for his State with the limitations inserted therein, the Ruler is not touched by the Act. Nor does the Act in any way affect the relation between the States and the Crown as the Paramount Power. See notes to ss. 2, 5 and 6 above, and Introduction to Part II, Chapter I and to Part II, Chapter II under PARAMOUNTCY.

286.—(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.

Use of His Majesty's forces in connection with discharge of the functions of the Crown in its relations with Indian States

(2) In discharging his functions under this section the Governor-General shall act in his discretion.

The Viceroy to preserve peace and order in an Indian State may ask for armed forces from the Federal Government who shall give the help as demanded. The expenses for such military assistance will be regarded as expenses of His Majesty for the exercise of the functions of the Crown in its relation with the States. These expenses are charged on the revenues of the Federation,¹ and are payable on requisition made by the Viceroy.²

¹ See s. 33(3) (f).

² See s. 145.

Arrangements for Governors and Provincial staff to assist in discharging functions of Political Department

287. 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.

Under s. 123, the Governor-General may direct the Governor of a Province to discharge as his agent certain functions relating to tribal areas, defence, external affairs and ecclesiastical affairs. Under this section, the Viceroy may arrange for the discharge by a Governor and officers in the Province of certain functions of the Crown in its relation to the States. Under s. 2(1) Prov., powers relating to the exercise of the functions of the Crown in its relations with the States shall, if not exercised by His Majesty, be exercised only by the Viceroy or persons acting under his authority. The Governor and officers will be such persons acting under the authority of the Viceroy. The expenses for administering these delegated functions will be included in the expenses of His Majesty incurred in discharging these functions. These expenses are charged on the Federal revenues,¹ and are to be paid to His Majesty every year.²

Aden

Aden

288.—(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 subsection may, without prejudice to the generality of the words of that subsection, 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;

¹ See s. 33(3) (f).

² See s. 145.

- (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, or 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.

The settlement of Aden which comprises the town of Aden itself and certain adjacent districts, was hitherto administered by the Government of India as a Chief Commissioner's Province. Responsibility for the hinterland of Aden which is not British territory, has since 1917 rested with His Majesty's Government who have also since the same date been responsible for the military and the political affairs of the settlement. Arrangements were made in 1926 under which an annual contribution, subject to a maximum of £150,000, was made from Indian revenues for military and political expenditure of the settlement and the protectorate. The population of the settlement is predominantly Arab, the Indian

population which is however of great commercial importance, numbering only about one-seventh of the whole.

This section provides that Aden is to cease to be part of British India on such date as His Majesty may by Order in Council appoint. The Order will provide for the future Government of Aden and power is reserved to His Majesty under subsection (2) to make laws for the peace, order and government of Aden.

The Order in Council relating to Aden, which has now been made, provides for its separation from India on 1 April 1937 and prescribes its constitution. It covers only what is now the settlement area of seventy-five square miles, and converts this into a Crown Colony under the normal regime appropriate thereto. The much larger Protectorate Area is now, and will remain as before, under the direct supervision of the Colonial Office. The Order provides that the new Colony shall have a Governor, and it is accompanied by the draft of his Instrument of Instructions. He will be assisted by an Executive Council whose composition is not specified. He will legislate by regulations subject to the usual right of the Crown to disallow his laws or supplement them by an Order in Council.

The Order provides for the safeguarding of Indian interests in the Colony. India is automatically relieved by implication of the annual contribution of about Rs.20 lakhs which she has hitherto had to pay to Aden. The right of civil and criminal appeal from the Supreme Court of Aden to the High Court of Bombay is conferred on all inhabitants of the Colony without discrimination and death sentence passed by the Supreme Court must be confirmed by the Bombay High Court. No racial discrimination of any kind is permitted in any circumstances whatsoever. An executive instruction will provide for the entry of British Indians into the Protectorate under the same terms as those accorded to other British subjects. The Governor may not impose duties or additional taxation without the Crown's approval, and Aden will remain a free Port so long as conditions permit. Executive instructions will cover the questions of the employment of Indian personnel in the local services, and it is understood that for the present it is intended that a number of men will be borrowed from the Indian services. The present level of the administration is to be maintained.

What was the District and Sessions Court has become the Supreme Court of the Colony as from 1 April 1937. There is appeal to the Bombay High Court involving property or some civil right to the value of Rs.5,000 or upwards, and in criminal cases as under the provisions of the Indian Code of Criminal Procedure. No appeal lies where the sentence does not exceed six months' imprisonment or a fine of Rs.500, or both such imprisonment and fine. All death sentences are subject to confirmation by the High Court. In specified civil cases there may be further appeal to the Privy Council. See the Aden Colony Order, 1936. The appointed day was the first day of April, 1937. The territory hitherto known as the Chief Commissioner's Province of Aden is known from that date as the Colony of Aden. His Majesty will by Sign Manual and Signet appoint a Governor and Commander-in-Chief over the Colony. The Governor and Commander-in-Chief may make laws for the peace, order and good government of the Colony, but His Majesty may disallow any such law, and reserves the power to make laws for the peace, order and good government of the Colony.

New Provinces and alterations of boundaries of Provinces

289.—(1) As from such date as His Majesty may by Order in Council appoint—

Creation of
new Pro-
vinces of
Sind and
Orissa

- (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 specified in the said Order shall 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.

The two new Provinces of Orissa and Sind have already been created by Order in Council under the provisions of this section, as from 1 April 1936.

See notes under s. 46 above.

Sind has been separated from Bombay and constituted as a Governor's Province from 1 April 1936 by the Government of India (Constitution of Sind) Order, 1936. It will be from that date till the commencement of Part III of this Act (the transitional period), governed by the Governor who shall have no Executive Council. But there will be an Advisory Council consisting of not more than twenty-five members nominated by the Governor, of whom not more than three are to be officials. The Budget will be laid by him before the Advisory Council for discussion only and will not be voted upon.

Apportionment of assets and liabilities between Sind and the Presidency of Bombay is provided for by Rule 20 and the Second Schedule to the Order.

After the commencement of Part III of this Act, the government will be that as in a Governor's Province.

Orissa, consisting of certain parts of the Province of Bihar and

Orissa, the Presidency of Madras and the Central Provinces, has been constituted as a Governor's Province from 1 April 1936 by the Government of India (Constitution of Orissa) Order, 1936. Its constitution is similar to that of Sind. The Advisory Council is to consist of not more than twenty members to be nominated by the Governor, of whom not more than three are to be officials. Apportionment of assets and liabilities between Orissa and the Provinces from which areas are separated by the Order is provided for by Rule 22 and the Third Schedule to the Order.

The areas transferred to Orissa from the Central Provinces and from the Vizagapatam Agency in the Presidency of Madras have been made Partially Excluded Areas by the Government of India (Excluded and Partially Excluded Areas) Order, 1936.

290.—(1) Subject to the provisions of this section, 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 :

Creation
of new
Provinces
and altera-
tions of
boundaries
of Pro-
vinces

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) 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.

Under s. 60 of the old Act, the Governor-General in Council may by notification declare, appoint, or alter the boundaries of any Province and distribute the territories of British India among the several Provinces.¹ The power to create new Provinces is new. Under this section, power is reserved to the Crown to alter, by Order in Council, the areas or boundaries of the existing Provinces or to create new Provinces.

It is, however, added in the proviso that before the draft of any such Order is laid before the Parliament, the Secretary of State is to take such steps as His Majesty may direct for ascertaining the views of the Federal Legislature and the views of the Government and the Chamber

¹ See J.C.R. 62 and 63.

or the Chambers of the Legislatures of the Province which will be affected by the Order. This procedure is to be adopted both for the proposal to make the Order and for the provisions to be inserted in it.

Franchise

Power of
His Majesty
to make
provision
with respect
to fran-
chises and
elections

291. 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 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.

Under the provisions of this section, some Orders in Council have been passed with respect to the following matters :

1. The Government of India (Scheduled Castes) Order, 1936, defining for the purposes of the First, Fifth and Sixth Schedules of the Act, the castes, races or tribes who are to be deemed to be Scheduled Castes.

2. The Government of India (Provincial Legislative Assemblies) Order, 1936, laying down for the Provincial Legislative Assemblies rules about territorial and special constituencies, preparation of electoral rolls, special provisions for the Scheduled Castes, Women's seats, Anglo-Indian seats, European seats, Landholders' seats and other seats. By this Order, certain minor amendments have been made in the Fifth and Sixth Schedules.

3. The Government of India (Provincial Legislative Councils) Order, 1936, laying down for the Provincial Legislative Councils rules regulating delimitation of territorial constituencies, qualifications of candidates, dates of nominations and elections, etc.

4. The Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936, making provisions about election agents, and expenses, decision of doubts and disputes about elections and disqualifications for corrupt practices.

Other Orders in Council may be passed from time to time to deal further with the matters mentioned in this section.

Under paragraph 20 of the Fifth Schedule, the Governor, in his individual judgement, may make rules for carrying into effect the provisions of the Fifth and the Sixth Schedules, in the absence of provisions made by this Act or Order in Council or by the Provincial Legislature.

Corrupt practices and election petitions have been dealt with by the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order amended by paragraph 4 of the Government of India (Provincial Legislatures) (Miscellaneous Provisions) Order, 1936 ; and by Rules made by the Governor under powers conferred by paragraph 20 of the Fifth Schedule. See s. 69 for disqualifications for membership.

Provisions as to certain legal matters

292. 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.

Existing law of India to continue in force

The law existing before Part III of the Act comes into force shall continue to prevail unless altered by the Legislature or any other competent authority. But Orders in Council may be made modifying such law, as provided in s. 243, so as to bring it into accord with the provisions of this Act.

Laws in force : Reference may here be made to the Indian legal system. The law administered by the Indian courts consists of :

- (1) Acts of Parliament extending to India and rules and Orders made thereunder ;
- (2) Acts of the Governor-General in Council, of the Indian Legislature and of the Governor-General and rules and orders made thereunder ; Ordinances made by the Governor-General and regulations for special areas made by the Governor-General in Council ;
- (3) Acts passed by local legislatures of the various Provinces and rules and regulations made thereunder ;
- (4) certain regulations made by the Government of Bombay, Madras and Bengal before 1833 and the Governor-General in Executive Council for the Punjab up to 1861.

