

Government of India Act, 1935

UNION OF INDIA

India

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Chapter 2

An Act to make further provision for the A.D. 1935. government of India. [2nd August 1935.] ---BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :-

Part I – INTRODUCTORY

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

2.

(1) All rights, authority and jurisdiction heretofore belonging to His Majesty the King, Emperor of India, which appertain or are incidental to the government of the territories in India for the time being vested in him, and all rights, authority and jurisdiction exercisable by him in or in relation to any other territories in India, are exercisable by His Majesty, except in so far as may be otherwise provided by or under this Act, or as may be otherwise directed by His Majesty: Provided that any powers connected with the exercise of the functions of the Crown in its relations with Indian States shall in India, if not exercised by His Majesty, be exercised only by, or by persons acting under the authority of, His Majesty's Representative for the exercise of those functions of the Crown. (2) The said rights, authority and jurisdiction shall include any rights, authority or jurisdiction heretofore exercisable in or in relation to any territories in India by the Secretary of State, the Secretary of State in Council, the Governor-General, the Governor-General in Council, any Governor or any Local Government, whether by delegation from His Majesty or otherwise.

3. (I) The Governor-General of India is appointed by His Majesty by a Commission under the Royal Sign Manual and has-

(a)all such powers and duties as are conferred or imposed on him by or under this Act ; and(b)such other powers of His Majesty, not being powers connected with the exercise of the functions of the Crown in its relations with Indian States, as His Majesty may be pleased to assign to him.(2)His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States is appointed by His Majesty in like manner and has such powers and duties in connection with the exercise of those functions (not being powers or duties conferred or imposed by or under this Act on the Governor-General) as His Majesty may be pleased to assign to him.(3)It shall be lawful for His Majesty to appoint one person to fill both the said offices.

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

Part II – THE FEDERATION OF INDIA

Chapter I

ESTABLISHMENT OF FEDERATION AND ACCESSION OF INDIAN STATES

5.

(1)It shall be lawful for His Majesty, if an address in that behalf has been presented to him by each House of Parliament and if the condition herein-after mentioned is satisfied, to declare by Proclamation that as from the day therein appointed there shall be united in a Federation under the Crown, by the name of the Federation of India,-(a)the Provinces hereinafter called Governors' Provinces ; and(b)the Indian States which have acceded or may thereafter accede to the Federation ; and in the Federation so established there shall be included the Provinces hereinafter called Chief Commissioners' Provinces.(2)The condition referred to is that States-(a)the Rulers whereof will, in accordance with the provisions contained in Part II of the First Schedule to this Act, be entitled to choose not less than fifty-two members of the Council of State; and(b)the aggregate population whereof, as ascertained in accordance with the said provisions, amounts to at least one-half of the total population of the States as so ascertained, have acceded to the Federation.

6.

(1)A State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an Instrument of Accession executed by the Ruler thereof, whereby the Ruler for himself, his heirs and successors-(a)declares that he accedes to the Federation as established under this Act, with the intent that His Majesty the King, the Governor-General of India, the Federal

Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall, by virtue of his Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to his State such functions as may be vested in them by or under this Act ; and (b) assumes the obligation of ensuring that due effect is given within his State to the provisions of this Act so far as they are applicable therein by virtue of his Instrument of Accession : Provided that an Instrument of Accession may be executed conditionally on the establishment of the Federation on or before a specified date, and in that case the State shall not be deemed to have acceded to the Federation if the Federation is not established until after that date. (2) An Instrument of Accession shall specify the matters which the Ruler accepts as matters with respect to which the Federal Legislature may make laws for his State, and the limitations, if any, to which the power of the Federal Legislature to make laws for his State, and the exercise of the executive authority of the Federation in his State, are respectively to be subject. (3) A Ruler may, by a supplementary Instrument executed by him and accepted by His Majesty, vary the Instrument of Accession of his State by extending the functions which by virtue of that Instrument are exercisable by His Majesty or any Federal Authority in relation to his State. (4) Nothing in this section shall be construed as requiring His Majesty to accept any Instrument of Accession or supplementary Instrument unless he considers it proper so to do, or as empowering His Majesty to accept any such Instrument if it appears to him that the terms thereof are inconsistent with the scheme of Federation embodied in this Act : Provided that after the establishment of the Federation, if any Instrument has in fact been accepted by His Majesty, the validity of that Instrument or of any of its provisions shall not be called in question and the provisions of this Act shall, in relation to the State, have effect subject to the provisions of the Instrument. (5) It shall be a term of every Instrument of Accession that the provisions of this Act mentioned in the Second Schedule thereto may, without affecting the accession of the State, be amended by or by authority of Parliament, but no such amendment shall, unless it is accepted by the Ruler in a supplementary Instrument, be construed as extending the functions which by virtue of the Instrument are exercisable by His Majesty or any Federal Authority in relation to the State. (6) An Instrument of Accession or supplementary Instrument shall not be valid unless it is executed by the Ruler himself, but, subject as aforesaid, references in this Act to the Ruler of a State include references to any persons for the time being exercising the powers of the Ruler of the State, whether by reason of the Ruler's minority or for any other reason. (7) After the establishment of the Federation the request of a Ruler that his State may be admitted to the Federation shall be transmitted to His Majesty through the Governor-General, and after the expiration of twenty years from the establishment of the Federation the Governor-General shall not transmit to His Majesty any such request until there has been presented to him by each Chamber of the Federal Legislature, for submission to His Majesty, an address praying that His Majesty may be pleased to admit the State into the Federation. (8) In this Act a State which has acceded to the Federation is referred to as a Federated State, and the Instrument by virtue of which a State has so acceded, construed together with any supplementary Instrument as executed under this section, is referred to as the Instrument of Accession of that State. (9) As soon as may be after any Instrument of Accession or supplementary Instrument has been accepted by His Majesty under this section, copies of the Instrument and of His Majesty's Acceptance thereof shall be laid before Parliament, and all courts shall take judicial notice of every such Instrument and Acceptance.

Chapter II

THE FEDERAL EXECUTIVE

The Governor-General

7.

(1) Subject to the provisions of this Act, the executive authority of the Federation shall be exercised on behalf of His Majesty by the Governor-General, either directly or through officers subordinate to him, but nothing in this section shall prevent the Federal Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor-General any functions conferred by any existing Indian law on any court, judge or officer, or on any local or, other authority. (2) References in this Act to the functions of the Governor-General shall be construed as references to his powers and duties in the exercise of the executive authority of the Federation and to any other powers and duties conferred or imposed on him as Governor-General by or under this Act, other than powers exercisable by him by reason that they have been assigned to him by His Majesty under Part I of this Act. (3) The provisions of the Third Schedule to this Act shall have effect with respect to the salary and allowances of the Governor-General and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office.

8.

(1) Subject to the provisions of this Act, the executive authority of the Federation extends—(a) to the matters with respect to which the Federal Legislature has power to make laws ; (b) to the raising in British India on behalf of His Majesty of naval, military and air forces and to the governance of His Majesty's forces borne on the Indian establishment ; (c) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance, or otherwise in and in relation to the tribal areas Provided that—(i) the said authority does not, save as expressly provided in this Act, extend in any Province to matters with respect to which the Provincial Legislature has power to make laws ; (ii) the said authority does not, save as expressly provided in this Act, extend in any Federated State save to matters with respect to which the Federal Legislature has power to make laws for that State, and the exercise thereof in each State shall be subject to such limitations, if any, as may be specified in the Instrument of Accession of the State ; (iii) the said authority does not extend to the enlistment or enrolment in any forces raised in India of any person unless he is either a subject of His Majesty or a native of India or of territories adjacent to India ; and (iv) commissions in any such force shall be granted by His Majesty save in so far as he may be pleased to delegate that power by virtue of the provisions of Part I of this Act or otherwise. (2) The executive authority of the Ruler of a Federated State shall, notwithstanding anything in this section, continue to be exercisable in that State with respect to matters with respect to which the Federal Legislature has power to make laws for that State except in so far as the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal law. Administration of Federal Affairs

9.

(1) There shall be a council of ministers, not exceeding ten in number, to aid and advise the Governor-General in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion: Provided that nothing in this subsection shall be construed as preventing the Governor-General from exercising his individual judgment in any case where by or under this Act he is required so to do. (2) The Governor-General in his discretion may preside at meetings of the council, of ministers. (3) If any question arises whether any matter is or is not a matter as respects which the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor-General in his discretion shall be final, and the validity of anything done by the Governor-General shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgment.

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

(2) A minister who for any period of six consecutive months is not a member of either Chamber of the Federal Legislature shall at the expiration of that period cease to be a minister. (3) The salaries of ministers shall be such as the Federal Legislature may from time to time by Act determine and, until the Federal Legislature so determine, shall be determined by the Governor-General: Provided that the salary of a minister shall not be varied during his term of office. (4) The question whether any and, if so, what advice was tendered by ministers to the Governor-General shall not be inquired into in any court. (5) The functions of the Governor-General with respect to the choosing and summoning and the dismissal of ministers, and with respect to the determination of their salaries, shall be exercised by him in his discretion.

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

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

12.

(1) In the exercise of his functions the Governor-General shall have the following special responsibilities, that is to say, - (a) the prevention of any grave menace to the peace or tranquillity of

India or any part thereof;(b)the safeguarding of the financial stability and credit of the Federal Government;(c)the safeguarding of the legitimate interests of minorities;(d)the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests ;(e)the securing in the sphere of executive action of the purposes which the provisions of Chapter III in of Part V of this Act are designed to secure in relation to legislation;(f)the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment ;(g)the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof ; and(h)the securing that the due discharge of his functions with respect to matters with respect to which he is by or under this Act required to act in his discretion, or to exercise his individual judgment, is not prejudiced or impeded by any course of action taken with respect to any other matter.(2)If and in so far as any special responsibility of the Governor-General is involved, he shall in the exercise of his functions exercise his individual judgment as to the action to be taken.

13.

(1)The Secretary of State shall lay before Parliament the draft of any Instrument of Instructions (including any Instrument amending or revoking an Instrument previously issued) which it is proposed to recommend His Majesty to issue to the Governor-General, 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 Instrument may be issued.(2)The validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.

14.

(1)In so far as the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by, the Secretary of State, but the validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.(2)Before giving any directions under this section the Secretary of State shall satisfy himself that nothing in the directions requires the Governor-General to act in any manner inconsistent with any Instrument of Instructions issued to him by His Majesty.

15.

(1)The Governor-General may appoint a person to be his financial adviser.(2)It shall be the duty of the Governor-General's financial adviser to assist by his advice the Governor-General in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federal Government, and also to give advice to the Federal Government upon any matter relating to finance with respect to which he may be consulted.(3)The Governor-General's financial adviser shall hold office during the pleasure of the Governor-General, and the salary and allowances of the

financial adviser and the numbers of his staff and their conditions of service shall be such as the Governor-General may determine.(4)The powers of the Governor-General with respect to the appointment and dismissal of a financial adviser, and with respect to the determination of his salary and allowances and the numbers of his staff and their conditions of service, shall be exercised by him in his discretion:Provided that, if the Governor-General has determined to appoint a financial adviser, he shall, before making any appointment other than the first appointment, consult his ministers as to the person to be selected.

16.

(1)The Governor-General shall appoint a person, being a person qualified to be appointed a judge of the Federal Court, to be Advocate-General for the Federation.(2)It shall be the duty of the Advocate-General to give advice to the Federal Government upon such legal matters, and to perform such other duties of a legal character, as may be referred or assigned to him by the Governor-General, and in the performance of his duties he shall have right of audience in all courts in British India and, in a case in which federal interests are concerned, in all courts in any Federated State.(3)The Advocate-General shall hold office during the pleasure of the Governor-General, and shall receive such remuneration as the Governor-General may determine.(4)In exercising his powers with respect to the appointment and dismissal of the Advocate-General and with respect to the determination of his remuneration, the Governor-General shall exercise his individual judgment.

17.

(1)All executive action of the Federal Government shall be expressed to be taken in the name of the Governor-General.(2)Orders and other instruments made and executed in the name of the Governor-General shall be authenticated in such manner as may be specified in rules to be made by the Governor-General, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor-General.(3)The Governor-General shall make rules for the more convenient transaction of the business of the Federal Government, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor-General is by or under this Act required to act in his discretion.(4)The rules shall include provisions requiring ministers and secretaries to Government to transmit to the Governor-General all such information with respect to the business of the Federal Government as may be specified in the rules, or as the Governor-General may otherwise require to be so transmitted, and in particular requiring a minister to bring to the notice of the Governor-General, and the appropriate secretary to bring to the notice of the minister concerned and of the Governor-General, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor-General.(5)In the discharge of his functions under subsections (2), (3) and (4) of this section the Governor-General shall act in his discretion after consultation with his ministers.

Chapter III

THE FEDERAL LEGISLATURE

18.

(1) There shall be a Federal Legislature which shall consist of His Majesty, represented by the Governor-General, and two Chambers, to be known respectively as the Council of State and the House of Assembly (in this Act referred to as "the Federal Assembly"). (2) The Council of State shall consist of one hundred and fifty-six representatives of British India and not more than one hundred and four representatives of the Indian States, and the Federal Assembly shall consist of two hundred and fifty representatives of British India and not more than one hundred and twenty-five representatives of the Indian States. (3) The said representatives shall be chosen in accordance with the provisions in that behalf contained in the First Schedule to this Act. (4) The Council of State shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf contained in the said First Schedule. (5) Every Federal Assembly, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

19.

(1) The Chambers of the Federal Legislature shall be summoned to meet once at least in every year, and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session. (2) Subject to the provisions of this section, the Governor-General may in his discretion from time to time—(a) summon the Chambers or either Chamber to meet at such time and place as he thinks fit; (b) prorogue the Chambers; (c) dissolve the Federal Assembly. (3) The Chambers shall be summoned to meet for their first session on a day not later than such day as may be specified in that behalf in His Majesty's Proclamation establishing the Federation.

20.

(1) The Governor-General may in his discretion Right of address either Chamber of the Federal Legislature or both Chambers assembled together, and for that purpose require the attendance of members. (2) The Governor-General may in his discretion messages to, send messages to either Chamber of the Federal Chambers. Legislature, whether with respect to a Bill then pending in the Legislature or otherwise, and a Chamber to whom any message is so sent shall with all convenient dispatch consider any matter which they are required by the message to take into consideration.

21. Every minister, every counsellor and the Rights of Advocate-General shall have the right to speak in, and otherwise to take part in the proceedings of, either Chamber, any joint sitting of the Chambers, and any committee of

the Legislature of which he may be named a member, but shall not by virtue of this section be entitled to vote.

22.

(1)The Council of State shall as soon as may be choose two members of the Council to be respectively President and Deputy President thereof and, so often as the office of President or Deputy President becomes vacant, the Council shall choose another member to be President or Deputy President, as the case may be.(2)A member holding office as President or Deputy President of the Council of State shall vacate his office if he ceases to be a member of the Council, may at any time resign his office by writing under his hand addressed to the Governor-General, and may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council; but no resolution for the purpose of this subsection shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.(3)While the office of President is vacant, the duties of the office shall be performed by the Deputy President, or, if the office of Deputy President is also vacant, by such member of the Council as the Governor-General may in his discretion appoint for the purpose, and during any absence of the President from any sitting of the Council the Deputy President or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as President.(4)There shall be paid to the President and the Deputy President of the Council of State such salaries as may be respectively fixed by Act of the Federal Legislature, and, until provision in that behalf is so made, such salaries as the Governor-General may determine.(5)The foregoing provisions of this section shall apply in relation to the Federal Assembly as they apply in relation to the Council of State with the substitution of the titles "Speaker " and " Deputy Speaker " for the titles " President " and " Deputy President " respectively, and with the substitution of references to the Assembly for references to the Council:Provided that, without prejudice to the provisions of subsection (2) of this section as applied by this subsection, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

23.

(1)Save as provided in the last preceding section, all questions at any sitting or joint sitting of the Chambers shall be determined by a majority of votes of the members present and voting, other than the President or Speaker or person acting as such.The President or Speaker or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.(2)A Chamber of the Federal Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.(3)If at any time during a meeting of a Chamber less than one-sixth of the total number of members of the Chamber are present, it shall be the duty of the President or Speaker or person acting as such either to adjourn the Chamber, or to suspend the meeting until at least one-sixth of the members are present.

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

25.

(1)No person shall be a member of both Chambers, and rules made by the Governor-General exercising his individual judgment shall provide for the vacation by a person who is chosen a member of both Chambers of his seat in one Chamber or the other.(2)If a member of either Chamber-(a)becomes subject to any of the disqualifications mentioned in subsection (1) of the next succeeding section; or(b)by writing under his hand addressed to the Governor-General resigns his seat, his seat shall thereupon become vacant.(3)If for sixty days a member of either Chamber is without permission of the Chamber absent from all meetings thereof, the Chamber may declare his seat vacant:Provided that in computing the said period of sixty days no account shall be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days.

26.

(1)A person shall be disqualified for being chosen as, and for being, a member of either Chamber —(a)if he holds any office of profit under the Crown in India, other than an office declared by Act of the Federal Legislature not to disqualify its holder;(b)if he is of unsound mind and stands so declared by a competent court;(c)if he is an undischarged insolvent;(d)if, whether before or after the establishment of the Federation, he has been convicted, or has, in proceedings for questioning, the validity or regularity, of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been declared by Order in Council or by an Act of the Federal Legislature to be an offence or practice entailing disqualification for membership of the Legislature, unless such period has elapsed as may be specified in that behalf by the provisions of that Order or Act;(e)if, whether before or after the establishment of the Federation, he has been convicted of any other offence by a court in British India or in a State which is a Federated State and, sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period, as the Governor-General, acting in his discretion, may allow in any particular case, has elapsed since his release;(f)if, having been nominated as a candidate for the Federal or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by any Order in Council made under this Act or by any Act of the Federal or the Provincial Legislature, unless -five years have elapsed from the date by which the. return ought to have been lodged or the Governor-General, acting in his discretion, has removed the disqualification:Provided that a disqualification under paragraph (f) of this subsection, shall not take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the Governor-General, acting in his discretion, may in; any particular case allow(2)A person shall not be capable of being chosen a member of either Chamber while he is serving a sentence of transportation or of imprisonment for a criminal offence.(3)Where a person

who, by virtue of a conviction or a conviction, and a sentence, becomes disqualified by virtue of paragraph (2) or paragraph (e) of subsection (1) of this section is at the date of the disqualification a member of the Legislature, his seat shall, notwithstanding anything in this or the last preceding section, not become vacant by reason of the disqualification until three months have elapsed from the date thereof or, if within those three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this subsection he shall not sit or vote.(4)For the purposes of this section a person shall not be deemed, to hold an office of profit under the Crown in India by reason only that—(a)he is a minister either for the Federation or for a Province; or(b)while serving a State, he remains a member of one of the services of the Crown in India and retains all or any of his rights, as such.

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

28.

(1)Subject to the provisions of this Act and to the rules and standing orders regulating the procedure of the Federal. Legislature, there shall be freedom of speech in the Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either Chamber of the Legislature of any report, paper, votes or proceedings.(2)In other respects, the privileges of members of the Chambers shall be such as may from time to time be defined by Act of the Federal Legislature and, until so defined, shall be such as were immediately before the establishment of the Federation enjoyed by members of the Indian Legislature.(3)Nothing in any existing Indian Act, and, notwithstanding anything in the foregoing provisions of this section, nothing in this Act, shall be construed as conferring, or empowering the Federal Legislature to confer, on either Chamber or on both Chambers sitting together, or on any committee or officer of the Legislature, the status of a court, or any punitive or disciplinary powers other than a power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner.(4)Provision may be made by an Act of the Federal Legislature for the punishment, on conviction before a court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the chairman of the committee so to do :Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are, or have been, in the service of the Crown in India, and safeguarding confidential matter from disclosure, as may be made by the Governor-General exercising his individual judgment.(5)The provisions of subsections (1) and (2) of

this section shall apply in relation to persons who by virtue of this Act have the right to speak in, and otherwise take part in the proceedings of, a Chamber as they apply in relation to members of the Legislature.

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

Legislative Procedure

30.

(1)Subject to the special provisions of this Part of this Act with respect to financial Bills, a Bill may originate in either Chamber.(2)Subject to the provisions of the next succeeding section, a Bill shall not be deemed to have been passed by the Chambers of the Legislature unless it has been agreed to by both Chambers, either without amendment or with such amendments only as are agreed to by both Chambers.(3)A Bill pending in the Legislature shall not lapse by reason of the prorogation of the Chambers.(4)A Bill pending in the Council of State which has not been passed by the Federal Assembly shall not lapse on a dissolution of the Assembly.(5)A Bill which is pending in the Federal Assembly or which having. been passed by the Federal Assembly is pending in the Council of State shall, subject to the provisions of the next succeeding section, lapse on a dissolution of the Assembly.

31.

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

adjourned for more than four days.(2)Where the Governor-General has notified his intention of summoning the Chambers to meet in a joint sitting, neither Chamber shall proceed further with the Bill, but the Governor-General may at any time in the next session after the expiration of six months from the date of his notification summon the Chambers to meet in a joint sitting for the purpose specified in his notification and, if he does so, the Chambers shall meet accordingly :Provided that, if it appears to the Governor-General that the Bill is such a Bill as is mentioned in the proviso to subsection (1) of this section, he may summon the Chambers to meet in a joint sitting for the purpose aforesaid at any date, whether in the same session or in the next session.(3)The functions of the Governor-General under the provisos to the two last preceding subsections shall be exercised by him in his discretion.(4)If at the joint sitting of the two Chambers the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers:Provided that at a joint sitting-(a)if the Bill, having been passed by one Chamber, has not been passed by the other Chamber with amendments and returned to the Chamber in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;(b)if the Bill has been so passed and returned, only such amendments as aforesaid shall. be proposed to the Bill. and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed, and the decision of the person presiding as to the amendments which are admissible under this subsection shall be final.(5)A joint sitting may be held under this section and a Bill passed thereat notwithstanding that a dissolution of the Assembly has intervened since the Governor-General notified his intention to summon the Chambers to meet therein.

32.

(1)When a Bill has been passed by the Chambers, it shall be presented to the Governor-General, and the Governor - General shall in his discretion declare either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the signification of His Majesty's pleasure Provided that the Governor - General may in his discretion return the Bill to the Chambers with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Chambers shall reconsider the Bill accordingly.(2)A Bill reserved for the signification of His Majesty's pleasure shall not become an Act of the Federal Legislature unless and until, within twelve months from the day on which it was presented to the Governor- General, the Governor-General makes known by public notification that His Majesty has assented thereto.(3)Any Act assented to by the Governor-General may be disallowed by His Majesty within twelve months from the day of the Governor-General's assent, and where any Act is so disallowed the Governor-General shall forthwith make the disallowance known by public notification, and as from the date of the notification the Act shall become void.Procedure, in Financial Matters

33.

(1)The Governor-General shall in respect of every financial year cause to be laid before both Chambers of the Federal Legislature a statement of the estimated receipts and expenditure of the Federation for that year, in this Part of this Act referred to as the " annual financial statement."(2)The estimates of expenditure embodied in the annual financial statement shall show separately-(a)the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the Federation; and(b)the sums required to meet other expenditure proposed to be made from the revenues of the Federation, and shall distinguish expenditure on revenue account from other expenditure, and indicate the sums, if any, which are included solely because the Governor-General has directed their inclusion as being necessary for the due discharge of any of his special responsibilities.(3)The following expenditure shall be expenditure charged on the revenues of the Federation:- (a)the salary and allowances of the Governor-General and other expenditure relating to his office for which provision is required to be made by Order in Council;(b)debt charges for which the Federation is liable, including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;(c)the salaries and allowances of ministers, of counsellors, of the financial adviser, of the advocate-general, of chief commissioners, and of the staff of the financial adviser;(d)the salaries, allowances, and pensions payable to or in respect of judges of the Federal Court, and the pensions payable to or in respect of judges of any High Court;(e)expenditure for the purpose of the discharge by the Governor-General of his functions with respect to defence and ecclesiastical affairs, his functions with respect to external affairs in so far as he is by or under this Act required in the exercise thereof to act in his discretion, his functions in or in relation to tribal areas, and his functions in relation to the administration of any territory in the direction and control of which he is under this Act required to act in his discretion : provided that the sum so charged in any year in respect of expenditure on ecclesiastical affairs shall not exceed forty-two lakhs of rupees, exclusive of pension charges ;(f)the sums payable to His Majesty under this Act out of the revenues of the Federation in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States;(g)any grants for purposes connected with the administration of any areas in a Province which are for the time being excluded areas;(h)any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;(i)any other expenditure declared by this Act or any Act of the Federal Legislature to be so charged.(4)Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Federation shall be decided by the Governor-General in his discretion.

34.

(1)So much of the estimates of expenditures relates to expenditure charged upon the revenues of the Federation shall not be submitted to the vote of the Legislature, but nothing in this subsection shall be construed as preventing the discussion in either Chamber of the Legislature of any of those estimates other than estimates relating to expenditure referred to in paragraph(a) or paragraph (f) of subsection (3) of the last preceding section.(2)So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Federal Assembly and thereafter to the Council of State, and either Chamber shall have power to assent or to refuse to

assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein :Provided that, where the Assembly have refused to assent to any demand, that demand shall not be submitted to the Council of State, unless the Governor-General so directs and, where the Assembly have assented to a demand subject to a reduction of the amount specified therein, a demand for the reduced amount only shall be submitted to the Council of State, unless the Governor-General otherwise directs ; and where, in either of the said cases, such a direction is given, the demand submitted to the Council of State shall be for such amount, not being greater amount than that originally demanded, as maybe specified in the direction.(3)If the Chambers differ with respect to any demand the Governor-General shall summon the two Chambers to meet in a joint sitting for the purpose of deliberating and voting on the demand as to which they disagree, and the decision of the majority of the members of both Chambers present and voting shall be deemed to be the decision of the two Chambers.(4) No demand for a grant shall be made exception the recommendation of the Governor-General.

35.

(1)The Governor-General shall authenticate by his signature a schedule specifying:(a)the grants made by the Chambers under the last preceding section;(b)the several sums required to meet the expenditure charged on the revenues of the Federation but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Legislature:Provided that, if the Chambers have not assented to any demand for a grant or have assented subject to a reduction of the amount specified therein, the Governor-General may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case maybe, as appears to him necessary in order to enable him to discharge that responsibility.(2)The schedule so authenticated shall be laid before both Chambers but shall not be open to discussion or vote therein.(3)Subject to the provisions of the next succeeding section, no expenditure from the revenues of the Federation shall be deemed to be duly authorized unless it is specified in the schedule so authenticated.

36. If in respect of any financial year further expenditure from the revenues of the Federation becomes necessary over and above the expenditure theretofore authorised for that year, the Governor-General shall cause to be laid before both Chambers of the Federal Legislature supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding sections shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein. ##statement, expenditure, supplementary, governor general, powers, federal legislature, annual financial statement, president, parliament, upper house, lower house, house of people, council of states, lok sabha, rajya sabha, supplementary grant, additional grant, excess grant#, president, finance, legislative

procedure#

37. (I) A Bill or amendment making provision-

(a)for imposing or increasing any tax; or(b)for regulating the borrowing of money or the giving of any guarantee by the Federal Government, or for amending the law with respect to any financial obligations undertake nor to be undertaken by the Federal Government ; or(c)for declaring any expenditure to be expenditure charged on the revenues of the Federation, or for increasing the amount of any such expenditure, shall not be introduced or moved except on the recommendation of the Governor-General, and a Bill making such provision shall not be introduced in the Council of State.(2)A Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licenses or fees for services rendered.(3)A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of the Federation shall not be passed by either Chamber unless the Governor-General has recommended to that Chamber the consideration of the Bill.Procedure generally

38.

