In this chapter, position of Governor and Central intervention in Provinces is discussed since the establishment of East India Company. During the British regime in India, the holders of the highest executive offices were named as Viceroy, Governor-General, Executive Councillors, and Governor. Among all these names, only one survives after the commencement of the constitution and that is the "Governor". The names of all other high executives have changed. In place of Viceroy and Governor-General, we now have the President or Rashtrapati. In place of Executive Councillors, we have the Prime Minister, the Chief Minister and other Ministers.

(A) POSITION DURING EAST INDIA COMPANY'S ADMINISTRATION

The origin of the institution of Governor can be traced back to the establishment of the East India Company under a charter issued by Queen Elizabeth I in 1600. Its rights and privileges were renewed and supplemented from time to time. In 1698, William III issued a charter on constituting a new joint-stock Company named English Company trading into the East Indies.

withdrawing the privileges of the old one. However, the two merged in 1709 to form the united Company of merchants of England trading to the East Indies, which was given the short name as the East India Company² in 1833, which was destined to establish British rule in India.

During the rule of the East India Company, the Governor did not enjoy any real power, but with the passage of time, his office underwent a significant change. The charter of 31st December, 1600 provided for the establishment of the office of the Governor with a view "to have an integrated and coherent management, control, direction and handling the business of the Company in India."³ Thomas Smith, Alderman of London, was appointed the first Governor.⁴ The Governor and the Council were also vested with executive, legislative and judicial powers. The Charter allowed them:-

(a) "to use any trade route and to have an exclusive right to trading with power to grant licenses to trade, unauthorised traders being liable to forfeiture of all their belongings and to other penalties;

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3. Supra note I
(b) 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;

(c) to impose such fines or penalties as might be necessary for enforcing these laws."\(^5\)

Thus the Governor in Council was vested with the executive, legislative and judicial powers. They were also under an obligation to safeguard the interests and benefits of the British Kingdom.\(^6\)

With the extension of the powers of the Company by the Charters of 1609\(^7\), 1615\(^8\), 1623\(^9\) and 1657\(^10\), the Institution of

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5. Supra note I p.11.
7. By the Charter of 1609, the privileges of the Company were made perpetual, subject to revocation after three years' notice on proof of injury to realm. (See, Banerjee, Anil Chandra, "The Constitutional History of India," Vol.I, p.5).
8. By the Charter of 1615, the Company was authorised to issue Commissions to their captains with the important proviso that in capital cases a verdict must be found by a jury (see Keith, A. B., "A Constitutional History of India," ed. 2nd, p.6).
9. By the Charter of 1623, the power of the Company was extended by authorising it to grant Commissions to their presidents and chief officers for the punishment of offences committed by the Company's servants on land, subject to the same provision for trial by jury in capital cases (Keith, A.B., Ibid at p.7).
10. By the Charter of 1657 the Company was established on a regular permanent joint stock basis, and voting power at its meetings was accorded to each member on the basis of one vote for every of 500 subscribed by him (Keith, A.B. Supra at p.8).
the Governor also became important. However, these charters did not alter the basic position of the Governor as envisaged in the charter of 1600. Certain civil and military powers were conferred upon him to enable him to deal efficiently and effectively with the problem of law and order. Charles II's Charter of 1661 re-organised the Company on the joint-stock basis and considerably extended its privileges. It was given "power and command" over its fortresses. It was empowered to appoint Governors and other officers for their administration. ¹¹ The territorial Character of the Company was thus recognised. After laborious investigations made by the Select Committee, the House of Commons decided to base the legal status of the Company on a Royal Charter granted in 1698, which gave the Governor and the Council authority to exercise civil and criminal jurisdiction at their settlements, and to maintain troops for their defence. ¹² Though in view of the fact that the Portuguese were jealous of any foreign commercial Company the powers of the Governor were inadequate, yet it remains a fact that the Governors who, in the very beginning, were begging for the right to exist, started to lodge "in a regal State with a navy, a standing army, a Militia, Judges and a mint." ¹³

¹¹ Banerjee A. C., "Indian Constitutional Documents", ed. (1945), P II.
¹² George Chestney, Indian Polity - "A view of the system of Administration in India" (1870), 2nd ed. P.12.
In the 18th century the East India Company became a great political power because it had acquired full control over the three Presidencies of Madras, Bombay and Calcutta. These Presidencies, no doubt were independent of one another, but they had been co-operative in the event of an emergent situation.