These measures of codification are of general application and cannot be superseded by the private law of any particular community. But they leave untouched most of the essentials of private law. The courts give effect to the Hindu and Mahomedan law and the customary law of particular castes or sects such as Jains or Sikhs in causes between the members of a community relating to inheritance and succession, and so far as it has not been superseded by legislation or is contrary to justice, equity or good conscience. Hindus retain their family law, regulating marriage, adoption, the joint family, partition and inheritance.

Mahommedans follow their own law of marriage, of testamentary and intestate succession and of religious endowments. The courts give effect to the different systems of Hindu and Mahommedan law that exist in different parts of the country. Few legislative changes have been made in these two systems. The Age of Consent Act (Act XIX of 1929) forbids consummation of marriage before the ages of eighteen for the boy and fourteen for the girl. By the Indian Majority Act, 1875, infants are protected against the earlier attainment of majority and legal capacity. Hindu and Mahommedan Law, save as aforesaid, has been considerably developed by judge-made law. The Parsee community has special rules of succession which have been codified in the Succession Act of 1925, which has also been accepted by the Jews of India in general. The chief authority for Buddhist law which prevails in Burma is the Manugye Dhammathat promulgated as authoritative by King Alaungpaya in 1756.

Special legislation for marriage (the Indian Christian Marriage Act, 1872) has been made for the Indian Christians, while the special Marriage Act, 1872, as extended by Act XXX of 1923, applies to non-Christians, Hindus, Buddhists, Sikhs and Jains. All these measures allow divorce, but the courts recognize and give effect to divorces carried out under the personal law of non-Christians.¹

The law of torts is practically English Law, as laid down by the judges. By paragraph 9 of the Government of India (Commencement and Transitory Provisions) Order, 1936, Acts of the Indian Legislature as also Regulations and Ordinances under ss. 71 and 72 of the old Act, passed before the commencement of Part III of the Act may validly come into force at, or at any time after, the commencement of Part III, and will lapse after 12 months.

Adaptation
of existing
Indian
laws, etc.

293. His Majesty may by Order in Council 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,

¹ *Khambatta v. Khambatta* (1935) 59 Bom. 279.

byelaw, rule or regulation having in British India the force of law.

S. 292 provides for the continuance of existing laws in force at the commencement of Part III of the Act, subject to amendments by competent authority. Pending such amendments, His Majesty may by Order in Council prescribe that from a certain date the existing Indian law shall be in force subject to such adaptations and modifications as appear necessary to him. But such Order in Council shall not apply to any Federated State.

See the Government of India (Adaptation of Indian Laws) Order, 1937. The Indian Laws mentioned in the Schedule to the Order, until repealed or amended, are to apply as modified in the Schedule. For the expression 'Local Government', the expression 'Provincial Government' has been substituted. This order is in force from 1 April, 1937.

See the India and Burma (Burma Monetary Arrangements) Order, 1937.

294.—(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 : Foreign jurisdiction

Provided that—

- (a) a declaration shall not be made under this subsection 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 foregoing 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 subsection 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 the accession of the State becomes effective and might by virtue of the Instrument of Accession of the State be re-enacted for that State by the Federal Legislature, shall continue in force and be deemed for the purposes of this Act to be a Federal law so re-enacted :

Provided that any such law may be repealed or amended by Act of the Federal Legislature and unless continued in force by such an Act shall cease to have effect on the expiration of five years from the date when the accession of the State becomes effective.

(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 or 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.

On federation, any authority of the Crown under the Foreign Jurisdiction Act, 1890 or otherwise shall become exercisable by the federal authorities including the Statutory Railway Authority, except in so far as is otherwise provided by any agreement made under Part VI of the Act for the administration of federal legislation by the Rulers.¹ The powers of the Crown in a State will remain unaffected in all other cases, without prejudice to its power to relinquish such authority, and the Order in Council of 1902 is reaffirmed as valid. It is also provided that an Order under the Act of 1890 may validly authorize judicial or administrative authorities to act in respect of territory, though situated outside the territory, and the appellate jurisdiction of British courts in the Indian States may validly be conferred on the Federal Court. Nothing in the Act can limit the power of the Crown to determine by what courts British subjects and subjects of foreign countries shall be tried in respect of offences committed in an Indian State. Questions of Paramountcy as between the Crown and the States do not come within the scope of the Federation at all, so the Act does not deal with Paramountcy. See Part II, Chapter I, Introduction under PARAMOUNTCY.

¹ See Cl. (2).

The powers of the Indian legislative, executive and judicial authorities with respect to things outside the territorial limits of British India, particularly in the territories in the Indian States and in the countries bordering on India are mainly derived from the following sources :

I. The Indian Legislature has been given powers under various Imperial Acts to make laws with extra-territorial operation on various subjects. For instance, under s. 99 of the present Act, which re-enacts similar provisions of the older Acts, the Federal Legislature has been empowered to make laws for all British subjects domiciled in India and regulations for the discipline of any naval, military and air force raised in British India, without and beyond, as well as within, the Indian territories under the dominion of His Majesty. So also s. 264 of the Merchant Shipping Act, 1894¹ enacts that if the Legislature of a British possession—an expression including India—by any law apply or adapt to any British ships registered at, trading with, or being at, any port in that possession and to the owners and masters and crews of those ships, any provisions in Part II of that Act which they do not otherwise so apply, the law is to have effect throughout His Majesty's dominions and in all places where His Majesty has jurisdiction in the same manner as if it were enacted in the Merchant Shipping Act itself. In like manner, s. 368 of the Merchant Shipping Act enacts that the Governor-General of India in Council, may by any Act passed for the purpose, declare that all or any of the provisions of Part III of the Merchant Shipping Act, 1894 shall apply to the carriage and steerage of passengers upon any voyage from any specified part in British India to any other specified part whatsoever, and may make, for the purposes of Part III of the Act, other regulations ; and the provisions of any such Indian Act while in force are to have effect without as well as within British India as if enacted by the Merchant Shipping Act itself.

II. Parliamentary legislation has given extra-territorial jurisdiction to courts in British India which could not have been conferred on them by Acts of Indian Legislature.² See the Slave Trade Act, 1876³ which enacts that if any person, being a subject of His Majesty, or of any Prince or State in Indian alliance with His Majesty, should on the high seas or in any part of Asia or Africa specified by Order in Council in that behalf commit any of certain offences relating to Slave Trade under the Penal Code, or abet the commission of any such offence, he will be dealt with as if the offence or abetment had been committed in any place within British India in which he may be or may be found.

III. The Governor-General in Council has in his executive capacity extra-territorial powers far wider than those which may be exercised by the Indian Legislature. As Ilbert observes in *The Government of India*⁴

The Governor-General in Council is the representative in India of the British Crown, and as such can exercise under delegated authority the powers incidental to sovereignty with reference both to British India and to neighbouring territories subject to the restrictions imposed by Parliamentary legislation and to the control exercised by the Crown, through the Secretary of State for India.

Thus he can acquire and exercise within the territories of Indian States and of adjoining States which border on India, powers of legislation and

¹ 57 and 58 Vict., c. 60.

² See 12 and 13 Vict., c. 96; 23 and 24 Vict., c. 88; 53 and 54 Vict., c. 27.

³ 39 and 40 Vict., c. 46

⁴ 3rd ed., 1915, p. 417.

jurisdiction similar to those which are exercised by the Crown in foreign countries in accordance with the Foreign Jurisdiction Act and the Orders in Council under them, and extending to persons who are not subjects of the King. The existence of the extra-territorial powers exercisable by the Governor-General in Council is recognized by the Order in Council of 1902 made under the Foreign Jurisdiction Act, 1890. The Order of 1902 now regulates the exercise of foreign jurisdiction by the Governor-General in Council. The Order which is re-affirmed as valid in this section, is as follows :

1. The Order may be cited as the Indian (Foreign Jurisdiction) Order in Council, 1902.
2. The limits of this Order are the territories in India outside British India and any other territories which may be declared by His Majesty to be territories in which jurisdiction is exercised by or on behalf of His Majesty through the Governor-General of India in Council or some authority subordinate to him, including the territorial waters of any such jurisdiction.
3. The Governor-General of India in Council may, on His Majesty's behalf, exercise any power of jurisdiction which His Majesty or the Governor-General of India in Council for the time being has within the limits of this Order, and may delegate any such power or jurisdiction to any servant of the British Indian Government in such manner and to such extent, as the Governor-General in Council from time to time thinks fit.
4. The Governor-General in Council may make such rules and Orders as may seem expedient for carrying this Order into effect and in particular—
 - (a) for determining the law and procedure to be observed, whether by applying with or without modifications all or any of the provisions of any enactment in force elsewhere, or otherwise ;
 - (b) for determining the persons who are to exercise jurisdiction either generally or in particular classes of cases and the powers to be exercised by them ;
 - (c) for determining the courts, authorities, judges and magistrates, by whom and for regulating the manner in which, any jurisdiction, auxiliary or incidental to or consequential on the jurisdiction exercised under this Order, is to be exercised in British India ;
 - (d) for regulating the amount, collection and application of fees.
5. All appointments, delegations, certificates, requisitions, rules, notifications, processes, orders and directions made or issued under or in pursuance of any enactment of the Indian Legislature regulating the exercise of foreign jurisdiction, are hereby confirmed and shall have effect as if made or issued under this Order.
6. The Interpretation Act, 1889, shall apply to the construction of this Order.

The Order is, as Ilbert says, wide enough to include every possible source of extra-territorial authority. The powers delegated are both

executive and legislative, and the local limits of the Order, within which, or with respect to which, jurisdiction and powers may be exercised under the Order are the territories outside, and adjacent to British India, which, of course, include the Indian States. The jurisdiction of the Governor-General in Council within the territories in the Indian States is exercised—

- (i) over European British subjects in all cases ;
- (ii) over British Indian subjects in certain cases ;
- (iii) over all classes of persons, British or Foreign within certain areas.