(1)Each Chamber of the Federal Legislature may make rules for regulating, subject to the provisions of this Act, their procedure and the conduct of their business:Provided that as regards each Chamber the Governor-General shall in his discretion, after consultation with the President or the Speaker, as the case may be, make rules-(a)for regulating the procedure of, and the conduct of business in, the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment;(b)for securing the timely completion of financial business;(c)for prohibiting the discussion of, or the asking of questions on, any matter connected with any Indian State, other than a matter with respect to which the Federal Legislature has power to make laws for that State, unless the Governor-General in his discretion is satisfied that the matter affects Federal interests or affects a British subject, and has given his consent to the matter being discussed or the question being asked ;(d)for prohibiting, save with the consent of the Governor-General in his discretion-(i)the discussion of, or the asking of questions on, any matter connected with relations between His Majesty or the Governor-General and any foreign State or Prince; or(ii)the discussion, except in relation to estimates of expenditure, of, or the asking of questions on, any matter connected with the tribal areas or the administration of any excluded area; or(iii)the discussion of, or the asking of questions on, any action taken in his discretion by the Governor-General in relation to the affairs of a Province; or(iv)the discussion of, or the asking of questions on, the personal conduct of the Ruler of any Indian State, or of a member of the ruling family thereof; and, if and. in so far as any rule so made by the Governor-General is inconsistent with any rule made by a Chamber, the rule made by the Governor-General shall prevail.(2)The Governor-General, after consultation with the President of the Council of State and the Speaker of the Legislative Assembly, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Chambers. The said rules shall make such provision for the purposes specified in the proviso to the preceding subsections the Governor-General in his discretion may think fit.(3)Until rules are made under this

section, the rules of procedure and standing orders in force immediately before the establishment of the Federation with respect to the Indian Legislature shall have effect in relation to the Federal Legislature subject to such modifications and adaptations as may be made therein by the Governor-General in his discretion.(4). At a joint sitting of the two Chambers the President of the Council of State, or in his absence such personas may be determined by rules of procedure made under this section, shall preside.GOI.39

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

40.

(1)No discussion shall take place in the Federal Legislature with respect to the conduct of any judge of the Federal Court or a High Court in the discharge of his duties. In this subsection the reference to a High Court shall be construed as including a reference to any court in a Federated State which is a High Court for any of the purposes of Part IX of this Act.(2) If the Governor-General in his discretion certifies that the discussion of a Bill introduced or proposed to be introduced in the Federal Legislature, or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquility of India or any part thereof, he may in his discretion direct that no proceedings, or no further proceedings, shall be taken in relation to the Bill, clause or amendment, and effect shall be given to the direction.

41.

(1)The validity of any proceedings in the Federal Legislature shall not be called in question on the ground of any alleged irregularity of procedure.(2) No officer or other member of the Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.CHARTER IV LEGISLATIVE POWERS OF GOVERNOR-GENERAL

42.

(1)If at any time when the Federal Legislatures not in session the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require:Provided that the Governor-General-(a)shall exercise his individual judgment as respects the promulgation of any ordinance under this section if a Bill containing the same provisions would under this Act have required his previous sanction to the introduction thereof into the Legislature; and(b)shall not,

without instructions from His Majesty, promulgate any such ordinance if he would have deemed it necessary to reserve a Bill containing the same provisions for the signification of His Majesty's pleasure thereon.(2)An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance-(a)shall be laid before the Federal Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or, if before the expiration of that period resolutions disapproving it are passed by both Chambers, upon the passing of the second of those resolutions;(b)shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General; and(c)may be withdrawn at any time by the Governor-General.(3)If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.

43.

(1)If at any time the Governor-General is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, he may promulgate such ordinances as in his opinion the circumstances of the case require.(2)An ordinance promulgated under this section shall continue in operation for such period not exceeding six months as may be specified therein, but may by subsequent ordinance be extended for a further period not exceeding six months.(3)An ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Legislature assented to by the Governor-General, but every such ordinance-(a)shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Federal Legislature assented to by the Governor-General;(b)may be withdrawn at any time by the Governor-General ; and(c)if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.(4)If and so far as an ordinance under this section makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.(5)The functions of the Governor-General under this section shall be exercised by him in his discretion.

44.

(1)If at any time it appears to the Governor-General that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by message to both Chambers of the Legislature explain the circumstances which in his opinion render legislation essential, and either-(a)enact forthwith, as a Governor-General's Act, bill containing such provisions as he considers necessary; or(b)attach to his message a draft of the Bill which he considers necessary.(2)Where the Governor-General takes such actions is mentioned in paragraph (b) of the preceding subsection, he may at any time after the expiration of one month enact, as a Governor-General's Act, the Bill proposed by him to the Chambers either in the form of the draft communicated to them or with such amendments as he

deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by either Chamber with reference to the Bill or to amendments suggested to be made therein.(3)A Governor-General's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Federal Legislature assented to by the Governor-General and, if and in so far as a Governor-General's Act makes any provision which the Federal Legislature would not under this Act be competent to enact, it shall be void.(4)Every Governor-General's Act shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament.(5)The functions of the Governor-General under this section shall be exercised by him in his discretion.

Chapter V

PROVISIONS IN CASE OF FAILURE OF CONSTITUTIONAL

MACHINERY

45.

(1)If at any time the Governor-General is satisfied that a situation has arisen in which the government of the Federation cannot be carried on in accordance with the provisions of this Act, he may by Proclamation-(a)declare that his functions shall to such extents may be specified in the Proclamation be exercised by him in his discretion;(b)assume to himself all or any of the powers vested in or exercisable by any Federal body or authority, and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Federal body or authority :Provided that nothing in this subsection shall authorise the Governor-General to assume to himself any of the powers vested in or exercisable by the Federal Court or to suspend, either in whole or in part, the operation of any provision of this Act relating to the Federal Court.(2)Any such Proclamation may be revoked or(3)A Proclamation issued under this section-(a)shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament;(b)unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months :Provided that, if and so often as a resolution approving the continuance in force of such a Proclamations passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this subsection it would otherwise have ceased to operate.(4)If at any time the government of the Federation has for a continuous period of three years been carried on under and by virtue of a Proclamation issued under this section, then, at the expiration of that period, the Proclamation shall cease to have effect and the government of the Federation shall be carried on in accordance with the other provisions of this Act, subject to any amendment thereof which Parliament may deem it necessary to make, but nothing in this subsection shall be construed as extending the power of Parliament to make amendments in this Act without affecting the accession of a State.(5)If the Governor-General, by a Proclamation under this section, assumes to himself any power of the Federal Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue

to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Federal Acts, Federal laws, or Acts or laws of the Federal Legislature shall be construed as including reference to such a law.(6)The functions of the Governor-General under this section shall be exercised by him in his discretion.

Part III – THE GOVERNORS' PROVINCES

Chapter I THE PROVINCES

46.

(1)Subject to the provisions of the next succeeding section with respect to Berar, the following shall be Governors' Provinces, that is to say, Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the Northwest Frontier Province, Orissa, Sind, and such other Governors' Provinces as may be created under this Act.(2)Burma shall cease to be part of India.(3)In this Act the expression " Province " means, unless the context otherwise requires, a Governor's Province, and " Provincial " shall be construed accordingly.

47. Whereas certain territory (in this Act referred to as " Berar ") is under the sovereignty of His Exalted Highness the Nizam of Hyderabad, but is at the date of the passing of this Act, by virtue of certain agreements subsisting between His Majesty and His Exalted Highness, administered together with the Central Provinces;

And whereas it is in contemplation that an agreement shall be concluded between His Majesty and His Exalted Highness whereby, notwithstanding the continuance of the sovereignty of His Exalted Highness over Berar, the Central Provinces and Berar maybe governed together as one Governor's Province under this Act by the name of the Central Provinces and Berar:Now, therefore,-(1)While any such agreement is in force-(a)Berar and the Central Provinces shall, notwithstanding the continuance of the sovereignty of His Exalted Highness, be deemed to be one Governor's Province by the name of the Central Provinces and Berar;(b)any reference in this Act or in any other Act to British India shall be construed as a reference to British India and Berar, and any reference in this Act to subjects of His Majesty shall, except forth purposes of any oath of allegiance, be deemed to include a reference to Berar subjects of His Exalted Highness;(c)any provision made under this Act with respect to the qualifications of the voters for the Provincial Legislature of the Central Provinces and Berar, or the voters for the Council of State, shall be such as to give effect to any provisions with respect to those matters contained in the agreement:(2)If no such agreement is concluded, or if such an agreement is concluded but subsequently ceases to have effect, references in this Actor the Central Provinces and Berar shall be construed as references to the Central Provinces, and His Majesty in Council may make such consequential modifications in the provisions of this Act relating

to the Central Provinces as he thinks proper.

Chapter II

THE PROVINCIAL EXECUTIVE

The Governor

48.

(1)The Governor of a Province is appointed by His Majesty by a Commission under the Royal Sign Manual.(2)The provisions of the Third Schedule to this Act shall have effect with respect to the salary and allowances of the Governor and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office.

49.

(1)The executive authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him, but nothing in this section shall prevent the Federal or the Provincial Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor any functions conferred by any existing Indian law on any court, judge, or officer or any local or other authority.(2)Subject to the provisions of this Act, the executive authority of each Province extends to the matters with respect to which the Legislature of the Province has power to make laws.Administration of Provincial Affairs

50.

(1)There shall be a council of ministers to aid Council of Ministers to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion:Provided that nothing in this subsection shall be construed as preventing the Governor from exercising his individual judgment in any case where by or under this Act he is required so to do.(2)The Governor in his discretion may preside at meetings of the council of ministers.(3)If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgment.

51.

(1)The Governor's ministers shall be chosen and summoned by him, shall be sworn as members of the council, and shall hold office during his pleasure.(2)A minister who for any period of six consecutive months is not a member of the Provincial Legislature shall at the expiration of that

period cease to be a minister.(3)The salaries of ministers shall be such as the Provincial Legislature may from time to time by Act determine, and, until the Provincial Legislature so determine, shall be determined by the Governor:Provided that the salary of a minister shall not be varied during his term of office.(4)The question whether any, and if so what, advice was tendered by ministers to the Governor shall not be inquired into in any court.(5)The functions of the Governor under this section with respect to the choosing and summoning and the dismissal of ministers, and with respect to the determination of their salaries, shall be exercised by him in his discretion.

52.

(1)In the exercise of his functions the Governor shall have the following special responsibilities, that is to say :-(a)the prevention of any grave menace to the peace or tranquility of the Province or any part thereof;(b)the safeguarding of the legitimate interests of minorities;(c)the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act, and the safeguarding of their legitimate interests;(d)the securing in the sphere of executive action of the purposes which the provisions of Chapter III of Part V of this Act are designed to secure in relation to legislation;(e)the securing of the peace and good government of areas which by or under the provisions of this Part of this Act are declared to be partially excluded areas;(f)the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof; and(g)the securing of the execution of orders or directions lawfully issued to him under Part VI of this Act by the Governor-General in his discretion.(2)The Governor of the Central Provinces and Berar shall also have the special responsibility of securing that a reasonable share of the revenues of the Provinces expended in or for the benefit of Berar, the Governor of any Province which. includes an excluded area shall also have the special responsibility of securing that the due discharge of his functions in respect of excluded areas is not prejudiced or impeded by any course of action taken with respect to any other matter, any Governor who is discharging any functions as agent for the Governor-General shall also have the special responsibility of securing that the due discharge of those functions is not prejudiced or impeded by any course of action taken with respect to any other matter, and the Governor of Sind shall also have the special responsibility of securing the proper administration of the Lloyd Barrage and Canals Scheme.(3)If and in so far as any special responsibility of the Governor is involved, he shall, in the exercise of his functions, exercise his individual judgment as to the action to be taken.

53.

(1)The Secretary of State shall lay before Parliament the draft of any Instructions (including any Instructions amending or revoking Instructions previously issued) which it is proposed to recommend His Majesty to issue to the Governor of a Province, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instructions may be issued.(2)The validity of anything done by the Governor of a Province shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.GOI.54

54.

(1) In so far as the Governor of a Province is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by, the Governor-General in his discretion, but the validity of anything done by a Governor shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section. (2) Before giving any directions under this section, the Governor-General shall satisfy himself that nothing in the directions requires the Governor to act in any manner inconsistent with any Instrument of Instructions issued to the Governor by His Majesty. GOI.55

55.

(1) The Governor of each Province shall appoint a person, being a person qualified to be appointed a judge of a High Court, to be Advocate-General for the Province. (2) It shall be the duty of the Advocate-General to give advice to the Provincial Government upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor. (3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remunerations the Governor may determine. (4) In exercising his powers with respect to the appointment and dismissal of the Advocate-General and with respect to the determination of his remuneration, the Governor shall exercise his individual judgment. GOI.56

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

GOI.57

57.

(1) If it appears to the Governor of a Province that the peace or tranquility of the Province is endangered by the operations of any persons committing, or conspiring, preparing or attempting to commit, crimes of violence which, in the opinion of the Governor, are intended to overthrow the government as by law established, the Governor may, if he thinks that the circumstances of the case require him so to do for the purpose of combating those operations, direct that his functions shall, to such extent as may be specified in the direction, be exercised by him in his discretion and, until otherwise provided by a subsequent direction of the Governor, those functions shall to that extent be exercised by him accordingly. (2) While any such direction is in force, the Governor may authorize an official to speak in and otherwise take part in the proceedings of the Legislature, and any official so

authorized may speak and take part accordingly in the proceedings of the Chamber or Chambers of the Legislature, any joint sitting of the Chambers, and any committee of the Legislature of which he maybe named a member by the Governor, but shall not be entitled to vote.(3)The functions of the Governor under this section shall be exercised by him in his discretion.(4)Nothing in this section affects the special responsibility of the Governor for the prevention of any grave menace to the peace or tranquility of the Province or any part thereof.GOI.58

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

(a)by any member of any police force in the Province to another member of that force except in accordance with directions of the Inspector-General of Police or Commissioner of Police, as the case may be, or to any other person except in accordance with directions of the Governor in his discretion ; or(b)by any other person in the service of the Crown in the Province to any person except in accordance with directions of the Governor in his discretion.GOI.59

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

(2)Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.(3)The Governor shall make rules for the more convenient transaction of the business of the Provincial Government, and for the allocation among ministers of the said business in so far as it is not business with respect to act in his discretion. to which the Governor is by or under this Act required to act in his discretion(4)The rules shall include provisions requiring ministers and secretaries to Government to transmit to the Governor all such information with respect to the business of the Provincial Government as may be specified in the rules, or as the Governor may otherwise require to be so transmitted, and in particular requiring a minister to bring to the notice of the Governor, and the appropriate secretary to bring to the notice of the minister concerned and of the Governor, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor.(5)In the discharge of his functions under subsections (2), (3) and (4) of this section the Governor shall act in his discretion after consultation with his ministers.

Chapter III

THE PROVINCIAL LEGISLATURE

GeneralGOI.60

60.

(1) There shall for every Province be a Provincial Legislature which shall consist of His Majesty, represented by the Governor, and -(a) in the Provinces of Madras, Bombay, Bengal, the United Provinces, Bihar and Assam, two Chambers; (b) in other Provinces, one Chamber. (2) Where there are two Chambers of a Provincial Legislature, they shall be known respectively as the Legislative Council and the Legislative Assembly, and where there is only one Chamber, the Chamber shall be known as the Legislative Assembly. GOI.61

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

(2) Every Legislative Assembly of every Province, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly. (3) Every Legislative Council shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provision in that behalf made in relation to the Province under the said Fifth Schedule. GOI.62

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

(2) Subject to the provisions of this section, the Governor may in his discretion from time to time-(a) summon the Chambers or either Chamber to meet at such time and place as he thinks fit; (b) prorogue the Chamber or Chambers; (c) dissolve the Legislative Assembly. (3) The Chamber or Chambers shall be summoned to meet for the first session of the Legislature on a day not later than six months after the commencement of this Part of this Act. GOI.63

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

(2) The Governor may in his discretion send messages to the Chamber or Chambers of the Provincial Legislature, whether with respect to a Bill then pending in the Legislature or otherwise, and a Chamber to whom any message is so sent shall with all convenient dispatch consider any matter which they are required by the message to take into consideration. GOI.64

64. Every minister and the Advocate-General shall have the right to speak in, and otherwise take part in the proceedings of, the Legislative Assembly of the Province or, in the case of a Province having a Legislative Council, both Chambers and any joint sitting of the Chambers, and to speak in, and otherwise take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this section, be entitled to vote.

GOI.65

65.

(1) Every Provincial Legislative Assembly shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be. (2) A member holding office as Speaker or Deputy Speaker of an Assembly shall vacate his office if he ceases to be a member of the Assembly, may at any time resign his office by writing under his hand addressed to the Governor, and may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly; but no resolution for the purpose of this subsection shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution : Provided that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution. (3) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may in his discretion appoint for the purpose, and during any absence of the Speaker from any sitting of the Assembly the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker. (4) There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly such salaries as maybe respectively fixed by Act of the Provincial Legislature, and, until provision in that behalf is so made, such salaries as the Governor may determine. (5) In the case of a Province having a Legislative Council, the foregoing provisions of this section (other than the proviso to subsection (2) thereof) shall apply in relation to the Legislative Council as they apply in relation to the Legislative Assembly, with the substitution of the titles " President " and " Deputy President " for the titles " Speaker " and " Deputy Speaker " respectively, and with the substitution of references to the Council for references to the Assembly. GOI.66

66.

(1) Save as in this Act otherwise expressly provided, all questions in a Chamber, or a joint sitting of two Chambers, of a Provincial Legislature shall be determined by a majority of votes of the members present and voting, other than the Speaker or President, or person acting as such. The Speaker or

President, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.(2)A Chamber of a Provincial Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in a Provincial Legislature shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do, sat or voted or otherwise took part in the proceedings.(3)If at any time during a meeting of a Provincial Legislative Assembly less than one-sixth of the total number of members of the Chamber are present, or if at any time during a meeting of a Provincial Legislative Council less than ten members are present, it shall be the duty of the Speaker or President or person acting as such either to adjourn the Chamber, or to suspend the meeting until at least one-sixth of the members, or, as the case may be, at least ten members, are present.Provisions as to Members of LegislaturesGOI.67

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

GOI.68

68.

(1)No person shall be a member of both Chambers of a Provincial Legislature, and rules made by the Governor exercising his individual judgment shall provide for the vacation by a person who is chosen a member of both Chambers of his seat in one Chamber or the other.(2)No person shall be a member both of the Federal Legislature and of a Provincial Legislature and if a person is chosen a member both of the Federal Legislature and of a Provincial Legislature, then, at the expiration of such period as may be specified in rules made by the Governor of the Province exercising his individual judgment, that person's seat in the Provincial Legislature shall become vacant, unless he has previously resigned his seat in the Federal Legislature.(3)If a member of a Chamber-(a)becomes subject to any of the disqualifications mentioned in subsection (1) of the next succeeding section; or(b)by writing under his hand addressed to the Governor resigns his seat, his seat shall thereupon become vacant.(4)If for sixty days a member of a Chamber is without permission of the Chamber absent from all meetings thereof, the Chamber may declare his seat vacant:Provided that in computing the said period of sixty days no account shall be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days.GOI.69

69.

(1)A person shall be disqualified for being chosen as, and for being, a member of a Provincial Legislative Assembly or Legislative Council-(a)if he holds any office of profit under the Crown in India, other than an office declared by Act of the Provincial Legislature not to disqualify its holder;(b)if he is of unsound mind and stand, so declared by a competent court;(c)if he is an

undercharged insolvent;(d)if, whether before or after the commencement of this Part of this Act, he has been convicted or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been declared by Order in Council, or by an Act of the Provincial Legislature, to be an offence or practice entailing disqualification for membership of the Legislature, unless such period has elapsed as may be specified in that behalf in the provisions of that Order or Act ;(e)if, whether before or after the commencement of this Part of this Act, he has been convicted of any other offence by a court in British India or in a State which is a Federated State and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Governor, acting in his discretion, may allow in any particular case, has elapsed since his release ;(f)if, having been nominated as a candidate for the Federal or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within, the time and in the manner required by any Order in Council made under this Act or by any Act of the Federal or the Provincial Legislature, unless five years have elapsed from the date by which the return ought to have been lodged or the Governor, acting in his discretion, has removed the disqualification: Provided that a disqualification under paragraph (f)of this subsection shall not take effect until the expiration of one month from the date by which the return ought to have been lodged or of such longer period as the Governor, acting in his discretion, may in any particular case allow.(2)A person shall not be capable of being chosen member of a Chamber of a Provincial Legislature while he is serving a sentence of transportation or of imprisonment for a criminal offence.(3)Where a person who, by virtue of a conviction or a conviction and a sentence, becomes disqualified by virtue of paragraph (d) or paragraph (e) of subsection (1) of this section is at the date of the disqualification member of a Chamber, his seat shall, notwithstanding anything in this or the last preceding section, not become vacant by reason of the disqualification until three months have elapsed from the date thereof or, if within those three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this subsection, he shall not sit or vote.(4)For the purposes of this section a person shall not be deemed to hold an office of profit under the Crown in India by reason only that he is a minister either for the Federation or for a Province.GOI.70

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

GOI.71

71.

(1) Subject to the provisions of this Act and to rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in every Provincial Legislature, and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be sociable in respect of the publication by or under the authority of a Chamber of such a Legislature of any report, paper, votes or proceedings. (2) In other respects the privileges of members of a Chamber of a Provincial Legislature shall be such as may from time to time be defined by Act of the Provincial Legislature, and, until so defined, shall be such as were immediately before the commencement of this Part of this Act enjoyed by members of the Legislative Council of the Province. (3) Nothing in any existing Indian law, and, notwithstanding anything in the foregoing provisions of this section, nothing in this Act, shall be construed as conferring, or empowering any Legislature to confer, on a Chamber thereof or on both Chambers sitting together or any committee or officer of the Legislature, the status of a court, or any punitive or disciplinary powers other than the power to remove or exclude persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner. (4) Provision may be made by an Act of the Provincial Legislature for the punishment, on conviction before a court, of persons who refuse to give evidence or produce documents before a committee of a Chamber when duly required by the chairman of a committee so to do. Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committees of persons who are, or have been, in the service of the Crown in India, and safeguarding confidential matter from disclosure, as may be made by the Governor exercising his individual judgment. (5) The provisions of subsections (1) and (2) of this section shall apply in relation to persons who by virtue of this Act have the right to speak in and otherwise take part in the proceedings of a Chamber as they apply in relation to members of the Legislature. GOI.72

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

Legislative Procedure GOI.73

73.

(1) Subject to the special provisions of this Part of this Act with respect to financial Bills, a Bill may originate in either Chamber of the Legislature of Province which has a Legislative Council. (2) A Bill pending in the Legislature of a Province shall not lapse by reason of the prorogation of the Chamber or Chambers thereof. (3) A Bill pending in the Legislative Council of Province which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly. (4) A Bill which is pending in the Legislative Assembly of a Province, or which having been passed by the Legislative

Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.GOI.74

74.

(1)Subject to the provisions of this section, a Bill shall not be deemed to have been passed by the Chambers of the Legislature of a Province having a Legislative Council, unless it has been agreed to by both Chambers, either without amendments or with such amendments only as are agreed to by both Chambers.(2)If a Bill which has been passed by the Legislative Assembly and transmitted to the Legislative Council is not, before the expiration of twelve months from its reception by the Council, presented to the Governor for his assent, the Governor may summon the Chambers to meet in a joint sitting for the purpose of deliberating and voting on the Bill:Provided that, if it appears to the Governor that the Bill relates to finance or affects the discharge of any of his special responsibilities, he may summon the Chambers to meet in a joint sitting for the purpose aforesaid notwithstanding that the said period of twelve months has not elapsed. The functions of the Governor under the proviso to this subsection shall be exercised by him in his discretion.(3)If at a joint sitting of the two Chambers summoned in accordance with the provisions of this section the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers :Provided that at a joint sitting-(a)unless the Bill has been passed by the Legislative Council with amendments and returned to the Legislative Assembly, no amendment shall be proposed to the Bill other than such amendments, if any, as are made necessary by the delay in the passage of the Bill;(b)if the Bill has been so passed and returned by the Legislative Council, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed, and the decision of the person presiding as to the amendments which are admissible under this subsection shall be final.GOI.75

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

GOI.76

76.

(1) When a Bill is reserved by a Governor for the consideration of the Governor-General, the Governor-General shall in his discretion declare, either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the signification of His Majesty's pleasure thereon: Provided that the Governor-General may, if he in his discretion thinks fit, direct the Governor to return the Bill to the Chamber, or, as the case may be, the Chambers, of the Provincial Legislature together with such a message as is mentioned in the proviso to the last preceding section and, when a Bill is so returned, the Chamber or Chambers shall reconsider it accordingly and, if it is again passed by them with or without amendment, it shall be presented again to the Governor-General for his consideration. (2) A Bill reserved for the signification of His Majesty's pleasure shall not become an Act of the Provincial Legislature unless and until, within twelve months from the day on which it was presented to the Governor, the Governor makes known by public notification that His Majesty has assented thereto. GOI.77

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

Procedure in Financial matters GOI.78

78.

(1) The Governor shall in respect of every financial year cause to be laid before the Chamber or Chambers of the Legislature a statement of the estimated receipts and expenditure of the Province for that year, in this Part of this Act referred to as the "annual financial statement." (2) The estimates of expenditure embodied in the annual financial statement shall show separately—(a) the sums required to meet expenditure described by this Act as expenditure charged upon the revenues of the Province; and (b) the sums required to meet other expenditure proposed to be made from the revenues of the Province, and shall distinguish expenditure on revenue account from other expenditure, and indicate the sums, if any, which are included solely because the Governor has directed their inclusion as being necessary for the due discharge of any of his special responsibilities. (3) The following expenditure shall be expenditure charged on the revenues of each Province—(a) the salary and allowances of the Governor any other expenditure relating to his office for which provision is required to be made by Order in Council; (b) debt charges for which the Province is liable, including interest, sinking fund charges and redemption charges, - and other expenditure relating to the raising of loans and the service and redemption of debt; (c) the salaries and allowances of ministers, and of the Advocate-General; (d) expenditure in respect of the salaries and allowances of judges of any High Court; (e) expenditure connected with the administration of any areas which are for the time being excluded areas; (f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal; (g) any other expenditure declared by this Act or

any Act of the Provincial Legislature to be so charged.(4)Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Province shall be decided by the Governor in his discretion.GOI.79

79.

(1)So much of the estimates of expenditures relates to expenditure charged upon the revenues of a Province shall not be submitted to the vote of the Legislative Assembly, but nothing in this subsection shall be construed as preventing the discussion in the Legislature of those estimates, other than estimates relating to expenditure referred to in paragraph (a) of subsection (3) of the last preceding section.(2)So much of the said estimates as relates to other expenditure shall be submitted, in the form of demands for grants, to the Legislative Assembly, and the Legislative Assembly shall have, power to assent, or to refuse to assent, to any demand, or to assent to a demand subject to a reduction of the amount specified therein.(3)No demand for a grant shall be made except on the recommendation of the Governor.GOI.80

80.

(1)The Governor shall authenticate by his signature a schedule specifying-(a)the grants made by the Assembly under the last preceding section;(b)the several sums required to meet the expenditure charged on the revenues of the Province but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Chamber or Chambers:Provided that, if the Assembly have refused to assent to any demand for a grant or have assented to such a demand subject to a reduction of the amount specified therein, the Governor may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case maybe, as appears to him necessary in order to enable him to discharge that responsibility.(2)The schedule so authenticated shall be laid before the Assembly but shall not be open to discussion or vote in the Legislature.(3)Subject to the provisions of the next succeeding section, no expenditure from the revenues of 'the Province shall be deemed to be duly authorized unless it is specified in the schedule so authenticated.GOI.81

81. If in respect of any financial year further expenditure from the revenues of the Province becomes necessary over and above the expenditure 'theretofore authorised for that year, the Governor shall cause to be laid before the Chamber or Chambers a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding sections shall have effect in relation to that statement and that expenditures they have effect in relation to the annual financial statement and the expenditure mentioned therein.

GOI.82

82. (I) A Bill or amendment making provision-

(a)for imposing or increasing any tax; or(b)for regulating the borrowing of money or the giving of any guarantee by the Province, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Province; or(c)for declaring any expenditure to be expenditure charged on the revenues of the Province, or for increasing the amount of any such expenditure, shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council.(2)A Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand and payment of fees for licenses or fees for services rendered.(3)A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of Province shall not be passed by a Chamber of the Legislature unless the Governor has recommended to that Chamber the consideration of the Bill.GOI.83

83.

