Chapter-1
INTRODUCTION

The office of the Governor in India is a heritage of the British rule. The famous Elizabethan Charter of the 31st December 1600\(^1\) which granted to “the Company of Merchants of London” the exclusive right of trading into the East Indies, invested the control of business of the Company in a Governor and twenty-four committees.\(^2\) The Charter provided for the office of the Governor elected by the Company. The Charter was granted for a period of fifteen years and Thomas Smith Alderman of London was appointed as the first Governor.

Governor: the Genesis:

The first phase in the evolution of the office of the Governor is that of a manager of trading concern. The Charter Act of 1600,\(^1\) provided for the office of the Governor primarily to ensure an integrated coherent management, control and direction of the business of the Company. The Governor was intended to defend and promote the commercial interests of the Company and perform managerial functions. According to the provisions of the Charter, the Governor was to have the direction of the Company’s voyages the provision shipping and merchandises, the sale of merchandises returned and the managing of all other things belonging to the Company. The Governor had also certain specified legislative, executive and judicial powers. The Charter allowed them\(^3\): -

- To use any trade route and have an exclusive right of trading with power to grant licenses to trade.
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• To make reasonable “laws, constitutions, orders and ordinances”, not contrary or repugnant to the laws, statutes or customs of the English realm for good government of the Company and its affairs;

• To impose, such fines or penalties as might be necessary for enforcing these laws.

No doubt, these powers and privileges were formally granted to the Company, but in practice the Governor alone exercised them, as he held a key position in the executive body of the Company. He, however, functioned under the supervision of the General Court, which met on certain occasions from among the great merchants of England associated with the Company. He was removable by the same body if he did not behave well. With the extension of powers and privileges of the Company through the Charter Acts of 1609, 1615, 1623, and 1657, the office of the Governor also gradually acquired importance. The Charter Act of 1661, in particular gave the Company ‘power and command’ over the fortress it possessed and authorised the Governor and his Council “to judge all persons belonging to the said Governor and Company or that shall live under them, and to execute judgment accordingly”. The replacement of the system of election of the Governor by that of appointment by the Company also came to affect the structure of his office in many ways. He was now endowed with powers to safeguard factories and other places of trade and even "to continue or make peace or war." Yet the power and authority vested in him were not adequate to enable him to discharge his onerous duties to
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safeguard the commercial interests of the Company against the onslaught of Portugese trading concerns and the antipathy of the Mughal rule to any foreign trade. This called for ability of management, qualities of leadership and strength of character on the part of the Governor so that he could be equal to the occasion in foreign land.

The second phase is marked by transition from commerce to statecraft when the Governor came to play significant political role in building up on the British Empire. With the gradual transition of the Company from a trading association to sovereign in the latter part of the 17th century, the Governor was invested with power of civil and military government. Besides looking after and promoting development of wealth and trade of the Company, the Governor now was to see that such a policy was followed as might constitute “the foundation of a large, well-grounded, sure English dominion in India for all time to come”. The policy particularly highlighted under the stewardship of Sir Josiah Child. The Charter of 1669 had already authorised the Governor to use and exercise all those powers and authorities intend to a Captain General of a army by virtue of the office. Subsequent Acts also conferred several important powers on the Governor. Thus by 1698 the Governors, who in the first few years were begging for the right to exist, began to “live in a regal State with a navy, a standing army, a militia, judges and a mint”.

The Charter Act of 1698, which regulated by and large the governance of the Company till the enactment of the Regulating
Acts of 1773, defined the powers of the Governor in still clearer terms. Each of the three Presidencies-Bombay, Madras and Calcutta-were placed under a Governor and a Council appointed by the Company. All powers were vested in the Governor and the Council Jointly, and every decision was to be taken by majority of votes. The number of members varied in each Presidency but it was normally between 12 and 16. All the Presidencies were made independent of the each other though they were enjoined to follow “the principle of mutual help and cooperation amongst them for the common benefit of the whole.” Since the Council was comprised of the senior civil servants of the Company, and since the decisions were taken by a majority of the members, the Governor was not more than “primus inter pares”. He could not overrule his colleagues nor was he expected to act on his own in any eventuality or to by pass the Council. When Warren Hastings became the Governor of Bengal, he complained in his letter to the Court of Directors that the powers of the Governor, although supposed to be great, are in reality little more than those any individual in his Council. However, there were some factors which put him in more advantageous jacket than his Councillors. He was the Commander-in-Chief of the forces of the Company and had the exclusive privilege of corresponding with the secret committee of
the Court of Directors which gave confidential instructions only to him for managing the affairs of the Company. The personal influence of the incumbent also mattered much in determining his position. A man of strong character, determination and imagination would certainly dominate the Council. Above all, the relations between the Council and the Court of Directors were worse than that of a slave and master. The Court of Directors never hesitated in insulting the Council. It led the Council to criticise its behavior.