It has been the practice of the Government of India not to allow State courts to exercise jurisdiction in the case of the European British subjects, but to require them either to be tried by the British courts, established in the Indian States or to be sent for trial before a court in British India. The Government of India does not claim similar jurisdiction over British Indian subjects when within Indian States but doubtless would assert jurisdiction over such persons in cases where it thought the assertion necessary. As, for international purposes, the territory of Indian States is in the same position as the territory of British India,¹ the jurisdiction is also exercisable over European foreigners in the Indian States. This section² affirms that the Crown possesses jurisdiction over foreign subjects in respect of offences committed in Indian States. Lastly, there are certain areas within which full jurisdiction has been ceded to the Government of India and within which jurisdiction is accordingly exercised by courts and officers of the Government of India over all classes of persons as if the territory were part of India such as the Berars, the Residencies and other stations in the occupation of political officers, and cantonments in the occupation of British troops. Jurisdiction has also been ceded over railway lands within the territories of States. The extra-territorial powers of the Governor-General are, according to Ilbert³ the following :

1. The extra-territorial powers of the Governor-General of India are much wider than the extra-territorial powers of the Indian Legislature, and are not derived from, though they may be regulated or restricted by, English or Indian Acts.
2. Those powers are exercisable within the territories of all the Indian States. Whether they are exercisable within the territories of any State outside India is a question which depends on the arrangements in force with the Government of that State, and on the extent to which the powers of the Crown exercisable in pursuance of such arrangements have been delegated to the Governor-General.
3. The jurisdiction exercisable under those powers might be made to extend not only to British subjects and to subjects of the State within which the jurisdiction is exercised, but also to foreigners.
4. The classes of foreigners and cases to which jurisdiction actually applies depend on the agreement, if any, in force with respect to its exercise and, in the absence of express agreement, on usage and the circumstances of the case,

¹ See Introduction to Part II, Chapter I under RELATION BETWEEN PARAMOUNT POWERS AND THE STATE.

² See subsection (7).

³ See p. 428.

and may be defined, restricted or extended accordingly by the instrument regulating the exercise of the jurisdiction.

Under s. 2 of the Act, all these powers and jurisdiction are now resumed by the Crown to be exercised in accordance with the various provisions of this section. The extra-territorial powers will be exercised as heretofore, subject to such modifications as have been rendered necessary by the constitutional changes. The provision for accession of the Indian States to the Federation necessarily restricts the exercise of these powers in the territories of those States which shall elect to be federated. The extra-territorial powers hitherto exercised by the Governor-General in India in Council partly devolve, as far as the Federated States are concerned, on the federal authorities to the extent covered by their Instrument of Accession. These powers shall be regulated by this Act, and shall not be exercisable under foreign jurisdiction. Otherwise, the powers of the Governor-General under foreign jurisdiction will be exercisable in the Federated States. Power has also been reserved to His Majesty, to exclude, at the time of the acceptance of the Instrument of Accession, areas in that State, from the executive and legislative authority of the Federation, and in such areas, the Governor-General will be free to exercise his extra-territorial powers. Save as referred to herein, the powers of the Governor-General under foreign jurisdiction remain unaltered. As regards the powers of the Federal Legislature to make laws with extra-territorial operation, see s. 99 and notes thereto.

See the Indian (Foreign Jurisdiction) Order, 1937, amending the Indian (Foreign Jurisdiction) Order, 1902. The powers conferred by the Order of 1902 on the Governor-General in Council connected with the exercise of the functions of the Crown in its relation with Indian States, devolve from the commencement of Part III of the Act, on His Majesty's representative.

295.—(1) Where any person has been sentenced to death in a Province, the Governor-General in his discretion 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 :

Provisions
as to death
sentences

Provided that nothing in this subsection 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.

The prerogative of pardon reprieve and remission and commutation of sentence belongs to His Majesty.¹ The Governor-General under

¹ See notes to s. 2 under **PREROGATIVE POWERS**.

s. 2(1) (b) will exercise such prerogative powers of the Crown (not being powers inconsistent with the Act) as His Majesty may be pleased to delegate to him. Under the Indian Code of Criminal Procedure, the Governor in Council has the power of pardon, remission or commutation of sentence. In any sentence on a person, convicted in a Province, the only authority outside the Province who can interfere is the Governor-General who can suspend, remit or commute a sentence of death.

Courts of
Appeal in
revenue
matters

296.—(1) No member of the Federal or a Provincial Legislature shall be a member of any tribunal in 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 subsection, 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.

Under s. 226, the High Court has no original jurisdiction in revenue matters unless otherwise provided by legislation. If in any Province, any appellate or revisionary jurisdiction was vested in the local Government, before the Act came into force in the Provinces, the Governor is (until otherwise provided by a Provincial Act) to constitute a tribunal to hear appeals or revision matters in revenue cases. The salaries and allowances of the members of the tribunal are to be determined by the Governor in his individual judgement and are charged on the revenues of the Province.

Prohibition
of certain
restrictions
on internal
trade

297.—(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 the 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.

The section provides for the economic unity of India by prohibiting internal economic barriers. A Provincial Government will not be permitted fiscal developments which will obstruct or restrict the flow of internal or external trade. No Province can impose customs duties levied at its frontiers on goods entering the Province from other parts of India. The Federation alone can impose tariffs and other restrictions on trade. But the imposition by a provincial authority of the octroi and terminal taxes is not prohibited—as these taxes may be levied on all goods whether or not they are manufactured within the Province.

While Provinces are debarred by statute from taxing goods manufactured in the Indian States, no such obligation is placed on the latter, in regard to goods entering into the State from Provinces. The States possess the right to impose customs duties on their frontiers. States acceding to the Federation are not required to accept the principle of internal freedom for trade in India, although internal customs barriers are in principle inconsistent with the freedom of interchange in a fully developed federation. See J.C.R. 264.

298.—(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 British India. Persons not to be subjected to disability by reason of race, religion, etc.

(2) Nothing in this section shall affect the operation of any law which—

- (a) prohibits, either absolutely or subject to exceptions, the sale or mortgage of agricultural land situate in any particular area, and owned by a person belonging to some class recognised by the law as being a class of persons engaged in or connected with agriculture in that area, to any person not belonging to any such class ;
or

(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.

(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.

See J.C.R. 366-73. This and the next succeeding sections contain what is commonly known as declaration of fundamental rights. The Act declares that no British subject, domiciled in India, shall be disabled from holding public office or from practising any trade, profession or calling by reason only of colour, race, religion, caste or place of birth, and further, that a person shall not be deprived of property except by authority of law and that, compulsory acquisition of land can only be made on payment of compensation. The Act also makes further declarations as to the rights of persons not to be disqualified by sex for holding certain offices¹ and as to the rights of British subjects domiciled in the United Kingdom.²

Constitutional lawyers are not agreed as to the necessity of incorporating these declarations of rights in a document. The statutory Commission made the following observations with regard to this subject :

We are aware that such provisions have been inserted in many constitutions, notably in those of the European States formed after the War. Experience, however, has not shown them to be of any great practical value. Abstract declarations are useless, unless there exists the will and the means to make them effective.³

The authors of the Joint Select Committee in expressing agreement with these views stated in paragraph 366 of their Report as follows :

A cynic might find plausible arguments in the history during the last ten years of more than one country, for asserting that the most effective method of ensuring the destruction of fundamental rights is to include a declaration of its existence in a constitutional instrument. But there are also strong practical arguments against the proposal, which may be put in the form of a dilemma : for either the declaration of rights is of so abstract a nature that it has no legal effect of any kind or its legal effect will be to impose an embarrassing restriction on the powers of the Legislature and to create a grave risk that a large number of laws may be declared invalid by the courts because inconsistent with one or other of the rights so declared. . . . There is this further objection that the States have made it abundantly clear that no declaration of fundamental rights is to apply in State territories ; and it would be altogether anomalous if such a declaration had legal force in part only of the area of the Federation. There are, however, one or two legal principles which might, we think, be appropriately embodied in the constitution.

¹ S. 275.

² Part V, Chapter III.

³ Report, Vol. II, par. 36.

There are others, not strictly of a legal kind, to which perhaps His Majesty will think fit to make reference in any Proclamation which he may be pleased to issue in connection with the establishment of the new Order in India.

Sir P. S. Sivaswami Iyer, a constitutional writer of eminence, expresses the uselessness of these declarations in these terms :

In the final place it is hardly necessary, at this time of day, to think of conferring protection against the arbitrary acts of the executive Government. The rule of law is so firmly established in the system of English Jurisprudence by which we are governed, that the danger of encroachment by the executive authority on the rights of individual citizens, otherwise than under colour of law, hardly exists at the present moment. Secondly, the rights included in these declarations are not placed above the reach of the ordinary legislature, for, most of them are expressed in language which recognizes and permits interference by the legislature. Thirdly, the language in which the so-called rights are declared clearly show that they are not legally enforceable terms at all. They are expressed in far too loose and vague a manner to be regarded as a statement of legal rights. Most of the statements are expressed in a very crude form, without any of the qualifications and limitations which would be necessary to make them accurate legal propositions. . . . If these declarations are treated, as they should be, as devoid of legal contents, they are merely illusory safeguards of rights. If on the other hand, they are treated as having the force of law as not liable to change by the ordinary legislatures, they are sure to interfere with the working of the ordinary legislature and to hamper the passing of legislative measures which may be found to be called for in the interests of the safety of the State. . . . Measures like the suspension of the Habeas Corpus Act or the Defence of the Realm Act may be imperatively called for but the legislature will be powerless to put them through. When the Government of this country becomes responsible, we shall ourselves realize the wisdom of not crippling the efficiency of the legislature and preventing it from acting with vigour and promptitude on occasions of emergency. These are the reasons why the Declaration of Rights in a Constitution must be held to be unnecessary, unscientific, misleading and either legally ineffective or harmful.

The section will not affect the validity of any existing law, like the Punjab Land Alienation Act, which prohibits either absolutely or with exceptions, the sale or mortgage of agricultural land in any or to any person not belonging to some recognized class.

See notes to s. 117. See also Part X, Chapter V under RULE OF LAW.

299.—(1) No person shall be deprived of his property in 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,

Compulsory
acquisition
of land, etc.

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 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.

This section safeguards private property against expropriation. Legislation expropriating or authorizing the expropriation of the property of particular individuals will be lawful only if confined to expropriation for public purposes and if compensation is determined in accordance with the provisions of subsection (2). General legislation on the other hand, the effect of which would be to transfer to public ownership some particular class of property or to extinguish or modify the rights of individuals in it, will require the previous sanction of the Governor-General or Governor (as the case may be) to its introduction and in that event, he will be directed by the Instrument of Instruction to take into account as a relevant factor the nature of the provisions proposed for compensating those whose interests will be adversely affected by the legislation.¹ But the section does not restrict the powers of the Legislature in relation to taxation.

Protection
for certain
rights, privi-
leges, and
pensions

300.—(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 commencement of Part III of this Act by the Governor-

¹ See J.C.R. par. 369.