(1)If in the last complete financial year before the commencement of this Part of this Act a grant for the benefit of the Anglo-Indian and European communities or either of them was included in the grants made, in any Province for education, then in each subsequent financial year, not being a year in which the Provincial Legislative Assembly otherwise resolve by a majority which includes at least three-fourths of the members of the Assembly, a grant shall be made for the benefit of the said community or communities not less in amount than the average of the grants made for its or their benefit in the ten financial years ending on the thirty-first day of March, nineteen hundred and thirty three:Provided that, if in any financial year the total grant for education in the Province is less than the average of the total grants for education in the Province in the said ten financial years, then, whatever fraction the former may be of the latter, any grant made under this subsection in that financial year for the benefit of the said community or communities need not exceed that fraction of the average of the grants made for its or their benefit in the said ten financial years.In computing for the purposes of this subsection the amount of any grants, grants for capital purposes shall be included.(2)The provisions of this section shall cease to have effect in a Province if at any time the Provincial Legislative Assembly resolve by a majority which includes at least three-fourths of the members of the Assembly that those provisions shall cease to have effect.(3)Nothing in this section affects the special responsibility of the Governor of a Province for the safeguarding of the legitimate interests of minorities.Procedure generallyGOI.84

84.

(1)A Chamber of a Provincial Legislature may make rules for regulating, subject to the provisions of this Act, their procedure and the conduct of their business :Provided that, as regards either a Legislative Assembly or a Legislative Council, the Governor shall in his discretion, after consultation with the Speaker or the President, as the case may be, make rules-(a)for regulating the procedure of, and the conduct of business in, the Chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his

individual judgment;(b)for securing the timely completion of financial business;(c)for prohibiting the discussion of, or the asking of questions on, any matter connected with any Indian State unless the Governor in his discretion is satisfied that the matter affects the interests of the Provincial Government or of a British subject ordinarily resident in the Province, and has given his consent to the matter being discussed, or to the question being asked ;(d)for prohibiting, save with the consent of the Governor in his discretion-(i)the discussion of or the asking of questions on any matter connected with relations between His Majesty or the Governor-General and any foreign State or Prince; or(ii)the discussion, except in relation to estimates of expenditure, of, or the asking of questions on, any matters connected with the tribal areas or arising out of or affecting the administration of an excluded area; or(iii)the discussion of, or the asking of questions on, the personal conduct of the Ruler of any Indian State or of a member of the ruling family thereof ;and, if and in so far as any rule so made by the Governor is inconsistent with any rule made by a Chamber, the rule made by the Governor shall prevail.(2)In a Province having a Legislative Council the Governor, after consultation with the Speaker and the President, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Chambers. The said rules shall make such provision for the purposes specified in the proviso to the preceding subsections the Governor in his discretion may think fit.(3)Until rules are made under this section the rules of procedure and standing orders in force immediately before the commencement of this Part of this Act with respect to the Legislative Council of the Province shall have effect in relation to the Legislature of the Province, subject to such modifications and adaptations as may be made therein by the Governor acting in his discretion.(4)At a joint sitting of two Chambers the President of the Legislative Council, or in his absence such person as may be determined by rules of procedure made under this section, shall preside.GOI.85

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

GOI.86

86.

(1)No discussion shall take place in a Provincial Legislature with respect to the conduct of any judge of the Federal Court or of a High Court in the discharge of his duties. In this subsection the reference to a High Court shall be construed as including a reference to a court in a Federated State which is a High Court for any of the purposes of Part IX of this Act.(2)If the Governor in his discretion certifies that the discussion of a Bill introduced or proposed to be introduced in the Provincial Legislature, or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquility of the Province or any part thereof, he may in his discretion direct that no proceedings, or no further proceedings, shall be taken in relation to the Bill,

clause or amendment, and effect shall be given to the direction.GOI.87

87.

(1)The validity of any proceedings in a Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure.(2)No officer or other member of a Provincial Legislature in whom powers are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

Chapter IV

LEGISLATIVE POWERS OF GOVERNOR

GOI.88

88.

(1)If at any time when the Legislature of province is not in session the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such recess of ordinances as the circumstances appear to him to Legislature, require:Provided that the. Governor-(a)shall exercise his individual judgment as respects the promulgation of any ordinance under this section, if a Bill containing the same provisions would under this Act have required his or the Governor-General's previous sanction to the introduction thereof into the Legislature;(b)shall not without instructions from the Governor- General, acting in his discretion, ---promulgate any such ordinance, if a Bill containing the same provisions would under this Act have required the Governor-General's previous sanction for the introduction thereof into the Legislature, or if he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the Governor-General.(2)An, ordinance promulgated under this, section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance-(a)shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or, if a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council.:(b)shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature assented to by the Governor ; and(c)may be withdrawn at any time by the Governor.(3)If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature assented to by the Governor, it shall be void.GOI.89

89.

(1)If at any time the Governor of a Provinces satisfied that circumstances exist which render it necessary, for him to take immediate action for the purpose of enabling him satisfactorily to,

discharge his functions in so far as he is by or under this Act required in the exercise thereof to. act in his discretion, or to exercise his individual judgment, he may promulgate such ordinances as in his opinion the circumstances of the case require.(2)An ordinance promulgated under this section shall continue in operation for such period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months.(3)An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance-(a)shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature;(b)may be withdrawn at any time by the Governor; and(c)if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith through the Governor-General to the Secretary of State and shall be laid by him before each House of Parliament.(4)If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature, it shall be void.:Provided that for the purposes of the provisions of this Act relating to the effect of an Act of a Provincial Legislature which is repugnant to an Act of the Federal Legislature, an ordinance promulgated under this section shall be deemed to be an Act of the Provincial Legislature which has been reserved for the consideration of the Governor-General and assented to by him.(5)The functions of the Governor under this section shall be exercised by him in his discretion but he shall not exercise any of his powers there under except with the concurrence of the Governor-General in his discretion:Provided that, if it appears to the Governor that it is impracticable to obtain in time the concurrence of the Governor-General, he may promulgate an ordinance without the concurrence of the Governor-General, but in that case the Governor-General in his discretion may direct the Governor to withdraw the ordinance and the ordinance shall be withdrawn accordingly.GOI.90

90.

(1)If at any time it appears to the Governor that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by message to the Chamber or Chambers of the Legislature explain the circumstances which in his opinion render legislation essential, and either-(a)enact forthwith as a Governor's Act a Bill containing such provisions as he considers necessary ; or(b)attach to his message a draft of the Bill which he considers necessary.(2)Where the Governor takes such action as is mentioned in paragraph (b) of the preceding subsection, he may, at any time after the expiration of one month, enact, as a Governor's Act, the Bill proposed by him to the Chamber or Chambers either in the form of the draft communicated to them, or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by the Chamber or either of the Chambers with reference to the Bill or to amendments suggested to be made therein.(3)A Governor's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Provincial Legislature assented to by the Governor and, if and so far as it makes any provision which would not be valid if enacted in an Act of that Legislature, shall be void :Provided that, for the purposes of the provisions of this Act relating to the effect of an Act of a Provincial Legislature which is repugnant to an Act of the Federal Legislature, a Governor's Act shall be deemed to be an Act reserved for the consideration

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

Chapter V

EXCLUDED AREAS AND PARTIALLY EXCLUDED AREAS

GOI.91

91.

(1)In this Act the expressions " excluded area" and " partially, excluded area " mean respectively such areas as His Majesty may by Order, in Council declare to be excluded areas or partially excluded areas. The Secretary of State shall lay the draft of the Order which it is proposed to recommend His Majesty to make under this subsection before Parliament within six months from the passing of this Act.(2)His Majesty may at any time by Order in Council-(a)direct that the whole or any specified 'part of an excluded area shall become, or become part of, a partially excluded area;(b)direct that the whole or any specified part of a partially excluded area shall cease to be a partially excluded area or a part of such an area;(c)alter, but only by way of rectification of boundaries, any excluded or partially excluded area;(d)on any alteration of the boundaries of a Province, or the creation of a new Province, declare any territory not previously included in any Province to be, or to form part of, an excluded area or a partially excluded area, and any, such Order may contain such incidental and consequential provisions as appear to His Majesty to be necessary and proper, but save as aforesaid 'the Order in Council made under subsection (1) of this section shallot be varied by any subsequent Order.GOI.92

92.

(1)The executive authority of a Province extends to excluded and partially excluded areas therein, excluded but, notwithstanding anything in this Act, no Act of the Federal Legislature or of the Provincial Legislature, excluded shall apply to an excluded area or a partially excluded area, unless the Governor by public notification so directs, and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.(2)The Governor may make regulations for the peace and good government of any area in a Province which is for the time being an excluded area, or a partially excluded area, and any regulations so made may repeal or amend any Act of the Federal Legislature, or of the Provincial Legislature, or any existing Indian law, which is for the time being applicable to the area in question.Regulations made under this subsection shall be submitted forthwith to the Governor-General and until assented to by him in his discretion shall have no effect, and the provisions of this Part of this Act with respect to the power of His Majesty to disallow Acts shall apply in relation to any such regulations assented to by the

Governor-General as they apply in relation to Acts of a Provincial Legislature assented to by him.(3)The Governor shall, as respects any area in a Province which is for the time being an excluded area, exercise his functions in his discretion.

Chapter VI

PROVISIONS IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY

GOI.93

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

(a)declare that his functions shall, to such extent as may be specified in the Proclamation, be exercised by him in his discretion;(b)assume to himself all or any of the powers vested in or exercisable by any Provincial body or authority ;and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Act relating to any Provincial body or authority :Provided that nothing in this subsection shall authorize the Governor to assume to himself any of the powers vested in or exercisable by a High Court, or to suspend, either in whole or in part, the operation of any provision of this Act relating to High Courts.(2)Any such Proclamation may be revoked or varied by a subsequent Proclamation.(3) A Proclamation under this section-(a)shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament;(b)unless it is a Proclamation revoking a previous Proclamation, shall cease to operate at the expiration of six months:Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this subsection it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years.(4)If the Governor, by a Proclamation under this section, assumes to himself any power of the Provincial Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by Act of the appropriate Legislature, and any reference in this Act to Provincial Acts, Provincial laws, or Acts or laws of Provincial Legislature shall be construed as including a reference to such a law.(5)The functions of the Governor under this section shall be exercised by him in his discretion and no Proclamation shall be made by a Governor under this section without the concurrence of the Governor-General in his discretion.

Part IV – THE CHIEF COMMISSIONERS' PROVINCES

GOI.94

94.

(1)The following shall be the Chief Commissioners' Provinces, that is to say, the heretofore existing Chief Commissioners' Provinces of British Baluchistan, Delhi, Ajmer-Merwara, Coorg and the Andaman and Nicobar Islands, the area known as Panth Piploda, and such other Chief Commissioners' Provinces as may be created under this Act.(2)Aden shall cease to be part of India.(3)A Chief Commissioner's Province shall be administered by the Governor-General acting, to such extent as he thinks fit, through a Chief Commissioner to be appointed by him in his discretion.GOI.95

95.

(1)In directing and controlling the administration of British Baluchistan, the Governor-General shall act in his discretion.(2)The executive authority of the Federation extends to British Baluchistan as it extends to other Chief Commissioners' Provinces, but, notwithstanding anything in this Act, no Act of the Federal Legislature shall apply to British Baluchistan unless the Governor-General in his discretion by public notification so directs, and the Governor-General in giving such a direction with respect to any Act may direct that the Act shall in its application to the Province, or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit.(3)The Governor-General may in his discretion make regulations for the, peace and good government of British Baluchistan, and any regulations so made may repeal or amend any Act of the Federal, Legislature. or any existing Indian law which is for the time being applicable to the Province and, when promulgated by the Governor-General, shall have the same force and effect as an Act of the Federal Legislature which applies to the Province.The provisions of Part II of this Act relating to the power of His Majesty to disallow Acts shall apply in relation to any such regulations as they apply in relation to Acts of - the Federal Legislature assented to by the Governor-General.GOI.96

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

GOI.97

97. Until other provision is made by His Majesty in Council, the constitution, powers and functions of the Coorg Legislative Council, and the arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg, shall continue unchanged.

GOI.98

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

Part V – LEGISLATIVE POWERS

Chapter I

DISTRIBUTION OF POWERS

GOI.99

99.

(1) Subject to the provisions of this Act, the Federal Legislature may make laws for the whole or any part of British India or for any Federated State, and a Provincial Legislature may make laws for the Province or for any part thereof. (2) Without prejudice to the generality of the powers conferred by the preceding subsection, no Federal law shall, on the ground that it would have extra territorial operation, be deemed to be invalid in so far as it applies—(a) to British subjects and servants of the Crown in any, part of India ; or (b) to British subjects who are domiciled in any part of India wherever they may be; or (c) to, or to persons on, ships or aircraft registered in British India or any Federated State wherever they may be; or (d) in the case of a law with respect to a matter accepted in the Instrument of Accession of a Federated State as a matter with respect to which the Federal Legislature may make laws for that State, to subjects of that State wherever they may be; or (e) in the case of a law for the regulation or discipline of any naval, military, or air force raised in British India, to members of, and persons attached to, employed with or following, that force, wherever they may be. GOI.100

100.

(1) Notwithstanding anything in the two next succeeding subsections, the Federal Legislature has, and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule to this Act (hereinafter called the " Federal Legislative List "). (2) Notwithstanding anything in the next succeeding subsection, the Federal Legislature, and, subject to the preceding subsection, a Provincial Legislature also, have power to make laws with

respect to any of the matters enumerated in List III in the said Schedule (hereinafter called the "Concurrent Legislative List").(3)Subject to the two preceding subsections, the Provincial Legislature has, and the Federal ' Legislature has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called the Provincial Legislative List ").(4)The Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof.GOI.101

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

GOI.102

102.

(1)Notwithstanding anything in the preceding sections of this chapter, the Federal Legislature shall, if the Governor-General has in his discretion declared by Proclamation (in this Act referred to as a "Proclamation of Emergency ") that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance; have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List :Provided that no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, and the Governor-General shall not give his sanction unless it appears to him that the provision proposed to be made is a proper provision in view of the nature of the emergency.(2)Nothing in this section shall restrict the power of a Provincial Legislature to make any law which under this Act it has power to make, but if any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature has under this section power to make, the Federal law, whether passed before or after the Provincial law, shall prevail, and the Provincial law shall to the extent of the repugnancy, but so long only as the Federal law continues to have effect, be void.(3)A Proclamation of Emergency-(a)may be revoked by a subsequent Proclamation;(b)shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament; and(c)shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by Resolutions of both Houses of Parliament.(4)A law made by the Federal Legislature which that Legislature would not but for the issue of a Proclamation of Emergency have been competent to make shall cease to have effect on the expiration of a, period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.GOI.103

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

GOI.104

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

(2) In the discharge of his functions under this section the Governor-General shall act in his discretion. GOI.105

105.

(1) Without prejudice to the provisions of this Act with respect to the legislative powers of the Federal Legislature, provision may be made by Act of that Legislature for applying the Naval Discipline Act of the Indian naval forces and, so long as provision for that purpose is made either by an Act of the Federal Legislature or by an existing Indian law, the Naval Discipline Act as so applied shall have effect as if references therein to His Majesty's navy and His Majesty's ships included references to His Majesty's Indian navy and the ships thereof, subject however-(a) in the application of the said Act to the forces and ships of the Indian navy and to the trial by, court martial of officers and men belonging thereto, to such modifications and adaptations, if any, as may be, or may have been, made by the Act of the Federal or Indian Legislature to adapt the said Act to the circumstances of India, including such adaptations as may be, or may have been, so made for the purpose of authorizing or requiring anything which under the said Act is to be done by or to the Admiralty, or the Secretary of the Admiralty, to be done by or to the Governor-General, or some person authorized to act on his behalf; and (b) in the application of the said Act to the forces and ships of His Majesty's navy other than those of the Indian navy, to such modifications and adaptations as may be made, or may have been made under section sixty-six of the Government of India Act, by His Majesty in Council for the purpose of regulating the relations of those forces and ships to the forces and the ships of the Indian navy. (2) Notwithstanding anything in this Act or in any Act of any Legislature in

India, where, any forces and ships of the Indian navy have been placed at the disposal of the Admiralty, the Naval Discipline Act shall have effect as if references therein to His Majesty's navy and His Majesty's ships included references to His Majesty's Indian navy and the ships thereof, without any such modifications or adaptations as aforesaid. GOI.106

106.

(1)The Federal Legislature shall not by reason only of the entry in the Federal Legislative List relating to the implementing of treaties and agreements with other countries have power to make any law for any Province except with the previous consent of the Governor, or for a Federated State except with the previous consent of the Ruler thereof.(2)So much of any law as is valid only by virtue of any such entry as aforesaid may be repealed by the Federal Legislature and may, on the treaty or agreement in question ceasing to have effect, be repealed as respects any Province or State by a law of that Province or State.(3)Nothing in this section applies in relation to any law which the Federal Legislature has power to make for a Province or, as the case may be, a Federated State, by virtue of any other entry in the Federal or the Concurrent Legislative List as well as by virtue of the said entry. GOI.107

107.

(1)If any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature is competent to enact or to any provision of an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List, then, subject to the provisions of this section, the Federal law, whether passed before or after the Provincial law, or, as the case may be, the existing Indian law, shall prevail and the Provincial law shall, to the extent of the repugnancy, be void.(2)Where a Provincial law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the provisions of an earlier Federal law or an existing Indian law with respect to that matter, then, if the Provincial law, having been reserved for the consideration of the Governor-General or for the signification of His Majesty's pleasure, has received the assent of the Governor-General or of His Majesty, the Provincial law shall in that Province prevail, but nevertheless the Federal Legislature may at any time enact further legislation with respect to the same matter :Provided that no Bill or amendment for making any provision repugnant to any Provincial law, which, having been so reserved, has received the assent of the Governor-General or of His Majesty, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.(3)If any provision of a law of a Federated State is repugnant to a Federal law which extends to that State, the Federal law, whether passed before or after the law of the State, shall prevail and the law of the State shall, to the extent of the repugnancy, be void.

Chapter II

RESTRICTIONS ON LEGISLATIVE POWERS

GOI.108

108.

(1) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, either Chamber of the Federal Legislature, any Bill or amendment which-(a) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India; or (b) repeals, amends or is repugnant to any Governor-General's or Governor's Act, or any ordinance promulgated in his discretion by the Governor-General or a Governor; or (c) affects matters as respects which the Governor-General is, by or under this Act, required to act in his discretion; or (d) repeals, amends or affects any Act relating to any police force; or (e) affects the procedure for criminal proceedings in which European British subjects are concerned; or (f) subjects persons not resident in British India to greater taxation than persons resident in British India or subjects companies not wholly controlled and managed in British India to greater taxation than companies wholly controlled and managed therein; or (g) affects the grant of relief from any Federal tax on income in respect of income taxed or taxable in the United Kingdom. (2) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, a Chamber of a Provincial Legislature any Bill or amendment which-(a) repeals, amends, or is repugnant to any provisions of any Act of Parliament extending to British India; or (b) repeals, amends or is repugnant to any Governor-General's Act, or any ordinance promulgated in his discretion by the Governor-General; or (c) affects matters as respects which the Governor-General is by or under this Act, required to act in his discretion; or (d) affects the procedure for criminal proceedings in which European British subjects are concerned; and unless the Governor of the Province in his discretion thinks fit to give his previous sanction, there shall not be introduced or moved any Bill or amendment which-(i) repeals, amends or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor; or (ii) repeals, amends or affects any Act relating to any police force. (3) Nothing in this section affects the operation of any other provision in this Act which requires the previous sanction of the Governor-General or of a Governor to the introduction of any Bill or the moving of any amendment. GOI.109

109.

(1) Where under any provision of this Act the previous sanction or recommendation of the Governor-General or of a Governor is required to the introduction or passing of a Bill or the moving of an amendment, the giving of the sanction or recommendation shall not be construed as precluding him from exercising subsequently in regard to the Bill in question any powers conferred upon him by this Act with respect to the withholding of assent to, or the reservation of Bills. (2) No Act of the Federal Legislature or a Provincial Legislature, and no provision in any such Act, shall be invalid by reason only that some previous sanction or recommendation was not given, if assent to that Act was given-(a) where the previous sanction or recommendation required was that of the Governor, either by the Governor, by the Governor-General, or by His Majesty; (b) where the previous sanction or recommendation required was that of the Governor-General, either by the Governor-General or by His Majesty. GOI.110

110. Nothing in this Act shall be taken-

(a) to affect the power of Parliament to legislate for British India, or any part thereof; or (b) to empower the Federal Legislature, or any Provincial Legislature- (i) to make any law affecting the Sovereign or the Royal Family, or the Succession to the Crown, or the sovereignty, dominion or suzerainty of the Crown in any part of India, or the law of British nationality, or the Army Act, the Air Force Act, or the Naval Discipline Act, or the law of Prize or Prize courts; or (ii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law amending any provision of this Act, or any Order in Council made there under, or any rules made under this Act by the Secretary of State, or by the Governor-General or a Governor in his discretion, or in the exercise of his individual judgment; or (iii) except in so far as is expressly permitted by any subsequent provisions of this Act, to make any law derogating from any prerogative right of His Majesty to grant special leave to appeal from any court.

Chapter III

GOI.110

\$PROVISIONS WITH RESPECT TO DISCRIMINATION, & CGOI.111

111.

(1) Subject to the provisions of this chapter, a British subject domiciled in the United Kingdom shall be exempt from the operation of so much of any Federal or Provincial law as- (a) imposes any restriction on the right of entry into British India; or (b) imposes by reference to place of birth, race, descent, language, religion, domicile, residence or duration of residence, any disability, liability, restriction or condition in regard to travel, residence, the acquisition, holding, or disposal of property, the holding of public office, or the carrying on of any occupation, trade, business or profession: Provided that no person shall by virtue of this subsection be entitled to exemption from any such restriction, condition, liability or disability as aforesaid if and so long as British subjects domiciled in British India are by or under the law of the United Kingdom subject in the United Kingdom to a like restriction, condition, liability, or disability imposed in regard to the same subject matter by reference to the same principle of distinction. (2) For the purposes of the preceding subsection, a provision, whether of the law of British India or of the law of the United Kingdom, empowering any public authority to impose quarantine regulations, or to exclude or deport individuals, wherever domiciled, who appear to that authority to be undesirable persons, shall not be deemed to be a restriction on the right of entry. (3) Notwithstanding anything in this section, if the Governor-General or, as the case may be, the Governor of any Province, by public notification certifies that for the prevention of any grave menace to the peace or tranquility of any part of India or, as the case may be, of any part of the Province, or for the purpose of combating crimes of violence intended to overthrow the Government, it is expedient that the operation of the provisions of subsection (1) of this section should be wholly or partially suspended in relation to any law, then while the notification is in force the operation of those provisions shall be suspended accordingly. The functions of the Governor-General and of a Governor under this subsection shall be

exercised by him in his discretion.GOI.112

112.

(1)No Federal or Provincial law which imposes any liability to taxation shall be such as to discriminate against British subjects domiciled in the United Kingdom or Burma or companies incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom or Burma, and any law passed or made in contravention of this section shall, to the extent of the contravention, be invalid.(2)Without prejudice to the generality of the foregoing provisions, a law shall be deemed to be such as to discriminate against such persons or companies as aforesaid if it would result in any of them being liable to greater taxation than that to which they would be liable if domiciled in British India or incorporated by or under the laws of British India, as the case may be.(3)For the purposes of this section a company incorporated before the commencement of Part III of this Act under any existing Indian law and registered hereunder in Burma shall be deemed to be a company incorporated by or under the laws of Burma.GOI.113

113.

(1)Subject to the following provisions of this chapter, a company incorporated, whether before or after the passing of this Act, by or under the laws of the in United Kingdom, and the members of the governing the body of any such company and the holders of its shares, stock, debentures, debenture stock or bonds, and its officers, agents, and servants, shall be deemed to comply with so much of any Federal or Provincial law as imposes in regard to companies carrying on or proposing to carry on business in British India requirements or conditions relating to or connected with-(a)the place of incorporation of a company or the situation of its registered office, or the currency in which its capital or loan capital is expressed ;or(b)the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company, or of the holders of its shares, stock, debentures, debenture stock or bonds, or of its officers, agents or servants :Provided that no company or person shall by virtue of this section be deemed to comply with any such requirement or condition as aforesaid if and so long as alike requirement or condition is imposed by or under the law of the United Kingdom in regard to companies incorporated by or, under the laws of British India and carrying on or proposing to carry on business in the United Kingdom.(2)If and in so far as any total or partial exemption from, or preferential treatment in respect of, taxation imposed on companies by or under any Federal or Provincial law depends on compliance with conditions as to any of the matters mentioned in subsection (1) of this section, any company incorporated by or under the laws of the United Kingdom carrying on business in British India shall be deemed to satisfy those conditions and be entitled to the exemption or preferential treatment accordingly, so long as the taxation imposed by or under the laws of the United Kingdom on companies incorporated by or under the laws of British India and carrying on business in the United Kingdom does not depend on compliance with conditions as to any of the matters so mentioned.GOI.114

114.

(1) Subject to the following provisions of this chapter, a British subject domiciled in the United Kingdom shall be deemed to comply with so much of any Federal or Provincial law as imposes in regard to companies incorporated or proposed to be incorporated, whether before or after the passing of this Act, by or under the laws of British India, any requirements or conditions relating to, or connected with, the place of birth, race, descent, language, religion, domicile, residence or duration of residence of members of the governing body of a company, or of the holders of its shares, stock, debentures, debenture stock or bonds, or of its officers, agents or servants: Provided that no person shall by virtue of this section be deemed to comply with any such, requirement or condition as aforesaid if and so long as a like requirement or condition is imposed by or under the law of the United Kingdom in regard to companies incorporated or proposed to be incorporated by or under the laws of the United Kingdom on British subjects domiciled in British India. (2) If and in so far as, in the case of any such companies as aforesaid, any total or partial exemption from, or preferential treatment in respect of, taxation imposed by or under any Federal or Provincial law depends on compliance with conditions as to any of the matters aforesaid, then, so far as regards such members of its governing body and such of the holders of its shares, stock, debentures, debenture stock or bonds, and such of its officers, agents, and servants, as are British subjects domiciled in the United Kingdom, any such company shall be deemed to satisfy those conditions and be entitled to the exemption or preferential treatment accordingly, so long as the taxation imposed by or under the laws of the United Kingdom on companies incorporated by or under those laws does not, as regards such of the members of a company's governing body, or such of the holders of its shares, stock, debentures, debenture stock or bonds, or such of its officers, agents, or servants, as are British subjects domiciled in British India, depend on compliance with conditions as to any of the matters aforesaid. (3) For the purposes of this section, but not for the purposes of any other provision of this chapter, a company incorporated before the commencement of Part III of this Act under any existing Indian law and registered hereunder in Burma, shall be deemed to be a company incorporated by or under the laws of British India. GOI.115

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

(2) This section shall apply in relation to aircraft as it applies in relation to ships. (3) The provisions of this section, are in addition to and not in derogation of the provisions of any of the preceding sections of this chapter. GOI.116

116. (l) Notwithstanding anything in any Act of the Federal Legislature or of a Provincial Legislature, companies incorporated, whether before or after the passing of this Act, by or under the laws of the United Kingdom and carrying on business in India shall be eligible for any grant, bounty or subsidy payable out of the revenues of the Federation or of a Province for the encouragement of any trade or industry to the same extent as companies incorporated by or under the laws of British India are eligible therefor:

Provided that this subsection shall not apply in relation to any grant, bounty or subsidy for the encouragement of any trade or industry, if and so long as under the law of the United Kingdom for the time being in force companies incorporated by or under the laws of British India and carrying on business in the United Kingdom are not equally eligible with companies incorporated by or under the laws of the United Kingdom for the benefit of any grant, bounty or subsidy payable out of public moneys in the United Kingdom for the encouragement of the same trade or industry.(2)Notwithstanding anything in this chapter, an Act of the Federal Legislature or of a Provincial Legislature may require, in the case of a company which at the date of the passing of that Act was not engaged in British India in that branch of trade or industry which it is the purpose of the grant, bounty or subsidy to encourage, that the company shall not be eligible for any grant, bounty or subsidy under the Act unless and until-(a)the company is incorporated by or under the laws of British India or, if the Act so provides, is incorporated by or under the laws of British India or of a Federated State ; and(b)such proportion, not exceeding one half, of the members of its governing body as the Act may prescribe, are British subjects domiciled in India or, if the Act so provides, are either British subjects domiciled in India or subjects of a Federated State ; and(c)the company gives such reasonable facilities as may be so prescribed for the training of British subjects domiciled in India or, if the Act so provides, of British subjects domiciled in India or subjects of a Federated State.(3)For the purposes of this section a company incorporated by or under the laws of the United Kingdom shall be deemed to be carrying on business in India if it owns ships which habitually trade to and from ports in India.GOI.117

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

GOI.118

118.