The third phase is characterized by the formation of a central authority in the form of a supreme government and the consequent subordination of the Governor to it. The Regulating Act of 1773, which is regarded "as the basis of all subsequent legislations for determining the form of Indian government" and as "beginning of Parliamentary intervention", introduced "a policy of centralisation" depriving the Governors of their independent and absolute positions with in their limits. It reduced them to the status of an agent expected to act according to the direction of the central authority. The Act provided for the post of a Governor-General of Bengal with a Council of four members who had the power of superintending and controlling the government and management of the Presidencies of Madras, Bombay and Bencoolen (a settlement in the island Sumatra ). The President (i.e., the Governor )and the Council of those Presidencies were not to make war or negotiate treaties without
the consent of said Governor-General and Council except in case of imminent necessity.

The Governor-General was authorised to suspend the Governor and Councillors of the subordinate Presidencies for disobeying the Central government. The Presidencies were also required to send all needful information with regard to the affairs of the Company. All future appointments were vested in the Court of Directors. The Act of 1773 confined the above powers and the power of interference of the Governor-General and Council to matters of war and negotiations with native States, the Act of 1784 gave them the authority to control the war expenditure of other Presidencies. No doubt, as a result of this Act the position of the Governor improved, as he was granted the right of a casting vote, but the power of the Governor-General to suspend Governors and Councillors of other Presidencies gave him complete authority of control over them.15

This centralising trend to some was only a matter of theoretical importance. In practice, the extent to which the Central government could “superintend, direct and control” the regional governments was limited by the two primary factors.16 First, the distance between the Central government and the Presidencies in making communications were slow and uncertain at that time, provincial governments had to take steps to meet certain exigencies without awaiting the approval of the Central government. Secondly, the huge volume of business involved make it quite impossible for any central authority to control the day-to-day administration of all the territories placed under its
superintendence and control. There is no doubt that the Act was intended to establish the supremacy of the government but gave to the Governor-General 'so shadowy a control' over the subordinate Presidencies that he was little more than first among equals. Thus, the power of superintendence, direction and control were exercised in matter of policy rather than of current administration. According to Philip Woodruff, the provisions of the Act were equally to blame, as they gave the Governor-General so shadowy a control over the Governors of Madras and Bombay that he was little more than first among equals. For example, the Governors were under the control of the Governor-General with regard to the declaration of peace and war, but the exceptions laid down to this rule were so wide as to rendered it nugatory. Some subsequent Acts also enhanced the power of the Governors. On the recommendation of the Lord Cornwallis, the Governor-General, the Governor of a Presidency was authorized to overrule his Council. The Charter Act of 1793 vested in the Governors "a discretionary power of action without the concurrence of their respective Councils."

The same Act empowered the Governor and Council to send dispatches directly to the secret committee of the Court of Directors. It is true that Governor-General still continued to superintend and control other Presidencies, but the latter were to obey the orders only if they were not repugnant to instructions from England. In 1807 the Governors of Madras and Bombay were empowered to issue regulations and Act of 1830 gave them power of taxations. But the centralising tendency continued to
grow, and in the Charter Act of 1833 the control of the Central
government was asserted much more distinctly than in previous
Acts. Under the Act the Governor-General of Bengal became the
Governor-General of India and his government for the first time
came to be known as Government of India. Its authority became
coeextensive with the area of British possessions in India.\(^{20}\) The
Act took away from the provincial governments the power of
making laws. They were given the right of only submitting drafts
or reports of any laws or regulations, which they thought
expedient. The Governor of a Presidency could act as an
extraordinary member of the Council of Governor-General when
it assembled there. Section 59 of the Act, prohibited the
Governor of a Presidency to make or suspend any regulations,
except in cases of urgent necessity, with the approval of the
Governor-General-in-Council. It was also provided by the Act
that he could not grant any salary, gratuity or allowance without
the approval of the Governor-General-in Council. The Governors
of the subordinate Presidencies were put entirely under the
control of the Governor-General in the sense that he was to obey
the instructions of the Governor-General in all points relating to
the civil and military administrations. The Governors were also
required to send true copies of their orders to the Governor-
General and other information which the Governor-General
thought essential in the interests of the Company.\(^{21}\) Provision
was also made that the Court of Directors could, after the
passing of the Act, declare that the Governor-General of India
would not be Governor of the Presidency of the Fort William in
Bengal and a separate Governor would be appointed for the said Presidency. But only a Lieutenant-Governor was appointed, who was though for the meantime only. The India's first war of Independence started in 1857, the Act of 1853 remained in operation with some minor changes introduced by the Government of India Act, 1854. Under Section 4 of the Act of 1854 the Governor-General was empowered to limit the powers of the Governor-in-Council, Governor, or Lieutenant-Governor of Bengal or Agra or the North-West Provinces, who was then or might be thereafter appointed.