General in Council or any Local Government on political considerations or compassionate grounds shall be discontinued or reduced, otherwise than in accordance with any grant or order regulating the payment thereof, save on an order of the Governor-General in the exercise of his individual judgment or, as the case may be, of the Governor in the exercise of his individual judgment, and any sum required for the payment of any such pension shall be charged on the revenues of the Federation or, as the case may be, the Province.

(3) Nothing in this section affects any remedy for a breach of any condition on which a grant was made.

This section refers to grants of land or of tenure of land free of land revenue or subject to partial remissions of land revenue, held under various names (of which Taluk, Inam, Watan, Jagir and Muafi are examples) throughout British India by various individuals or classes of individuals. Some of these grants date from Moghul or Sikh times and have been confirmed by the British Government; others have been granted by the British Government for services rendered. The terms of these grants differ; older grants are perpetual, modern grants are mostly for three or even two generations. But whatever the terms, a grant of this kind is always held in virtue of a specific understanding given by or on the authority of, the British Government that, subject to some cases to the due observance by the grantee of specified conditions, the rights of himself and his successors will be respected either for all time or, as the case may be, for the duration of the grant. A well-known instance of such rights is to be found in those enjoyed by the present Talukdars of Oudh, who owe their origin to the grant to their predecessors of sanads by Lord Canning, the then Governor-General, conferring proprietary rights upon all those who engaged to pay the jumma, which might then or might from time to time subsequently, be fixed, subject to loyalty and good behaviour; and the rights thus conferred were declared to be permanent, hereditary, and transferable.¹ The holders of these 'vested interests' naturally felt apprehensive lest the grant of responsible government and the consequent handing over of matters connected with land revenue (which is included in the Provincial List in the Seventh Schedule) to the control of Ministers and Legislatures should result in a failure to respect the promises of the Government made to their predecessors. The Joint Committee in paragraph 371 of their Report recommended a provision in the Act requiring the previous sanction of the Governor-General or the Governor to any proposal altering or prejudicing the rights of the grantees. This section adopts the recommendation. But the section does not contemplate that every promise or undertaking made by the British Government in the past shall remain unaltered and unalterable for all time, if its modification can be justified in the light of changed circumstances. Likewise, subsection (2) affords similar protection to those who receive pension, or compassionate allowance from the Government on political and other considerations.

¹ See J.C.R. par. 370.

Still stronger is the case of Zamindars and others who are the successors in interests of those in whose favour the Permanent Settlement of Bengal, Bihar and Orissa and parts of the United Provinces and Madras was made in 1793.

Under the Bengal Permanent Settlement Regulation I of 1793, the Zamindars were declared proprietors of the areas over which their revenue collection extended, subject to the payment of land revenue and to the liability to have their lands sold for failure of payment. The assessment fixed on the land was declared to be unalterable for ever, and the British Government specifically undertook not to make any demand on the Zamindars or their heirs or successors, 'for augmentation of the public assessment in consequence of the improvement of their respective estates'. The Zamindars collected and paid to Government the revenue assessed on that land which was fixed at rates declared at the time to be intended to stand unaltered in perpetuity. The Joint Select Committee in their Report¹ observe :

It is apparent that the position of Zamindars under the Permanent Settlement is very different from that of the individual holders of grants or privileges of the kind we have just described ; for, while the privileges of the latter might, but for a protection such as we suggest, be swept away by a stroke of the pen with little or no injury to any but the holder of the vested interest himself, the alteration of the character of the land revenue settlement in Bengal, for instance, would involve directly or indirectly the interests of vast numbers of the population, in addition to those of the comparatively small number of Zamindars proper, and might indeed produce an economic revolution of a most far-reaching character. Consequently, no Ministry or Legislature in Bengal, could, in fact, embark upon, or at all events carry to a conclusion, legislative proposals which would have such results, unless they had behind them an overwhelming volume of public support. We do not dispute the fact that the declarations as to the permanence of the Settlement, contained in the Regulations under which it was enacted, could not have been departed from by the British Government so long as that Government was in effective control of land revenue. But we could not regard this fact as involving the conclusion that it must be placed beyond the legal competence of an Indian Ministry responsible to an Indian Legislature, which is to be charged *inter alia* with the duty of regulating the land revenue system of the Province, to alter the enactments embodying the Permanent Settlement, which enactments, despite the promises of permanence which they contain, are legally subject (like any other Indian enactment) to repeal or alteration. Nevertheless, we feel that the Permanent Settlement is not a matter for which, as the result of the introduction of Provincial Autonomy, His Majesty's Government can properly disclaim all responsibility. We recommend, therefore, that the Governor should be instructed to reserve for the signification of His Majesty's pleasure any Bill passed by the Legislature which would alter the character of the Permanent Settlement.

Agricultural income is exempt from income-tax. See notes to s. 138 under this head.

¹ Par. 372.

301. Section eighteen of the East India Company Act, 1780, and section twelve of the East India Act, 1797 (being obsolete enactments containing savings for native law and custom) are hereby repealed.

Repeal of
s. 18 of 21
Geo. 3, c. 70,
and s. 12
of 37 Geo.
3, c. 142

High Commissioner

302.—(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.

High Com-
missioner
for India

(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.

See s. 29A, old Act. Since 1920, there has been a High Commissioner for India in London, appointed under the provisions of an Order in Council. Various agency functions on behalf of the Central and the Provincial Governments which were formerly discharged by the India Office have been transferred to him. Under the new Act, he is to be appointed by the Governor-General. The High Commissioner for India is not subject to the orders of the Secretary of State nor is his establishment part of India Office. The appointment of the High Commissioner will be made by the Governor-General in his individual judgement. His duties will be prescribed by the Governor-General and will include the purchase of Government stores. It is to be noted that the various governments in India, in agreement with their legislatures, were free under the old constitution, by convention, from the control of the Secretary of State as regards the policy adopted in regard to the purchase of stores, other than military stores. The High Commissioner will perform for India the functions of agency, as distinguished from political functions, analogous to those now performed in the offices of the High Commissioners of the Dominions. It is open to the Provincial Governments, with the sanction of the Governor-General (or the government of a Federated State or of Burma) to employ the agency of the High Commissioner for such purposes as may be determined by the Provincial Governments.

Although for commercial purposes the High Commissioner for India ranks with the other Dominions, his normal duties do not include matters connected with foreign affairs or defence. The new Act does not abolish the India Office: communication on questions of policy as between the Home and Indian Governments will be addressed to the India Office direct, and not by the High Commissioner on the instruction of the

Government of India. The High Commissioner, whose duties are mainly of agency character, may be and frequently is, appointed to represent the Government of India on such international bodies as the Imperial Conference and the League of Nations. The Indian Delegation to the Ottawa Conference communicated with the Government of India through the High Commissioner. The High Commissioner was, on one occasion directed by the Government of India, to conduct trade negotiations with the Irish Free State. The office of the High Commissioner is located in an impressive building known as the India House.

The High Commissioner's work is performed in the following departments:

(1) The Accounts department, which makes all payments on behalf of the High Commissioner and whose transaction amounted to nearly £7,000,000 in 1935, is responsible for payment of pensions and leave allowances, and deals with all problems arising in connexion with the salaries and conditions of the personnel in the High Commissioner's office. It also sanctions extension of leave to officers from India for limited periods.

(2) The principal function of the General department is to make arrangements for the recruitment of staff for the office and for Government and public bodies in India. It exercises supervision over officers on deputation or study leave and obtains facilities for them and other accredited persons, official or non-official. It arranges passage to India for officials. It protects the interests of, and where necessary repatriates, distressed Indian seamen and generally assists other Indian nationals.

(3) The Public department, which was formed in 1931, deals primarily with international and inter-imperial matters. The principal organization it has to deal with at present is the International Labour Office at Geneva, the main function of which is to look after the working conditions and welfare of labour in all the countries of the world which are members of the International Labour Organization. The High Commissioner has a seat in the Governing Body of the International Labour Office and on the managing board of the following bodies:

- (a) The International Institute of Agriculture.
- (b) The Imperial Economic Committee.
- (c) The Imperial Shipping Committee.
- (d) The Imperial Agricultural Bureau.

(4) The Trade department is actually older than the office of the High Commissioner, as the first Trade Commissioner to London was appointed in 1917. There are three Trade Commissioners under the High Commissioner for India. The Trade Commissioner in London covers Great Britain and America. The Trade Commissioner in Hamburg deals with Germany and the northern half of Europe. The Trade Commissioner in Milan watches over Indian trade in Italy and the southern half of Europe. The main work of the department is to develop the exports of Indian products to Europe and America. It represents India on various Imperial and Trade Committees in the United Kingdom. Associated with this department are the Indian Trade Publicity Officer, the Timber Adviser, the Mineral Adviser, and a special officer to direct lac researches.

(5) The Stores department of the High Commissioner for India is not located in the India House. The duties entrusted to this department may be briefly described as the purchase, inspection and shipment of stores required by the Central and Provincial Governments of India.

The articles purchased are of the greatest possible variety. They include vessels for the Royal Indian Navy, generating machinery and transmission plants for hydro-electric projects, munitions of war, tanks, clothing and food-stuffs for the army, motor vehicles, surgical instruments and drugs.

(6) The duties of the Education department which is the smallest in the India House and which consists of only 12 officials out of a total of 600 officers, are :

- (a) to furnish Indians both directly and through institutions with informations regarding educational facilities in Great Britain ;
- (b) to obtain admission for them to educational institutions ;
- (c) to assist them to obtain professional and technological training ;
- (d) to supervise State scholars and others who may be placed under the High Commissioner's guardianship ; and
- (e) generally to strive for the welfare of Indian students.

The High Commissioner's Office : The Provisions of Part X of the Act are to apply to appointments to, and to persons serving in, the staff of the High Commissioner for India, as if the members of the staff rendered service in India. All persons who were immediately before the commencement of Part III of this Act members of the High Commissioner's staff, shall continue to be so, and they hold their posts under the same conditions of pay, pensions, etc. as before. See ss. 251 and 252.

Pensions : The High Commissioner is to be provided with sufficient funds by the Federation or a Province to enable him to pay the pensions payable out of the Federal or the Provincial revenues. See s. 157(2).

General Provisions

303.—(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. Provisions as to Sheriff of 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.

(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.