(1)If after the establishment of the Federation a convention is made between His Majesty's

Government in the United Kingdom and the Federal Government whereby similarity of treatment is assured in the United Kingdom to British subjects domiciled in British India and to companies incorporated by or under the laws of British India and in British India to British subjects domiciled in the United Kingdom and to companies incorporated by or under the laws of the United Kingdom, respectively, in respect of the matters, or any of the matters, with regard to which provision is made in the preceding sections of this chapter, His Majesty may, if he is satisfied that all necessary legislation has been enacted both in the United Kingdom and in India for the purpose of giving effect to the convention, by Order in Council declare that the purposes of those sections are to such extent as may be specified in the Order sufficiently fulfilled by that convention and legislation, and while any such Order is in force, the operation of those sections shall to that extent be suspended.(2)An Order in Council under, this section shall cease to have effect if and when the convention to which it relates expires or is terminated by either party thereto.GOI.119

119.

(1)No Bill or amendment which prescribes, or empowers any authority to prescribe, the professional or technical qualifications which are to be requisite for any purpose in British India or which imposes, or empowers any authority to impose, by reference to any professional or technical qualification, any disability, liability, restriction or condition in regard to the practicing of any profession, the carrying on of any occupation, trade or business, or the holding of any office in British India, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.(2)The Governor-General or a Governor shall not give his sanction for the purposes of the preceding subsection unless he is satisfied that the proposed legislation is so framed as to secure that no person who, immediately before the coming into operation of any disability, liability, restriction or condition to be imposed by or under that legislation, was lawfully practicing any profession, carrying on any occupation, trade, or business, or holding any office in British India shall, except in so far as may be necessary in the interests of the public, be debarred from continuing to practice that profession, carry on that occupation, trade or business, or hold that office, or from doing anything in the course of that profession, occupation, trade or business, or in the discharge of the duties of that office which he could lawfully have done if that disability, liability, restriction or condition had not come into operation.(3)All regulations made under the provisions of any Federal or Provincial law which prescribe the professional or technical qualifications which are to be requisite for any purpose in British India or impose, by reference to any professional or technical qualification, any disability, liability, restriction or condition in regard to the practicing of any profession, the carrying on of any occupation, trade or business; or the holding of any office in British India, shall, not less than four months before they are expressed to come into operation, be published in such manner as may be required by general or special directions of the Governor-General, or, as the case may be, the Governor, and, if within two months from the date of the publication complaint is made to the Governor-General or, as the case may be, the Governor that the regulations or any of them will operate unfairly as against any class of persons affected thereby, the Governor-General or Governor, if he is of opinion that the complaint is well founded, may, at any time before the regulations are expressed to come into operation, by public notification disallow the regulations or any of them.In

this subsection the expression " regulations "includes rules, byelaws, orders and ordinances. In the discharge of his functions under this subsection the Governor-General or a, Governor shall exercise his individual judgment.(4) If the Governor-General exercising his individual judgment by public notification directs that the provisions of the last preceding subsection shall apply in relation to any existing Indian law, those provisions shall apply in relation to that law accordingly, and the functions which under those provisions are to be performed in relation to a Federal law by the Governor-General and in relation to a Provincial law by the Governor shall, in relation to that existing Indian law, be performed, according as may be directed by the notification, by the Governor-General exercising his individual judgment, by the Governor exercising his individual judgment or partly by the one and partly by the other of them. GOI.120

120.

(1) So long as the condition set out in subsection (3) of this section continues to be fulfilled, a British subject domiciled in the United Kingdom or India who, by virtue of a medical diploma granted to him in the United Kingdom, is, or is entitled to be, registered in the United Kingdom as a qualified medical practitioner shall not by or under any existing Indian law or any law of the Federal or any Provincial Legislature, be excluded from practicing medicine, surgery or midwifery in British India, or in any part thereof, or from being registered as qualified so to do, on any ground other than the ground that the diploma held by him does not furnish a sufficient guarantee of his possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and he shall not be so excluded on that ground unless a law of the Federation or of the Province, as the case may be, makes provision for securing—(a) that no proposal for excluding the holders of any particular diploma from practice or registration shall become operative until the expiration of twelve months after notice thereof has been given to the Governor-General and to the University or other body granting that diploma ; and (b) that such a proposal shall not become operative or, as the case may be, shall cease to operate, if the Privy Council on an application made to them under the next succeeding subsection determine that the diploma in question ought to be recognized as furnishing such a sufficient guarantee as aforesaid.(2) If any University or other body in the United Kingdom which grants a medical diploma, or any British subject who holds such a diploma, is aggrieved by the proposal to exclude holders of that diploma from practice or registration in British India, that body or person may make an application to the Privy Council, and the Privy Council, after giving to such authorities and persons both in British India, and in the United Kingdom as they think fit an opportunity of tendering evidence or submitting representations in writing, shall determine whether the diploma in question does or does not furnish a sufficient guarantee of the possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and shall notify their determination to the Governor-General, who shall communicate it to such authorities, and cause it to be published in such manner, as he thinks fit.(3) The condition referred to in subsection (1) of this section is that British subjects domiciled in India who hold a medical diploma granted after examination in British India shall not be excluded from practicing medicine, surgery or midwifery in the United Kingdom or from being registered therein as qualified medical practitioners, except on the ground that that diploma does not furnish a sufficient guarantee of the possession of the requisite knowledge and skill for the practice of medicine, surgery and midwifery, and shall only be excluded on that ground so long as the law of the United Kingdom makes provision

for enabling any question as to the sufficiency of that diploma to be referred to and decided by the Privy Council.(4)A medical practitioner entitled to practice or to be registered in British India by virtue of a diploma granted in the United Kingdom, or in the United Kingdom by virtue of a diploma granted in British India, shall not in the practice of his profession be subjected to any liability, disability, restriction or condition to which persons entitled to practice by virtue of diplomas granted in the other country are not subject.(5)The foregoing provisions of this section shall, subject to the modifications hereinafter mentioned, apply in relation to British subjects domiciled in Burma who, by virtue of medical diplomas granted to them in Burma or the United Kingdom, are, or are entitled to be, registered in the United Kingdom as qualified medical practitioners as they apply in relation to British subjects domiciled in the United Kingdom who, by virtue of medical diplomas granted in the United Kingdom, are, or are entitled to be, registered in the United Kingdom as qualified medical practitioners.The said modifications are as follows, that is to say-(a)subsection (3) shall not apply and the reference in subsection (1) to the condition set out therein shall be deemed to be omitted;(b)any reference in subsection (2) or subsection (4) to the United Kingdom shall be construed as a reference to Burma.(6)Nothing in this section shall be construed as affecting any power of any recognized authority in the United Kingdom or British India to suspend or debar any person from practice on the ground of misconduct, or to remove any person from a register on that ground.(7)In this section the expression " diploma " includes any certificate, degree, fellowship, or other document or status granted to persons passing examinations.GOI.121

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

Part VI – ADMINISTRATIVE RELATIONS BETWEEN FEDERATION, PROVINCES AND STATES

GOI.122

122.

(1)The executive authority of every Province and Federated State shall be so exercised as to secure respect for the laws of the Federal Legislature which apply in that Province or State.(2)The reference in subsection (1) of this section to laws of the Federal Legislature shall, in relation to any Province, include a reference to any existing Indian law applying in that Province.(3)Without prejudice to any of the other provisions of this Part of this Act, in the exercise of the executive authority of the Federation in any Province or Federated State regard shall be had to the interests of that Province or State.GOI.123

123.

(1)The Governor-General may direct the Governor of any Province to discharge as his agent, either generally or in any particular case, such functions in and in relation to the tribal areas as may be specified in the direction.(2)If in any particular case it appears to the Governor-General necessary or convenient so to do, he as his may direct the Governor of any Province to discharge as agents. his agent such functions in relation to defense, external affairs, or ecclesiastical affairs as may be specified in the direction.(3)In the discharge of any such functions the Governor shall act in his discretion.GOI.124

124.

(1)Notwithstanding anything in this Act, the Governor-General may, with the consent of the Government of a Province or the Ruler of a Federated State, entrust either conditionally or unconditionally to that Government or Ruler, or to their respective officers, functions in relation to any matter to which the executive authority of the Federation extends.(2)An Act of the Federal Legislature may, notwithstanding that it relates to a matter with respect to which a Provincial Legislature has no power to make laws, confer powers and impose duties upon a Province or officers and authorities thereof.(3)An Act of the Federal Legislature which extends to a Federated State may confer powers and impose duties upon the State or officers and authorities thereof to be designated for the purpose by the Ruler.(4)Where by virtue of this section powers and duties have been conferred or imposed upon a Province or Federated State or officers or authorities thereof, there shall be paid by the Federation to the Province or State such sum as may be agreed, or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India, in respect of any extra costs of administration incurred by the Province or State in connection with the exercise of those powers and duties.GOI.125

125.

(1)Notwithstanding anything in this Act, agreements may, and, if provision has been made in that behalf by the Instrument of Accession of the State, shall, be made between the Governor-General and the Ruler of a Federated State for the exercise by the Ruler or his officers of functions in relation to the administration in his State of any law of the Federal Legislature which applies therein.(2)An agreement made under this section shall contain provisions enabling the Governor-General in his discretion to satisfy himself, by inspection or otherwise, that the administration of the law to which the agreement relates is carried out in accordance with the policy of the Federal Government and, if he is not so satisfied, the Governor-General, acting in his discretion, may issue such directions to the Ruler as he thinks fit.(3)All courts shall take judicial notice of any agreement made under this section.GOI.126

126.

(1)The executive authority of every Province shall be so exercised as not to impede or prejudice the

exercise of the executive authority of the Federation, and the executive authority of the Federation shall extend to the giving of such directions to a Province as may appear to the Federal Government to be necessary for that purpose.(2)The executive authority of the Federation shall also extend to the giving of directions to a Province as to the carrying into execution therein of any Act of the Federal Legislature which relates to a matter specified in Part II of the Concurrent Legislative List and authorises the giving of such directions:Provided that a Bill or amendment which proposes to authorise the giving of any such directions as aforesaid shall not be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.(3)The executive authority of the Federation shall also extend to the giving of directions to a Province as to the construction and maintenance of means of communication declared in the direction to be of military importance:Provided that nothing in this subsection shall be taken as restricting the power of the Federation to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.(4)If it appears to the Governor-General that in any Province effect has not been given to any directions given under this section, the Governor-General, acting in his discretion, may issue as orders to the Governor of that Province either the directions previously given or those directions modified in such manner as the Governor-General thinks proper.(5)Without prejudice to his powers 'under the last preceding subsection, the Governor-General, acting in his discretion, may at any time issue orders to the Governor of a Province as to the manner in which the executive authority thereof is to be exercised for the purpose of preventing any grave menace to the peace or tranquility of India or of any part thereof.GOI.127

127. The Federation may, if it deems it necessary to acquire any land situate in a Province for any purpose connected with a matter with respect to which the Federal Legislature has power to make laws, require the Province to acquire the land on behalf, and at the expense, of the Federation or, if the land belongs to the Province, to transfer it to the Federation on such terms as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India.

GOI.128

128.

(1)The executive authority of every Federated State shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation so far as it is exercisable in the State by virtue of a law of the Federal Legislature which applies therein.(2)If it appears to the Governor-General that the Ruler of any Federated State has in any way failed to fulfill his obligations under the preceding subsection, the Governor-General, acting in his discretion, may after considering any representations made to him by the Ruler issue such directions to the Ruler as he thinks fit:Provided that, if any question arises under this section as to whether the executive authority of the Federation is exercisable in a State with respect to any matter or as to the extent to which it is 'so exercisable, the question may, at the instance either of the Federation or the Ruler, be

referred to the Federal Court for determination by that Court in the exercise of its original jurisdiction under this Act. Broadcasting GOI.129

129.

(1) The Federal Government shall not unreasonably refuse to entrust to the Government of any, Province or the Ruler of any Federated State such functions with respect to broadcasting as may be necessary to enable that Government or Ruler-(a) to construct and use transmitters in the Province or State; (b) to regulate, and impose fees in respect of, the construction and use of transmitters and the use of receiving apparatus in the Province or State: Provided that nothing in this subsection shall be construed as requiring the Federal Government to entrust to any such Government or Ruler any control over the use of transmitters constructed or maintained by the Federal Government or by persons authorised by the Federal Government, or over the use of receiving apparatus by persons so authorised. (2) Any functions so entrusted to a Government or Ruler shall be exercised subject to such conditions as may be imposed by the Federal Government, including, notwithstanding anything in this Act, any conditions with respect to finance, but it shall not be lawful for the Federal Government so to impose any conditions regulating the matter broadcast by, or by authority of, the Government or Ruler. (3) Any Federal laws which may be passed with respect to broadcasting shall be such as to secure that effect can be given to the foregoing provisions of this section. (4) If any question arises under this section whether any conditions imposed on any such Government or Ruler are lawfully imposed, or whether any refusal by the Federal Government to entrust functions is unreasonable, the question shall be determined by the Governor-General in his discretion. (5) Nothing in this section shall be construed as restricting the powers conferred on the Governor-General by this Act for the prevention of any grave menace to the peace or tranquility of India or any part thereof, or as prohibiting the imposition on Governments or Rulers of such conditions regulating matter broadcast as appear to be necessary to enable the Governor-General to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment. Interference with Water Supplies GOI.130

130. If it appears to the Government of any Governor's Province or to the Ruler of any Federated State that the interests of that Province or State, or of any of the inhabitants thereof, in the water from any natural source of supply in any Governor's or Chief Commissioner's Province or Federated State, have been, or are likely to be, affected prejudicially by-

(a) any executive action or legislation taken or passed, or proposed to be taken or passed; or (b) the failure of any authority to exercise any of their powers, with respect to the use, distribution or control of water from that source, the Government or Ruler may complaint to the Governor-General. GOI.131

131.

(1) If the Governor-General receives such a complaint as aforesaid, he shall, unless he is of opinion that the issues involved are not of sufficient importance to warrant such action, appoint a Commission consisting of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law, as he thinks fit, and request that Commission to investigate in accordance with such instructions as he may give to them, and to report to him on the matters to which the complaint relates, or such of those matters as he may refer to them. (2) A Commission so appointed shall investigate the matters referred to them and present to the Governor-General a report setting out the facts as found by them and making such recommendations as they think proper. (3) If it appears to the Governor-General upon consideration of the Commission's report that anything therein contained requires explanation, or that he, needs guidance upon any point not originally referred by him to the Commission, he may again refer the matter to the Commission for further investigation and a further report. (4) For the purpose of assisting a Commission appointed under this section in investigating any matters referred to them, the Federal Court, if requested by the Commission so to do, shall make such orders and issue such letters of request for the purposes of the proceedings of the Commission as they may make or issue in the exercise of the jurisdiction of the court. (5) After considering any report made to him by the Commission, the Governor-General shall give such decision and make such order, if any, in the matter of the complaint as he may deem proper: Provided that if, before the Governor-General has given any decision, the Government of any Province or the Ruler of any State affected request him so to do, he shall refer the matter to His Majesty in Council and His Majesty in Council may give such decision and make such order, if any, in the matter as he deems proper. (6) Effect shall be given in any Province or State affected to any order made under this section by His Majesty in Council or the Governor-General, and any Act of a Provincial Legislature or of a State which is repugnant to the order shall, to the extent of the repugnancy, be void. (7) Subject as hereinafter provided the Governor-General, on application made to him by the Government of any Province, or the Ruler of any State affected, may at any time, if after a reference to, and report from, a Commission appointed as aforesaid he considers improper so to do, vary any decision or order given or made under this section: Provided that, where the application relates to a decision or order of His Majesty in Council and in any other case if the Government of any Province or the Ruler of any State affected request him so to do, the Governor-General shall refer the matter to His Majesty in Council, and His Majesty in Council may, if he considers proper so to do, vary the decision or order. (8) An order made by His Majesty in Council or the Governor-General under this section may contain directions as to the Government or persons by whom the expenses of the Commission and any costs incurred by any Province, State or persons in appearing before the Commission are to be paid, and may fix the amount of any expenses or costs to be so paid, and so far as it relates to expenses or costs, may be enforced as if it were an order made by the Federal Court. (9) The functions of the Governor-General under this section shall be exercised by him in his discretion. GOI.132

132. If it appears to the Governor-General that the interests of any Chief Commissioner's Province, or of any of the inhabitants of such a Province, in the water from any natural source of supply in any Governor's Province or

Federated State have been or are likely to be affected prejudicially by-

(a)any executive action or legislation taken or passed, or proposed to be taken or passed; or(b)the failure of any authority to exercise any of their powers, with respect to the use, distribution or control of water from that source, he may, if he in his discretion thinks fit, refer the matter to a Commission appointed in accordance with the provisions of the last preceding section and thereupon those provisions shall apply as if the Chief Commissioner's Province were a Governor's Province and as if a complaint with respect to the matter had been made by the Government of that Province to the Governor-General.GOI.133

133. Notwithstanding anything in this Act, neither the Federal Court nor any other court shall have jurisdiction to entertain any action or suit in respect of any matter if action in respect of that matter might have been taken under any of the three last preceding sections by the Government of a Province, the Ruler of a State, or the Governor-General.

GOI.134

134. The provisions contained in this Part of this Act with respect to interference with water supplies shall not apply in relation to any Federated State the Ruler w hereof has declared in his Instrument of Accession that those provisions are not to apply in relation to his State.

Inter-Provincial Co-operationGOI.135

135. If at any time it appears to His Majesty upon consideration of representations addressed to him by the Governor-General that the public interests would be served by the establishment of an Inter-Provincial Council charged with the duty of-

(a)inquiring into and advising upon disputes which may have arisen between Provinces;(b)investigating and discussing subjects in which some or all of the Provinces, or the Federation and one or more of the Provinces, have a common interest; or(c)making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject, it shall be lawful for His Majesty in Council to establish such a Council, and to define the nature of the duties to be performed by it and its organization and procedure.An Order establishing any such Council may make provision for representatives of Indian States to participate in the work of the Council.

Part VII – FINANCE, PROPERTY, CONTRACTS AND SUITS

Chapter I FINANCE

Distribution of Revenues between the Federation and the Federal UnitsGOI.136

136. Subject to the following provisions of this chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to Provinces and Federated States, and subject to the provisions of this Act with respect to the Federal Railway Authority, the expression revenues of the Federation " includes all revenues and public moneys raised or received by the Federation, and the expression " revenues of the Province " includes all revenues and public moneys raised or received by a Province.

GOI.137

137. Duties in respect of succession to property other than agricultural land, such stamp duties as are mentioned in the Federal Legislative List, terminal taxes on goods or passengers carried by railway, or air, and taxes on railway fares and freights, shall be levied and collected by the Federation, but the net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the Provinces and to the Federated States, if any, within which that duty or tax is leviable in that year, and shall be distributed among the Provinces and those States in accordance with such principles of distribution as maybe formulated by Act of the Federal Legislature :

Provided that the Federal Legislature may at anytime increase any of the said duties or taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.GOI.138

138.

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

shall be assigned to the Provinces and to the Federated States, if any, within which that tax is leviable in that year, and shall be distributed among the Provinces and those States in such manner as may be prescribed :Provided that-(a)the percentage originally prescribed under this subsection shall not be increased by any subsequent Order in Council ;(b)the Federal Legislature may at any time increase the said taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.(2)Notwithstanding anything in the preceding subsection, the Federation may retain out of the moneys assigned by that subsection to Provinces and States-(a)in each year of a prescribed period such sum as may be prescribed ; and(b)in each year of a further prescribed period a sum less than that retained in the preceding year by an amount, being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual reduction :Provided that-(i)neither of the periods originally prescribed shall 'be reduced by any subsequent Order in Council ;(ii)the Governor-General in his discretion may in any year of the second prescribed period direct that the sum to be retained by the Federation in that year shall be the sum retained in the preceding year, and that the second prescribed period shall be correspondingly extended, but he shall not give any such direction except after consultation with such representatives of Federal, Provincial and State interests as he may think desirable, nor shall he give any such direction unless he is satisfied that the maintenance of the financial stability of the Federal Government requires him so to do.(3)Where an Act of the Federal Legislature imposes a surcharge for Federal purposes under this section, the Act shall provide for the payment by each Federated State in which taxes on income are not leviable by the Federation of a contribution to the revenues of the Federation assessed on such basis as may be prescribed with a view to securing that the contribution shall be the equivalent, as near as may be, of the net proceeds which it is estimated would result from the surcharge if it were leviable in that State, and the State shall become liable to pay that contribution accordingly.(4)In this section-"taxes on income" does not include a corporation tax ;"prescribed" means prescribed by His Majesty in Council ; and" Federal emoluments " includes all emoluments and pensions payable out of the revenues of the Federation or of the Federal Railway Authority in respect of which income tax is chargeable.GOI.139

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

(2)Any Federal law providing for the levying of corporation tax shall contain provisions enabling the Ruler of any Federated State in which the tax would otherwise be leviable to elect that the tax shall not be levied in the State, but that in lieu thereof there shall be paid by the State to the revenues of the Federation a contribution as near as may be equivalent to the net proceeds which it is estimated would result from the tax if it were levied in the State.(3)Where the Ruler of a State so elects as aforesaid, the officers of the Federation shall not call for any information or returns from any corporation in the State, but it shall be the duty of the Ruler thereof to cause to be supplied to the Auditor-General of India such information as the Auditor-General may reasonably require to enable the amount of any such contribution to be determined.If the Ruler of a State is dissatisfied with the determination as to the amount of the contribution payable by his State in any financial year, he may appeal to the Federal Court, and if he establishes to the satisfaction of that Court that the

amount determined is excessive, the Court shall reduce the amount accordingly and no appeal shall lie from the decision of the Court on the appeal.GOI.140

140.

(1) Duties on salt, Federal duties of excise and export duties shall be levied and collected by the Federation, but, if an Act of the Federal Legislature so provides, there shall be paid out of the revenues of the Federation to the Provinces and to the Federated States, if any, to which the Act imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed -among the Provinces and those States in accordance with such principles of distribution as may be formulated by the Act.(2) Notwithstanding anything in the preceding subsection, one half, or such greater proportion as His Majesty in Council may determine, of the net proceeds in each year of any export duty on jute or jute products shall not form part of the revenues of the Federation, but shall be assigned to the Provinces or Federated States in which jute is grown in proportion to the respective amounts of jute grown therein.GOI.141

141.

(1). No Bill or amendment. which imposes or varies any tax or duty in which Provinces are interested, or which varies the meaning of the expression " agricultural income" as defined for the purposes of the enactments relating to Indian income tax, or which affects the principles on which under any of the foregoing provisions of this chapter moneys are or maybe distributable to Provinces or States, or which imposes any such Federal surcharge as is mentioned in the foregoing provisions of this chapter, shall be introduced or moved in either Chamber of the Federal Legislature except with the previous sanction of the Governor-General in his discretion.(2) The Governor-General shall not give his sanction to the introduction of any Bill or the moving of any amendment imposing in any year any such Federal surcharge as aforesaid unless he is satisfied that all practicable economies and all practicable measures for otherwise increasing the proceeds of Federal taxation or the portion thereof retainable by the Federation would not result in the balancing of Federal receipts and expenditure on revenue account in that year.(3) In this section the expression " tax or duty in which Provinces are interested means-(a) a tax or duty the whole or part of the net proceeds whereof are assigned to any Province ;or(b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the revenues of the Federation to any Provinces.GOI.142

142. Such sums as may be prescribed by His Majesty in Council shall be charged on the revenues of the Federation in each year as grants in aid of the revenues of such Provinces as His Majesty may determine to be in need of assistance, and different sums maybe prescribed for different Provinces:

Provided that, except in the case of the North West Frontier Province, no grant fixed under this section shall be increased by a subsequent Order, unless an address has been presented to the Governor-General by both Chambers of the Federal Legislature for submission to His Majesty

praying that the increase may be made.GOI.143

143.

(1)Nothing in the foregoing provisions of this chapter affects any duties or taxes levied in any Federated State otherwise than by virtue of an Act of the Federal Legislature applying in the State.(2)Any taxes, duties, cesses or fees which, immediately before the commencement of Part III of this Act, were being lawfully levied by any Provincial Government, municipality or other local authority or body for the purposes of the Province, municipality, district or other local area under a law in force on the first day of January, nineteen hundred and thirty-five, may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Federal Legislative List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Legislature.GOI.144

144.

(1)In the foregoing provisions of this chapter " net proceeds " means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Auditor-General of India, whose certificates shall be final.(2)Subject as aforesaid, and to any other express provision of this chapter, an Act of the Federal Legislature may, in any case where under this Part of this Act the proceeds of any duty or tax are, or may be, assigned to any Province or State, or a contribution is, or may be, made to the revenues of the Federation by any State, provide for the manner in which the proceeds of any duty or tax and the amount of any contribution are to be calculated, for the times in each year and the manner at and in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.The Crown and the StatesGOI.145

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

GOI.146

146. All cash contributions and payments in respect of loans and other payments due from or by any Indian State which, if this Act had not been passed, would have formed part of the revenues of India, shall be received by His Majesty, and shall, if His Majesty has so directed, be placed at the

disposal of the Federation, but nothing in this Act shall derogate from the right of His Majesty, if he thinks fit so to do, to remit at any time the whole or any part of any such contributions or payments.

GOI.147

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

(2) Subject as aforesaid, where any territories have been voluntarily ceded to the Crown by a Federated State before the passing of this Act—(a) in return for specific military guarantees, or (b) in return for the discharge of the State from obligations to provide military assistance, there shall, if His Majesty, in signifying his acceptance of the Instrument of Accession of that State, so directs, be paid to that State, but in the first-mentioned case on condition that the said guarantees are waived, such sums as in the opinion of His Majesty ought to be paid in respect of any such cession as aforesaid. (3) Notwithstanding anything in this section—(a) every such agreement or direction as aforesaid shall be such as to secure that no such remission or payment shall be made by virtue of the agreement or direction until the Provinces have begun to receive moneys under the section of this chapter relating to taxes on income, and, in the case of a remission, that the remission shall be complete before the expiration of twenty years from the date of the accession to the Federation of the State in question, or before the end of the second prescribed period referred to in subsection (2) of the said section, whichever first occurs; and (b) no contribution shall be remitted by virtue of any such agreement save in so far as it exceeds the value of any privilege or immunity enjoyed by the State; and (c) in fixing the amount of any payments in respect of ceded territories, account shall be taken of the value of any such privilege or immunity. (4) This section shall apply in the case of any cash contributions the liability for which has before the passing of this Act been discharged by payment of a capital sum or sums, and accordingly His Majesty may agree that the capital sum or sums so paid shall be repaid either by installments or otherwise, and such repayments shall be deemed to be remissions for the purposes of this section. (5) In this chapter "cash contributions" means—(a) periodical contributions in acknowledgment of the suzerainty of His Majesty, including contributions payable in connection with any arrangement for the aid and protection of a State by His Majesty, and contributions in commutation of any obligation of a State to provide military assistance to His Majesty, or in respect of the maintenance by His Majesty of a special force for service in connection with a State, or in respect of the maintenance of local military forces or police, or in respect of the expenses of an agent; (b) periodical contributions fixed on the creation or restoration of a State, or on a re-grant or increase of territory, including annual payments for grants of land on perpetual tenure or for equalisation of the value of exchanged territory; (c) periodical contributions formerly payable to another State but now payable to His Majesty by right of conquest, assignment or lapse. (6) In this chapter "privilege or immunity" means any such right, privilege, advantage or immunity of a financial character as is hereinafter mentioned, that is to

say-(a)rights, privileges or advantages in respect of, or connected with, the levying of sea customs or the production and sale of untaxed salt ;(b)sums receivable in respect of the abandonment or surrender of the right to levy internal customs duties, or to produce or manufacture salt, or to tax salt or other commodities or goods in transit, or sums receivable in lieu of grants of free salt ;(c)the annual value to the Ruler of any privilege or territory granted in respect of the abandonment or surrender of any such right as is mentioned in the last preceding paragraph ;(d)privileges in respect of free service stamps or the free carriage of State mails on government business ;(e) the privilege of entry free from customs duties of goods imported by sea and transported inbound to the State in question; and(f)the right to issue currency notes,not being a right, privilege, advantage or immunity surrendered upon the accession of the State, or one which, in the opinion of His Majesty, for any other reason ought not to be taken into account for the purposes of this chapter.(7)An Instrument of Accession of a State shall not be deemed to be suitable for acceptance by His Majesty, unless it contains such particulars as appear to His Majesty to be necessary to enable due effect to be given to the provisions of this and the next but one succeeding sections, and in particular provision for determining from time to time the value to be attributed for the purposes of those provisions to any privilege or immunity the value of which is fluctuating or uncertain.GOI.148

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

GOI.149

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

Miscellaneous Financial ProvisionsGOI.150

150.