The next important stage in the growth of the Company's territorial power was marked by the Charter of 1726. It authorised the establishment or reconstitution of municipalities at Madras, Bombay and Calcutta, and of Mayor's courts at each of these places. The Mayor's Court was to have civil jurisdiction, subject to an appeal to the Governor or President in subject to an appeal to the Governor or President in Council, and a further appeal in more important cases to the King in Council.14 The Charter made provision also for the power of subordinate legislation. The Governors and Councils were empowered to make by-laws and ordinances for the several corporations, subject to confirmation by the court of Directors, provided they were not contrary to the laws of England.15 The Crown thus established in India itself a subordinate power of legislation which was destined to supersede the authority in this regard vested in the Company itself.16

15. Ibid p.15.
However, the necessity to establish a central authority was badly felt by the Company to deal with two fronts, the warring native Rulers on the one hand and the French on the other. Apart from it, the need for co-ordination among the three Presidencies was also essential as on several occasions they acted separately. The Governor no doubt, was the Head of the Presidency, but his position was weak as he had no over-riding power over his Council. The Governor, therefore, could not exercise his powers effectively. He was always obstructed by the superior servants of the Company. Hence, the collegiate rule adversely affected the interests of the Company. This was realised in 1762 when Vansistart, the then Governor, entered into an agreement with Mir Qasim to realise on an 'equitable basis the dues of the internal trade.' The need for the office of Governor General in India was hinted at by Lord Clive in 1764, but he refused to accept the new assignment. Similarly, Warran Hastings after assuming the office in 1772, experienced the same difficulty and he was, therefore, forced to write to the Court of Directors on November 11, 1773, that "the powers of the Governor, although supposed to be great are in reality little

17. It is proper to mention here that Hyderabad, Mysore and Marathas were fighting amongst themselves and against foreigners for supremacy.

more than those of an individual in his Council.\textsuperscript{19}

Lord Warren Hasting pleaded to the Court of Directors to create a central authority for wielding full control over all the Presidencies. Therefore, the British Parliament, while giving a definite Constitution to the Company's government in India, provided for a Central Authority under the Regulating Act of 1773.

Under the said Act, the office of the Governor of Bengal was upgraded to the office of the Governor General of Bengal. He was to be assisted by a Council of four members and they were given the power of superintending and controlling the Government and management of the Presidencies of Madras, Bombay and Bencoolen (a settlement in the Island of Sumatra.) The Presidencies of Madras and Bombay were made subordinate to the Presidency of Bengal in respect of war or treaty with any native Ruler.

The Act in particular provided that the "Governor and Council of Madras, Bombay and Bencoolen for the time being, share and they are hereby respectively directed and required, to pay due obedience to such orders as they shall receive, touching the premises, from the said Governor-General in Council for the time being."\textsuperscript{20} Under the Act, every Governor was required to send

\textsuperscript{19} Quoted in Muir, Ramsay, "The Making of the British India." 1756-1858 (1923), P.111.
\textsuperscript{20} Section 9, The East India Company Act, 1773.
regular reports regarding the matters of his Presidency. The Governor in Council could be suspended by the Governor-General in case of disobedience to his directions and orders. Under the Act, the position of the Governor General of Bengal was raised to superintend, direct and control the affairs of the Presidencies, yet the exceptions laid down to this rule were so wide as to render it nugatory.21

Under the regulating Act, 1773, a Governor-General and four Councillors were appointed to administer the Presidency of Fort William which became the supreme Presidency, and the Governor-General in Council subject to the orders of the Court of Directors was given the power to supervise the Governments of the Presidencies of Madras and Bombay. The Presidencies of Bombay and Madras could not make treaty or declare war without the consent of the Governor-General except in case of imminent necessity. The Governor-General was authorised to suspend 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.22

There is no doubt that the Act was intended to establish

22. Sec 9, Regulating Act, 1773.
the supremacy of the government at Fort William but gave to the Governor-General "So Shadowy a control" over the subordinate Presidencies that he 'was little more than first among equals.\textsuperscript{23}

The Montford Committee observed that the Act of 1773 'created a Governor-General who was powerless before his own Council, and an executive that was powerless before a supreme Court, itself immune from all responsibility for the peace and welfare of the country - a system that was made workable only by the genius and fortitude of one great man."\textsuperscript{24}

Above all, the powers of the Supreme Court were not defined and this led to clashes between the Governor-General and the Court.\textsuperscript{25} The hostile relations that existed between the Supreme Court and the Council perhaps explain the comparative absence of legislation during the period from 1773-1780, but by the end of 1780 the Council had triumphed, and Warren Hastings passed his Regulations for the administration of justice in Provincial Courts without regard to the Company's Courts.

Act of Settlement 1781, declared that the Supreme Court should not have any jurisdiction in any matter concerning the

\textsuperscript{23} Supra note 13. p.146.

\textsuperscript{24} Quoted in the Report on Indian Constitutional Reforms (Calcutta 1928, Para 30).

revenue or concerning any acts ordered or done in the collection thereof according to the practice of the country or the regulations of the Governor-General and Council. The Act provided that the Sadar Diwani Adalat will be the Court of Appeal to hear appeals from the county Courts in civil cases. Sadar Diwani Adalat was presided over by the Governor-General and Council. It was also empowered to hear and decide cases of revenue and undue force used in the collection of revenue. The Act authorised the Governor-General and Council to frame Regulations for the Provincial Councils and Courts.