The fourth phase which provide the office of the Governor with a political setting which allowed it to acquire some of its modern characteristics. The Governor had the opportunity to function, at least in theory, with a legislature and also with some native elements. It is true that when the Government of India Act, 1858 was being enacted for transferring the government of India from the Company to Crown, Lord Palmerston, the Prime Minister, declared that the proposed Act would be confined entirely and solely to "a change in the administrative organization at Home" and would not bring "any alteration in the existing arrangement in India". Two executive Councillors were appointed by the Crown, to assist the Governor. Thus, the Governor hereafter became an appointee of the Crown. He continued to function with Executive Councillors appointed by the Crown and also retained the power to overrule them. He now came to possess the right of direct access to the Secretary of State of India, though he still had to work under the Governor—
General. As matter of fact the disappearance of the East India Company marked a change rather in the form of government than in the substance of policy. After a period of nearly three years of the direct rule of the Crown, the British government introduced the Indian Councils Act of 1861, which is said to contain the first seeds of representative institutions in India. "It laid the foundation of the policy of legislative devolution" and thereby enhanced the powers and functions of the Governor. The power of making and amending laws, which was taken away from him by Charter Act of 1833, was restored to him by the Act of 1861. The importance of the Act remains in the fact that native of India secured seats in the Council.

The Governor had the power to nominate these additional members who were to be "not less than four nor more than eight in number" and of whom not less than one half were required to be "non official" and who were invariably Indians. He was also empowered to summon any person as additional member if a vacancy occurred and to determine time and place of meeting of the legislative council, to adjourn it and to make for conduct of business at its meetings. He was to preside over its meetings and had a casting vote. No member could introduce "any measure affecting the public revenues" without the previous sanction of the Governor. The latter could give his assent to or withhold his assent from any bill. It is thus clear that the Indian Councils Act of 1861 attempted at mitigating the grievances of the Governors who held the doctrine that the interference of the government was indefensible in principle, as it militated against the practice
of local self-government. However, the Governors continued to function in subordination to Governor-General in Council. The laws passed by the Governor-General’s legislative council could ‘control and supersede’ laws passed by provincial governments. On the one hand, the powers of legislation were restored to the Governors and on the other, effective restrictions were imposed on them. The Governor had to look always to the Governor-General for performing his legislative functions, because the latter had the authority to disallow any measure even after it had received the assent of the former. No measure could become valid until it received the assent of the Governor-General.

Subsequent Acts could not bring about any substantial improvement in the position of the Governor. The Indian Council Act of 1870 empowered the Governor to propose to the Governor-General in Council, drafts of any regulations together with the reasons for proposing the same, which are being approved by the Governor-General in Council, became laws. The Indian Councils Act of 1871 gave a new impetus to the local governments by empowering the Governor-in-Council to propose to the Governor-General in Council drafts of any regulations for the peace and good government of any part, and by giving the local legislatures the power to amend and repel certain laws. It was the outcome of a decision of the Bombay High Court in R.V. Reay. As the Indian Council Acts of 1861, supplemented by the Act of 1871 could not meet the aspirations of the people, and as the national sentiments under the directions of the Indian National Congress began to take a new shape among the liberal
spokesmen, the demand for introducing new reforms assumed a fresh dimension. Therefore, the British Government enacted the Indian Council Act of 1892. George Curzon, the future Viceroy of India, as under Secretary of State of India while moving the measure in the House of Commons on March 1892 said; the object of this Bill is to widen the basis and to expand functions of the Government of India, to give further opportunity than at present exists to the non-official and native elements in Indian society to take part in the work of government. Thus, the Indian Council Act of 1892, though increased the number of members of the provincial legislative council, imposed restriction on the Governor by providing that the Governor-General might make regulations regarding nomination of the members to the legislative council by the Governor.

After having sown the seeds of communalism, the British Government enacted the Indian Council Act of 1909, based on the underlying idea of Morley-Minto changes, aimed at making substantial advance over previous enactments. All the legislative councils were enlarged, and all were given substantial elected element. The councils were also given the right of discussing questions of public interest. This provided the members of the council with some opportunity of exercising influence on questions of administration and finance and of making the Governor feel responsive. But this Act also could not do away with the element of a high degree of centralisation.