(1) No burden shall be imposed on the revenues of the Federation or the Provinces except for the purposes of India or some part of India. (2) Subject as aforesaid, the Federation or a Province may make grants for any purpose, notwithstanding that the purpose is not one with respect to which the Federal or the Provincial Legislature, as the case may be, may make laws. GOI.151

151.

(1) Rules may be made by the Governor-General and by the Governor of a Province for the purpose of securing that all moneys received on account of the revenues of the Federation or of the Province, as the case may be, shall, with such exceptions, if any, as may be specified in the rules, be paid into the public account of the Federation or of the Province, and the rules so made may prescribe, or authorize some person to prescribe, the procedure to be followed in respect of the payment of moneys into the said account, the withdrawal of moneys therefrom, the custody of moneys therein, and any other matters connected with or ancillary to the matters aforesaid. (2) In the exercise of his powers under this section the Governor-General or a Governor shall exercise his individual judgment. GOI.152

152.

(1) The functions of the Governor-General with respect to the following matters shall be exercised by him in his discretion, that is to say—(a) the appointment and removal from office of the Governor and Deputy Governors of the Reserve Bank of India, the approval of their salaries and allowances, and the fixing of their terms of office; (b) the appointment of an officiating Governor or Deputy Governor of the Bank; (c) the supersession of the Central Board of the Bank and any action consequent thereon; and (d) the liquidation of the Bank. (2) In nominating directors of the Reserve Bank of India and in removing from office any director nominated by him, the Governor-General shall exercise his individual judgment. GOI.153

153. No Bill or amendment which affects the coinage or currency of the Federation or the constitution or functions of the Reserve Bank of India shall be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor General in his discretion.

GOI.154

154. Property vested in His Majesty for purposes of the government of the Federation shall, save in so far as any Federal law may otherwise provide, be exempt from all taxes imposed by, or by any authority within, a Province or Federated State:

Provided that, until any Federal law otherwise provides, any property so vested which was immediately before the commencement of Part III of this Act liable, or treated as liable, to any such tax, shall, so long as that tax continues, continue to be liable, or to be treated as liable, thereto.GOI.155

155.

(1)Subject as hereinafter provided, the Government of a Province and the Ruler of a Federated State shall not be liable to Federal taxation in respect of lands or buildings situate in British India or income accruing, arising or received in British India:Provided that-(a)where a trade or business of any kind is carried on by or on behalf of the Government of a Province in any part of British India outside that Province or by a Ruler in any part of British India, nothing in this subsection shall exempt that Government or Ruler from any Federal taxation in respect of that trade or business, or any operations connected therewith, or any income arising in connection therewith, or any property occupied for the purposes thereof ;(b)nothing in this subsection shall exempt a Ruler from any Federal taxation in respect of any lands, buildings or income being his personal property or personal income.(2)Nothing in this Act affects any exemption from taxation enjoyed as of right at the passing of this Act by the Ruler of an Indian State in respect of any Indian Government securities issued before that date.GOI.156

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

(a)in the case of a charge on the revenues of the Federation, the court or commission serves any of the separate needs of a Province, or the person has served wholly or in part in connection with the affairs of a Province; or(b). in the case of a charge on the revenues of a Province, the court or commission serves any of the separate needs of the Federation or another Province, or the person has served wholly or in part in connection with the affairs of the Federation or another Province,there shall be charged on and paid out of the revenues of the Province or, as the case may be, the revenues of the Federation or of the other Province, such contribution in respect of the expenses or pension as may be agreed, or as may in default of agreement be determined . by an arbitrator to be appointed by the Chief Justice of India.GOI.157

157.

(1)The Federation and every Province shall secure that there are from time to time in the hands of the Secretary of State sufficient moneys to enable him to make such payments as he may have to make in respect of any liability which falls to be met out of the revenues of the Federation or of the Province as the case may be.(2)Without prejudice to their obligations under the preceding subsection, the Federation and every Province shall secure that there are from time to time in the hands of the Secretary of State and the High Commissioner sufficient moneys to enable payment to

be made of all pensions payable out of the revenues of the Federation or the Province, as the case may be, in the United Kingdom or through officers accounting to the Secretary of State or to the High Commissioner.GOI.158

158.

(1)His Majesty in Council may make such provision as may appear to him to be necessary or proper for defining and regulating the relations between the monetary systems of India and Burma and for purposes connected with or ancillary to those purposes, and in particular, but without prejudice to the generality of this section, such provision as may appear to His Majesty to be necessary or proper for the purpose of giving effect to any arrangements with respect to the said matters made before the commencement of Part III of this Act with the approval of the Secretary of State by the Governor of Burma in Council with the Governor-General in Council or any other persons.(2)Any sums required by an Order under this section to be paid by the Federation shall be charged on - the revenues of the Federation.GOI.159

159. His Majesty in Council may make provision for the grant of relief from any Federal tax on income in respect of income taxed or taxable in Burma.

GOI.160

160. With a view to preventing undue disturbance of trade between India and Burma in the period immediately following the separation of India and Burma and with a view to safeguarding the economic interests of Burma during that period, His Majesty may by Order in Council give such directions as he thinks fit for those purposes with respect to the duties which are, while the Order is in force, to be levied on goods imported into or exported from India or Burma and with respect to ancillary and related matters.

Chapter H

BORROWING AND AUDIT

BorrowingGOI.161

161. Upon the commencement of Part III of this Act all powers vested in the Secretary of State in Council of borrowing on the security of the revenues of India shall cease and determine, but nothing in this section. affects the provisions of Part XIII of this Act with respect to borrowing in sterling by the Secretary of State.

GOI.162

162. Subject to the provisions of Part XIII of this Act with respect to borrowing in sterling, the executive authority of the Federation extends to borrowing upon the security of the revenues of the Federation within such limits, if any, as may from time to time be fixed by Act of the Federal Legislature and to the giving of guarantees within such limits, if any, as may be so fixed.

GOI.163

163.

(1) Subject to the provisions of this section, the executive authority of a Province extends to borrowing upon the security of the revenues of the Province within such limits, if any, as may from time to time be fixed by the Act of the Provincial Legislature and to the giving of guarantees within such limits, if any, as may be so fixed. (2) The Federation may, subject to such conditions, if any, as it may think fit to impose, make loans to, or, so long as any limits fixed under the last preceding section are not exceeded, give guarantees in respect of loans raised by, any Province and any sums required for the purpose of making loans to a Province shall be charged on the revenues of the Federation. (3) A Province may not without the consent of the Federation borrow outside India, nor without the like consent raise any loan if there is still outstanding any part of a loan made to the Province by the Federation or by the Governor-General in Council, or in respect of which a guarantee has been given by the Federation or by the Governor-General in Council. A consent under this subsection may be granted subject to such conditions, if any, as the Federation may think fit to impose. (4) A consent required by the last preceding subsection shall not be unreasonably withheld, nor shall the Federation refuse, if sufficient cause is shown, to make a loan to, or to give a guarantee in respect of a loan raised by, a Province, or seek to impose in respect of any of the matters aforesaid any condition which is unreasonable, and, if any dispute arises whether a refusal of consent, or a refusal to make a loan or to give a guarantee, or any condition insisted upon, is or is not justifiable, the matter shall be referred to the Governor-General and the decision of the Governor-General in his discretion shall be final. GOI.164

164. The Federation may, subject to such conditions, if any, as it may think fit to impose, make loans to, or, so long as any limits fixed under the last but one preceding section are not exceeded, give guarantees in respect of loans raised by, any Federated State.

GOI.165

165.

(1)The Colonial Stock Acts, 1877 to 1900, shall, notwithstanding anything to the contrary in those Acts, apply in relation to sterling stock issued after the establishment of the Federation and forming part of issued the public debt of the Federation as they apply in relation to stock forming part of the public debt of any British Possession mentioned in those Acts, so however that nothing in section twenty of the Colonial Stock Act, 1877, shall be construed as compelling a person desirous of bringing proceedings to proceed in the manner therein specified and that, until Parliament otherwise determines, any conditions prescribed by the Treasury under section two of the Colonial Stock Act, 1900, shall be deemed to have been complied with respect to all such stock so issued by the Federation.(2)The expression " colonial stock " in section eleven of the Trusts (Scotland) Act, 1921, shall include any stock in relation to which the said Acts apply by virtue of this section.(3)In paragraph (d) of subsection (1) of section one of the Trustee Act, 1925, the words " or any other securities the interest in sterling whereon is payable out "of, and charged on, the revenues of India " shall be repealed :Provided that, notwithstanding anything in this Act, any securities which by virtue of the said words were immediately before the commencement of Part III of this Act securities in which a trustee might invest trust funds shall continue to be securities in which a trustee may invest such funds.Audit and AccountsGOI.166

166.

(1)There shall be an Auditor-General of India, who shall be appointed by His Majesty and shall only be removed from office in like manner and on the like grounds as a judge of the Federal Court.(2)The conditions of service of the Auditor-General shall be such as may be prescribed by His Majesty in Council, and he shall not be eligible for further office under the Crown in India after he has ceased to hold his office :Provided that neither the salary of an Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.(3)The Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Federation and of the Provinces as may be prescribed by, or by rules made under, an Order of His Majesty in Council, or by any subsequent Act of the Federal Legislature varying or extending such an Order :Provided that no Bill or amendment for the purpose aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion.(4)The salary, allowances and pension payable to or in respect of an Auditor-General shall be charged on the revenues of the Federation, and the salaries, allowances and pensions payable to or in respect of members of his staff shall be paid out of those revenues.GOI.167

167.

(1)If a Provincial Legislature after the expiration of two years from the commencement of Part III of this Act passes an Act charging the salary of an Auditor-General for that Province on the revenues of the Province, an Auditor-General of the Province may be appointed by His Majesty to perform the same duties and to exercise the same powers in relation to the audit of the accounts of the Province as would be performed and exercised by the Auditor-General of India, if an Auditor-General of the Province had not been appointed :Provided that no appointment of an Auditor-General in a

Province shall be made until the expiration of at least three years from the date of the Act of the Provincial Legislature by which provision is made for an Auditor-General of that Province.(2)The provisions of the last preceding section shall apply in relation to the Auditor-General of a Province and his staff as they apply in relation to the Auditor-General of India and his staff, subject to the following modifications, that is to say-(a) a person who is, or has been, Auditor-General of a Province shall be eligible for appointment as Auditor-General of India ;(b)in subsection (3) of the said section, for the reference to the Federal Legislature there shall be substituted a reference to the Provincial Legislature, and for the reference to the Governor-General there shall be substituted a reference to the Governor; and(c)in subsection (4) of the said section for the reference to the revenues of the Federation there shall be substituted a reference to the revenues of the Province :Provided that nothing in this section shall derogate from the power of the Auditor-General of India to give such directions in respect to the accounts of Provinces as are mentioned in the next succeeding section.GOI.168

168. The accounts of the Federation shall be kept in such form as the Auditor-General of India may, with the approval of the Governor-General, prescribe and, in so far as the Auditor-General of India may, with the like approval, give any directions with regard to the methods or principles in accordance with which any accounts of Provinces ought to be kept, it shall be the duty of every Provincial Government to cause accounts to be kept accordingly.

GOI.169

169. The reports of the Auditor-General of India relating to the accounts of the Federation shall be submitted to the Governor-General, who shall cause them to be laid before the Federal Legislature, and the reports of the Auditor-General of India or of the Auditor-General of the Province, as the case may be, relating to the accounts of a Province shall be submitted to the Governor of the Province, who shall cause them to be laid before the Provincial Legislature.

GOI.170

170.

(1)There shall be an Auditor of Indian Home Accounts who shall be appointed by the Governor-General in his discretion and shall only be removed from office in like manner and on the like grounds as a judge of the Federal Court.(2)The conditions of service of the Auditor of Indian Home Accounts shall be such as may be prescribed by the Governor-General in his discretion :Provided that neither the salary of an Auditor of Indian Home Accounts nor his rights in respect of

leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.(3)The Auditor of Indian Home Accounts shall perform such duties and exercise such powers in relation to transactions in the United Kingdom affecting the revenues of the Federation, of the Federal Railway Authority, or of any Province, as may be prescribed by, or by rules made under, an Order of His Majesty in Council, or by any Act of the Federal Legislature varying or extending such an Order:Provided that no Bill or amendment for the purpose aforesaid shall be introduced or moved without the prior sanction of the Governor-General in his discretion.(4)The reports of the Auditor of Indian Home Accounts relating to such transactions as aforesaid shall be submitted to the Auditor-General of India, or, in the case of transactions affecting the revenues of a Province which has an Auditor-General, to the Auditor-General of the Province, and shall be included by any such Auditor-General in the reports which under this Part of this Act he is required to submit to the Governor-General or, as the case may be, to the Governor.(5)The Auditor of Indian Home Accounts shall be subject to the general superintendence of the Auditor-General of India.(6)The salary, allowances and pension payable to or in respect of the Auditor of Indian Home Accounts shall be charged on the revenues of the Federation, and the salaries, allowances and pensions payable to or in respect of members of his staff shall be paid out of those revenues.(7)His Majesty in Council may require the Auditor of Indian Home Accounts to perform in relation to Burma all or any of the functions which he performs in relation to India, and may fix the payments to be made in respect of his services from the revenues of Burma to the revenues of the Federation, and may make such incidental and consequential provision as may appear to him to be proper.GOI.171

171. The accounts relating to the discharge of the functions of the Crown in its relations with Indian States shall be audited by the Auditor-General of India, or, in so far as those accounts concern transactions in the United Kingdom, by the Auditor of Indian Home Accounts acting on his behalf and under his general superintendence, and the Auditor-General of India shall make to the Secretary of State annual reports on the accounts so audited by him or on his behalf.

Chapter III

PROPERTY, CONTRACTS, LIABILITIES, AND SUITS

GOI.172

172.

(1)All lands and buildings which immediately before the commencement of Part III of this Act were vested in His Majesty for the purposes of the government of India shall as from that date-(a)in the case of lands and buildings which are situate in a Province, vest in His Majesty for the purposes of the government of that Province unless they were then used, otherwise than under a tenancy agreement between the Governor-General in Council and the Government of that Province, for

purposes which thereafter will be purposes of the Federal Government or of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, or unless they are lands and buildings formerly used for such purposes as aforesaid, or intended or formerly intended to be so used, and are certified by the Governor-General in Council or, as the case may be, His Majesty's Representative, to have been retained for future use for such purposes, or to have been retained temporarily for the purpose of more advantageous disposal by sale or otherwise ;(b)in the case of lands and buildings which are situate in a Province but do not by virtue of the preceding paragraph vest in His Majesty for the purposes of the government of that Province, and in the case of lands and buildings which are situate in India elsewhere than in a Province, vest in His Majesty for the purposes of the government of the Federation or for the purposes of the exercise of the functions of the Crown in its relations with Indian States, according to the purpose for which they were used immediately before the commencement of Part III of this Act ;and(c)in the case of lands and buildings which are situate elsewhere than in India (except lands and buildings situate in Burma or Aden),vest in His Majesty for the purposes of the government of the Federation or, if they were immediately before the commencement of Part III of this Act used for purposes of the department of the Secretary of State in Council, for the purposes of His Majesty's Government in the United Kingdom.(2)Except with the consent of the Governor-General, effect shall not be given to any proposal for the sale of any lands or buildings which by virtue of this section are vested in His Majesty for the purposes of His Majesty's Government in the United Kingdom, or to any proposal for the diversion of any such lands and buildings to uses not connected with the discharge of the functions of the Crown in relation to India or Burma.(3)The lands and buildings vested in His Majesty by virtue of this section for the purpose of His Majesty's Government in the United Kingdom shall be under the management of the Commissioners of Works, and, subject to the provisions of subsection (2) of this section, the provisions of the Acts relating to the Commissioners of Works shall apply in relation to those lands and buildings as if they had been acquired by the Commissioners in pursuance of those Acts.(4)The provisions of this section shall apply in relation to the contents of buildings vested in His Majesty for the purposes of His Majesty's Government in the United Kingdom, other than any money or securities, as they apply in relation to the buildings themselves :Provided that, in the case of such articles and classes of articles as may be agreed upon between the Secretary of State and the Governor-General, the provisions of subsection(2) of this section shall not apply and, notwithstanding anything in subsection (3) of this section, the contents of those buildings shall be under the control of the Secretary of State.(5)Any question which may arise within the five years next following the commencement of Part III of this Act as to the purposes for which any lands or buildings are by virtue of this section vested in His Majesty may be determined by His Majesty in Council.GOI.173

173.

(1)Subject to the provisions of this and the last preceding section, all property vested in His Majesty which by virtue of any delegation from the Secretary of State in Council or otherwise is immediately before the commencement of Part III of this Act in the possession or under the control of, or held on account of, the Governor-General in Council or any Local Government shall, as from the commencement of Part III of this Act, vest in His Majesty-(a)for the purposes of the Government of the Federation ; or(b)for the purposes of the exercise of the functions of the Crown in its relations

with Indian States ;or(c)for the purposes of the Government of a Province,according as the purposes for which the property was held immediately before the commencement of Part III of this Act will thereafter be purposes of the Government of the Federation, purposes of His Majesty's Representative for the exercise of the said functions of the Crown or purposes of the Government of a Province :Provided that-(i)all moneys which immediately before the commencement of Part III of this Act were in the public account of which the Governor-General in Council was custodian shall be vested in His Majesty for the purposes of the Government of the Federation ;(ii)all credits and debits of the Local Government of any Governor's Province (other than Burma) in account with the Governor-General in Council shall be deemed to be credits and debits of the corresponding Province under this Act in account with the Federation.(2)Subject as aforesaid, all other property vested in His Majesty and under the control of the Secretary of State in Council immediately before the commencement of Part III of this Act shall as from the commencement of Part III of this Act vest in His Majesty for the purposes of the Government of the Federation, for the purposes of the exercise of the functions of the Crown in its relations with Indian States or for the purposes of the Government of a Province, according as the Secretary of State may determine having regard to the circumstances of the case, and the Secretary of State shall have power to and shall deal with the property accordingly.(3)In this section " property " includes money, securities, bank balances and movable property of any description.(4)Arrears of any taxes outstanding immediately before the commencement of Part III of this Act shall be deemed to be due to and may be recovered by the Federal Government or a Provincial Government according as the proceeds of any such tax imposed after the commencement of Part III of this Act would-be due to and recoverable by the Federal Government or the Provincial Government.(5)This section shall apply in relation to any equipment, stores, moneys, bank balances and other property held in connection with His Majesty's Indian forces stationed in Burma (not being forces raised in Burma)as it applies in relation to property held for purposes which will be purposes of the Government of the Federation, but, save as aforesaid, nothing in this section applies to any property situate in Burma or Aden, or to arrears of taxes in Burma or Aden, or to any property which by virtue of any delegation from the Secretary of State in Council or otherwise is, immediately before the commencement of Part III of this Act, in the possession or under the control of, or held on account of, the Local Government of Burma or Aden.(6)Nothing in this section shall affect any adjustments made or to be made by or under this Act by reason of the creation before the commencement of Part III of this Act of the Provinces of Orissa and Sind.GOI.174

174. Subject as hereinafter provided, any property in India accruing to His Majesty by escheat or lapse, or as bona vacantia for want of a rightful owner, shall, if it is property situate in a Province, vest in His Majesty for the purposes of the government of that Province, and shall in any other case vest in His Majesty for the purposes of the government of the Federation :

Provided that any property which at the date when it accrued to His Majesty was in the possession or under the control of the Federal Government or the Government of a Province shall, according as the purposes for which it was then used or held were purposes of the Federation or of a Province, vest in His Majesty for the purposes of the government of the Federation or for the purposes of the

government of that Province.GOI.175

175.

(1)The executive authority of the Federation and of a Province shall extend, subject to any Act of the appropriate Legislature, to the grant, sale, disposition or mortgage of any property vested in His Majesty for to the to, purposes of the government of the Federation or of the Province, as the case may be, and to the purchase or acquisition of property on behalf of His Majesty for and to those purposes respectively, and to the making of contracts:Provided that any land or building used as an official residence of the Governor-General or a Governor shall not be sold, nor any change made in the purposes for which it is being used, except with the concurrence, in his discretion, of the Governor-General or the Governor, as the case may be.(2)All property acquired for the purposes of the Federation or of a Province or of the exercise of the functions of the Crown in its relations with Indian States, as the case may be, shall vest in His Majesty for those purposes.(3)Subject to the provisions of this Act with respect to the Federal Railway Authority, all contracts made in the exercise of the executive authority of the Federation or of a Province shall be expressed to be made by the Governor-General, or by the Governor of the Province, as the case may be, and all such contracts and all assurances of property made in the exercise of that authority shall be executed on behalf of the Governor-General or Governor by such persons and in such manner as he may direct or authorise.(4)Neither the Governor-General, nor the Governor of a Province, nor the Secretary of State shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Act, or for the purposes of the Government of India Act or of any Act repealed thereby, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.GOI.176

176.

(1)The Federation may sue or be sued by the name of the Federation of India and a Provincial Government may sue or be sued by the name of the Province, and., without prejudice to the subsequent provisions of this chapter, may, subject to any provisions which may be made by Act of the Federal or a Provincial Legislature enacted by virtue of powers conferred on that Legislature by this Act, sue or be sued in relation to their respective affairs in the like cases as the Secretary of State in Council might have sued or be ensued if this Act had not been passed.(2)Rules of court may provide that, where the Federation, the Federal Railway Authority, or a Province sue or are sued in the United Kingdom, service of all proceedings may be effected. upon the High Commissioner for India or such other representative in the United Kingdom of the Federation, Authority or Province, as may be specified in the rules.GOI.177

177.

(1)Without prejudice to the special provisions of the next succeeding section relating to loans, guarantees and other financial obligations, any contract in made before the commencement of Part III of this Act, or on behalf of, the Secretary of State in Council shall, as from that date-(a)if it was made for purposes which will after the commencement of Part III of this Act be purposes of the

Government of a Province, have effect as if it had been made on behalf of that Province; and (b) in any other case have effect as if it had been made on behalf of the Federation, and references in any such contract to the Secretary of State in Council shall be construed accordingly, and any such contract may be enforced in accordance with the provisions of the next but one succeeding section. (2) This section does not apply in relation to contracts solely in connection with the affairs of Burma or Aden, or solely for purposes which will after the commencement of Part III of this Act be purposes of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States. GOI.178

178.

(1) All liabilities in respect of such loans, guarantees and other financial obligations of the Secretary of State in Council as are outstanding immediately before the commencement of Part III of this Act and were secured on the revenues of India shall, as from that date, be liabilities of the Federation and shall be secured upon the revenues of the Federation and of all the Provinces. (2) All enactments relating to any such loans, guarantees and other financial obligations of the Secretary of State in Council as aforesaid shall, in relation to those loans, guarantees and obligations, continue to have effect with the substitution therein, except in so far as the context otherwise requires, of references to the Secretary of State for references to the Secretary of State in Council, and with such other modifications and such adaptations as His Majesty in Council may deem necessary. (3) No deduction in respect of taxation imposed by or under any existing Indian law or any law of the Federal or a Provincial Legislature shall be made from any payment of principal or interest in respect of any securities, the interest whereon is payable in sterling, being a payment which would, but for the provisions of this Act, have fallen to be made by the Secretary of State in Council. (4) If in the case of any Local Government in India there are outstanding immediately before the commencement of Part III of this Act any loans or other financial obligations secured upon the revenues of the Province, all liabilities in respect of those loans and obligations shall, as from that date, be liabilities of the Government of, and shall be secured upon the revenues of, the corresponding Province under this Act. (5) Any liabilities in respect of any such loan, guarantee or financial obligation as is mentioned in this section may be enforced in accordance with the provisions of the next succeeding section. (6) The provisions of this section apply to the liabilities of the Secretary of State in Council in respect of the Burma Railways three per cent. Debenture Stock, but, save as aforesaid, do not apply to any liability solely in connection with the affairs of Burma or Aden. GOI.179

179.

(1) Any proceedings which, if this Act had not been passed, might have been brought against the Secretary of State in Council may, in the case of any liability arising before the commencement of Part III of this Act or arising under any contract or statute made or passed before that date, be brought against the Federation or a Province, according to the subject matter of the proceedings, or, at the option of the person by whom the proceedings are brought, against the Secretary of State, and any sum ordered to be paid by way of debt, damages or costs in any such proceedings, and any costs or expenses incurred in or in connection with the defence thereof, shall be paid out of the revenues of the Federation or the Province, as the case may be, or, if the proceedings are brought against the

Secretary of State, out of such revenues as the Secretary of State may direct. The provisions of this subsection shall apply with respect to proceedings arising under any contract declared by the terms thereof to be supplemental to any such contract as is mentioned in those provisions as they apply in relation to the contracts so mentioned. (2) If at the commencement of Part III of this Act any legal proceedings are pending in the United Kingdom or in India to which the Secretary of State in Council is a party, the Secretary of State shall be deemed to be substituted in those proceedings for the Secretary of State in Council, and the provisions of subsection (1) of this section shall apply in relation to sums ordered to be paid, and costs or expenses incurred, by the Secretary of State or the Secretary of State in Council in or in connection with any such proceedings as they apply in relation to sums ordered to be paid in, and costs or expenses incurred in or in connection with the defence of, proceedings brought against the Secretary of State under the said subsection (1). (3) Any contract made in respect of the affairs of the Federation or a Province by or on behalf of the Secretary of State after the commencement of Part III of this Act may provide that any proceedings under that contract shall be brought in the United Kingdom by or against the Secretary of State and any such proceedings may be brought accordingly, and any sum ordered to be paid by the Secretary of State by way of debt, damages or costs in any such proceedings, and any costs or expenses incurred by the Secretary of State in or in connection therewith, shall be paid out of the revenues of the Federation or the Province, as the case may be. (4) Nothing in this section shall be construed as imposing any liability upon the Exchequer of the United Kingdom in respect of any debt, damages, costs or expenses in or in connection with any proceedings brought or continued by or against the Secretary of State by virtue of this section, or as derogating from the provisions of subsection (1) of the last preceding section. (5) This section does not apply in relation to contracts or liabilities solely in connection with the affairs of Burma or Aden, other than liabilities which are by this Act made liabilities of the Federation, or to contracts or liabilities for purposes which will, after the commencement of Part III of this Act, be purposes of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States. GOI.180

180.