By the first Charter granted to the United Company in 1726 by 13 Geo. 1, a mayor and 4 aldermen were appointed at each of the settlements of Madras, Bombay and Calcutta, and they were constituted a Court of Record. A sheriff could be appointed for the above towns and for any space within ten miles of the same. But no sheriff seems to have been appointed under this Charter. By Cl. (9) of the Charter of George III of 26 March 1774, establishing the Supreme Court of Judicature at Fort William of Bengal, it was provided that the Supreme Court of Judicature shall on the first Tuesday of December every year, nominate three residents of the town of Calcutta to the Governor-General and Council, who within three days after such nomination shall appoint one

of the three persons to serve as sheriff for the year from 20 December next, such sheriff remaining in office for one whole year therefrom, and that sheriff and deputies appointed by him are authorized to execute all writs, summonses, rules, orders, warrants and processes of the Supreme Court of Judicature and to make return of the same to that Court and to detain in prison persons committed to him for the purpose by the Supreme Court. In December 1774, the first sheriff of Calcutta was appointed, Mr James McRabey, brother-in-law of Sir Philip Francis. Clause 9 of the Charter of 1774 was still in force (except the provision regarding official oath) till the new Act. By this section, the Governor in the exercise of his individual judgement is to appoint annually a sheriff from a panel of three persons. All the money realized by the sheriff from fees for writs, poundage, etc. were taken by the sheriff who paid the salary of the staff employed in the sheriff's office and took the balance. In Bombay and Madras, all this money is credited to Government and the sheriffs there receive no emoluments, but that is not so in Calcutta. There has been a proposal in Calcutta under which Government is to manage the sheriff's office under an official, and all the balance left after payment of salaries and allowances to those employed in this office, is to be credited to Government. It is open to the Governor to fix a remuneration for the sheriff but it is expected that the office will be purely an honorary one.

Persons
acting as
Governor-
General or
Governor

304. 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.

S. 90 of the old Act dealt with temporary vacancy in the office of the Governor-General which was to be filled by the most senior Governor of Provinces in India. This section deals with the privileges of the person appointed by His Majesty to act for the Governor-General or for a Governor. Paragraph 5 of the Third Schedule deals with the salary, allowances and privileges of the person so acting. Such a person will enjoy all the powers and immunities of the Governor-General or the Governor, e.g. he enjoys the protection under s. 306.

See s. 7(3), and notes.

Secretarial
staffs of
Governor-
General and
Governor

305.—(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.

Having regard to the important duties of the Governor, particularly in connexion with his special responsibilities the Joint Committee in paragraph 101 of their Report approved of the proposal in the W.P. that the Governor should have at his disposal an adequate personal and secretarial staff of his own and that the salary and allowances of such a staff should be fixed by Order in Council and, though included in the Budget, were not to be submitted to the vote of the Legislature. At the head of this staff, there should be a capable and experienced officer of high standing. He should be a man fully conversant with the current affairs of the Province and in close contact with the administration. In some respects he will occupy the position formerly occupied by the Governor's Private Secretary but with duties of a wider and a more responsible character. In the Presidencies, it may be assumed that the Governor's Secretary will be of the rank of an Executive Councillor under the old constitution, and in the other Governor's Provinces he will be of the rank of a Collector. The Governor's secretariat under the Act, will be a department between the Ministry and the Governor.

306.—(1) No proceedings whatsoever shall lie in, and no process whatsoever shall issue from, any court in India against the Governor-General, against the Governor of a Province, or against the Secretary of State, whether in a personal capacity or otherwise, and, except with the sanction of 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 a 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 :

Protection of
Governor-
General,
Governor or
Secretary of
State

Provided that nothing in this section shall be construed as restricting the right of any person to bring against the Federation, a Province, 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 subsection 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.

Under s. 110 (1), old Act, neither the Governor-General nor any of the Governors nor any member of their Cabinet shall be subject to the original jurisdiction of the High Court by reason of anything done or ordered to be done by him in his public capacity, or liable to be arrested or imprisoned in any suit in the Original Side of the High Court. But under old s. 111, neither the Governor-General nor any member of his Executive Council nor any person acting under their orders is exempt from any proceedings before any competent court in England.

This section confers legal immunity upon the Governor-General, the Governor and the Secretary of State. These officers of State, whether in a personal capacity or otherwise, cannot be sued or prosecuted in any court in India in respect of anything done or omitted to be done by them during their term of office, in the performance or purported performance of their duties. This immunity from legal proceedings in Indian courts is to continue even after retirement. But this protection may be removed and action may be started against these officers after their retirement, if the sanction of His Majesty in Council has been previously obtained for this specific purpose. But this section does not restrict the right to bring against the Federation, a Province or the Secretary of State such proceedings as are mentioned in Chapter III of Part VII of the Act which deals with property, contracts and suits. This section only applies to proceedings in Indian courts. At Common Law, the Governor of any territories of the Crown is liable to a civil action for acts done in his private and unofficial capacity both in the Courts of the Colony and in the Courts of King's Bench in England.¹ He may also be sued in England for acts done in his official capacity, but outside the limits of his authority or for acts which, though done officially and apparently within the limits of his commission, are such as the Crown through his Ministers cannot legally do; for the orders of the Crown are no excuse for such acts.² The defence of political necessity is available to Governors in all civil proceedings in the absence of statutory justification, where the act complained of is within the authority of the Crown and also within the limited authority conferred by the Crown upon the Governor. Different considerations arise, however, in the case of a Viceroy.³ But the action complained of must be tortious, both in the view of the English law and of local law, and action can be barred, therefore, if the local Legislature legalises the action impugned.⁴ But a Governor is not liable either in England or in the Colony for any act done within the authority of his commission.

Governors are liable to criminal proceedings in the Court of King's Bench in England under the Governor's Act⁵ 'for acts of oppression within the area of their command, or for any other crime or offence contrary to the laws of the realm or in force within their respective Governments or commands'. The Governor's Act was extended by a subsequent Act, the Criminal Jurisdiction Act, 1802⁶ to 'all persons in

¹ *Hill v. Bigge* (1841) 3 Moo. P.C. 465; *Cameron v. Kyte* (1835) 3 Knapp. 332 P.C.

² *Mostyn v. Fabrigas* (1774) 1 Cowp. 161 at p. 172; 1 Smith's L.C. (13th ed.) 642; *Musgrave v. Pulido* (1879), 5 App. Cas. 102 at 11-12; *Phillips v. Eyre* (1869) L.R. 4 Q.B. 225.

³ *Luby v. Lord Wodehouse* (1865) 17 Ir. C.L. R. 618.

⁴ See *Phillips v. Eyre* (above).

⁵ 11 & 12 Will III, c. 12.

⁶ 42 Geo. III, c. 85.

His Majesty's service, in any civil or military capacity out of Great Britain, guilty of any crime, misdemeanour or offence, in the execution of, or under colour or in the exercise of any such employment'. The old Act dealt with certain offences committed by any person holding office under the Crown in India; e.g. under s. 124 of that Act any servant of the Crown who within his jurisdiction or in the exercise of his authority oppressed any British subject was guilty of a misdemeanour. Under s. 127 of the old Act, if a person holding office under the Crown in India commits any offence under that Act or any offence against any person within his jurisdiction or subject to his authority, the offence may also be tried before His Majesty's Court of Justice, to be dealt with as if committed in the county of Middlesex; and further, any British subject committing any offence within India but outside British India, may be tried in the United Kingdom as if the offence had been committed in British India. Ss. 128 and 129 of the old Act refer to the prosecution of offences referred to in s. 127, before a High Court in British India and the penalties that may be imposed by a High Court, including deportation to Great Britain. Thus under the old Act, persons holding office under the Crown in India and certain British subjects were subject to the jurisdiction of the English as well as the Indian courts. These sections of the old Act have been repealed, and this new section provides for the immunity of the Viceroy, the Governor-General, the Governor and the Secretary of State from proceedings in any Indian court, unless such proceedings have been authorized by His Majesty in Council. But under the English statutes cited, Governors and all persons in His Majesty's service out of Great Britain are liable to prosecution in England.¹ So the new Act has practically abrogated the liability of these officials to proceedings before Indian courts.

307. 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—

Removal of certain disqualifications on the occasion of the first elections to Legislature

- (a) an office of profit as a non-official member of the Executive Council of the Governor-General or a Governor, or as a minister in a Province;
- (b) an office which is not a whole time office remunerated either by salary or by fees.

See notes to s. 26 (1) (a) under OFFICE OF PROFIT. Under the Non-Official (Definition) Rules made under the old Act, a person who is not both a whole-time servant of Government and remunerated by salary or fees was a non-official and could stand for election. Under old s. 80B, a minister was not regarded as an official so as to be disqualified to be elected member of the local Legislature. Under the new Act, a minister, a public prosecutor or a part-time lecturer in a Government college would be holding an office of profit and so would be disqualified from standing for election. This section is a temporary measure permitting such persons to stand for the first election. An Act of the

¹ See *Ilbert's Government of India* (3rd ed.), Article 117 at p.283.

Legislature will have to be passed subsequently declaring what offices will not be regarded as offices of profit within the meaning of s. 26 (1) (a) and s. 69 (1) (a).

Procedure
as respects
proposals
for amend-
ment of
certain pro-
visions of
Act and
Orders in
Council

308.—(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 motions 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 subsection the Governor-General or the Governor, as the case may be, shall act in his discretion.

(2) The amendments referred to in the preceding subsection 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 Federal Assembly, the proportion between the number of seats allotted to

British India and the number of seats allotted to Indian States ;

- (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 subsection, the provisions of subsection (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 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 subsection have elapsed or not, and whether any such address as is mentioned in this section has been submitted to His Majesty or not, make in the provisions of this Act any such amendment as is referred to in subsection (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 not be amended without the consent of the Ruler of any State which will be affected by the amendment.