The relaxation of Parliamentary control had not been contemplated, the government of India could not relax their
control over local government. The government of India directly administered not less than two-thirds of the entire revenues of the State. The Central government exercised legislative and administrative control over the provinces. The Governor had to secure assent of the Governor-General on all the bills passed by his Council and had to act strictly according to instructions which were issued by the Central government regarding the vital matters of administrations. Thus before the introduction of the Montagu-Chelmsford Reforms, Governors functioned practically as the 'agent' of the government of India though they tended to be autocratic in their internal administration, which was tempered by the provision of the legislative councils.

The main features of the Act of 1909 were as follows:

- The official majority in the Provincial Legislative Council was abandoned, at least in theory.

- The size of these bodies was enlarged up to a maximum to 50 additional members in the large provinces and 30 in the smaller. The greater part of these additional members were non-official who were to be elected either by groups of local authorities, trade associations or Universities; and

- A special representation was given the Muslim community.

Undoubtedly, it was a distinct advance over the previous Acts, but, except in Bengal, the Governor could have a working majority in the Legislative Council at his beck and call in every Province. For example, there were forty-six members in the
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Legislative Council of Bombay, out of which there were twenty-one elected, seven nominated non-official and eighteen officials. In this way, the Governor had the support of twenty-five in a House of forty-six. In Bengal, the situation was somewhat different. In a House of fifty-two, the Governor had the support of twenty officials and four nominated non-officials. As such, he could have been overridden by his Council.

So far as the control of the Centre over the provinces was concerned, that remained unmitigated. The Governor-General, subject to the approval of the Secretary of State, had the power to make regulations as to the conditions under which and manner in which persons resident in India were to be nominated or elected as member of the Legislative Councils of Governors. The Central government still kept the power of scrutinizing and altering the provincial budget. Besides, the rules made by the Governor in regard to the discussion of the annual financial statement, matters of general public interest and the asking of questions, were subject to the sanction of the Secretary of State, and the Legislative Council could not alter or amend them. The Secretary of State was empowered to determine the number of ordinary members of Governor’s Executive Councils. Since all the powers remained in the hands of the Governor subject to the authority of the Secretary of State, the non-official majority in the Legislative Councils proved quite “illusory.” The Legislative Council, whether Supreme or Provincial, were nothing but advisory bodies without any power of effective control over the
Government, Imperial or Provincial. It may be said that the Act of 1909:

*Envisaged a Presidential type of Government in which the President could be assured of perpetual majority in the Legislative Council and in case of necessity ignore the Legislative Council altogether. That is the Governor-General and the Governors were as independent of their Legislative Councils as they were of their Exclusive Councils.*

As a matter of fact, the Minto-Morley Reforms were not intended to serve as a measure of self-government. Their only object was to associate Indians in a larger measure with everyday administration. Sir S.P Sinha, who was the first Indian member of the Viceroy's Executive Council, said that:-

The Morley-Minto Reforms though a distinct advance gave Indians in the Legislative Councils only influence and not power. Power is different from influence and what we need is a steady increase of power to determine and to control policy. Thus before the introduction of the Montagu-Chelmsford Reforms, Governors functioned practically as the 'agents' of the government of Indian though they to be autocratic in their internal administration, which has tempered by the provision of the legislative councils.

The government of India interposed till more directly in the provinces under the Lieutenant-Governors than in those under the Governors-in-Council. The plan of having a Lieutenant-Governor was adopted because it was cheaper and also because
it left "the Governor General a greater share of authority in such a province. While the Governor was an appointee of the Crown, the Lieutenants Governor was appointed by the Governor-General in Council with the approval of the Crown in accordance with the Charter Act of 1853. The Governor-General was only to see person appointed as the Lieutenant Governor had been, at the time of appointment, at least ten years in the service of the Crown in India. Otherwise, with the approval of the Secretary of State in Council, he might declare and limit the extent of authority of any Lieutenant-Governor. Besides being inferior in emolument and dignity to the Governor, the office of the Lieutenant-Governor different in yet another respect. He was not associated with an Executive Council till 1912 when a Council was constituted only for Bihar and Orissa, other Lieutenant-Governors still being left without such a Council. This made the interference of the Central government in the affairs of a Lieutenant-Governorship look more plausible.