(1) Any contract made before the commencement of Part III of this Act by or on behalf of the Secretary of State in Council solely in connection with the exercise of the functions of the Crown in its relations with Indian States shall, as from the commencement of Part III of this Act, have effect as if it had been made on behalf of His Majesty and references in any such contract to the Secretary of State in Council shall be construed accordingly. (2) Any proceedings which if this Act had not been passed might have been brought by or against the Secretary of State in Council in respect of any such contract as aforesaid may be brought by or against the Secretary of State and if at the commencement of Part III of this Act any proceedings in respect of any such contract are pending in the United Kingdom or in India to which the Secretary of State in Council is a party, the Secretary of State shall be deemed to be substituted in those proceedings for the Secretary of State in Council. (3) Any contract made after the commencement of Part III of this Act on behalf of His Majesty solely in connection with the exercise of the said functions of the Crown shall, if it is such a contract as would have been legally enforceable by or against the Secretary of State in Council, be legally enforceable by or against the Secretary of State. (4) Any sums ordered to be paid by the Secretary of State by way of debt, damages or costs in any such proceedings as are mentioned in this

section and any costs or expenses incurred by him in or in connection with the prosecution or defence thereof shall be deemed to be sums required for the discharge of the functions of the Crown in its relations with Indian States, and any sum received by the Secretary of State by virtue of any such proceedings shall be paid or credited to the Federation.

Part VIII – THE FEDERAL RAILWAY AUTHORITY

GOI.181

181.

(1)The executive authority of the Federation in respect of the regulation and the construction, maintenance and operation of railways shall be exercised by a Federal Railway Authority (hereinafter referred to as "the Authority").(2)The said executive authority extends to the carrying on in connection with any Federal railways of such undertakings as, in the opinion of the Authority, it is expedient should be carried on in connection therewith and to the making and carrying into effect of arrangements with other persons for the carrying on by those persons of such undertakings:Provided that, as respects their powers under this subsection, the Authority shall be subject to any relevant provisions of any Federal, Provincial or existing Indian law, and to the relevant provisions of the law of any Federated State, but nothing in this subsection shall be construed as limiting the provisions of Part VI of this Act regulating the relations of the Federation with Provinces and States.(3)Notwithstanding anything in this section, the Federal Government or its officers shall perform in regard to the construction, equipment, and operation of railways such functions for securing the safety both of members of the public and of persons operating the railways, including the holding of inquiries into the causes of accidents, as in the opinion of the Federal Government should be performed by persons independent of the Authority and of any railway administration.So much of Part X of this Act as provides that powers in relation to railway services of the Federation shall be exercised by the Authority shall not apply in relation to officers of the Federal Government employed in the performance of any of the functions mentioned in this subsection.GOI.182

182.

(1)Not less than three - sevenths of. the members of the Authority shall be persons appointed by the Governor-General in his discretion, and the Governor - General shall in his discretion appoint a member of the Authority to be the President thereof.(2)Subject as aforesaid, the provisions of the Eighth Schedule to this Act, as supplemented or amended by any Act of the Federal Legislature for the time being in force, shall have effect with respect to the appointment, qualifications and conditions of service of members of the Authority, and with respect to the Authority's proceedings, executive staff and liability to income tax :Provided that, except with the previous sanction of the Governor-General in his discretion, there shall not be introduced into, or moved in, either Chamber of the Federal Legislature any Bill or any amendment for supplementing or. amending the provisions of the said Schedule.GOI.183

183.

-(1) The Authority in discharging their functions under this Act shall act on business principles, due regard being had by them to the interests of agriculture, industry, commerce and the general public, and in particular shall make proper provision for meeting out of their receipts on revenue account all expenditure to which such receipts are applicable under the provisions of this Part of this Act.(2)In the discharge of their said functions the Authority shall be guided by such instructions on questions of policy as may be given to them by the Federal Government.If any dispute arises under this subsection between the Federal Government and the Authority as to whether a question is or is not a question of policy, the decision of the Governor-General in his discretion shall be final.(3)The provisions of subsection (1) of this section shall apply in relation to the discharge by the Federal Government of their functions with respect to railways as they apply in relation to the functions of the Authority, but nothing in this subsection shall be construed as limiting the powers of the Governor-General under the next succeeding subsection.(4)The provisions of this Act relating to the special responsibilities of the Governor-General, and to his duty as regards certain matters to exercise his functions in his discretion or to exercise his individual judgment, shall apply as regards matters entrusted to the Authority as if the executive authority of the Federation in regard to those matters were vested in him, and as if the functions of the Authority as regards those matters were the functions of ministers, and the Governor-General may issue to the Authority such directions as he may deem necessary as regards any matter which appears to him to involve any of his special responsibilities, or as regards which he is by or under this Act required to act in his discretion or to exercise his individual judgment, and the Authority shall give effect to any directions so issued to them.GOI.184

184. (1) The Governor-General exercising his individual judgment, but after consultation with the Authority, may make rules for the more convenient transaction of business arising out of the relations between the Federal Government and the Authority.

(2)The rules shall include provisions requiring the Authority to transmit to the Federal Government all such information with respect to their business as may be specified in the rules, or as the Governor-General may otherwise require to be so transmitted, and in particular provisions requiring the Authority and their chief executive officer to bring to the notice of the Governor-General any matter under consideration by the Authority or by that officer which involves, or appears to them or him likely to involve, any special responsibility of the Governor-General.GOI.185

185.

(1)Except in such classes of case as may be specified in regulations to be made by the Federal Government, the Authority shall not acquire or dispose of any land, and, when it is necessary for the Authority to acquire compulsorily any land for the purposes of their functions, the Federal Government shall cause that land to be acquired on their behalf and at their expense.(2)Contracts

made by or on behalf of the Authority shall be enforceable by or against the Authority and not by or against the Federation, and, subject to any provision which may hereafter be made by Act of the Federal Legislature, the Authority may sue and be sued in the like manner and in the like cases as a company operating a railway may sue and be sued :Provided that this subsection does not apply in relation to any contract declared by its terms to be supplemental to a contract made before the establishment of the Authority, and any such supplemental contract may be enforced in any manner in which the principal contract may be enforced.(3)The Authority may make working agreements with, and carry out working agreements made with, any Indian State or person owning or operating any railway in India, or in territories adjacent to India, with respect to the persons by whom and the terms on which any of the railways with which the parties are respectively concerned shall be operated.GOI.186

186.

-(1) The Authority shall establish, maintain and control a fund (which shall be known as the "Railway Fund") and all moneys received by the Authority, whether on revenue account or on capital account, in the discharge of their functions and all moneys provided, whether on revenue account or on capital account, out of the revenues of the Federation to enable them to discharge those functions shall be paid into that Fund, and all expenditure, whether on revenue account or on capital account, required for the discharge of their functions shall be defrayed out of that Fund:Provided that nothing in this subsection shall prevent the Authority from establishing and maintaining separate provident funds for the benefit of persons who are or have been employed in connection with railways.(2)The receipts of the Authority on revenue account in any financial year shall be applied in-(a)defraying working expenses;(b)meeting payments due under contracts or agreements to railway undertakings ;(c)paying pensions, and contributions to provident funds ;(d)repaying to the revenues of the Federation so much of any pensions and contributions to provident funds charged by this Act on those revenues as is attributable to service on railways in India ;(e)making due provision for maintenance, renewals, improvements and depreciation ;(f)making to the revenues of the Federation any payments by way of interest which they are required by this Part of this Act to make ; and(g)defraying other expenses properly chargeable against revenue in that year.(3)Any surpluses on revenue account shown in the accounts of the Authority shall be apportioned between the Federation and the Authority in accordance with a scheme to be prepared, and from time to time reviewed, by the Federal Government, or, until such a scheme has been prepared, in accordance with the principles which immediately before the establishment of the Authority regulated the application of surpluses in railway accounts, and any sum apportioned to the Federation under this subsection shall be transferred accordingly and shall form part of the revenues of the Federation.(4)The Federation may provide any moneys, whether on revenue account or capital account, for the purposes of the Railway Authority, but, where any moneys are so provided, the provision thereof shall be deemed to be expenditure and shall accordingly be shown as such in the estimates of expenditure laid before the Chambers of the Legislature.GOI.187

187.

(1) There shall be deemed to be owing from the Authority to the Federation such sum as may be agreed or, in default of agreement, determined by the Governor-General in his discretion, to be equivalent to the amount of the moneys provided, whether before or after the passing of this Act, out of the revenues of India or of the Federation for capital purposes in connection with railways in India (exclusive of Burma) and the Authority shall out of their receipts on revenue account pay to the Federation interest on that amount at such rate as maybe so agreed or determined, and also make payments in reduction of the principal of that amount in accordance with a repayment scheme so agreed or determined. For the purposes of this subsection, where the Secretary of State in Council has assumed or incurred any obligation in connection with any such railways, he shall be deemed to have provided for the said purposes an amount equal to the capital value of that obligations shown in the accounts of the Government of India immediately before the establishment of the Authority. Nothing in this subsection shall be construed as preventing the Authority from making payments to the Federation in reduction of the principal of any such amount as aforesaid out of moneys other than receipts on revenue account. (2) It shall be an obligation of the Authority to repay to the Federation any sums defrayed out of the revenues of the Federation in respect of any debt, damages, costs, or expenses in , or in connection with, any proceedings brought or continued by or against the Federation or against the Secretary of State under Part VII of this Act in respect of railways in India. (3) It shall be an obligation of the Authority to pay to any Province or Indian State such sums as may be equivalent to the expenses incurred by that Province or State in the provision of police required for the maintenance of order' on Federal railway premises, and any question which may arise between the Authority and a Province or State as to the amount of any expenses so incurred shall be determined by the Governor-General in his discretion. GOI.188

188. Subject to such conditions, if any, as maybe prescribed by the Federal Government, the Authority may from time to time invest any moneys in the railway fund or any provident fund which are not for the time being required to meet expenses properly defrayable out of that fund, and may, subject as aforesaid, from time to time transfer and realise investments made by them.

GOI.189

189.

(1) Nothing in the foregoing provisions of this Part of this Act shall be construed as entitling the Authority to require that any moneys which immediately before the establishment of the Authority were held by the Governor-General in Council on account of any railway depreciation fund, reserve fund or provident fund shall be transferred to the Authority for investment by them, but the Authority may from time to time require the transfer to themselves of so much of any such fund as they require to defray expenditure chargeable against that fund, and the Federal Government shall credit each such fund with interest on the untransferred balance thereof at such rate as may be agreed, or, in default of agreement, determined by the Governor-General in his discretion. (2) In this

section references to any such fund as aforesaid shall be construed as references to so much of that fund as is not attributable to the railways of Burma.GOI.190

190.

(1)The accounts of the receipts and expenditure of the Authority shall be audited and certified by, or on behalf of, the Auditor-General of India.(2)The Authority shall publish annually a report of their operations during the preceding year and a statement of accounts in a form approved by the Auditor-General.GOI.191

191. The Governor-General may from time to time appoint a Railway Rates Committee to give advice to the Authority in connection with any dispute between persons using, or desiring to use, a railway and the Authority as to rates or traffic facilities which he may require the Authority to refer to the committee.

GOI.192

192. A. Bill or amendment making provision for regulating the rates or fares to be charged on any railway shall not be introduced or moved in either Chamber of the Federal Legislature except on the recommendation of the Governor-General.

GOI.193

193.

(1)It shall be the duty of the Authority and every Federated State so to exercise their powers in relation to the railways with which they are respectively concerned as to afford all reasonable facilities for the receiving, forwarding, and delivering of traffic upon and from. those railways, including the receiving, forward in and delivering of through traffic at through rates, and as to secure that there shall be between one railway system and another no unfair discrimination, by the granting of undue preferences or otherwise, and no unfair or uneconomic competition.(2)Any complaint by the Authority against a Federated State or by a Federated State against the Authority on the ground that the provisions of the preceding subsection have not been complied with shall be made to and determined by the Railway Tribunal.GOI.194

194. If the Authority, in the exercise of any executive authority of the Federation in relation to interchange of traffic, or maximum or minimum rates and fares, or station or service terminal charges, give any direction to a Federated State, the State may complain that the direction discriminates

unfairly against the railways of the State, or imposes on the State an obligation to afford facilities which are not in the circumstances reasonable, and any such complaint shall be determined by the Railway Tribunal.

GOI.195

195. (1) The Governor-General acting in his discretion shall make rules requiring the Authority and any Federated State to give notice in such cases as the rules may prescribe of an proposal for constructing a railway or for altering the alignment or gauge of a railway, and to deposit plans.

(2)The rules so made shall contain provisions enabling objections to be lodged by the Authority or by a Federated State on the ground that the carrying out of the proposal will result in unfair or uneconomic competition with a Federal railway or a State railway, as the case may be, and, if an objection so lodged is not withdrawn within the prescribed time, the Governor-General shall refer to the Railway Tribunal the question whether the proposal ought to be carried into effect, either without modification or with such modification as the Tribunal may approve, and the proposal shall not be proceeded with save in accordance with the decision of the Tribunal.(3)This section shall not apply in any case where the Governor-General in his discretion certifies that for reasons connected with defence effect should, or should not, be given to a proposal.GOI.196

196. (1) There shall be a Tribunal (in this Act Railway referred to as " the Railway Tribunal ") consisting of a Tribunal. President and two other persons to be selected to act in each case by the Governor-General in his discretion from a panel of eight persons appointed by him in his discretion, being persons with railway, administrative, or business experience.

(2)The President shall be such one of the judges of the Federal Court as may be appointed for the purpose by the Governor-General in his discretion after consultation with the Chief Justice of India and shall hold office for such period of not less than five years as may be specified in the appointment, and shall be eligible for re-appointment for a further period of five years or any less period :Provided that, if the President ceases to be a judge of the Federal Court, he shall thereupon cease to be President of the Tribunal and, if he is for any reason temporarily unable to act, the Governor-General in his discretion may after the like consultation appoint another judge of the Federal Court to act for the time being in his place.(3)It shall be the duty of the Railway Tribunal to exercise such jurisdiction as is conferred on it by this Act, and for that purpose the Tribunal may make such orders, including interim orders, orders varying or discharging a direction or order of the Authority, orders for the payment of compensation or damages and of costs and orders for the production of documents and the attendance of witnesses, as the circumstances of the case may require, and it shall be the duty of the Authority and of every Federated State and of every other person or authority affected thereby to give effect to any such order.(4)An appeal shall lie to the Federal Court from any decision of the Railway Tribunal on a question of law, but no appeal shall lie

from the decision of the Federal Court on any such appeal.(5)The Railway Tribunal or the Federal Court, as the case may be, may, on application made for the purpose, if satisfied that in view of an alteration in the circumstances it is proper so to do, vary or revoke any previous order made by it.(6)The President of the Railway Tribunal may, with the approval of the Governor-General in his discretion, make rules regulating the practice and procedure of the Tribunal and the fees to be taken in proceedings before it.(7)Subject to the provisions of this section relating to appeals to the Federal Court, no court shall have any jurisdiction with respect to any matter with respect to which the Railway Tribunal has jurisdiction.(8)There shall be paid out of the revenues of the Federation to the members of the Railway Tribunal other than the President such remuneration as may be determined by the Governor-General in his discretion, and the administrative expenses of the Railway Tribunal, including any such remuneration as aforesaid, shall be charged on the revenues of the Federation, and any fees or other moneys taken by the Tribunal shall form part of those revenues. The Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Railway Tribunal in any estimates of expenditure laid by him before the Chambers of the Federal Legislature.GOI.197

197.

(1)Without prejudice to the general provisions of this Act with respect to rights and liabilities under contracts made by or on behalf of the Secretary of State in Council, the provisions of this section shall have effect with respect to any contract so made with a railway company which immediately before the commencement of Part III of this Act was operating a railway in British India.(2)If a dispute arises under any such contract between the railway company concerned and either the Authority or the Federal Government, and if the matter in dispute is of such a nature that under the contract the company might require, or, but for some provision of this Act, might have required, it to be submitted to arbitration, the dispute shall be deemed to have arisen between the company and the Secretary of State, and the provisions of the contract relating to the determination of such a dispute shall have effect with the substitution of the Secretary of State for the Secretary of State in Council.Any award made in an arbitration under the foregoing provisions of this section and any settlement of the dispute agreed to by the Secretary of State with the concurrence of his advisers shall be binding on the Federal Government and the Authority, and any sum which the Secretary of State may become liable or may so agree to pay by way of debt, damage or costs, and any costs or expenses incurred by him in connection with the matter, shall be paid out of the revenues of the Federation and shall be charged on those revenues but shall be a debt due to the Federation from the Authority.GOI.198

198. If and in so far as His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States may entrust to the Authority the performance of any functions in relation to railways in an Indian State which is not a Federated State, the Authority shall undertake the performance of those functions.

GOI.199

199. Any powers of the Secretary of State in Council with respect to the appointment of directors and deputy directors of Indian railway companies shall be exercised by the Governor-General in his discretion after consultation with the Authority.

Part IX – THE JUDICATURE

Chapter I

THE FEDERAL COURT

GOI.200

200.

(1) There shall be a Federal Court consisting of a Chief Justice of India and such number of other judges as His Majesty may deem necessary, but unless and until an address has been presented by the Federal Legislature to the Governor-General for submission to His Majesty praying for an increase in the number of judges, the number of puisne judges shall not exceed six. (2) Every judge of the Federal Court shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of sixty-five years: Provided that—(a) a judge may by resignation under his hand addressed to the Governor-General resign his office; (b) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed. (3) A person shall not be qualified for appointment as a judge of the Federal Court unless he—(a) has been for at least five years a judge of a High Court in British India or in a Federated State; or (b) is a barrister of England or Northern Ireland, of at least ten years standing, or a member of the Faculty of Advocates in Scotland of at least ten years standing; or (c) has been for at least ten years a pleader of a High Court in British India or in a Federated State or of two or more such Courts in succession: Provided that—(i) a person shall not be qualified for appointment as Chief Justice of India unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader.; and (ii) in relation to the Chief Justice of India, for the references in paragraphs (b) and (c) of this subsection to ten years there shall be substituted references to fifteen years. In computing for the purposes of this subsection the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which a person has held judicial office after he became a barrister, a member of the Faculty of Advocates or a pleader, as the case may be, shall be included. (4) Every person appointed to be a judge of the Federal Court shall, before he enters upon his office, make and subscribe before the Governor-General or some person appointed by him an oath according to the form set out in that behalf in the Fourth Schedule to this Act. GOI.201

201. The judges of the Federal Court shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by His Majesty in Council:

Provided that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his, appointment.GOI.202

202. If the office of Chief Justice of India becomes vacant, or if the Chief Justice is, by reason of absence or for any other reason, unable to perform the duties of his office, those duties shall, until some person appointed by His Majesty to the, vacant office has entered on the duties thereof, or until the Chief Justice has resumed his duties, as the case may be, be performed by such one of the other judges of the court as the Governor-General may in his discretion appoint for the purpose.

GOI.203

203. The Federal Court shall be a court of record and shall sit in Delhi and at such other place or places, if any, as the Chief Justice of India may, with the approval of the Governor-General, from time to time appoint.

GOI.204

204.

(1)Subject to the provisions of this Act, the Federal Court shall, to the exclusion of any other court, have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the Federation, any of the Provinces or any of the Federated States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:Provided that the said jurisdiction shall not extend to-(a)a dispute to which a State is a party, unless the dispute-(i)concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State; or(ii)arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature, or otherwise concerns some matter with respect to which the Federal Legislature has power to make laws for that State; or(iii)arises under an agreement made after the establishment of the Federation, with the approval of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, between that State and the Federation or a Province, being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute;(b)a dispute arising under any agreement which expressly provides that the said jurisdiction shall not

extend to such a dispute.(2)The Federal Court in the exercise of its original jurisdiction shall not pronounce any judgment other than a declaratory judgment.GOI.205

205.

(1)An appeal shall lie to the Federal Court from any judgment, decree or final order of a High Court in British India, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Act or any Order in Council made there under, and it shall be the duty of every High Court in British India to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly.(2)Where such a certificate is given, any party in the case may appeal to the Federal Court on the ground that any such question as aforesaid has been wrongly decided, and on any ground on which that party could have appealed without special leave to His Majesty in Council if no such certificate had been given, and, with the leave of the Federal Court, on any other ground, and no direct appeal shall lie to His Majesty in Council, either with or without special leave.GOI.206

206.

(1)The Federal Legislature may by Act provide that in such civil cases as may be specified in the Act an appeal shall lie to the Federal Court from a judgment decree or final order of a High Court in British India without any such certificate as aforesaid, but no appeal shall lie under any such Act unless-(a)the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than fifty thousand rupees or such other sum not less than fifteen thousand rupees as maybe specified by the Act, or the judgment decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value ; or(b)the Federal Court gives special leave. to appeal.(2)If the Federal Legislature makes such provision as is mentioned in the last preceding subsection, consequential provision may also be made by Act of the-coat' Federal Legislature for the abolition in whole or in part of direct appeals in civil cases from High Courts in British India to His Majesty in Council, either with or without special leave.(3)A Bill. or amendment for any of the purposes specified in this section shall not be introduced into, or moved in, either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion.GOI.207

207.

(1)An appeal shall lie to the Federal Court from a High- Court in a Federated State on the ground that a question of law has been wrongly decided, being a question which concerns the interpretation of this Act or of an Order in Council made thereunder or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State, or arises under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature.(2)An appeal under this section shall be by way of special case to be stated for the opinion of the Federal Court by the High Court, and the Federal Court may require a case to be so stated, and may return any case so stated in order that further facts may be stated therein.GOI.208

208. An appeal may be brought to His Majesty in Council from a decision of the Federal Court-

(a)from any judgment of the Federal Court given in the exercise of its original jurisdiction in any dispute which concerns the interpretation of this Act or of an Order in Council made thereunder, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of any State, or arises under an agreement made under Part VI of this Act in relation to the administration in any State of a law of the Federal Legislature, without leave ; and(b)in any other case, by leave of the Federal Court or of His Majesty in Council.GOI.210

210.

(1)All authorities, civil and judicial, throughout the Federation, shall act in aid of the Federal Court.(2)The Federal Court shall, as respects British Federal India and the Federated States, have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of court, which any High Court in British India has power to make as respects the territory within its jurisdiction, and any such orders, and any orders of the Federal Court as to the costs of and incidental to any proceedings therein, shall be enforceable by all courts and authorities in every part of British India or of any Federated State as if they were orders duly made by the highest court exercising civil or criminal jurisdiction, as the case may be, in that part.(3)Nothing in this section-(a)shall apply to any such order with respect to costs as is mentioned in subsection (2) of the last preceding section ; or(b)shall, as regards a Federated State, apply in relation to any jurisdiction exercisable by the Federal Court by reason only of the making by the Federal Legislature of such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of the Federal Court.GOI.211

211. Where in any case the Federal Court require a special case to be stated or re-stated by, or remit a case to, or order a stay of execution in a case from, a High Court in a Federated State, or require the aid of the civil or judicial authorities in a Federated State, the Federal Court shall cause letters of request in that behalf to be sent to the Ruler of the State, and the Ruler shall cause such communication to be made to the High Court or to any judicial or civil authority as the circumstances may require.

GOI.212

212. The law declared by the Federal Court and by any judgment of the Privy Council shall, so far as applicable, be recognised as binding on, and shall be followed by, all courts in British India, and, so far as respects the application and interpretation of this Act or any Order in Council thereunder or any matter with respect to which the Federal Legislature has power to make laws

in relation to the State, in any Federated State.

GOI.213

213.

(1) If at any time it appears to the Governor-General that a question of law has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Federal Court upon it, he may in his discretion refer the question to that court for consideration, and the court may, after such hearing as they think fit, report to the Governor-General thereon. (2) No report shall be made under this section save in accordance with an opinion delivered in open court with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this subsection shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion. GOI.214

214.

(1) The Federal Court may from time to time, with the approval of the Governor-General in his discretion, make rules of court for regulating generally the practice and procedure of the court, including rules as to the persons practicing before the court, as to the time within which appeals to the court are to be entered, as to the costs of and incidental to any proceedings in the court, and as to the fees to be charged in respect of proceedings therein, and in particular may make rules providing for the summary determination of any appeal which appears to the court to be frivolous or vexatious or brought for the purpose of delay. (2) Rules made under this section may fix the minimum number of judges who are to sit for any purpose, so however that no case shall be decided by less than three judges: Provided that, if the Federal Legislature makes such provision as is mentioned in this chapter for enlarging the appellate jurisdiction of the court, the rules shall provide for the constitution of a special division of the court for the purpose of deciding all cases which would have been within the jurisdiction of the court even if its jurisdiction had not been so enlarged. (3) Subject to the provisions of any rules of court, the Chief Justice of India shall determine what judges are to constitute any division of the court and what judges are to sit for any purpose. (4) No judgment shall be delivered by the Federal Court save in open court and with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this subsection shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment. (5) All proceedings in the Federal Court shall be in the English language. GOI.215

215. The Federal Legislature may make provision by Act for conferring upon the Federal Court such supplemental powers not inconsistent with any of the provisions of this Act as may appear to be necessary or desirable for' the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by or under this Act.

GOI.216

216.

(1)The administrative expenses of the Federal Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of the - Federation, and any fees or other moneys taken by the court shall form part of those revenues.(2)The Governor-General shall exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Federal Court in any estimates of expenditure laid by him before the Chambers of the Federal Legislature.GOI.217

217. References in any provision of this Part of this Act to a High Court in a Federated State shall be construed as references to any court which His Majesty may, after communication with the Ruler of the State, declare to be a High Court for the purposes of that provision.

GOI.218

218. Nothing in this chapter shall be construed as conferring, or empowering the Federal Legislature to confer, any right of appeal to the Federal Court in any case in which a High Court in British India is exercising jurisdiction on appeal from a court outside British India, or as affecting any right of appeal in any such case to His Majesty in Council with or without leave.

Chapter II

THE HIGH COURTS IN BRITISH INDIA

GOI.219

219.

(1)The following courts shall in relation to British India be deemed to be High Courts for the purposes of this Act, that is to say, the High Courts in Calcutta, Madras, Bombay, Allahabad, Lahore, and Patna, the Chief Court in Oudh, the Judicial Commissioner's Courts in the Central Provinces and Berar, in the North-West Frontier Province and in Sind, any other court in British India constituted or reconstituted under this chapter as a High Court, and any other comparable court in British India which His Majesty in Council may declare to be a High Court for the purposes of this Act :Provided that, if provision has been made before the commencement of Part III of this Act for the establishment of a High Court to replace any court or courts mentioned in this subsection, then as from. the establishment of the new court this section shall have effect as if the new court were mentioned therein in lieu of the court or courts so replaced.(2)The provisions of this chapter shall apply to every High Court in British India.GOI.220

220.

(1) Every High Court shall be a court of record and shall consist of a chief justice and such other judges as His Majesty may from time to time deem it necessary to appoint: Provided that the judges so appointed together with any additional judges appointed by the Governor-General in accordance with the following provisions of this chapter shall at no time exceed in number such maximum number as His Majesty in Council may fix in relation to that court. (2) Every judge of a High Court shall be appointed by His Majesty by warrant under the Royal Sign Manual and shall hold office until he attains the age of sixty years: Provided that—(a) a judge may by resignation under his hand addressed to the Governor resign his office; (b) a judge may be removed from his office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report that the judge ought on any such ground to be removed. (3) A person shall not be qualified for appointment as a judge of a High Court unless he—(a) is a barrister of England or Northern Ireland, of at least ten years standing, or a member of the Faculty of Advocates in Scotland of at least ten years standing; or (b) is a member of the Indian Civil Service of at least ten years standing, who has for at least three years served as, or exercised the powers of, a district judge; or (c) has for at least five years held a judicial office in British India not inferior to that of a subordinate judge, or judge of a small cause court; or (d) has for at least ten years been a pleader of any High Court, or of two or more such Courts in succession. Provided that a person shall not, unless he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader, be qualified for appointment as Chief Justice of any High Court constituted by letters patent until he has served for not less than three years as a judge of a High Court. In computing for the purposes of this subsection the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which the person has held judicial office after he became a barrister, a member of the Faculty of Advocates, or a pleader, as the case may be, shall be included. (4) Every person appointed to be a judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor or some person appointed by him an oath according to the form set out in that behalf in the Fourth Schedule to this Act. GOI.221

221. The judges of the several High Courts shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pensions, as may from time to time be fixed by His Majesty in Council:

Provided that neither the salary of a judge, nor his rights in respect of leave of absence or pension, shall be varied to his disadvantage after his appointment. GOI.222

222.