As the administration of the Company was facing developmental retardness for want of harmony among various organs, and as the corruption was being exposed through a vehement criticism of the Company's affairs the Government of Great Britian proceeded further to enact the Pitt's India Act, 1784. The effect of this Act was two fold:

27. Ibid.
28. Section 22, Ibid.
29. Section 23, Ibid.
30. Fox called the Company's administration "a system of despotism unmatched in all the histories of the world." Burk, in 1784, denounced the Company as "one of the most corrupt destructive tyrannies that probably ever existed in the world." (Norman. D. Palmer, The Indian Political System, (1961) P.34
(I) It constituted a department of State in England under the official style of "commissioners for the affairs of India" whose special function was to "control" the policy of the Court of Directors.\textsuperscript{31}

(II) It reduced the number of members of the Council at Calcutta to three, of whom the Commander-in-Chief was to be one, and it remodelled the Councils at Madras and Bombay on the pattern of Calcutta.\textsuperscript{32}

The Pitt's India Act, 1784 enhanced the powers and position of the Governor General as the number of members of his Council was reduced to three. With the support of only one member in the Council of three, the Governor General could keep his ascendancy over the Council by the exercise of his casting vote. His position and stature, therefore improved as the Presidencies were kept under the control of the Bengal Presidency in matters relating to war and peace, transactions with the country powers or any other matter which might be specially referred to by the Court of Directors to their superintendence and control.\textsuperscript{33} In the event of defiance of central directions by the Presidencies of Madras and Bombay, the Governor General had the right to

\textsuperscript{31} Section 11, The East India Company Act, 1784.

\textsuperscript{32} Section 19, Ibid.

\textsuperscript{33} Section 20, and 22, Pitt's India Act, 1784.
suspend the Governors and their Councils. Thus, the two Presidencies were virtually made the agents of the Governor General-in-Council. According to G.N. Singh "The act of 1784 carried the unification of India one step further, it extended and defined the powers of the Governor General in Council over the Governors in Council of Madras and Bombay. Hence it was found that the main defect in the Act was that the Governors and Governor-General could still be overruled by their Councils. But as Ramsay Muir says, "as the number of Councillors was reduced to three, the Governor by use of his casting vote could always make his will predominant if he had one supporter". Had this provision existed earlier, it could have saved Hastings from being overruled by the majority in Council from 1774 to 1776.

When Lord Hastings retired, Lord Cornwallis was approached to accept Governor-General's office, but he insisted that the Governor-General should be given the constitutional right to overrule his Council. Consequently, three brief Acts were passed in 1786.

34. Section 35, and 36, Ibid.
35. Supra note 4, p.32.
36. Section 21 Pitt's India Act, 1784.
37. Section 19 Ibid.
The first Act provided that in future no one should be appointed a member of Council who had less than twelve years' service. It amended the provision of the Act of 1784 making the commander-in-chief the second member of Council and left it at the discretion of the Court of Directors to appoint him to such office. It empowered the court of Directors to unite in one person the offices of Governor-General and Commander-in-Chief. It conferred on the Governor-General and the Governors of Madras and Bombay the power to over-ride in special cases their respective Councils and to act on their own responsibility. This special power was confined to the executive sphere only, and to cases which, in the opinion of the Governor-General or Governor, involved the interests of the Company or the safety and tranquility of the British possessions in India, it did not extend to legislative or judicial business or taxation.

By the second Act of 1786, the provision of the Act of 1781, requiring the approbation of the Crown for appointment to the office of Governor-General, was repeated, but the Crown's power of recall was not taken away.

The third act of 1786 repealed the provision in the Act of 1784 requiring servants of the Company to disclose the amount of

40. Banerjee, Anil Chandra, op. cit. p.139.
41. Section 7, Act of 1786.
42. Supra note 40, p.140.
property which they had brought to England. It also amended the
Constitution and procedure of the special court to be formed
under the Act of 1784. The amended provisions were never put to
force.\textsuperscript{43}

Thereafter, the charter Act of 1793 was passed. The hurdles
felt under the Act of 1786 were removed. The Act of 1793 laid
down in the Act:

"The Governor General or Governor, who shall declare and
command any such order or resolution to be made and recorded
without the assent or concurrence of any of the other
members of the Council, shall alone be held responsible for
the same, and the consequences thereof.\textsuperscript{44}

Accordingly, the Act of 1793 empowered the Governor of the
two Presidencies to exercise "the discretionary power of
taking action without the concurrence of their respective
Councils with regard to matters affecting the safety and
tranquillity of their Provinces."\textsuperscript{45} Hence in such decisions the
Governors alone were to shoulder the entire responsibilities
for all their consequences.

This Act also authorised the Governor and his Council to

\textsuperscript{43} Ibid.

\textsuperscript{44} Section 47, Charter Act of 1793.

\textsuperscript{45} Banerjee, A. C., "Indian Constitutional Document", Vol. 1
P.149.
send despatches directly to the select committee of the Court of Directors in London over the Head of the Governor General of Bengal. The power of control exercised by the Governor-General over subordinate Presidencies was emphasised, and they were to obey the orders of the Governor-General in Council, if not repugnant to instructions from England. The Court of Directors still retained the power to appoint the Governors and members to the Councils from senior merchants of twelve years standing in India. The King of England was authorised to remove any servant of the Company.

Thereafter an Act of 1807 was passed. At this time although the Company was completely a centralized body, the Act of 1807 clothed the Governors at Madras and Bombay with legislative powers, subject to restriction and approval by the Supreme Court and Recorder's Court respectively. According to P. Mukherjee "the Governor at Madras first received legislative powers in 1800."