But Chesney maintains that in reality there was no difference between a Lieutenant-Governor and a Governor, particularly when the latter ceased to be head (little more than nominal) of the administration of an army. Under the Charter Act of 1853, the Lieutenant Governor, like his counterpart in the Presidency, was to nominate one member for his province on the Council of the Governor-General. The Indian Councils Acts of 1861 enable both the Governors and the Lieutenant-Governors to act as additional Councillors when Executive Council assembled within their jurisdiction.
The Act further authorised the Governor-General-in-Council to extend the provisions regarding the Constitution of legislative council, in the Presidencies to the Lieutenant-Governorships of Bengal, North Western Provinces and the Punjab and empowered the Lieutenant-Governors to nominate the Councillors. The council Act of 1909 also treated both the offices on equal footing when it provided for the enlargement of their councils and the inclusion of elected members in them. The Lieutenant-Governors were now to have Executive Councils, if the Governor-General in Council deemed it necessary. The Government of India Act, 1915 required, in identical terms, every local government to obey the orders of the Governor-General in the Council and to keep him constantly and diligently informed of its proceeding and of all matters which should, in its opinion, be reported to him, or as to which he required information, and was declared to be under his superintendance, direction and control in all the matters relating to the government of its province. With the passage of time the difference became, so nominal that the Government of India Act 1919 converted the post of the Lieutenant-Governor in many provinces into that of the Governor.

The fifth phase, which began with the enactments of the Government of India Act, 1919, attempts were made to reorient the office of the Governor to meet the requirements of constitutional reforms. The cordial features of all the previous phases were:
• The concentration of authority at the Centre and its dominance over provinces;
• The ultimate responsibility of the British Parliament for the whole of the Indian government;
• The supremacy of the executive, i.e. the Governor in the field of administration as also that of legislation.

Though the ultimate responsibility still rested with the British Parliament. This Act witnessed the introduction, of a modicum of responsibility into the working of the government made possible by the constitutional arrangement called “Dyarchy”39. The Act of 1919 aimed at the gradual development of self-governing institutions in India “with a view to the progressive realisation of responsibilities government” and further the purposes of this Act is to enhance the responsibilities of the Governor. In addition, a major attempt was made to initiate a policy of devolution as a means of giving greater scope to the provincial governments and of forming half-way house between the old centralism and federalism. The Governor was, therefore, expected to play the role of a head of the State. The Governors of Bengal, Madras and Bombay continued to be appointed by the Crown, and were usually chosen from among persons of high rank and administrative experience in Great Britain, while those of other provinces were appointed by the Crown after consulting the Governor-General.40 Under the new system of ‘dyarchy’, the Governor occupied a unique place in both parts of the executive “transferred” and “reserved”. He and
his Executive Council were in charge of what were known as 'reserved' subjects, whereas 'transferred' subjects were put under the Governor and his ministers. Though the Governor has no say in the appointment of the Executive Councillors, the latter were responsible to him. He presided over meetings of the Executive Council and had a casting vote.

With regard to the administration of the 'transferred' subjects, the Governor was empowered to appoint, by notification, ministers who were or were to become within a period of six months members of the legislative Council. Such ministers hold office during the pleasure of the Governor though ordinarily the latter was to dismiss them only when they lost the confidence of the legislative council. Ministers who enjoyed the confidence of the majority in their legislative council were to be given fullest opportunity of managing that field of government, which was entrusted to their care. The Governor was instructed to be always "guided by the advice of his ministers", but when he saw sufficient cause he could "dissent from their opinion" and was required to taken action "otherwise than in accordance with that advice". The Governor, thus, was not expected to occupy the position of a purely constitutional head of the State, who was bound to accept the decisions of his ministers. As a matter of fact his position was "one of great responsibility and difficulty and also of great opportunity and honour". He was expected to hold the balance between divergent policies and different ideals "to encourage the deliberations" between himself, his Councillors and his
ministers. He was empowered to make rules and order for the more convenient transaction of business of the Presidencies.

The Governor under the said Act was enjoined with important legislative powers. Although he was not to be a member of the legislative council, he appointed the time and place for holding its session and could prorogue it by notification or otherwise. He had the right to address the council and for that purpose he might require the attendance of its members. He nominated some members of legislative council who are associated with special knowledge and experience. No bill passed by the legislative Council could become law until it had received the assent of the Governor. He might withhold his assent from the bill, return the bill to the Council for reconsideration or reserve the bill for the consideration of the Governor-General. No motion for the appropriation of any provincial revenue could be made, except on the recommendation of the Governor communicated to the council.

The Governor was further invested with an extraordinary power of legislation. If a Governor's legislative council refused leave to introduce, or failed to pass in the form recommended by the Governor, any bill relating to a reserved subject, the Governor might certify that the passage of the bill was essential. The bill then become an Act after it was signed by the Governor, though the latter had to send an authentic copy of every Act, made in that way to the Governor-General who secured the assent of His Majesty-in-Council to it. The Governor, thus, held almost an autocratic position, which in turn made the policy of "progressive
realisation of responsible government” a hoax. He was made in effect a constitutional dictator in the province and Dyarchy could be tempered only by frequent exercise of his powers. Since the Governor had important powers with regards, to the formation of the legislative council, he could manipulate minister’s majority there and could make the minister behave according to his wishes. It is important to note that the Government of India Act, 1919 did not materially affect the centralized nature of the polity. The Governor still continued to function under the “superintendence, direction and control” of the Governor-General. He was responsible to the latter for the good governance of both the parts of dyarchy. There were a large number of enactments where powers were reserved to the Governor-General in Council or were exercised by provincial governments subject to his sanction or control. Proposals of provincial governments required in many cases the sanction of the government of India. The Governor was obliged to reserve certain number of bills for the consideration of the Governor-General who might withhold his assent and reserve them at his end for the signification of His Majesty’s pleasure thereon.