The Federal Legislature has powers under s.108, to vary or alter the provisions of the Imperial Acts, applying to India but these do not extend to the enactment of any law affecting or modifying the provisions of this Act. The Act does not confer general constituent powers on the Indian Legislatures and consequently no constitutional amendment can be made otherwise than by Act of Parliament. The observations of the Joint Select Committee on the subject in paragraph 375 are as follows :

We are satisfied that, though there are various matters in the Constitution Act which after an interval of time, might in principle be left quite appropriately to modification by the Central or Provincial Legislatures, as the case may be, as subsequent experience may show to be desirable, it is not practical politics here and now to confer such powers upon them. It would be necessary not merely to decide what matters could thus be dealt with but also to devise arrangements to ensure that various interests affected by any proposed modification were given full opportunity to express their views and that changes which they regarded as prejudicial to themselves could not be forced upon them by an inconsiderate majority. With a constitution necessarily so framed as to preserve so far as may be a nice balance between the conflicting interests of Federation, States and Provinces, of minority and majority, and indeed, of minority and minority, and with so much that is unpredictable in the effects of inter-play of these forces, it is plain that it would be a matter of extreme difficulty to devise arrangements likely to be acceptable to all those who might be affected ; and it would probably be found that the balance could only be preserved and existing statutory rights only guaranteed by a number of restrictions and conditions upon the exercise of the constituent powers which would make them in practice unworkable. But, whether or not this can reasonably be regarded as a defect in the Constitution Act, we do not think that the question is one of immediate importance, since we should have been bound in any event to recommend that the main provisions of the Act should remain unaltered for an appreciable period, in order to ensure that the Constitution is not subjected at the outset to the disturbances which might follow hasty attempts to modify its details.

There is another difficulty which is inherent in every federal constitution. The Indian Federation is a union of the British Indian Provinces and the Indian States which accede to the Federation on the basis of the Government of India Act, 1935. The States are, therefore, entitled to say, that so far as any constitutional amendment affects them, it should not be carried into effect without their approval. The Second Schedule to the Act provides that amendments of specified portions of the Act (which can only be made under the provisions of this and succeeding sections) will not affect the validity of the Instrument of Accession. See also Part II of the First Schedule which deals with the provisions relating to the representation of the Indian States in the Federal Legislature. It is also laid down in the Act that no Order in Council can be made amending these provisions without the consent of the Ruler of the State concerned.

While the Act makes no specific grant of constituent powers to authorities in India, this section provides for a plan whereby the Indian Legislatures may be associated with the modification hereafter of the provisions of the Act or of any Order in Council relating to the composition and the size of the Legislatures or the qualifications of the electors. It will be competent for any Legislature to pass a resolution on the motion of a minister advocating a constitutional change and to present an address to the Governor-General or Governor, as the case may be, praying that His Majesty may be pleased to communicate it to the Parliament. The resolution shall be laid before the both Houses of Parliament not later than six months after its receipt, with a statement of the action which His Majesty's Government propose to take upon it. But the procedure which is laid down in this section, shall be subject to the following conditions :

- (a) That the resolution shall be confined in scope to matters concerning composition of, and the franchise for, the Legislature ;
- (b) That the Federal Legislature should have no power to propose an alteration in the size or composition of either Chamber which would involve a variation of the proportion of the seats allotted to the States and the Provinces respectively or of the relative size of the two Houses ;
- (c) That the procedure shall not come into force until after ten years, in the case of the Provincial Legislatures from the inauguration of the Provincial Autonomy, and in the case of the Federal Legislature from the inauguration of the Federation ; except that any Provincial Legislature shall have power to propose the removal of the 'application' requirement and the lowering of the educational standard to literacy in the case of women voters after the first election in the Province under the new Constitution ;
- (d) That the Governor-General or the Governor, as the case may be, shall be required in forwarding a resolution, to state his own views on the question of its effect upon the interests of any minority or minorities ; and finally
- (e) That the resolution shall be proposed on the motion and responsibility of the Federal or Provincial ministers as the case may be.

It would be observed that the Indian Legislatures have only been given powers to express by resolution to His Majesty's Government,

their intention of a constitutional change in respect of the matters specified in this section. But the actual power of modifying the Act has been placed by the Act in the hands of His Majesty's Government by Order in Council laid in draft before both Houses as provided in s. 309. In other words, no amending legislation by Parliament will be required. In respect of these and other matters specifically mentioned in the Act variations may be made by Order in Council.

Cl. (4): His Majesty in Council may at any time, whether the ten years referred to has elapsed or not and whether any address mentioned in Cl. (1) has been submitted or not, make any such amendment in the provisions of the Act. In a statement issued by the Government of India on the authority of His Majesty's Government on 3 July 1935, it was pointed out that the necessity for these powers was due to such reasons as the following:

- (a) It is impossible to foresee when necessity may arise for amending minor details connected with the franchise and the constitution of the Legislatures, and for such amendment it would clearly be disadvantageous to have no method available short of a fresh amending Act of Parliament, nor is it practicable statutorily to separate out such detail from more important matters such as those covered by the terms of the Communal Award.
- (b) It might also become desirable, in the event of a unanimous agreement between communities in India, to make modifications in the provisions based upon the Communal Award and for such agreed changes it would also be disadvantageous to have no other method available than an amending Act of Parliament.

The statement added that within the range of the Communal Award His Majesty's Government would not propose, in the exercise of any powers conferred by this clause, to recommend to Parliament any changes, unless such changes has been agreed to between the communities concerned.

The new Act has been amended by Order in Council made under s. 308(4), by Part I, paragraph 23 of the Government of India (Provincial Legislative Assemblies) Order, 1936, whereby certain minor amendments have been made in the Fifth and the Sixth Schedules of the Act; and by paragraphs 2 and 3 of the Government of India (Federal Legislature Amendment) Order, 1936, whereby amendments have been made in Part II of the First Schedule to the Act.

Orders in
Council

309.—(1) Any power conferred by this Act on His Majesty in Council shall be exercisable only by Order in Council, and subject as hereinafter provided, the Secretary of State shall lay before Parliament the draft of any Order which it is proposed to recommend His Majesty to make in Council under any provision of this Act, 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 Order may be made either in the form of the draft, or with such amendments as may have been agreed to by resolutions of both Houses:

Provided that, if at any time when Parliament is dissolved or prorogued, or when both Houses of Parliament are adjourned for more than fourteen days, the Secretary of State is of opinion that on account of urgency an Order in Council should be made under this Act forthwith, it shall not be necessary for a draft of the Order to be laid before Parliament, but the Order shall cease to have effect at the expiration of twenty-eight days from the date on which the Commons House first sits after the making of the Order unless within that period resolutions approving the making of the Order are passed by both Houses of Parliament.

(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 subsection, 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.

See J.C.R. 376-79; and notes to s. 1, under ORDER IN COUNCIL.

The Order in Council is a principal method of giving the force of law to executive acts. The Privy Council acts as the formal medium for giving expression to the measures determined on by the Crown on the advice of its ministers in the exercise of the executive functions which it possesses, either by virtue of the Common Law prerogative or of statutory authority. The Crown expresses its wishes over a very wide range of subordinate legislation by Order in Council. It is one of the recognized modes of exercising delegated legislative authority. The powers conferred by the Statute in regard to the functions of delegated legislation may be classified as follows: (i) supplementing the statute in general terms; (ii) adoption of earlier statutes; (iii) amendment of the statute itself; and (iv) determination of the time and area of application.

Provisions have been made in the Act reserving power to the King in Council to enact measures under various sections which will have the force of Acts of Parliament. The form to be assumed for such legislation is that of an Order in Council which will not have statutory effect unless the procedure prescribed by this section has been complied with. In *The King v. Minister of Health, ex parte Yaffe*¹, the House of Lords expressed the opinion that if an Order did not comply with the statutory conditions, it was open to question. In the same case, the Court of

¹ (1931) A. C. 494.

Appeal declined to take judicial notice of a departmental order expressed to have statutory effect on the ground that the procedure prescribed by the statute had not been followed. By Order in Council, the Executive have no power to prescribe or alter the law.¹

This section lays down the procedure to be followed in promulgating Orders in Council under the authority of this Act. The Order in Council must be laid in draft before Parliament, and is to be approved by resolutions of both Houses before it takes effect. In circumstances of emergency when the Parliament is not sitting, the Order in Council will become operative before the approval by resolutions of both Houses of Parliament has been obtained, but will cease to operate unless such approval is obtained within the period specified in the proviso to subsection (1). If the Orders in Council conform to the requirements of this section, they are to have the same force as if enacted in the Act itself. Orders in Council in connexion with appeals and in connexion with sanction of proceedings against Viceroy, etc. are exempt from these requirements.

The Act also provides for the amendment and repeal of an existing Order in Council by a subsequent Order in Council. See s. 308, which lays down the procedure to be followed at the time of altering or repealing an Order in Council.

For the list of Orders in Council see Appendix III.

Power of
His Majesty
in Council
to remove
difficulties

310.—(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 of 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—

- (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 transition is being effected and during the period immediately following it, there are available to all governments in India and Burma sufficient revenues to enable the business of those governments to be carried on ; and

¹ *The Zamora* (1916) 2 A. C. 77 at p. 90.

- (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.

His Majesty may by Order in Council remove difficulties which may arise during the transition from the old Act to the new and during the transition from the establishment of the Provincial Autonomy under Part III of this Act, to the establishment of the Federation under Part II of this Act. By such Order His Majesty may direct that this Act and certain provisions of the old Act, subject to specified modification, shall apply during a limited period. No Order in Council under this section can be made after the expiry of 6 months from 1 April 1937. The Government of India (Commencement and Transitory Provisions) Order, 1936, and the (Commencement and Transitory Provisions) (No. 2) Order 1936, make provisions for the purpose of facilitating the transition from the old Act to the new Act.

See the India, Burma and Aden (Transitory Provisions) (Taxation) Order, 1937, which deals with the amount payable in respect of taxation in accordance with certain central enactments mentioned therein, before the separation of Burma and Aden from India.

See notes to s. 273 under the GOVERNMENT OF INDIA (FAMILY PENSIONS FUNDS) ORDER, 1937.

See the India and Burma (Transitory Provisions) Order, 1937, repealing paragraphs 9 and 10, and modifying paragraph 3(2) of the Government of India (Commencement and Transitory Provisions) Order, 1936, and making certain modifications and adaptations in the Act during a limited period for the purpose of facilitating the transition from the old Act to the new Act.

Interpretation

311.—(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

Interpretation, etc.

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 ;

‘Indian State’ includes any territory, whether described as a State, an Estate, a Jagir or otherwise, belonging to or under the suzerainty of a Ruler who is under the suzerainty of His Majesty and not being part of British India ;

‘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 requires, 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 ;

‘corporation tax’ means any tax on so much of the income of companies as does not represent agri-

- cultural income, being a tax to which the enactments requiring or authorising companies to make deductions in respect of income-tax from payments of interest or dividends, or from other payments representing a distribution of profits, have no application ;
- corresponding Province' means in case of doubt such Province as may be determined by 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 ;
- 'existing Indian law' means any law, ordinance, order, byelaw, rule or regulation passed or made before the commencement of Part III of this 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, byelaw, rule or regulation ;
- 'goods' includes 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 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 of this section, an Act passed or law made by a Provincial Legislature established under this Act;

'public notification' means a notification in the Gazette of India or, as the case may be, the official Gazette of a Province;

'securities' includes stock;

'taxation' includes the imposition of any tax or impost whether general or local or special, and 'tax' shall be construed accordingly;

'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, 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.