In 1807, the Governors of Bombay and Madras were given independent powers to legislate, and the Act of 1830 conferred

46. Ibid P.136.
47. Sections 25, 35, 40 and 41 Charter Act of 1793.
the powers of taxation on them. These powers resulted in the enactment of many contradictory laws in the two Presidencies, which caused many hurdles in the smooth functioning of the Governments at these places. To meet the problems, the British Parliament enacted the Charter Act of 1833 by which, "the control of the Supreme Government (Government of Bengal) was asserted much more distinctly than in the previous Acts."\(^{50}\)

Under the Act of 1833 the Governor General of Bengal became the Governor-General of India and his Government for the first time came to be known as the Government of India. Its authority became co-extensive with the area of British possession in India.\(^{51}\) 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 regulation 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.\(^{52}\) Section 59 prohibited the Governor of a Presidency to make or suspend any regulations, except in case of urgent necessity with the approval of the Governor-General in Council. It was also provided by the Act that he could not grant

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50. Supra note 12, p.60.
52. Section 66, Charter Act of 1833.
any salary, gratuity or allowance without the permission of the Governor-General in Council.\textsuperscript{53} The Governors of the subordinate Presidencies were put entirely under the control of the Governor-General in the sense that they were to obey the instructions of the Governor-General on all points relating to the civil and military administration.\textsuperscript{54}

The most important feature of the Act of 1833 - apart from complete centralization was that "no native of India shall, by reason of his place of birth, descent or colour, be disabled from holding any office under the Company".\textsuperscript{55} While commenting on this provision, Lord Morley said that the Act of 1833 was the most important Indian Act passed by the British Parliament till 1909,\textsuperscript{56} though no Indian could secure Governor's post through out this period.

Under the Act of 1833, the territorial possessions of the Company were continued under its Government for another term of twenty years.\textsuperscript{57} These were, however, to be held intrust for His Majesty, his heirs and successors, for the service of the Government of India.' This Act carried to its logical climax the

\begin{itemize}
\item \textsuperscript{53} Section 59, Ibid.
\item \textsuperscript{54} Section 65, Ibid.
\item \textsuperscript{55} Section 87, Ibid.
\item \textsuperscript{56} Singh G. N., op. cit. p.31.
\item \textsuperscript{57} Section 33, Act of 1833.
\end{itemize}
process of centralization initiated by the Act of 1773 and
developed by the Acts of 1784 and 1793. The Governor-General of
Fort William in Bengal became the Governor-General of India. He
was to be appointed by the Court of Directors, subject to the
approbation of the crown.58 He was to be Governor of Bengal,59
but he was empowered to nominate a member of his Council to be
Deputy Governor of Bengal 'invested with all the powers' and
entitled to 'perform all the duties' of the governor.60 His
special power to over-rule his council was reiterated.61 The
Governor-General in Council could assemble at such place or
places as might be appointed by the said Governor-General in
Council within the said territories; and whenever it assembled
within any of the Presidencies other than Bengal, the Governor of
the Presidency concerned was to act as an Extraordinary member of
Council.62

The sole motive of the Act was to establish a supreme
authority of the central government over other Presidencies. The
Act of 1833 left no room for doubt about the total subordination
of Madras and Bombay to the Governor-General in Council. Even

58. Section 42, Ibid.
59. Section 56, Id.
60. Section 69, Id.
61. Section 49, Id.
62. Section 50, Id.
then, the point was emphasized over and over again. Dalhousie, for instance, wrote that a Governmental machine controlling 'so large a mass of territory, of population, and of revenue' could never be safely worked unless there be unity of authority and of purpose in the direction of it.' He was careful enough to add that central control was not to be 'exerted in petty interference with the local administration of the Presidencies,' but he considered its retention 'essential to the safety and welfare of the empire.'

To remove the defects of Charter Act of 1833, the Act of 1853 was passed. The Charter Act of 1853 lessened the burden of the Governor General of India as he was relieved of the duties to look after the Presidency of Fort William in Bengal. It was, according to Sir Johan Strachey impossible for a single person to discharge the double duty of Governor General of India and Governor of Bengal and the administration of Bengal had notoriously become less efficient than that of any other Province in India. Under the Act of 1853 representative elements from the subordinate Presidencies were introduced. Although the Act provided for the office of the Governor in this Presidency, yet Lieutenant Governor was appointed.

By the time 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 Governors in Council, Governors, or Lieutenant Governors of Bengal and Agra or the North-West-Provinces.65

Therefore, from the above analysis it is clear that the Governor was an agent of East India Company. The Court of Directors had power to recall or remove the Governor at any time. The sole duty of the Governor was to carry out the advice of the Company and orders of Governor-General etc., because he was under an obligation to safeguard the interests and look after the benefits of the Company.

(B) INSTITUTION OF GOVERNOR AND CENTRAL CONTROL OVER PROVINCES UNDER THE GOVERNMENT OF INDIA ACT 1858

India could not tolerate the oppressions of the Rule of the Company. A hatred for the English men grew in the hearts of the people of India. On account of the juxtaposition of some internal and external factors the first war of India's Independence broke out in 1857. Regarding the Indian Revolution of 1857, Bright has remarked correctly:

65. Section 4 Government of India Act, 1854.

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"The conscience of the nation had been touched on the question and it came by leap - as it were by an irresponsible instinct - to the conclusion that the East India Company be abolished."  