The last phase in the evolution of the office of the Governor during pre-Independence India was the most crucial in as much as the dimensions acquired by it at this stage, constituted the base of the office of the Governor as constitutional head of the State. The Government of India, Act 1935 on the recommendation of India Statutory Commission (Simon Commission) of 1929 wanted to complete the process of
devolution and to make each province "as far as possible a mistress in her own house." It introduced certain new principles the federal principle with its corollary of provincial autonomy and the principle of popular responsible government in the provinces subject to certain "safeguards" as they were called in political parlance in India. The role of the Governor, therefore became twofold he was to act as a 'constitutional' head of an autonomous province providing the Premiers with a scope of becoming the "effective heads of "provincial administrations," and also as an agent of the Central government. He was to exercise the executive authority of the province on behalf of the Crown in his name on aid and advice of the Council of Ministers. He was, however, authorised to act in his discretion and also in his individual judgment. He was, thus, not bound to accept the advice of the Council of Ministers and the question whether any, and if so what advice was tendered by ministers to the Governor, was not to be enquired into in any court. On the question whether any matter was or was not a matter regarding which the Governor could act in his discretion or exercise his individual judgment, his decision was to be final and the validity of any thing done by him was not to be called in question. He might require the Council of Ministers to transmit to him any information with respect to the provincial government. In the exercise of his functions, the Governor had certain 'special responsibilities' such as prevention of any grave menace to the peace or tranquillity of the province, protection of rights and legitimate interests of minorities, government servants and also
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the rulers of the Indian States, prevention of unfair discrimination against British interests, securing of the peace and good government of ‘partially excluded areas’ and securing of the execution of orders or directions lawfully issued to him by the Governor-General. The Act armed the Governor with yet another special power. If it appeared to him that the peace and tranquillity of the province were being endangered by persons engaged in violent activities, he could act without consulting the Council of Ministers and direct that sources of information relating to such activities of violence should not be disclosed to others, not even to minister.\textsuperscript{52} The Governor, acting in his individual judgment, was to make amend or approve any rules, regulation or orders relating to police force. He had important legislative powers. He was empowered to summon and prorogue the provincial legislature. He could dissolve the lower House in his discretion could address both Houses and send massage to them. A bill passed by the provincial legislature was to be presented to the Governor who could either give or withhold his assent to the bill or reserve it for the consideration of the Governor–General. He could stop the discussion of any measure, if he considered such a course necessary for the proper discharge of his special responsibilities. Besides these ordinary legislative powers, the Governor was given some extraordinary powers of law making. During the recess of the legislature, if he was satisfied that circumstance existed which rendered it necessary to take immediate action; he might promulgate an ordinance which required subsequent approval of the legislature.
The Governor had the power to issue a second type ordinance, which did not need the approval of the legislature. Such an ordinance could be promulgated, when the Governor considered an immediate action necessary to discharge his functions in his discretion or to exercise his individual judgment. The Governor had yet another unusual power of passing permanent "Governor's Act" to facilitate the discharge of his discretionary functions or the exercise for his individual judgment. Every such Act be required to be communicated to the Secretary of State, through the Governor-General and was to be laid before both the Houses of Parliament. Each Governor had a power, similar to that of the Governor-General, to include in the schedule of authorised expenditure a sum necessary to secure the due discharge of his special responsibilities. This power was however, to be exercised after a demand had been made and the legislature had either refused it or had assented subject to reduction. No financial bill was introduced except on the recommendation of the Governor. He could also declare in his discretion, but with the concurrence of the Governor-General, the breakdown of the Constitution in the province, whenever he was satisfied that a situation had arisen in which the government of the province could not be carried on in accordance with the provisions of the Act. Under such a situation, he might proclaim that his functions, to such an extent as might be specified in the proclamations, would be exercised in his discretion and that he would assume to himself all or any of the powers vested or exercisable by any provincial
body or authority except those exercisable by the High Court. That proclamation might even contain any such incidental and consequential provisions as would appear to him necessary for giving effect to the object of proclamation.\textsuperscript{54}