(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 of the 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, being adaptations and modifications which appear to His Majesty in Council to be necessary or expedient in consequence of the provisions of this 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 subsection 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.

(6) Any reference in this Act to Federal Acts or laws or Provincial Acts or laws, or to Acts or laws of the Federal or a Provincial Legislature, shall be construed as including a reference to an ordinance made by the Governor-General or a Governor-General's Act, or as the case may be, to an ordinance made by a Governor or a Governor's Act.

(7) References in this Act to the taking of an oath include references to the making of an affirmation.

Cl. (1): 'India' as defined by the Interpretation Act¹ and the Indian General Clauses Act² includes not only the territories under the direct sovereignty of the Crown but also the territories of the Native States.

Agricultural income: See notes to s. 138 under this heading.

Corporation Tax: See s. 139 and notes thereto.

Existing Indian law: See ss. 292, 293 and 317.

Local government: See definition in s. 134(4) of the old Act. In List II, item 13, this expression has been used as meaning Local Self-Government. See item 1 in Part II, Provincial Subjects in Schedule I of the Devolution Rules made under the old Act.

Cl. (6): Reference to Federal Acts or Laws includes reference to Ordinances made by the Governor-General or Governor-General's Acts; similarly in the case of Provincial Acts or Laws.

See the Government of India (Adaptation of Acts of Parliament) Order, 1937, for adaptations and modifications of Acts of Parliament

¹ 52 & 53 Vict., c. 63, s. 18.

² Act X of 1897, s. 3 (27).

containing references to India, made by Order in Council made under Cl. (5) of this section. Amendments to the English Army and Air Force Acts, in their application to India, have been made in Part III of the Schedule to the Order.

PART XIII
TRANSITIONAL PROVISIONS

PART XIII

TRANSITIONAL PROVISIONS

INTRODUCTION

As the Joint Committee pointed out, the establishment of provincial autonomy was likely to precede the inauguration of Federation. So the new Act should contain transitory provisions which on the commencement of provincial autonomy should settle during the intervening period, the constitution and powers of the central Government and Legislature which will for the time co-exist along with the autonomous Provinces until the time the former are replaced by the Federal Government and Legislature under the new Act. This part is to apply during the period from 1 April 1937, the date fixed by the Government of India (Commencement and Transitory Provisions) Order, 1936—hereinafter referred to as the said Order,¹—for the commencement of provincial autonomy and the establishment of the Federation. S. 310 provides for an Order in Council *inter alia* to facilitate the transition from the provisions of the old Act to those of the new Act and to provide, during the transition period (up to 1 April 1937) and after that, that the various governments in India should have sufficient funds to carry on the work of government till the Budget is passed by the new Legislatures coming into existence after 1 April 1937. The Order in Council under s. 310 provides for the transition period from 1936 till 1 April 1937. Part XIII provides for the transition period from 1 April 1937 till the Federation is established.

The general intention underlying the provisions in Part XIII is that the central Government, though deprived of much of its authority under the old Act over the Provinces, should for the intervening period (between the establishment of provincial autonomy and of the Federation), be placed in substantially the same position as that occupied under the old Act by the Governor-General in Council, so it will be necessary to keep in being the existing central Legislature with its existing franchise and the existing number of elected and nominated members, and to keep the existing central Executive. But there must be consequential changes to fit in the present central Legislature and Executive as under the old Act, with provincial autonomy under the new Act. The fundamental feature underlying the new Act is a statutory distribution of legislative powers between the central and the provincial legislature. This will have to be provided for during the transition period. There should be also during the period a statutory distribution of financial powers and resources between the central government and the provincial governments, as when the Federation is actually established. To determine the questions between the centre and the Provinces regarding legislative and financial relationships, there must be a court with the powers of the Federal Court during this period, as there must be a Federal Court under the Federation. Next, it will be as necessary during this period, as under the Federation, to differentiate between the functions of the Governor-General in Council (a corporate body under the old Act exercising almost all the functions of the central Executive) and the Governor-General who during the period

¹ See under s. 310.

(as well as under the Federation) is to have control over the Governor acting in his discretion or acting in his individual judgement. Then the provisions in the new Act regarding settlement of disputes between the Province and Province or between the centre and a Province regarding water rights should be made applicable.

So this chapter provides that during the period intervening between the date of commencement of provincial autonomy (under Part III of the Act) and the establishment of the Federation :

(1) Federation will mean British India, and Federal Legislature will mean the central Legislature as constituted under the old Act.

(2) Governor-General and Federal Government shall mean (except where under the Act the Governor-General is to act in his discretion) the Governor-General in Council.

(3) The executive authority is to be exercised on behalf of His Majesty by the Governor-General in Council.

(4) Matters in the Act left to the Governor-General in his discretion will be regulated by the Governor-General.

(5) As there is no council of ministers to advise the Governor-General, provisions as to the exercise of his individual judgement will not come into force. But he will have special responsibilities similar to those under the Federation.

(6) With regard to the reserved departments,¹ and tribal areas, rules in the new Act shall apply as to (a) previous sanction of the Governor-General to legislation, (b) broadcasting, (c) direction to, and principles to be observed by, the Federal Railway Authority, and (d) civil services recruited by the Secretary of State.

(7) The Governor-General and the Governor-General in Council shall be under the general control of the Secretary of State whose particular directions are to be complied with. The Secretary of State shall not give directions to the Governor-General in Council regarding grant or appropriation of revenue except with the concurrence of his advisers who are to be from eight to twelve in number.

(8) Sterling loans are to be raised, not by the Governor-General in Council, but by the Secretary of State authorized by Parliament. But the borrowing must be approved by the Secretary of State with the concurrence of a majority of his advisers.

(9) The Federal Court, the Federal Public Service Commission and the Federal Railway Authority are to be constituted though the Federation has not yet been established, and they will in relation to British India, perform functions similar to those they are to perform in relation to the Federation.

(10) The provisions of the old Act dealing with the Governor-General, the Commander-in-Chief, the Governor-General's Executive Council and the Indian Legislature, with certain modifications, as set out in the Ninth Schedule shall apply notwithstanding the repeal of the old Act by the new Act.

Operation of
Part XIII

312. 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.

By the Government of India (Commencement and Transitory Provisions) Order, 1936 (hereinafter referred to as the said Order), 1 April 1937 has been fixed as the date for the commencement of Part III of this Act.

See the Government of India (Commencement and Transitory Provisions) Order, 1936, and the (Commencement and Transitory Provisions) (No. 2) Order, 1936.

313.—(1) Subject to the provisions of this Act for ^{Executive Government} 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 as respects matters with respect to which the Governor-General is required by the said provisions to act in his discretion, be construed as references to the Governor-General in Council, and any reference to the Federation, except where the reference is to the establishment of the Federation, shall be construed as a reference to British India, the Governor-General in Council or the Governor-General, as the circumstances and the context may require :

Provided that—

- (a) any reference to the revenues of the Federation shall be construed as a reference to the revenues 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.

Cl. (1) : See s. 7 of the Act.

Cl. (2) : See s. 8 of the Act.

Cl. (3), Prov. (b) : Part VII, Chapter I deals with the distribution of revenues between the Federation and the Federal units. Under the said Order, Part VII will be in force from 1 April 1937. Part VIII and the Eighth Schedule, dealing with the Federal Railway Authority may be brought into force by a subsequent Order under s. 310.

Cl. (4) : See Introduction to this Chapter. Defence, ecclesiastical affairs and external affairs form the reserved departments, and under s. 11 (when the Federation comes into operation) the Governor-General will deal with them in his discretion.

Cl. (5) : The exercise of the functions of the Crown in its relation to the States will vest in the Viceroy, and not in the Governor-General in Council, as provided in the Act for the Federation. See s. 2(1), Prov.

314.—(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 on the ground that it was done otherwise than in accordance with the provisions of this subsection.

Control of
the Secre-
tary of
State

(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 eight, 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.

Cl. (1) : For the control of the Secretary of State over the Governor-General in matters by which he is required to act in his discretion and in his individual judgement, see s. 14 and notes thereunder. During the transition period, as there is no council of ministers to advise him, there is no scope for the exercise of his individual judgement.

Cl. (3) : Under the said Order, Part XI of the Act dealing with the Secretary of State will come into force from 1 April 1937, the date of commencement of Part III of Act, so that the Secretary of State in Council as a statutory corporation will disappear and the Secretary of State under s. 278 will have a body of advisers not less than three and not more than six in number. See Introduction to Part XI and notes to s. 278. But during the period of transition from 1 April 1937 till the date of inauguration of the Federation, the Secretary of State will have from eight to twelve advisers. When Federation is established, such of the advisers as the Secretary of State may direct will cease to hold office, so that the number is reduced to that in s. 278.

Sterling
loans

315.—(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 subsection (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 India in Council under the provisions of Part XIII of the 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 loans 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.

Under ss. 161 and 162 of the Act, the borrowing powers of the Secretary of State in Council on the security of Indian revenues will cease upon the commencement of Part III of this Act, and then the Federal Government will have the power to borrow on such security within the limits (if any) fixed by the Federal Legislature. But during the transition period when the Federal Government is not in existence, the Secretary of State if so empowered by an Act of Parliament may borrow on behalf of the Governor-General in Council, provided the borrowing has been approved by the majority of the advisers of the Secretary of State present.

316. The powers conferred by the provisions of this ^{Legislature} 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.

The powers under the various parts of this Act brought into force under the said Order from 1 April 1937, conferred on the Federal Legislature shall be construed as powers given to the Indian Legislature during the period.

Continuance
of certain
provisions
of Govern-
ment of
India Act

317.—(1) The provisions of the Government of India Act set out, with amendments consequential on the provisions of this Act, 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.

See notes to ss. 33 and 145, and paragraph 4 of the Government of India (Commencement and Transitory Provisions) (No. 2) Order, 1936.

Provisions
as to
Federal
Court and
certain
other
Federal
authorities

318.—(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.