The events of 1857 brought the Company Rule to an end. This Indian revolution compelled the House of Commons to consider afresh the new policy to be introduced. On 12th Feb. 1858 Lord Palmerston, the Prime Minister, introducing a new Bill in the House of Commons to end the Double Government, made a memorable speech. While pointing the defects of the Rule of the Company in India, Lord Palmerston said:

"The principle of our political system that all administrative functions should be accompanied by ministerial responsibility - responsibility to Parliament, responsibility to public opinion, responsibility to the Crown; but in this case the chief functions of the Government of India are committed to a body not responsible to Parliament, not appointed by the Crown, but elected by persons who have no more connection with India than consists in the simple possession of so much stock."  

In the end of his speech Lord Palmerston tried to answer the

67. Ibid. P.322.
objections raised by the Company against the transferring of the Government to the Crown. The first objection raised was the ineffective and undesirable interference and check of the Parliament in the affairs of the Company. The answer given by him was that the greater part of the improvements which the Directors had done was due to the pressure of the Parliament. The Company next pointed out the indispensibility of a Council composed of statesmen having experience in Indian affairs. Lord Palmerston accepted the necessity of a Council to advise the Minister. The third point raised by the Company was the dangers of entrusting right of patronage to a Minister of the Crown. Lord Palmerston answered this objection by showing that no addition of patronage will devolve on the Executive Government or an amount which need excite the least constitutional jealousy on the part of the House of Commons. The last objection put forward by the Company was that even if the contemplated change could be advisable the present time was most unsuitable for entering the change. The reply of Lord Palmerston was that it is only in times of peculiar emergencies that inconveniences of different systems of administration are forced on the attention of the Government and the public. 68

Shortly after its second reading Lord Palmerston was turned

out of office on the conspiracy to murder Bill and was succeeded by Lord Derby, with Mr. Diralli as the leader of the House of Commons. The new ministry had no alternative except to continue the policy of Lord Palmerston. On April 30, 1858 the House passed 14 Resolutions on the basis of which the Government drew up a new Bill which ultimately got the assent and became the Government of India Act, 1858.69

By the Act of 1858, the territories administered by the East India Company came under the direct Rule of the British Crown. The Governor who was previously appointed by the Court of Directors was now to be appointed by His Majesty, the King of England, under Royal sign manual.70

Two Executive Councillors were appointed by the Crown to assist the Governor. Though the Governor was made subordinate to the Governor-General, he had now direct access to the Secretary of State. He retained the power to overrule the members of his Council.71

As a matter of fact the disappearance of the East India Company marked a change in the form of government rather than in the substance of policy.72

69. Ibid.
70. Section 29, Government of India Act, 1858.
The provisions relating to the Council of Secretary of State occupied a very prominent position in the Act. It was styled as the Council of India and henceforth the Council in India was styled as the Governor-General of India. It was consisted of 15 members of whom 8 were to be appointed by the Crown and 7 elected by the Directors of the Company. No member could sit or vote in Parliament. 73

The Secretary of State was to be the President of the Council, 'with power to vote' at its meetings. He was empowered to appoint from time to time any member of the Council to be its Vice-President, and such Vice-President might at any time be removed by him. All powers exercisable by the Secretary of State in Council, and all powers of the Council, could be exercised at meetings of such Council, at which not less than five members were present. Meetings of the Council were to be convened and held under the direction of the Secretary of State, but one meeting at last was to be held in each week. 74

The Secretary of State was empowered 'to divide the Council into Committees for the more convenient transaction of business, and from time to time to rearrange such Committees, and to direct what departments of the business in relation to the government of

73. Sections 7 - 15, Government Of India Act, 1858.
74. Ibid Sections 21 and 22.
India under this Act shall be under such Committees respectively, and generally to direct the manner in which all such business shall be transacted.'

The appointments of the ordinary members of the Governor-General's Council (except the fourth ordinary member), as also of the members of Council of the 'several Presidencies,' were to be made by the Secretary of State in Council with the concurrence of a majority of members present at a meeting. All powers of making regulations in relation to appointments and admission to service and other matters connected therewith, and of altering or revoking such regulations, which had previously been exercised by the Court of Directors or the Board of Control were to be exercised by the Secretary of State in Council. Power was given to the Secretary of State in Council to make regulations, with the advice and assistance of the Civil Service Commissioners of Great Britain, concerning the admission of persons to the Indian Civil Service. Such regulations were to be laid before Parliament within a prescribed time limit.

75. Ibid section 20.
76. There were Councils in two Presidencies only: Bombay and Madras.
77. Supra note 73, section 29.
78. Ibid section 37.
79. Ibid section 32.
By this Act following functions were specifically reserved for the Crown:

a) Appointment of 8-member of the Council of India i.e. Governor-General in Council, 80

b) Removal of any member of the Council of India from his office upon an address of both Houses of Parliament, 81

c) Appointment of the Governor-General, the 'Fourth ordinary member' of the Governor-General's Council, the Governors of Presidencies and Advocates-General' for the several presidencies, 82

d) All appointments to cadetships, naval and military, and all admissions to service' not otherwise provided for in the Act. 83

The Act abolished the dual government of Court of Directors and the Board of Control and established in its place a single authority known as 'Secretary of State for India' responsible to the British Parliament.