The inclusion of the Instrument of Instructions\textsuperscript{55} in the Government of India Act, 1935 was however, intended to encourage the working of responsible governments in the provinces and thereby to put limitations on the enormous powers of the Governor. The Governor was instructed to appoint that man as the Chief Minister who was likely to command a stable majority in the legislature. Other ministers were to be appointed by him on the advice of the Chief Minister, though he was to ensure, as far as practicable, the representation of the members of important minority communities in the Council of Ministers. He was required to be guided by the advice of his ministers. It is true that legally he could discharge his functions in exercise of his discretion or individual judgment even without consulting or accepting the advice of his ministers, but the legal disabilities were expected to be subordinated constitutional conventions. It was regarded to be the sacred duty of the Governor to support “frankly, honorably, and with all his might, the ministry of time, whatever it may be, so long as it commands majority and governs with integrity for welfare of the country”. It, thus, freed the Governor from all responsibility for the acts of the executive and legislature and gave full play to the constitutional maxim that the “king can do no wrong”.

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The Governor continued to hold a dominant position under the Act of 1935. The Instrument of Instructions, which breathed a spirit of compromise to further ministerial responsibility and responsible government, was after all “dependent on a gentleman’s understanding”, it could not be enforced in a Court of law. The special power conferred on the Governor and his power to act in his discretion and in his individual judgment placed him in a position so as to control the strings of provincial administration in all three spheres legislative, executive and financial. This was more so in non-Congress provinces where coalition ministries were formed, and the Governors actively intervened in the working of responsible government. Such ministries lacked the support of a workable majority in the legislatures and had therefore to depend on the help of the Governors and the civil service. The relationship between the Governors and ministers was seemingly smooth: but when the Governor of Sind terminated the services of Premier Allah Bux on October 10, 1942 and the Governor of Bengal literally forced Premier A.K. Fazlul Haq to submit his resignation in March 1943, the cat was out of the bag. There were loud protests against the arbitrariness of the Governors and Shyama Prasad Mukherjee, Minister of Finance in Bengal, had to observe that the Governors had “interfered with the work of the ministry and had rendered so called provincial autonomy into meaningless farce”. The coalition cabinets acted as a democratic facade which the Governor ruled through the bureaucracy. The very first act of the Governors in the provinces where the Congress
party was in majority in the legislatures was in, the words of B.P. Singh Roy (President Bengal Legislative Council), "unconstitutional when they obtained minority ministries and allowed them to function nearly five months".

In the Congress provinces, responsible government functioned more or less smoothly for some time and the Governors had hardly any occasion to interfere in their working. Four factors accounted for the non-interference by the Governors in the functioning of Congress ministries:

- The Congress party in provincial legislatures was highly disciplined and subject to the unified control of the Central Parliamentary Board;
- The party was in absolute majority in the provincial legislatures, and, therefore, the Governor was bound to summon the leader of the Congress party to form the ministry; he had no occasion to withdraw his pleasure whenever he wished;
- The Congress party formed homogeneous cabinets to foster the principle of Joint responsibility and refused to form coalition cabinets with the Muslim League and other parties; and
- The Congress High Command has made it a condition of office-acceptance that the Governor must assure and publicly state that he "would not use his special powers of interference or set aside the advice of ministers in regard to their constitutional activities." The party had been
assured by Lord Linlithgow, the Governor-General, that there was no foundation for any suggestion that a Governor would have power to interfere with the day-to-day administration of a province. Therefore, so long as the Congress party remained in power, the Governors wisely refrained from exercising their special powers of interference. The Congress party in its fifty-first session gladly admitted that "a measure of cooperation was extended by the Governors to the ministers".

But the Governors never tended to become mere ceremonial heads, and there is a grain of truth in the complaint of N.B. Khare, the Congress Premier of the Central Provinces, made at a public meeting in Poona on 22nd of December 1937, that the old Dyarchy was still in existence and the Governor of the provinces, armed with powers of the special responsibilities individual judgment and discretion, sat as the agent of British Imperialism to hamper the progress of Congress ministries.

As a matter of fact, a covert tension between the Governor and the ministry was going on in every Congress province, and clashes and constitutional crises were avoided only with great caution and tact. For example, in 1938 the Premiers of Bihar and United Provinces, Sir Krishna Sinha and Govind Ballabh pant respectively, insisted on the release of political prisoners, but their Governors disagreed. Left with no option, the two ministries resigned on February 1938 alleging the Governors of interfering in the provincial administration against the letter and the spirit of the Constitution. Few days later, however, the
Governors and the Chief Ministers arrived at 'agreed conclusion' and the ministries withdrew their resignations. Similarly, in Orissa the threatened constitutional crisis created by the declaration of intention of the ministry to resign if J.R. Dain, Revenue Commissioner of Orissa, was appointed as acting Governors during the absence the Governor, Sir John Hubback, was averted by cancelling the leave of the latter. When the Congress ministries resigned on account of the differences between the Congress party and the British government over the issue of India's participation in the Second World War, the Constitution was suspended and the administration was taken over by the Governors.