(1) If the office of chief justice of a High Court becomes vacant, or if any such chief justice is by reason of absence, or for any other reason, unable to perform the duties of his office, those duties

shall, until some person appointed by His Majesty to the vacant office has entered on the duties thereof, or until the chief justice has resumed his duties, as the case maybe, be performed by such one of the other judges of the court as the Governor-General may in his discretion think fit to appoint for the purpose.(2)If the office of any other judge of a High Court becomes vacant, or if any such judge is appointed to act temporarily as a chief justice, or is by reason of absence, or for any other reason, unable to perform the duties of his office, the Governor-General may in his discretion appoint a person duly qualified for appointment as a judge to act as a judge of that court, and the person so appointed shall, unless the Governor-General in his discretion thinks fit to revoke his appointment, be deemed to be a judge of that court until some person appointed by His Majesty to the vacant office has entered on. the duties thereof; or until the permanent judge has resumed his duties.(3)If by reason of any temporary increase in the business of any High Court or by reason of arrears of work in any such court it appears to the Governor-General that the number of the judges of the court should be for the time being increased, the Governor-General in his discretion may, subject to the foregoing provisions of this chapter with respect to the maximum number of judges, appoint persons duly qualified for appointment as judges to be additional judges of the court for such period not exceeding two years as he may specify.GOI.223

223. Subject to the provisions of this Part of this Act, to the provisions of any Order in Council made under this or any other Act and to the provisions of any Act of the appropriate Legislature enacted by virtue of powers conferred on that Legislature by this Act, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the court, including any power to make rules of court and to regulate the sittings of the court and of members thereof sitting alone or in division courts, shall be the same as immediately before the commencement of Part III of this Act.

GOI.224

224.

(1)Every High Court shall have superintendence over all courts in. India for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,-(a)call for returns;(b)make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts ;(c)prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and(d)settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts:Provided that such rules, forms and tables shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.(2)Nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision.GOI.225

225.

(1) If on an application made in accordance with the provisions of this section a High Court is satisfied that a case pending in an inferior court, being a case which the High Court has power to transfer to itself for trial, involves or is likely to involve the question of the validity of any Federal or Provincial Act, it shall exercise that power. (2) An application for the purposes of this section shall not be made except, in relation to a Federal Act, by the Advocate-General for the Federation and, in relation to a Provincial Act, by the Advocate-General for the Federation or the Advocate-General for the Province. GOI.226

226.

(1) Until otherwise provided by Act of the appropriate Legislature, no High Court shall have any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force. (2) A Bill or amendment for making such provision as aforesaid shall not be introduced into or moved in a Chamber of the Federal or a Provincial Legislature without the previous sanction of the Governor-General in his discretion or, as the case may be, of the Governor in his discretion. GOI.227

227. All proceedings in every High Court shall be in the English language.

GOI.228

228.

(1) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court and the salaries and allowances of the judges of the court shall be charged upon the revenues of the Province, and any fees or other moneys taken by the court shall form part of those revenues. (2) The Governor shall exercise his individual judgment as to the amount to be included in respect of such expenses as aforesaid in any estimates of expenditure laid by him before the Legislature. GOI.229

229.

(1) His Majesty, if the Chamber or Chambers of the Legislature of any Province present an address in that behalf to the Governor of the Province for submission to His Majesty, may by letters patent constitute a High Court for that Province or any part thereof or reconstitute in like manner any existing High Court for that Province or for any part thereof, or, where there are two High Courts in that Province, amalgamate those courts. (2) Where any Court is reconstituted, or two Courts are amalgamated, as aforesaid, the letters patent shall provide for the continuance in their respective offices of the existing judges, officers and servants of the Court or Courts, and for the carrying on before the reconstituted Court or the new Court of all pending matters, and may contain such other

provisions as may appear to His Majesty to be necessary by reason of the reconstitution or amalgamation. GOI.230

230. (1) His Majesty in Council may, if satisfied that an agreement in that behalf has been made between the Governments concerned, extend the jurisdiction of a High Court, in any Province to any area in British India not forming part of that Province, and the High Court shall thereupon have the same jurisdiction in relation to that area as it has in relation to any other area in relation to which it exercises jurisdiction.

(2) Nothing in this section affects the provisions of any law or letters patent in force immediately before the commencement of Part III of this Act empowering any High Court to exercise jurisdiction in relation to more than one Province or in relation to a Province and an area not forming part of any Province. (3) Where a High Court exercises jurisdiction in relation to any area or areas outside the Province in which it has its principal seat, nothing in this Act shall be construed—(a) as empowering the Legislature of the Province in which the Court has its principal seat to increase, restrict or abolish that jurisdiction; or (b) as preventing the Legislature having power to make laws in that behalf for any such area from passing such laws with respect to the jurisdiction of the court in relation to that area as it would be competent to pass if the principal seat of the court were in that area. GOI.231

231.

(1) Any judge appointed before the commencement of Part III of this Act to any High Court shall continue in office and shall be deemed to have been appointed under this Part of this Act, but shall not by virtue of this Act be required to relinquish his office at any earlier age than he would have been required so to do, if this Act had not been passed. (2) Where a High Court exercises jurisdiction in relation to more than one Province or in relation to a Province and an area not forming part of a Province, references in this chapter to the Governor in relation to the judges and expenses of a High Court and references to the revenues of the Province shall be construed as references to the Governor and the revenues of the Province in which the Court has its principal seat, and the reference to the approval by the Governor of rules, forms and tables for subordinate courts shall be construed as a reference to the approval thereof by the Governor of the Province in which the subordinate court is situate, or, if it is situate in an area not forming part of a Province, by the Governor-General.

Part X – THE SERVICES OF THE CROWN IN INDIA

Chapter I DEFENCE SERVICES

GOI.232

232. The pay and allowances of the Commander-in-Chief of His Majesty's Forces in India and the other conditions of his service shall be such as His Majesty in Council may direct.

GOI.233

233.

(1)His Majesty in Council may require that appointments to such offices connected with defence as he may specify shall be made by him or in such manner as he may direct.(2)Nothing in this section derogates from any power vested in His Majesty by virtue of any Act or by virtue of his Royal Prerogative.GOI.234

234. The power of His Majesty, and of any person authorised in that behalf by His Majesty, to grant commissions in any naval, military or air force raised in India extends to the granting of a commission in any such force to any person who might be, or has been, lawfully enlisted or enrolled in that force.

GOI.235

235. Without prejudice to the generality of the powers conferred on him by this Act, the Secretary of State may, acting with the concurrence of his advisers, from time to time specify what rules, regulations and orders affecting the conditions of service of all or any of His Majesty's Forces in India shall be made only with his previous approval.

GOI.236

236. Nothing in this Act affects any right of appeal which members of His Majesty's Forces in India enjoyed immediately before the passing of this Act, and the Secretary of State may entertain any such memorial from a member of those Forces as the Secretary of State, or the Secretary of State in Council, might previously have entertained.

GOI.237

237. Any sums payable out of the revenues of the Federation in respect of pay, allowances, pensions or other sums payable to, or in respect of, persons who are serving, or have served, in His Majesty's forces shall be charged on those revenues, but nothing herein contained shall be construed as limiting the interpretation of the general provisions of this Act charging on the said revenues expenditure with respect to defence.

GOI.238

238. The' provisions of the three last preceding sections shall apply in relation to persons who, not being members of His Majesty's forces, hold, or have held, posts in India connected with the equipment or administration of those forces or otherwise connected with defence, as they apply in relation to persons who are, or have been, members of those forces.

GOI.239

239. In the appointment of officers to His Majesty's army the same provision as heretofore, or equal provision, shall be made for the appointment of sons of persons who have served in India in the military or civil service of the Crown.

In this section the reference to persons who have served in India in the military or civil service of the Crown includes persons who have so served in Burma or in Aden before their respective separations from India.

Chapter II

CIVIL SERVICES

General ProvisionsGOI.240

240.

(1)Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure.(2)No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.(3)No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:Provided that this subsection shall not apply-(a)where a person is dismissed or reduced in rank on the ground of conduct which has led to

his conviction on a criminal charge ; or(b)where an authority empowered to dismiss a person or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause.(4)Notwithstanding that a person holding a civil post under the Crown in India holds office during His Majesty's pleasure, any contract under which a person, not being a member of a civil service of the Crown in India, is appointed under this Act to hold such a post may, if the Governor-General, or, as the case may be, the Governor, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.GOI.241

241.

(1)Except as expressly provided by this Act, appointments to the civil services of, and civil posts under, the Crown in India, shall, after the commencement of Part III of this Act, be made-(a)in the case of services of the Federation, and posts in connection with the affairs of the Federation, by the Governor-General or such person as he may direct;(b)in the case of services of a Province, and posts in connection with the affairs of a Province, by the Governor or such person as he may direct.(2)Except. as expressly provided by this Act, the conditions of service of persons serving His Majesty in a civil capacity in India shall, subject to the provisions of this section, be such as may be prescribed-(a)in the case of persons serving in connection with the affairs of the Federation, by rules made by the Governor-General or by some person or persons authorised by the Governor-General to make rules for the purpose;(b)in the case of persons serving in connection with the affairs of a Province, by rules made by the Governor of the Province or by some person or persons authorised by the Governor to make rules for the purpose:Provided that it shall not be necessary to make rules regulating the conditions of service of persons employed temporarily on the terms that their employment may be terminated on one month's notice or less, and nothing in this subsection shall be construed as requiring the rules regulating the conditions of service of any class of persons to extend to any matter which appears to the rule-making authority to be a matter not suitable for regulation by rule in the case of that class.(3)The said rules shall be so framed as to secure-(a)that, in the case of a person who before the commencement of Part III of this Act was serving His Majesty in a civil capacity in India, no order which alters or interprets to his disadvantage any rule by which his conditions of service are regulated shall be made, except by an authority which would have been competent to make such an order on the eighth day of March, nineteen hundred and twenty-six, or by some person empowered by the Secretary of State to give directions in that respect ;(b)that every such person as aforesaid shall have the same rights of appeal to the same authorities from any order which-(i)punishes or formally censures him; or(ii)alters or interprets to his disadvantage any rule by which his conditions of service are regulated; or(iii)terminates his appointment otherwise than upon his reaching the age fixed for superannuation,as he would have had immediately before the commencement of Part III of this Act, or such similar rights of appeal to such corresponding authorities as may be directed. by the Secretary of State or by some person empowered by the Secretary of State to give directions in that respect ;(c)that every other person serving His Majesty in a civil capacity in India shall have at least one appeal against any such order as aforesaid, not being an order of the Governor-General or a Governor.(4)Notwithstanding anything in this section, but

subject to any other provision of this Act, Acts of the appropriate Legislature in India may regulate the conditions of service of persons serving His Majesty in a civil capacity in India, and any rules made under this section shall have effect subject to the provisions of any such Act :Provided that nothing in any such Act shall have effect so as to deprive any person of any rights required to be given to him by the provisions of the last preceding subsection.(5)No rules made under this section and no Act of any Legislature in India shall be construed to limit or abridge the power of the Governor-General or a Governor to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable:Provided that, where any such rule or Act is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by that rule or Act.GOI.242

242.

(1)In its application to appointments to, and to persons serving in, the railway services of the Federation, the last preceding section shall have effect as if for any reference to the Governor-General in paragraph (a) of subsection (1), in paragraph (a) of subsection (2) and in subsection (5) there were substituted a reference to the Federal Railway Authority.(2)In framing rules for the regulation of recruitment to superior railway posts, the Federal Railway Authority shall consult the Federal Public Service Commission, and in recruitment to such posts and in recruitment generally for railway purposes shall have due regard to the past association of the Anglo-Indian community with railway services in India, and particularly to the specific class, character and numerical percentages of the posts hitherto held by members of that community and the remuneration attaching to such posts, and shall give effect to any instructions which may be issued by the Governor-General for the purpose of securing, so far as practicable to each community in India a fair representation in the railway services of the Federation, but, save as aforesaid, it shall not be obligatory on the Authority to consult with, or otherwise avail themselves of the services of, the Federal Public Service Commission.(3)In framing the rules for the regulation of recruitment to posts in the customs, postal and telegraph services, the Governor-General or person authorised by him in that behalf shall have due regard to the past association of the Anglo-Indian community with the said services, and particularly to the specific class, character and numerical percentages of the posts previously held in the said services by members of the said community and to the remuneration attaching to such posts.(4)In its application to appointments to, and to persons serving on, the staff attached to the Federal Court or the staff attached to a High Court, the said section shall have effect as if, in the case of the Federal Court, for any reference to the Governor-General in paragraph (a) of subsection (1), in paragraph (a) of subsection (2) and in subsection (5) there were substituted a reference to the Chief Justice of India and as if, in the case of a High Court, for. any reference to the Governor in paragraph (b) of subsection (1), in paragraph (b) of subsection (2) and in subsection (5) there were substituted a reference to the chief justice of the court:Provided that-(a)in the case of the Federal Court, the Governor-General and, in the case of a High Court, the Governor may in his discretion require that in such cases as he may in his discretion direct no person not already attached to the court shall be appointed to any office connected with the court save after consultation with the Federal Public Service Commission, or the Provincial Public Service Commission, as the case may be;(b)rules made under the said subsection (2) by a chief justice shall, so far as they relate to salaries, allowances, leave or pensions, require the

approval of the Governor-General or, as the case may be, the Governor.

243.

Notwithstanding anything in the foregoing provisions of this chapter, the conditions of service of the subordinate ranks of the various police forces in India shall be such as may be determined by or under the Acts relating to those forces respectively. Recruitment by Secretary of State and provisions as to certain posts GOI.244

244.

(1) As from the commencement of Part III recruited by of this Act appointments to the civil services known Secretary of State. as the Indian Civil Service, the Indian Medical Service (Civil), and the Indian Police Service (which last mentioned service shall thereafter be known as " the Indian Police ") shall, until Parliament otherwise determines, be made by the Secretary of State. (2) Until Parliament otherwise determines, the Secretary of State may also make appointments to any service or services which at any time after the said date he may deem it necessary to establish for the purpose of securing the recruitment of suitable persons to fill civil posts in connection with the discharge of any functions of the Governor-General which the Governor-General is by or under this Act required to exercise in his discretion. (3) The respective strengths of the said services shall be such as the Secretary of State may from time to time prescribe, and the Secretary of State shall in each year cause to be laid before each House of Parliament a statement of the appointments made thereto and the vacancies therein. (4) It shall be the duty of the Governor-General to keep the Secretary of State informed as to the operation of this section, and he may after the expiration of such period as he thinks fit make recommendations for the modification thereof. In discharging his functions under this subsection, the Governor-General shall act in his discretion. GOI.245

245. Until Parliament otherwise determines, the Secretary of State may for the purpose of securing efficiency in irrigation in any Province, appoint persons to any civil service of, or civil post under, the Crown in India concerned with irrigation.

GOI.246

246.

(1) The Secretary of State shall make rules specifying the number and character of the civil posts under the Crown (other than posts in connection with any functions of the Governor-General which the Governor-General is by or under this Act required to exercise in his discretion), which, subject to the provisions of this subsection, are to be filled by persons appointed by the Secretary of State to a civil service of, or a civil post under, the Crown in India, and except under such conditions as may be prescribed in the rules no such post shall, without the previous sanction of the Secretary of State—(a) be kept vacant for more than three months; or (b) be filled otherwise than by the

appointment of such a person as aforesaid; or(c)be held jointly with any other such post.(2)Appointments and postings to the said posts (hereinafter in this Part of this Act referred to as " reserved posts ") shall-(a)in the case of posts in connection with the affairs of the Federation, be made by the Governor-General, exercising his individual judgment;(b)in the case of posts in connection with the affairs of a Province, be made by the Governor of the Province, exercising his individual judgment.(3)All rules made under this section shall, so soon as may be after they are made, be laid before each House of Parliament and, if either House of Parliament within the next subsequent twenty-eight days on which that House has sat after any such rule has been laid before it resolves that the rule shall be annulled, the rule shall thenceforth be void but without prejudice to the validity of anything previously done thereunder or to the making of a new rule.GOI.247

247.

(1)The conditions of service of all persons appointed to a civil service or a civil post by the Secretary of State shall-(a)as respects pay, leave and pensions, and general rights in regard to medical attendance, be such as may be prescribed by rules to be made by the Secretary of State;(b)as respects other matters with respect to which express provision is not made by this chapter, be such as may be prescribed by rules to be made by the Secretary of State in so far as he thinks fit to make such rules, and, in so far and so long as provision is not made by such rules, by rules to be made, as respects persons serving in connection with the affairs of the Federation, by the Governor-General or some person or persons authorised by the Governor-General to make rules for the purpose and, as respects persons serving in connection - with the affairs of a Province, by the Governor of the Province or some person or persons authorised by the Governor to make rules for the purpose:Provided that no rule made under this subsection shall have effect so as to give to any person appointed to a civil service or civil post by the Secretary of State less favourable terms as respects remuneration or pension than were given to him by the rules in force on the date on which he was first appointed to his service or was appointed to his post.(2)Any promotion of any person appointed to a civil service or a civil post by the Secretary of State or any order relating to leave of not less than three months of any such person, or any order suspending any such person from office shall, if he is serving in connection with the affairs of the Federation, be made by the Governor-General exercising his individual judgment and, if he is serving in connection with the affairs of a Province, be made by the Governor exercising his individual judgment.(3)If any such person as aforesaid is suspended from office, his remuneration shall not during the period of his suspension be reduced except to such extent, if any, as may be directed by the Governor-General exercising his individual judgment or, as the case may be, by the Governor exercising his individual judgment.(4)The salary and allowances of any such person as aforesaid shall, if he is serving in connection with the affairs of the Federation, be charged on the revenues of the Federation and, if he is serving in connection with the affairs of a Province, be charged on the revenues of the Province :Provided that, if any such person is serving in connection with the railways in India, so much only of his salary and allowances shall be charged on the revenues of the Federation as is not paid out of the Railway Fund.(5)Pensions payable to or in respect of any such person as aforesaid, and government contributions in respect of any such person to any pension fund or provident fund, shall be charged on the revenues of the Federation.(6)No award of a pension less than the maximum pension allowable under rules made under this section shall be made, except in each case with the

consent of the Secretary of State.(7)No rules made under this section shall be construed to limit or abridge the power of the Secretary of State to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable, and no rules made under this section by any person other than the Secretary of State shall be construed to limit or abridge the power of the Governor-General or, as the case may be, the Governor of a Province to deal 'with the case of any such person in such manner as may appear to him to be just and equitable :Provided that, where any rule made under this section is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by the rule.GOI.248

248.

(1)If any person appointed to a civil service or a civil post by the Secretary of State is aggrieved by an order affecting his conditions of service and on due application to the person by whom the order was made does not receive the redress to which he considers himself entitled, he may, without prejudice to any other mode of obtaining redress, complain, if he is serving in connection with the affairs of the Federation, to the Governor-General and, if he is serving in, connection with the affairs of a Province, to the Governor of the Province, and the Governor-General or Governor, as the case maybe, shall examine into the complaint and cause such action to be taken thereon as appears to him exercising his individual judgment to be just and equitable.(2)No order which punishes or formally censures any such person as aforesaid, or affects adversely his emoluments or rights in respect of pension, or decides adversely to him the subject-matter of any memorial, shall be made except, if he is serving in connection with the affairs of the Federation, by the Governor-General, exercising his individual judgment, or, if he is serving in connection with the affairs of a Province, by the Governor of that Province, exercising his individual judgment.(3)Any person appointed to a civil service or a civil post by the Secretary of State may appeal to the Secretary of State against any order made by any authority in India which punishes or formally censures him, or alters - or interprets to his disadvantage any rule by which his conditions of service are regulated.(4)Any sums ordered to be paid out of the revenues of the Federation or a Province to or in respect of any such person as aforesaid on an appeal made under this section shall be charged on those revenues.GOI.249

249.

(1)If by reason of anything done under this Act the conditions of service of any person appointed to a civil service or a civil post by the Secretary of State have been adversely affected, or if for any other reason it appears to the Secretary of State that compensation ought to be granted to, or in respect of, any such person, he or his representatives shall be entitled to receive from the revenues of the Federation, or if the Secretary of State so directs, from the revenues of a Province, such compensation as the Secretary of State may consider just and equitable.(2)Any sum payable under this section from the revenues of the Federation or the revenues of a Province shall be charged on the revenues of the Federation or, as the case may be, that Province.(3)For the avoidance of doubt it is hereby declared that the foregoing provisions of this section in no way prohibit expenditure by the Governor-General, or, as the case may be, the Governor, from the revenues of the Federation or a Province by way of compensation to persons who are serving or have served His Majesty in India in

cases to which those provisions do not apply. Provisions as to persons appointed by Secretary of State in Council, persons holding reserved posts and commissioned officers in civil employmentGOI.250

250.

(1) Subject to the provisions of this section, the provisions of the four last preceding sections and any rules made there under shall apply in relation to any person who was appointed before the commencement of Part III of this Act by the Secretary of State in Council to a civil service of, or a civil post under, the Crown in India as they apply in relation to persons appointed to a civil service or, civil post by the Secretary of State. (2) Subject to the provisions of this section, the said sections and rules shall, in such cases and with such exceptions and modifications as the Secretary of State may decide, also apply in relation to any person who—(a) not being a person appointed as aforesaid by the Secretary of State or the Secretary of State in Council, holds or has held a reserved post; or (b) holds or has held any civil post under the Crown in India and is, or was when he was first appointed to such a post, an officer in His Majesty's forces. (3) In relation to any person who was appointed before the commencement of Part III of this Act to a civil service of, or to a civil post under, the Crown in India, the provision contained in the sections aforesaid that no rule as to conditions of service shall have effect so as to give to any person less favourable terms as regards remuneration or pension than were given to him by the rules in force on the date on which he was first appointed to his service or was appointed to his post, shall be construed as a provision that no such rule shall have effect so as to give to any person less favourable terms as respects the said matters than were given to him by the rules in force immediately before the coming into operation of the rule. (4) In its application, by virtue of this section, to persons serving in the railway services of the Federation, the second of the four last preceding sections (which relates to the conditions of service, pensions, &c., of persons recruited by the Secretary of State) shall have effect as if for any reference to the Governor-General in paragraph (b) of subsection (1) thereof and in subsections (2), (3) and (7) thereof there were substituted a reference to the Federal Railway Authority. (5) Any liability of the Federation or of any Province to or, in respect of any person appointed before the commencement of Part III of this Act by the Secretary of State in Council to a civil service of, or a civil post under, the Crown in India, being a liability to pay a pension granted to or in respect of any such person or any other liability of such a nature as to have been enforceable in legal proceedings against the Secretary of State in Council if this Act had not been passed, shall, notwithstanding anything in this Act, be deemed, for the purposes of the provisions of Part VII of this Act relating to legal proceedings, to be a liability arising under a statute passed before the commencement of Part III of this Act. Special provisions as to staffs of the High Commissioner for India and the Auditor of Indian Home AccountsGOI.251

251. The provisions of this Part of this Act shall apply in relation to appointments to, and to persons serving on, the staffs of the High Commissioner for India and the Auditor of Indian Home Accounts as if the service of members of those staffs were service rendered Home in India:

Provided that-(a)appointments to the staff of the Auditor of Indian Home Accounts shall be made by him subject, as respects numbers, salaries and qualifications, to the approval of the Governor-General in his discretion; and(b)in relation to that staff the functions of the Governor-General under this Part of this Act shall be exercised by him in his discretion.GOI.252

252.

(1)All persons who immediately before the commencement of Part III of this Act were members of the staff of the High Commissioner for India, or members of the staff of the Auditor of the accounts of the Secretary of State in Council, shall continue to be, or shall become, members of the staff of the High Commissioner for India or, as the case may be, of the Auditor of Indian Home Accounts.(2)All such persons as aforesaid shall hold their offices or posts subject to like conditions of service as to remuneration, pensions or otherwise, as theretofore*, or not less favourable conditions, and shall be entitled to reckon for purposes of pension any service which they would have been entitled to reckon if this Act had not been passed.(3)The salaries, allowances and pensions payable to, or in respect of, such of the persons aforesaid as were members of the staff of the Auditor of the accounts of the Secretary of State in Council shall be charged on the revenues of the Federation, and the salaries, allowances and pensions payable to, or in respect of, other such persons as aforesaid shall be so charged in so far as those salaries, allowances and pensions would, but for the passing of this Act, have been payable without being submitted to the vote of the Legislative Assembly of the Indian Legislature.Special Provisions as to Judicial OfficersGOI.253

253.

(1)The provisions of this chapter shall not apply to the judges of the Federal Court or of any and High Court:Provided that-(a)for the purposes of this section a member of any of the civil services of the Crown in India who is acting temporarily as a judge of a High Court shall not be deemed to be a judge of that court:(b)nothing in this section shall be construed as preventing the Orders in Council relating to the salaries, leave and pensions of judges of the Federal Court, or of any High Court, from applying to such of those judges as were, before they were appointed judges, members of a civil service of the Crown in India, such of the rules relating to that 'service as may appear to His Majesty to be properly applicable in relation to them :(c)nothing in this section shall be construed as excluding the office of judge of the Federal Court or of a High Court from the operation of the provisions of this chapter with respect to the eligibility for civil office of persons who are not British subjects.(2)Any pension which under the rules in force immediately before the commencement of Part III of this Act was payable to or in respect of any person who, having been a judge of a High Court within the meaning of this Act or of the High Court at Rangoon, retired before the commencement of the said Part III shall, notwithstanding anything in this Act or the Government of Burma Act, 1935, continue to be payable in accordance with those rules and shall be charged on the revenues of the Federation.(3)Any liability of the Federation or of any Province to or in respect of any person who is, at the commencement of Part III of this Act, a judge of a High Court within the meaning of this Act, or to or in respect of any such person as is mentioned in subsection (2) of this section, being a liability to pay a pension granted to or in respect of any such person or any other liability of such, a nature as to have been enforceable in legal proceedings against the Secretary of

State in Council if this Act had not been passed, shall, notwithstanding anything in this Act or the Government of Burma Act, 1935, be deemed, for the purposes of the provisions of Part VII of this Act relating to legal proceedings, to be a liability arising under a statute passed before the commencement of Part III of this Act. GOI.254

254.

(1) Appointments of persons to be, and the posting and promotion of, district judges in any Province shall be made by the Governor of the Province, exercising his individual judgment, and the High Court shall be consulted before a recommendation as to the making of any such appointment is submitted to the Governor. (2) A person not already in the service of His Majesty shall only be eligible to be appointed a district judge if he has been for not less than five years a barrister, a member of the Faculty of Advocates in Scotland, or a pleader and is recommended by the High Court for appointment. (3) In this and the next succeeding section the expression "district judge" includes additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, sessions judge, additional sessions judge, and assistant sessions judge. GOI.255

255.

(1) The Governor of each Province shall, after consultation with the Provincial Public Service Commission and with the High Court, make rules defining the standard of qualifications to be attained by persons desirous of entering the subordinate civil judicial service of a Province. In this section, the expression "subordinate civil judicial service" means a service consisting exclusively of persons intended to fill civil judicial posts inferior to the post of district judge. (2) The Provincial Public Service Commission for each Province, after holding such examinations, if any, as the Governor may think necessary, shall from time to time out of the candidates for appointment to the subordinate civil judicial service of the Province make a list or lists of the persons whom they consider fit for appointment to that service, and appointments to that service shall be made by the Governor from the persons included in the list or lists in accordance with such regulations as may from time to time be made by him as to the number of persons in the said service who are to belong to the different communities in the Province. (3) The posting and promotion of, and the grant of leave to, persons belonging to the subordinate civil judicial service of a Province and holding any post inferior to the post of district judge, shall be in the hands of the High Court, but nothing in this section shall be construed as taking away from any such person the right of appeal required to be given to him by the foregoing provisions of this chapter, or as authorising the High Court to deal with any such person otherwise than in accordance with the conditions of his service prescribed thereunder. GOI.256

256. No recommendation shall be made for the grant of magisterial powers or of enhanced magisterial powers to, or the withdrawal of any magisterial powers from, any person save after consultation with the district magistrate of the district in which he is working, or with the Chief Presidency

magistrate, as the case may be.

Special Provisions as to Political DepartmentGOI.257

257.