80. Ibid section 8.
81. Ibid section 11.
82. Ibid section 29.
83. Ibid section 33.
After a period of about 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". According to Basu the administration of the country continued to remain in the exclusive control of officials. The Legislative Councils in the Presidencies of Bombay and Madras were established, each of which was to consist of the Governors, Executive Council, Advocate General of the Presidency and not less than four and not more than eight additional members. The Governor of the Presidency was empowered to nominate additional members and the Advocate-General for a period of two years. The Governor-General in Council was also authorised to create similar Councils for the North-Western Provinces (Agra) and the Punjab.

The powers of the Governors remained unchanged till the passage of Indian Council Act of 1870 by which they were vested with the power to "propose to the Governor General-in-Council

86. In pursuance of this policy, legislative Councils were established in Bengal (1862), North Western Province (1888) and the Punjab (1898).
drafts of any regulations, together with the reasons for propagating the same, for the peace and good government of any part or parts of the territories under their governments or administration. 87

The Indian National Congress which came into existence in 1885, urged the British Government to bring reforms in the Legislative Councils as these Councils failed to serve the people.

The Governors, on the other hand, also demanded more powers because the Act of 1861 was no longer useful for them. This was made clear in the minutes of Nov., 1888 sent to the Secretary of State by the Government of India. As a result, the Indian Councils Act of 1892 was passed. This Act provided ample opportunity to the people of India to take part in the governance. The number of members was increased in all the Councils. The Governors of the Provinces of Madras and Bombay were empowered to nominate not less than eight and not more than twenty additional members to their Councils. 88 Opportunity was given to the members freely to criticise financial policy of the Government.

88. Section 1, The Indian Councils Act, 1892.
To check the growing influence of Indian nationalism, British politicians adopted the policy of "Divide and Rule". The British bureaucrats manipulated an influential section of Muslims to demand separate representation in these bodies. On the advice of the Home Government, a circular was issued to the local governments in 1907 requiring the Governors to give adequate representation to Muslims in their respective Legislative Councils.\(^{89}\) They were further cautioned to evolve such a system of representation which should not hamper the interest of the Britishers. To give effect to these proposals, the British Parliament enacted the famous Minto-Morley Reforms\(^ {90}\). This Act of 1909 is considered as a great landmark in the history of Indian Administration and it made an attempt to associate Indians not only with the work of legislation but also with the day-to-day administration of the country. The main features of the Act were as follows:

1. The official majority in the Provincial Legislative Councils was abandoned at least in theory;
2. The size of these bodies was enlarged up to a maximum of 50 additional members in the larger Provinces and 30 in the smaller. The greater part of these additional members were non-officials who were to be elected.

\(^{89}\) A circular to local Governments, August, 24, 1907.

\(^{90}\) Indian Councils Act of 1909.
either by groups of local authorities, trade associations or Universities; and
3. Special representation was given to the Muslim community.

However, the Act also failed to do away with the element of a high degree of centralism which was introduced by the Charter Act of 1833. The members of the Legislative Councils were given the right to criticise the government but no change was brought about in the powers of the Governors. The Governors, therefore, had to face serious difficulties because the non-official members in the Legislative Councils worked like an opposition party.

The Indian nationalists were opposed to the powers of the Governors and the Central control in the affairs of the Provinces. The Congress-League scheme of 1916 proposed that four-fifth of the members of the Provincial Legislatures should be elected by the people, and only one-fifth should be nominated by the Governor of the Province. Although, the Governors should have the sole authority in regard to internal administration of the Province, yet they should not preside over the Legislative Councils. All bills passed by the Councils required the assent of the Governors. The resolution adopted by the Legislative Council might be rejected by the Governor-in-

Council, but if the resolution was repassed by the Legislative Council, the Governor-in-Council should in no way be authorised to reject them. This scheme was not acceptable to the Britishers as they believed that it would tie the hands of the Governors.

Political awakening among the Indians and their support to the British Government in the first world war led to the passage of the Government of India Act 1919 popularly known as "Montagu-Chelmsford" Reforms. This act was passed to meet the long standing demand of the Indian leaders for self government as an attempt was made to introduce partial responsible governments in the Provinces. According to G.N. Singh:

"The central proposal of the 'Montagu-Chelmsford' Reforms then was an important beginning in Provincial autonomy, in both senses of the term i.e. in the sense of freedom from control from above and also in the sense of transfer of power to the people". 92

The main features of the Act of 1919 concerned with the Provinces, broadly speaking, were as follows:

1. It established some sort of Provincial autonomy by the devolution of authority in the Provincial matters on the Provincial governments and freeing them from the control of the Central government.

92. Supra note 4, p.295.
2. 'Dyarchy' was introduced in the Provinces. Under this system the Provincial matters were divided into two parts - the "transferred" and "reserved" subjects.