The concentration of authority in the hands of the Governor-General and his domination over the provincial governments through the Governors also detracted a good deal from the functioning of provincial autonomy. The Act provided that whenever a Governor would act in his discretion or exercise his individual judgment, he would be “under the general control of, and comply with such particular directions of the Governor-General in his discretion”62 The Governor while promulgating ordinances and enacting Governor's Act was to communicate each one of them to the Secretary of State through the Governor-General, providing the latter a wide scope for interference. Under section 123 of the Act, the Governor-General was at liberty to require Governors “to discharge certain functions as his agent.” It was also expressly laid down that the executive authority of every province was to be so exercised as not to impede or
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prejudice the exercise of the executive authority of the federations and the latter was to extend to the giving of such directions as might appear to it to be necessary for the purpose. It was also necessary to have the previous sanction of the Governor-General for introducing certain legislative proposals and the Governor were also to reserve certain number of bills for the assent of the Governor-General. It was expected, however that working of the federal scheme would act as a check on the exercise of overriding powers by the Governor-General. But since the scheme itself could not come in operation owing to the antipathy of the Princes toward the formation of a federation, the nature of the Constitution remained unitary, and the provincial governments operated under the direction and control of the Governor-General as strictly as before.

Commencing his career as the manager of trading corporation, the Governor soon took on the role of territorial ruler concerned primarily with consolidation of the military conquests of the East India Company which was moved by political ambitions to expand and safeguard its trade and commerce. The Governor throughout the administration of the British in India remained the most trusted autocratic provincial agent and representative of the centralised British polity, though the gradual introductions of self-governing institutions a concession in Indian nationalist aspirations tended to modify the structure of his office to meet new situations. The building upon the provincial administration which came to enjoy considerable area of powers devolved from the Central
government was effected around the office of the Governor. But the ethos of the office remained throughout bureaucratic and the Governor continued to embody the attitudes and notions, which had become closely identified with his office. With the passage of the time the Indian independence Act, 1947, the British rule in India came to an end and India became an independent and sovereign country, it also resulted in some sort of changes in the office of the Governor. Though India continued to be governed by provisions of Act of 1935, the Governor-General was empowered to make amendment in the provisions up to 31st March 1948. Thereafter, the Constituent Assembly, which was not subject to any limitations whatsoever, could modify the same. By the time of the Indian Independence Act, 1947, became effective, the Governor in various States tendered their resignations to the Governor-General to be effective from 15th August 1947. Except Madras, Bombay and Assam fresh appointments were made in every province. The appointments of these Governors were approved by the king-Emperor. Infact appointments were made by the Congress High Command in consultation with the Premiers of Provinces. The special responsibilities of the Governor that existed under the Government of India Act, 1935, began to disappear from the Indian political system speedily. As a matter of fact as stated by an official spokesman, the full responsibilities devolved on the Premier of the Province, being the administrative head. By the time the new Constitution came into existence on 26th January 1950, no significant change was introduced in the office of the Governor.
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References:


4. The General Council consisted of all the members of the Company. But there was power to admit ‘other’, doubtless on the terms of their offering suitable contributions to the adventure of the Company. Sir Courtenay Ilbert, *The Government of India*, The Clarendon press, Oxford, 1907, p.7.


24. The Indian Council Act, 1871, Section 1.

26. The Indian Council Act, 1892.
27. The Indian Council Act, 1909.
28. Ibid., Section 6.
29. Ibid., Section 5.
30. Ibid., Section 2 (1).
34. The Charter Act of 1853.
35. Ibid.
36. The Indian Council Act, 1861.
37. The Indian Council Act, 1909.
38. Ibid.
39. Dyarchy was a system of double government. The 'provincial subject' was divided into two classes—the "reserved" subjects and the "transferred" subjects. With regard to 'reserved' subjects the Governor exercised control through the Executive Council and was responsible to the Governor-General in Council. The 'transferred' subjects were administered by the Governor and his ministers.
selected from among the members of the provincial legislative councils and were responsible to the latter.

41. Ibid.
43. The Government of India Act, 1919.
45. Ibid., p. 54.
47. Ibid.
49. Ibid., p. 236.
52. Ibid.
53. Ibid., Section 89.
56. Ibid., pp. 189-198.

57. Sir Maurice Gwyer and A.A. Appadorai, op.cit., p. 404.


63. Ibid.