The provisions of Part X, Chapter III (Public Service Commission) have been brought into force from 1 April 1937, by the (Commencement and Transitory Provisions) Order, 1936.

By the same Order, it was provided that the provisions of Part VIII of the Act (Federal Railway Authority) and of Chapter I of Part IX (Federal Court) were to come into force on such dates as His Majesty in Council might hereafter appoint. Thereafter, the provisions of Chapter I of Part IX of the Act (Federal Court), except s. 206 (power of Federal Court to enlarge appellate jurisdiction) and s. 215 (ancillary powers of the Federal Court), were brought into force from 1 October 1937, by the (Federal Court) Order, 1936. S. 215 was

brought into force from 28 July 1937 by the (Federal Court) Order, 1937. See s. 320.

319.—(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.

Rights and liabilities of Governor-General in Council and Governor-General to continue after establishment of Federation

(2) The provisions of subsection (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 and liabilities therein mentioned.

The rights and liabilities of the Governor-General in Council or of the Governor-General during the period will be taken over by the Federation on its being established. As to legal proceedings, see s. 179.

PART XIV

COMMENCEMENT, REPEALS, ETC.

PART XIV

COMMENCEMENT, REPEALS, ETC.

320.—(1) Part II of this Act shall come into force ^{Commence-} 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 contrary, come into force on such date 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 foregoing 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.

By the Government of India (Commencement and Transitory Provisions) Order, 1936, the date of the commencement of Part III of this Act has been fixed as the first day of April 1937. On that date, it has been further provided that all the provisions of the Act are to apply except :

- (1) Part II—Federation of India ;
- (2) Part VII—Federal Railway Authority ;
- (3) Part IX, Chapter I—Federal Court ;
- (4) The Eighth Schedule—Federal Railway Authority ;
- (5) S. 232—Pay of the Commander-in-Chief.

It has been provided by s. 318 that although the Federation may not yet be established, the Federal Court, the Federal Public Service Commission and the Federal Railway Authority are to be established, and that His Majesty may by Order in Council fix a date later than the commencement of Part III of this Act for coming into operation of the provisions of the Act relating to them.

The following Orders in Council have been made under this section : the Government of India (Commencement and Transitory Provisions) Order, 1936, and the (Commencement and Transitory Provisions) (No. 2) Order, 1936.

321. The Government of India Act shall be repealed ^{Repeals} 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—

9 and 10 Geo.
5, c. 101

- (a) nothing in this section shall affect the Preamble to the Government of India Act, 1919 ;
- (b) without prejudice to any other provisions of this Act, to the provisions of the Government of Burma Act, 1935, and to the provisions of the Interpretation Act, 1889, relating to the effect of repeals, this repeal shall not affect any appointment made under any enactment so repealed to any office, and any 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.

The preamble to the Government of India Act has not been repealed. See notes to s. 1 of this Act. In spite of the repeal of the Government of India Act, s. 317 provides for the continuance of certain provisions of that Act with consequential amendments as set out in the Ninth Schedule, (being certain provisions of that Act relating to the Governor-General, the Commander-in-Chief, the Indian Legislature and provisions supplemental to those provisions). By s. 310, His Majesty may by Order in Council remove difficulties which may arise regarding the transition from the provisions of the old Act to the provisions of the new Act, and from the provisions of Part XIII of this Act to the provisions of Part II; and he may direct that any provisions of the old Act shall for a limited period have effect subject to such modification as may be specified.

By paragraph 12 of the Government of India (Commencement and Transitory Provisions) Order, 1936, it is provided that until the establishment of the Federation, the following portion of s. 67(2) of the old Act shall continue to be in force, and so much of s. 321 and of the Tenth Schedule as repeals it shall not have effect: 'S. 67(2)—It shall not be lawful without the previous sanction of the Governor-General to introduce at a meeting of either Chamber of the Indian Legislature any measure affecting the public debt or imposing any charge on the revenues of India.'

SCHEDULES

FIRST SCHEDULE¹

Sections
5, 18, 308

COMPOSITION OF THE FEDERAL LEGISLATURE

PART I

REPRESENTATIVES OF BRITISH INDIA

General Qualification for Membership

1. A person shall not be qualified to be chosen as a representative of British India to fill a seat in the Federal Legislature unless he—

- (a) is a British subject, or the Ruler or a subject of an Indian State which has acceded to the Federation ; and
- (b) 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 ; and
- (c) possesses such, if any, of the other qualifications specified in, or prescribed under, this Part of this Schedule as may be appropriate in his case :

Provided that the Ruler or a subject of an Indian State which has not acceded to the Federation—

- (i) shall not be disqualified under sub-paragraph (a) of this paragraph to fill a seat allocated to a Province if he would be eligible to be elected to the Legislative Assembly of that Province ; and
- (ii) in such cases as may be prescribed, shall not be disqualified under the said sub-paragraph (a) to fill a seat allocated to a Chief Commissioner's Province.

2. Upon the expiration of the term for which he is chosen to serve as a member of the Federal Legislature, a person, if otherwise duly qualified, shall be eligible to be chosen to serve for a further term.

The Council of State

3. Of the one hundred and fifty-six seats in the Council of State to be filled by representatives of British India one hundred and fifty seats shall be allocated to the Governors' Provinces, the Chief Commissioners' Provinces and the Anglo-Indian, European and Indian Christian communities in the manner shown in division (i) of the relevant Table of Seats appended to this Part of this Schedule,

¹ See (Scheduled Castes) Order, 1936 and (Federal Legislature Amendment) Order, 1936.

and six seats shall be filled by persons chosen by the Governor-General in his discretion.

4. To each Governor's Province, Chief Commissioner's Province and community specified in the first column of division (i) of the Table there shall be allotted the number of seats specified in the second column opposite to that Province or community, and of the seats so allotted to a Governor's Province or a Chief Commissioner's Province, the number specified in the third column shall be general seats, the number specified in the fourth column shall be seats for representatives of the scheduled castes, the number specified in the fifth column shall be Sikh seats, the number specified in the sixth column shall be Muhammadan seats, and the number specified in the seventh column shall be seats reserved for women.

5. A Governor's Province or a Chief Commissioner's 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—

- (a) for the election of persons to fill the general seats, if any;
- (b) for the election of persons to fill the Sikh seats, if any; and
- (c) for the election of persons to fill the Muhammadan seats, if any,

or, if as respects any class of constituency it is so prescribed, may form one territorial constituency.

To each territorial constituency of any class one or more seats of that class shall be assigned.

6.—(1) No person shall be entitled to vote at an election to fill a Sikh seat or a Muhammadan seat in the Council of State unless he is a Sikh or a Muhammadan, as the case may be.

(2) No person who is, or is entitled to be, included in the electoral roll for a territorial constituency in any Province for the election of persons to fill a Sikh seat or a Muhammadan seat in the Council of State shall be entitled to vote at an election to fill a general seat therein allotted to that Province.

(3) No Anglo-Indian, European or Indian Christian shall be entitled to vote at an election to fill a general seat in the Council of State.

(4) Subject as aforesaid, the qualifications entitling persons to vote in territorial constituencies at elections of members of the Council of State shall be such as may be prescribed.

7. Nothing in the two last preceding paragraphs shall apply in relation to British Baluchistan, and a person to fill the seat in the Council of State allotted to that Province shall be chosen in such manner as may be prescribed.

8. In any Province to which a seat to be filled by a representative of the scheduled castes is allotted, a person to fill that seat

shall be chosen by the members of those castes who hold seats in the Chamber or, as the case may be, either Chamber of the Legislature of that Province.

9. In any Province to which a seat reserved for women is allotted, a woman to fill that seat shall be chosen by the persons, whether men or women, who hold seats in the Chamber or, as the case may be, the Chambers of the Legislature of that Province.

10. Persons to fill the seats allotted to the Anglo-Indian, European and Indian Christian communities shall be chosen by the members of Electoral Colleges consisting of such Anglo-Indians, Europeans and Indian Christians, as the case may be, as are members of the Legislative Council of any Governor's Province or of the Legislative Assembly of any Governor's Province.

The Rules regulating the conduct of elections by the European Electoral College shall be such as to secure that on any occasion where more than one seat falls to be filled by the College no two of the seats to be then filled shall be filled by persons who are normally resident in the same Province.

11. A person shall not be qualified to hold a seat in the Council of State unless—

- (a) in the case of a seat allotted to a Governor's Province or a Chief Commissioner's Province, he is qualified to vote in a territorial constituency in the Province at an election of a member of the Council of State, or, in the case of a seat allotted to British Baluchistan, possesses such qualifications as may be prescribed ;
- (b) in the case of a seat allotted to the Anglo-Indian, the European or the Indian Christian community, he possesses such qualifications as may be prescribed.

12. Subject to the provisions of the four next succeeding paragraphs, the term of office of a member of the Council of State shall be nine years :

Provided that a person chosen to fill a casual vacancy shall be chosen to serve only for the remainder of his predecessor's term of office.

13. Upon the first constitution of the Council of State persons shall be chosen to fill all the seats allotted to Governors' Provinces, Chief Commissioners' Provinces and communities, but, for the purpose of securing that in every third year one-third of the holders of such seats shall retire, one-third of the persons first chosen shall be chosen to serve for three years only, one-third shall be chosen to serve for six years only and one-third shall be chosen to serve for nine years, and thereafter in every third year persons shall be chosen to fill for nine years the seats then becoming vacant in consequence of the provisions of this paragraph.

14. In the case of a Province specified in column one in division (ii) of the Table of Seats, the numbers specified as respects seats of different classes in columns two to six, in columns seven to eleven

and in columns twelve to sixteen respectively shall be the numbers of the seats of the different classes to be filled upon the first constitution of the Council by members chosen to serve for three years only, by members chosen to serve for six years only, and by members chosen to serve for nine years.

15. The person chosen upon the first constitution of the Council to fill the Anglo-Indian seat shall be chosen to serve for nine years ; of the seven persons then chosen to fill the European seats, three shall be chosen to serve for three years only, one shall be chosen to serve for six years only and three shall be chosen to serve for nine years ; and, of the two persons then chosen to fill the Indian Christian seats, one shall be chosen to serve for three years only and one shall be chosen to serve for nine years.

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.

The Federal Assembly

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 third 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 eight 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 the number of seats reserved to women.

There shall also be in the 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 seats in the Federal Assembly allotted to a Governor's Province as general seats, Sikh seats or Muhammadan