This Act did not prescribe the qualifications and term of office of the Governors. The previous tenure of five years based on the conventions continued. Previous practice of taking the Governors of Madras, Bombay and Bengal from the distinguished men of British politicians and the remaining from the senior men of the Indian Civil Service also remained unchanged.

Under this Act a new system of Provincial government known as 'Dyarchy' was introduced in the nine major Provinces of India. Under this scheme the Provincial subjects were divided into two parts 'Reserved Subjects' and 'Transferred Subjects'.

Interestingly, it can be noted here that the members of his (Governor) executive Council were appointed by His Majesty, whereas the Ministers were appointed by the Governor of each

93. Reserved Subjects such as administration of justice, irrigation, land revenue, police, forests, famine relief fund, control of newspapers, books and printing presses etc., were kept under the control of the Governor and his executive Council.

94. whereas the 'Transferred Subjects' like agriculture, local self government, education other than European or Anglo-Indian, public works, development of industries, fisheries, religions endorsement, medical endorsement, adulteration of food stuffs and other articles, weights and measures, libraries etc., were put under the charge of the Governor and his Ministers.
Province. The Governors were instructed to "act on the aid and advice of the Ministers" but if they found sufficient reason they could dissent from their opinion and were required to take action" otherwise than in accordance with that advice". The Governors, thus, were not expected to be merely constitutional heads of their Provinces but their position was" one of great responsibility and difficulty and also of great opportunity and honour". They had the power to " make rules and order for the more convenient transaction of business in their executive Councils and with their Ministers" and also " for regulating the relations between their executive Councils and their Ministers for the purpose of the transaction of the business of local government".

Thus, such a system of Provincial administration, where there existed two halves of the government - One Governor in Council and the other Governor acting with the Ministers, one incharge of the 'Reserved Subjects' and the other of the 'Transferred Subjects' ones. one responsible to the British Parliament and the other to the Provincial Legislature, one


dominating and the other recessive was styled as the celebrated 'Dyarchy'. Here it is proper to point out that the Provinces of Bengal and Madras had four Councillors and three Ministers, in Bihar and Orissa there were three Executive Councillors and two Ministers. The remaining Provinces had two Councillors and two Ministers, each. M.V. Pylee has rightly observed that the role of the Governor in a dyarchic system was, "not only to yoke the Councillors and the Ministers to the chariot of Provincial administration but was also to drive it." 98

Although, the Governors were debarred from being the members of their Legislative Councils, yet they could address their respective Councils. The Bills passed by the legislative Councils required the approval of the Governor of each Province. They could give their assent to the bill or return the same to the Council along with their suggestions for reconsideration. They could also reserve certain bills for the consideration of the Governor General. 99 Each Legislative Council had the power to pass or reject any demand for grant by the government, but this power did not extend to the expenditure where the peace and security of the province was involved. 100

98. Pylee, M.V., Constitutional Government in India, P.79.
100. Ibid P.451.
Councils could also pass bills on "Reserve Subjects" but the Governors had the power to amend them and could enforce the same against the wishes of the former. The Governors, however, were required to send a copy of such an Act to the Governor General, who would reserve it for the approval of His Majesty.

The scheme proved an utter failure because the Act did not provide for collective discussion among the Governors, their Executive Councils and the Ministers except on a few subjects. The Act expected the Governors to have complete harmony between the two wings of the government for the smooth functioning of the Provincial administration. Dr. Appadorai observed as such:

"Above all, the Governor was directed to encourage the habit of joint deliberation between himself, his Councillors and his Ministers".  

After going through various provisions of the Act of 1919, it becomes quite clear that the exceptions laid down in both executive and legislative fields converted the importance of representative elements into a hoax. The Ministers were chosen by the Governor from a variety of political and communal groups. They were chosen Ministers not because they had a common policy but because they were leading men of different groups.  

a clear negation of a representative government. The position of the Ministers was so vulnerable that they "clung to the Governor for support of the nominated and official members in the legislature and sank down to the position of glorified Secretaries". 103

The main defect of the Act from Indian point of view was the control of purse. Finance, being a reserved subject, was placed under the control of the Executive Councillor. "This proved to be a serious handicap to the Ministerial position, and in every Province this financial arrangement not only led to considerable friction but to certain amount of irresponsibility in both halves of the government. 104 Besides, there was no clear-cut line of demarcation between the "reserved" and "transferred" subjects.

By virtue of his overriding powers, the Governor did not function as a constitutional head even with respect to transferred subjects. He had the discretionary powers to act otherwise than in accordance with the advice of his Ministers. 105 He had the power to certify a grant refused by the legislature relating to reserved subjects. 106 Even if the Legislative Council

106. Sec. 72 D(2) Ibid.
rejected a demand for a grant for Transferred Subjects, the Governor could authorise necessary expenditure for the safety or tranquility of the Province. In addition to his veto power over any bill, he was empowered to certify any Act rejected by the Legislature. While commenting on these powers of the Governor, Srinivas Ayyanger said that the Governor held the position of a dictator by any definition. C.R. Das observed that the Act of 1919 was a "timid concession" to the rights of Indians. P.N. Masaldan called the Act of 1919 an "unprecedented combination of opposite principles."