(1)Subject to the provisions of this section, the provisions of this Part of this Act shall not apply in relation to persons wholly or mainly employed in connection with the exercise of the functions of the Crown in its relations with Indian States.(2)Notwithstanding anything in the preceding subsection, all persons so employed immediately before the commencement of Part III of this Act shall hold their offices or posts subject to the like conditions of service as to remuneration, pensions or otherwise as theretofore or not less favourable conditions, and in relation to those persons anything which might, but for the passing of this Act, have been done by or in relation to the Secretary of State in Council shall be done by or in relation to. the Secretary of State, acting with the concurrence of his advisers.(3)Nothing in this section shall be construed as affecting the application to such persons of the rule of law that, except as otherwise provided by statute, every person employed under the Crown holds office during His Majesty's pleasure.Provisions for the protection of certain existing officersGOI.258

258.

(1)No civil post which, immediately before the commencement of Part III of this Act, was a post in, or a post required to be held by some member of, a Central Service Class I, a Central Service Class II, a Railway Service Class I, a Railway Service Class II, or a Provincial Service, shall, if the abolition thereof would adversely affect any person who immediately before the said date was a member of any such service, be abolished, except-(a)in the case of a post in connection with the affairs of the Federation, by the Governor-General exercising his individual judgment;(b)in the case of a post in connection with the affairs of a Province, by the Governor of the Province exercising his individual judgment.(2)No rule or order affecting adversely the pay, allowances or pensions payable to, or in respect of, a person appointed before the coming into operation of this Part of this Act to a Central Service Class I, to a Railway Service Class I, or to a Provincial service, and no order upon a memorial submitted by any such person, shall be made except-(a)in the case of a person who is serving or has served in connection with the affairs of the Federation, by the Governor-General exercising his individual judgment;(b)in the case of a person who is serving or has served in connection with the affairs of a Province, by the Governor of the Province exercising his individual judgment.(3)In relation to any person mentioned in this section who was appointed to a civil service of, or civil post under, the Crown in India by the Secretary of State or the Secretary of State in Council, or is an officer in His Majesty's forces, the foregoing provisions of this section shall have effect as if for the reference to the Governor-General or the Governor, as the case may be, there was substituted a reference to the Secretary of State.GOI.259

259.

(1)The salary and allowances of any person who was appointed before the first day of April, nineteen hundred and twenty-four, otherwise than by the Secretary of State in Council, to a service or a post which at anytime between that date and the coming into operation of this Part of this Act was classified as a superior service or post shall be charged, if he is serving in connection with the affairs of the Federation, on the revenues of the Federation and, if he is serving in connection with the affairs of a Province, on the revenues of that Province :Provided that, if any such person as aforesaid is serving in connection with the railways in India, so much only of his salary and allowances shall be charged on the revenues of the Federation as is not paid out of the railway fund.(2)Any pension payable to or in respect of a person appointed as aforesaid, and any government contributions to any provident fund or pensions fund in respect of any such person, shall be charged on the revenues of the Federation.(3)The provisions of the last preceding subsection shall also apply in relation to persons who retired before the first day of April, nineteen hundred and twenty-four, and before they retired belonged to services or held posts which were as from the said date classified as superior services or posts, or which are declared by the Secretary of State to have been services or posts equivalent in character to services or posts so classified.GOI.260

260.

(1)Except as otherwise expressly provided in this chapter, any pension payable to or in respect of any person who, having been appointed to a civil service of, or a civil post under, the Crown in India, retired from the service of His Majesty before the commencement of Part III of this Act shall, if it would have been payable by the Local Government in any Province if this Act had not passed, be paid out of the revenues of the corresponding Province and in any other case shall be paid out of the revenues of the Federation.(2)Any pension payable to or in respect of any person who, having served in Burma or Aden, retired from an All-India Service, a Central Service Class I, a Central Service Class II, a Railway Service Class I, or a Railway Service Class II, before the commencement of Part III of this Act shall be paid out of the revenues of the Federation, but save as aforesaid nothing in this section applies to any person who retired after service in Burma or Aden.MiscellaneousGOI.261

261. The powers conferred by this and the subsequent chapters of this Part of this Act on the Secretary of State shall not be exercisable by him except with the concurrence of his advisers.

GOI.262

262.

(1)The Ruler or a subject of a Federated State shall be eligible to hold any civil office under the Crown in India in connection with the affairs of the Federation, and the Governor-General may declare that the Ruler or any subject of a specified Indian State which is not a Federated State, or any native of a specified tribal area or territory adjacent to India, shall be eligible to hold any such

office, being an office specified in the declaration.(2)The Governor of a Province may declare that the Ruler or any subject of a specified Indian State, or any native of a specified tribal area or territory adjacent to India, shall be eligible to hold any civil office in connection with the affairs of the Province, being an office specified in the declaration.(3)The Secretary of State may declare that any named subject of an Indian State, or any named native of a tribal area or territory adjacent to India, shall be eligible for appointment by him to any civil service under the Crown in India to which he makes appointments, and any person who, having been so declared eligible, is appointed to such a service, shall be eligible to hold any civil office under the Crown in India.(4)Subject as aforesaid and to any other express provisions of this Act, no person who is not a British subject shall be eligible to hold any office under the Crown in India :Provided that the Governor-General or, in relation to a Province, the Governor may authorise the temporary employment for any purpose of a person who is not a British subject.(5)In the discharge of his functions under this section the Governor-General or the Governor of a Province shall exercise his individual judgment.GOI.263

263. If an agreement is made between the Federation and one or more Provinces, or between two or more Provinces, for the maintenance or creation of a service common to the Federation and one or more Provinces, or common to two or more Provinces, or for the maintenance or creation of a post the functions whereof are not restricted to the affairs of the Federation or one Province, the agreement may make provision that the Governor-General or any Governor, or any Public Service Commission, shall do in relation to that service or post anything which would under the provisions of this chapter be done by the Governor or the Provincial Public Service Commission if the service or post was a service or post in connection with the affairs of one Province only.

CHATTER IIIPUBLIC SERVICE COMMISSIONSGOI.264

264.

(1)Subject to the provisions of this section, there shall be a Public Service Commission for the Federation and a Public Service Commission for each Province.(2)Two or more Provinces may agree-(a)that there shall be one Public Service Commission for that group of Provinces; or(b)that the Public Service Commission for one of the Provinces shall serve the needs of all the Provinces,and any such agreement may contain such incidental and consequential provisions as may appear necessary or desirable for giving effect to the purposes of the agreement and shall, in the case of an agreement that there shall be one Commission for a group of Provinces, specify by what Governor or Governors the functions which are under this Part of this Act to be discharged by the Governor of a Province are to be discharged.(3)The Public Service Commission for the Federation if requested so to do by the Governor of a Province may, with the approval of the Governor-General , agree to serve all or any of the needs of the Province.(4)References in this Act to the Federal Public Service Commission or a Provincial Public Service Commission shall, unless the context otherwise requires,

be construed as references to the Commission serving the needs of the Federation or, as the case may be, the Province as respects the particular matter in question.GOI.265

265.

(1)The chairman and other members of a Public Service Commission shall be appointed, in the case of the Federal Commission, by the Governor-General in his discretion, and in the case of a Provincial Commission, by the Governor of the Province in his discretion:Provided that at least one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years under the Crown in India.(2)In the case of the Federal Commission, the Governor-General in his discretion and, in the case of a Provincial Commission, the Governor of the Province in his discretion, may by regulations-(a)determine the number of members of the commission, their tenure of office and their conditions of service; and(b)make provision with respect to the numbers of staff of the commission and their conditions of service.(3)On ceasing to hold office-(a)the chairman of the Federal Commission shall be ineligible for further employment under the Crown in India;(b)the chairman of a Provincial Commission shall be eligible for appointment as the chairman or a member of the Federal Commission, or as the chairman of another Provincial Commission, but not for any other employment under the Crown in India ;(c)no other member of the Federal or of any Provincial Commission shall be eligible for any other appointment under the Crown in India without the approval, in the case of an appointment in connection with the affairs of a Province, of the Governor of the Province in his discretion and, in the case of any other appointment, of the Governor-General in his discretion.GOI.266

266.

(1)It shall be the duty of the, Federal and the Provincial Public Service Commissions to conduct examinations for appointments to the services of the Federation and the services of the Province respectively.(2)It shall also be the duty of the Federal Public Service Commission, if requested by any two or more Provinces so to do, to assist those Provinces in framing and operating schemes of joint recruitment for their forest services, and any other services for which candidates possessing special qualifications are required.(3)The Secretary of State as respects services and posts to which appointments are made by him, the Governor-General in his discretion as respects other services and posts in connection with the affairs of the Federation, and the Governor in his discretion as respects other services and posts in connection with the affairs of a Province, may make regulations specifying the matters on which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted but, subject to regulations so made and to the provisions of the next succeeding subsection, the Federal Commission or, as the case may be, the Provincial Commission shall be consulted-(a)on all matters relating to methods of recruitment to civil services and for civil posts;(b)on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;(c)on all disciplinary matters affecting a person serving His Majesty in a civil capacity in India, including memorials or petitions relating to such matters;(d)on any claim by

or in respect of a person who is serving or has served His Majesty in a civil - capacity in India that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the revenues of the Federation or, as the case may be, the Province ;(e)on any claim for the award of a pension in respect of injuries sustained by a person while serving His Majesty in a civil capacity in India, and any question as to the amount of any such award,and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the Governor-General in his discretion, or, as the case may be, the Governor in his discretion, may refer to them.(4)Nothing in this section shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be allocated as between the various communities in the Federation or a Province or, in the case of the subordinate ranks of the various police forces in India, as respects any of the matters mentioned in paragraphs (a), (b), and(c) of subsection (3) of this section.GOI.267

267. Subject to the provisions of this section, an Act of the Federal Legislature or the Provincial Legislature may provide for the exercise of additional functions by the Federal Public Service Commission or, as the case may be, by the Provincial Public Service Commission:

Provided that-(a)no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, or, as the case maybe, of the Governor in his discretion; and(b)it shall be a term of every such Act that the functions conferred by it shall not be exercisable-(i) in relation to any person appointed to a service or a post by the Secretary of State or the Secretary of State in Council, any officer in His Majesty's Forces, or any holder of a reserved post, except with the consent of the Secretary of State; or(ii)where the Act is a provincial Act, in relation to any person who is not a member of one of the services of the Province, except with the consent of the Governor-General.GOI.268

268. The expenses of the Federal or a Provincial Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the revenues of the Federation or, as the case may be, the Province:

Provided that nothing in this section shall charge on the revenues of a Province any pension which is by virtue of the provisions of chapter II of this Part of this Act charged on the revenues of the Federation.

Chapter IV

CHAPLAINS

GOI.269

269.

(1) There may, as heretofore, be an establishment of chaplains to minister in India to be appointed by the Secretary of State and the provisions of chapter II of this Part of this Act shall, with any necessary modifications, apply in relation to that establishment and to persons appointed as chaplains by the Secretary of State or by the Secretary of State in Council, as they apply in relation to the civil services to which appointments are to be made by the Secretary of State and to persons appointed to a civil service under the Crown in India by the Secretary of State or by the Secretary of State in Council, and for the purposes of the provisions of chapter II relating to persons who retired before the commencement of Part III of this Act the said establishment shall be deemed to be an all-India service. (2) So long as an establishment of chaplains is maintained in the Province of Bengal, two members of that establishment in the Province must always be ministers of the Church of Scotland and shall be entitled to have out of the revenues of the Federation such salary as is from time to time allotted to the military chaplains. This subsection applies to the Province of Madras and to the Province of Bombay as it applies to the Province of Bengal. (3) The ministers of the Church of Scotland so appointed chaplains must be ordained and inducted by the Presbytery of Edinburgh according to the forms and solemnities used in the Church of Scotland, and shall be subject to the spiritual and ecclesiastical jurisdiction in all things of the Presbytery of Edinburgh, whose judgments shall be subject to dissent, protest and appeal to the Provincial Synod of Lothian and Tweeddale and to the General Assembly of the Church of Scotland.

Chapter V

GENERAL

GOI.270

270.

(1) No proceedings civil or criminal shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date, except with the consent, in the case of a person who was employed in connection with the affairs of the Government of India or the affairs of Burma, of the Governor-General in his discretion, and in the case of a person employed in connection with the affairs of a Province, of the Governor of that Province in his discretion. (2) Any civil or criminal proceedings instituted, whether before or after the coming into operation of this Part of this Act, against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date shall be dismissed unless the court is satisfied that the acts complained of were not done in good faith, and, where any such proceedings are dismissed, the costs incurred by the defendant shall, in so far as they are not recoverable from the persons instituting the proceedings, be charged, in the case of persons employed in connection with the functions of the Governor-General in Council or the affairs of Burma, on the revenues of the Federation, and in the case of persons employed in connection with the affairs of a Province, on the revenues of that Province. (3) For the purposes of this section-the

expression " the relevant date " means, in, relation to acts done by persons employed about the affairs of a Province or about the affairs of Burma, the commencement of Part III of this Act and, in relation to acts done by persons employed about the affairs of the Federation, the date of the establishment of the Federation; references to persons employed in connection with the functions of the Governor-General in Council include references to persons employed in connection with the affairs of any Chief Commissioner's Province; a person shall be deemed to have been employed about the affairs of a Province if he was employed about the affairs of the Province as constituted at the date when the act complained of occurred or is alleged to have occurred. GOI.271

271.

(1) No Bill or amendment to abolish or restrict the protection afforded to certain servants of the Crown in India by section one hundred and ninety-seven of the Indian Code of Criminal Procedure, or by sections eighty to eighty-two of the Indian Code of Civil Procedure, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion. (2) The powers conferred upon a Local Government by the said section one hundred and ninety-seven with respect to the sanctioning of prosecutions and the determination of the court before which, the person by whom and the manner, in which, a public servant is to be tried, shall be exercisable only—(a) in the case of a person employed in connection with the affairs of the Federation, by the Governor-General exercising his individual judgment; and (b) in the case of a person employed in connection with the affairs of a Province, by the Governor of that Province exercising his individual judgment: Provided that nothing in this subsection shall be construed as restricting the power of the Federal or a Provincial Legislature to amend the said section by a Bill or amendment introduced or moved with such previous sanction as is mentioned in subsection (1) of this section. (3) Where a civil suit is instituted against a public officer, within the meaning of that expression as used in the Indian Code of Civil Procedure, in respect of any act purporting to be done by him in his official capacity, the whole or any part of the costs incurred by him and of any damages or costs ordered to be paid by him shall, if the Governor-General exercising his individual judgment so directs in the case of a person employed in connection with the affairs of the Federation, or if the Governor exercising his individual judgment so directs in the case of a person employed in connection with the affairs of a Province, be defrayed out of and charged on the revenues of the Federation or of the Province, as the case may be. GOI.272

272. Any pension payable to or in respect of a person who-

(a) before the commencement of Part III of this Act had served His Majesty in India, Burma or Aden, or elsewhere under the Governor General in Council; or (b) after the commencement of Part III of this Act—(i) serves in India as an officer of His Majesty's forces; or (ii) is appointed to a civil service of, or to an office or post under, the Crown in India by His Majesty or the Secretary of State; or (iii) holds a reserved post, shall, if the person to whom the pension is payable is residing permanently outside India, be paid on behalf of the Federation or the Province, as the case may be, by, or in accordance with arrangements made with, the Secretary of State, and be exempt from all taxation imposed by or under any existing Indian law, or any law of the Federal or of a Provincial Legislature. GOI.273

273.

(1) His Majesty may by Order in Council provide for the vesting in Commissioners to be appointed under the Order of—(a) the Indian Military Widows and Orphans Fund; (b) the Superior Services (India) Family Pension Fund; (c) a fund to be formed out of the moneys contributed and to be contributed under the Indian Military Service Family Pension Regulations for the purpose of paying pensions payable under those regulations; (d) a fund to be formed out of the moneys contributed and to be contributed under the Indian Civil Service Family Pension Rules for the purpose of paying pensions payable under those rules, for the investment of the said funds by the Commissioners, in such manner as, subject to the provisions of the Order, they think fit, for the administration of the said funds in other respects by the Secretary of State, for the remuneration of the Commissioners out of the said funds, and for any other matters incidental to or consequential on the purposes of the Order; and if any such Order is made, then, as from such date as may be specified in the Order, any pensions payable under the said regulations and rules, shall, subject to the provisions of subsection (3) of this section be payable out of the appropriate fund in the hands of the Commissioners, and not otherwise. Before recommending His Majesty to make any Order in Council under this subsection, the Secretary of State shall consider any representations made to him by any of the existing subscribers and beneficiaries or by any persons appearing to him to represent any body of those subscribers or beneficiaries. (2) Any such Order as aforesaid shall provide that the balance in the hands of the Governor-General on the thirty-first day of March next following the passing of this Act in respect of the Indian Military Widows and Orphans Fund and the Superior Services (India) Family Pension Fund, and in respect of the moneys theretofore contributed under the Indian Military Service Family Pension Regulations and the Indian Civil Service Family Pension Rules shall, subject to the provisions of subsection (3) of this section, be transferred to the Commissioners before the expiration of three years from—the said date either all at one time or by installments, together with such interest as may be prescribed by or under the Order: Provided that His Majesty in Council may, if it appears to him necessary so to do, extend the said period of three years. (3) Any such Order as aforesaid shall provide for the making of objections by and on behalf of existing subscribers and beneficiaries to the vesting of any such fund as aforesaid in the Commissioners and, if any objection is so made in the manner and within the time limited by the Order—(a) so much of any money in the hands of the Governor-General as represents the interest of the objector shall not be transferred to the Commissioners, but shall be dealt with as part of the revenues of the Federation; and (b) in lieu of any pensions which might be payable out of the said funds to or in respect of the objectors there shall be payable out of the revenues of the Federation to and in respect of the said persons such pensions on such conditions as may be specified in rules to be made by the Secretary of State. (4) Any such Order as aforesaid may, notwithstanding anything in this Part of this Act or in the regulations or rules relating to the fund in question, provide for the making of such alterations in any pensions payable out of the fund to which the Order relates as may be reasonably necessary in consequence of the transfer effected under the Order. (5) Any interest or dividends received by the Commissioners on sums forming part of any fund vested in them under this section shall be exempt from income tax in the United Kingdom, and estate duty shall not be payable in Great Britain, nor, if the Parliament of Northern Ireland so provides, in Northern Ireland, in respect of any pension payable under the regulations or rules relating to any such fund. (6) In this section—references to the Indian Military Service Family Pension Regulations or the Indian Civil Service

Family Pension Rules shall be construed as including references to any regulations or rules which may be substituted therefor; the expression "existing subscribers and beneficiaries" means, in relation to the Indian Military Widows and Orphans Fund and the Superior Services (India) Family Pension Fund, persons who have subscribed to, or are or have been in receipt of pensions from, those funds, and, in relation to the funds to be formed out of the moneys contributed under the Indian Military Service Family Pension Regulations and the Indian Civil Service Family Pension Rules, persons who have contributed under, or are or have been in receipt of pensions payable under, the regulations or rules, not being persons who have surrendered or forfeited their interest in the fund or, as the case may be, their interest under the regulations or rules; references to pensions payable under the said regulations or the said rules do not include references to any pension or portion of a pension payable otherwise than out of the moneys contributed and to be contributed under those regulations or rules; references to moneys so contributed, or to be so contributed, include references to interest upon such moneys. (7) Notwithstanding anything in this Act, and in particular notwithstanding the separation of Burma and Aden from India, the provisions of this section shall apply in relation to persons who, before the commencement of Part III of this Act, were serving His Majesty in India, Burma or Aden, and after the commencement thereof continue to serve His Majesty in Burma or Aden, as they apply in relation to other persons who are serving or have served His Majesty in India, and accordingly the regulations and rules relating to any such fund may apply in relation to any such persons as aforesaid. If any Order in Council is made under this section, and if provision in that behalf is made by the Acts or rules relating to conditions of service of persons serving His Majesty in Burma, the said regulations and rules may also extend to persons appointed to the service of the Crown in Burma after the commencement of Part III of this Act. GOI.274

274. Notwithstanding anything in this Act, the India Military Funds Act, 1866, the East India Annuity Funds Act, 1874, and the Bombay Civil Fund Act, 1882, shall continue to have effect but subject to the following adaptations, that is to say, that anything to be done under the said Acts by or to the Secretary of State in Council shall, after the commencement of Part III of this Act, be done by or to the Secretary of State, and for any reference in the said Acts to the revenues of India there shall be substituted a reference to the revenues of the Federation.

GOI.275

275. A person shall not be disqualified by sex for being appointed to any civil service of, or civil post under, the Crown in India other than such a service or post as may be specified by any general or special order made-

(a) by the Governor-General in the case of services and posts in connection with the affairs of the Federation; (b) by the Governor of a Province in the case of services and posts in connection with the affairs of the Province; (c) by the Secretary of State in relation to appointments made by

him: Provided that any such agreement with respect to joint services and posts as is mentioned in chapter II of this Part of this Act may provide for the powers conferred by this section on the Governor-General and the Governor of a Province being exercised, with respect to the services or posts to which the agreement applies, by the Governor-General or a specified Governor. GOI.276

276. Until other provision is made under the Transitional appropriate provisions of this Part of this Act, any rules provisions made under the Government of India Act relating to the civil services of, or civil posts under, the Crown in India which were in force immediately before the commencement of Part III of this Act, shall, notwithstanding the repeal of that Act, continue in force so far as consistent with this Act, and shall be deemed to be rules made under the appropriate provisions of this Act.

GOI.277

277.

(1) In this Part of this Act the expressions - "all-India Service," "Central Service Class I," "Central Service Class II," "Railway Service Class I," "Railway Service Class II" and "Provincial Service" mean respectively the services which were immediately before the commencement of Part III of this Act, so described respectively in the classification rules then in force under section ninety-six B of the Government of India Act; and references to dismissal from His Majesty's service include references to removal from His Majesty's service. (2) References in this Part of this Act to persons appointed to a civil service of, or a civil post under, the Crown in India - (a) include references to persons who, after service in India, Burma, or Aden, retired from the service of His Majesty before the commencement of Part III of this Act; (b) do not include references to persons so appointed who, after the commencement of Part III of this Act, become members of a civil service of, or hold civil posts under, the Crown in Burma or Aden. (3) The inclusion in this Part of this Act of provisions expressly requiring the Governor-General or a Governor to exercise his individual judgment with respect to any matter shall not be construed as derogating from the special responsibility of the Governor-General and the Governors for the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests.

Part XI – THE SECRETARY OF STATE, HIS ADVISERS AND HIS DEPARTMENT

GOI.278

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 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.GOI.279

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 State in of this Act shall, as from that date, be transferred to 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.GOI.280

280.

(1)As from the commencement of Part III of this Act the salary of the Secretary of State and expenses of his department, including the salaries and remuneration of the staff thereof, shall be paid out of moneys provided by Parliament.(2)Subject to the provisions of the next succeeding section with respect to the transfer of certain existing officers and servants, the Secretary of State may appoint such officers and servants as he, subject to the consent of the Treasury as to numbers, may think fit and there shall be paid to persons so appointed such salaries or remuneration as the Treasury may from time to time determine.(3)There shall be charged on and paid out of the revenues of the Federation into the Exchequer such periodical or other sums as may from 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.GOI.281

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.(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.GOI.282

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.GOI.283

283.

(1)The liability for payment of any superannuation allowances, compensation allowances, retiring allowances, additional allowances and gratuities which immediately before the commencement of Part III of this Act were payable to or in respect of persons in respect of service on the establishment of the Secretary of State in Council, or in respect of service as Auditor of the Accounts of the Secretary of State in Council, or in respect of service as 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.(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).GOI.284

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

The Crown and the Indian StatesGOI.285

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.

GOI.286

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.(2)In discharging his functions under this section the Governor-General shall act in his discretion.GOI.287

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.

AdenGOI.288

288. (I) 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;(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 maybe 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.New Provinces and alterations of boundaries of ProvincesGOI.289

289.

(1)As from such date as His Majesty may new Pro- by Order in Council appoint-(a)Sind shall be separated from the Presidency of Bombay and shall form a Governor's Province to be known as the Province of Sind;(b)Orissa and such other areas in the Province of Bihar and Orissa as may be specified in the Order of His Majesty shall be separated from that Province, and such areas as may be 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.GOI.290

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: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.FranchiseGOI.291

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 bod ;(d)the filling of casual vacancies in any such body(e)the conduct of elections under this Act and the methods of voting thereat;(f)the expenses of candidates at such elections;(g)corrupt practices and other offences at or in connection with such elections;(h)the decision of doubts and disputes arising out of, or in connection with, such elections;(i)matters ancillary to any such matter as aforesaid.Provisions as to certain legal mattersGOI.292

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.

GOI.293

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, byelaw, rule or regulation having in British India the force of law.GOI.294

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 :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 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.GOI.295

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 :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.GOI.296

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.GOI.297

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.GOI.298

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.(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.GOI.299

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, 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.GOI.300

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-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.GOI.301

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

High CommissionerGOI.302

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.(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.General ProvisionsGOI.303

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.(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.GOI.304

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.

GOI.305

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.GOI.306

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 :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.GOI.308

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 and 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. GOI.309

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.GOI.310

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(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.InterpretationGOI.311

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 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 recognized 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 agricultural 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.

Part XIII – TRANSITIONAL PROVISIONS

GOI.312

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.

GOI.313

313.

(1) Subject to the provisions of this Act for the time being in force, such executive authority as is hereinafter mentioned shall be exercised on behalf of His Majesty by the Governor-General in Council, either directly or through officers subordinate to him, but nothing in this section shall prevent the Indian Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor-General in Council any functions conferred by any existing Indian law on any court, judge or officer, or on any local or other authority. (2) Subject to the provisions of this Act for the time being in force, the said executive authority extends—(a) to the matters with respect to which the Indian Legislature has, under the said provisions, power to make laws; (b) to the raising in British India on behalf of His Majesty of naval, military or air forces, and to the governance of His Majesty's forces borne on the Indian establishment; (c) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance or otherwise in and in relation to the tribal areas: Provided that—(i) the said authority does not, save as expressly provided in the provisions of this Act for the time being in force, extend in any Province to matters with respect to which the Provincial Legislature has power to make laws; (ii) the said authority does not extend to the enlistment or enrolment in any force raised in British India of any person unless he is either a subject of His Majesty, or a native of India or of territories adjacent thereto; and (iii) commissions in any such forces shall be granted by His Majesty, save in so far as he may be pleased to delegate that power by virtue of the provisions of Part I of this Act or otherwise. (3) References in the provisions of this Act for the time being in force to the Governor-General and the Federal Government shall, except 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. GOI.314

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. (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. GOI.315

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, 206 the Federal, or a Provincial Legislature shall be made, either before or after the establishment of the Federation, from any payment of principal or interest in respect of any loan contracted under this section. (5) Any legal proceedings in respect of any loan raised under this section may, either before or after the establishment of the Federation, be brought in the United

Kingdom against the Secretary of State, but nothing in this section shall be construed as imposing any liability on the Exchequer of the United Kingdom.

316. The powers conferred by the provisions of this Act for the time being in force on the Federal Legislature shall be exercisable by the Indian Legislature, and accordingly references in those provisions to the Federal Legislature and Federal Laws shall be construed as references to the Indian Legislature and laws of the Indian Legislature, and references in those provisions to Federal taxes shall be construed as references to taxes imposed by laws of the Indian Legislature:

Provided that nothing in this section shall empower the Indian Legislature to impose limits on the power of the Governor-General in Council to borrow money.

317.

(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 there under by the Secretary of State in Council before the commencement of Part III of this Act.

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.

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.(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.

Part XIV – COMMENCEMENT, REPEALS

320.

(1)Part II of this Act shall come into force on such date as His Majesty may appoint by the Proclamation establishing the Federation and the date so appointed is the date referred to in this Act as the date of the establishment of the Federation.(2)The remainder of this Act shall, subject to any express provision to the 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.

321. The Government of India Act shall be repealed and the other Acts mentioned in the Tenth Schedule to this Act shall also be repealed to the extent specified in the third column of that Schedule:

Provided that-(a)nothing in this section shall affect the Preamble to the Government of India Act, 1919;(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.