In regard to the Central control over the Provincial matters, it is pertinent to note that the limitations and reservations crippled the wings of the Legislature to a large extent. In certain matters previous sanction of the Governor General was necessary before raising them in the legislative

107. Ibid. Section 3
108. Sec. 13(1) Ibid.
109. Congress Presidential Address of Srinivas Ayyanger, Gauhati 1926
110. Undelivered Presidential Address of C.R. Das, 1921 cited in Dahiya, M.S., "Office of the Governor in India".
112. According to Sec.10(3) Government of India Act, 1919, a local Legislature, could, with the previous sanction of the Governor-General, make laws affecting such central subjects as the public debt in India, the Discipline and maintenance of the fighting forces, the relations of government with foreign Princes or States, and even laws regulating any central subject".
Council. Besides, the Governor was required to reserve certain Bills for the consideration of the Governor-General and, further, the Governor-General could also reserve a bill passed by the local legislatures for the signification of His Majesty's pleasure thereon.\textsuperscript{113}

A Bill assented to by the Governor and submitted to the Governor-General for his assent might be assented to by the latter; if, however, he refused his assent he was required to 'signify to the Governor in writing his reason for withholding his assent.' He might also reserve it for the signification of His Majesty's pleasure. In that case, the Bill would not have validity until His majesty in Council signified his assent. In the case of a Bill reserved for the Governor-General's consideration, he might assent to it or authorise the Governor to return it for further consideration by the Council. If neither of these courses was adopted within six months, the Bill lapsed.\textsuperscript{114}

The Governor's part in law-making was not confined to his control over legislation by the Council. The Joint Select Committee recommended that the Governor should be empowered to pass an Act in respect of any Reserved subject, if he considered

\textsuperscript{113} Sec. 12 Ibid.
\textsuperscript{114} Ibid.
the Act as necessary for the proper fulfilment of his responsibilities. The Act of 1919 empowered the Governor to assume direct law-making authority if the Council 'refused leave to introduce, or failed to pass in a form recommended by the Governor, any Bill relating to a reserved subject.' In such a case he could certify that the passage of the Bill was essential for the discharge of his responsibility for the subject.' Thereupon, the Bill was deemed to have passed. Every such Act had to be referred to the Governor-General and reserved by him for the signification of His Majesty's pleasure. If, however, he was of the opinion that a state of emergency existed, he could signify his assent to it, subject to disallowance by His Majesty in Council. An Act made according to these provisions was to be laid before each House of Parliament.

The Governor had the power to stop discussion at any stage of any Bill, clause or amendment before the Council, and require that no further proceedings should be taken in relation to it by declaring that the Bill, clause or amendment affected the safety or tranquillity of his Province or any part thereof, or of another Province.

115. This arrangement was to be a substitute for the complicated Grand Committee procedure recommended in the Montagu-Chelmsford Report (Paras 252-253)
117. Section 11, Ibid.

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In general, the Governor-General in Council was authorised to exercise the power of superintendence, direction and control in the case of Transferred subjects for the purpose of (a) safeguarding the administration of Central subjects, (b) deciding disputes between two Provinces, (c) safeguarding his position in respect of duties regarding the High Commissionership for India in London, the raising of Provincial loans, the Civil Service, any rules made with the authority of or by the Secretary of State in Council.118 The same heads were included in the powers of the Secretary of State in Council to intervene in respect of the Transferred subjects, with the addition of the safeguarding of imperial interest, the determination of the position of the Government of India in matters arising between India and other parts of the British Empire, and maintaining the rights of those members of the Civil Service who were still to be recruited by him.119 These restrictions on the power of the Secretary of State in Council were interpreted by a ruling of the speaker of the House of Commons to mean that it was not Parliament's business to criticize the administration of the Transferred subjects.120

120. Coupland op. cit. p. 63.
The position of the Governor under the Act was rather of a precarious nature. On the one hand the Governor was responsible to Governor-General and the Secretary of State for India for his administrative activities and on the other hand he was to act on the aid and advice of his Council of Ministers regarding transferred subjects.

(D) THE ROLE OF GOVERNOR AND CENTRAL INTERVENTION UNDER THE GOVERNMENT OF INDIA ACT, 1935

The failure of Dyarchy and the demand by the Indian National Congress for further reforms led the British Government in 1927 to appoint a Statutory Commission as envisaged by Government of India Act, 1919 itself121 to enquire into and report on the functioning of the system of government and the development of Representative institutions in India. In spite of the fact that the entire largest organised political party i.e. Indian National Congress in India boycotted the Simon Commission on the ground that no Indian was associated with it, the Commission submitted its report in 1930.

Hence, the British Government passed the Government of India Act, 1935. This act formed the last phase in the evolution of Governor's office in pre-independent India. The Act was based on the recommendations of the Simon Commission.

121. Sec. 89, Government of India Act, 1919.
The Simon Commission recommended overriding powers for the Governor in respect of administration, finance and legislation. Here we have a clear background for certain provisions of the Government of India Act, 1935. The Commission also recommended that the Governor should be empowered to declare breakdown of the constitutional machinery and to assume all the powers normally exercised by the Cabinet. In such a case, it was recommended that the Legislature would remain in existence, but the Governor would exercise necessary legislative and financial powers, if the Legislature refused to Act. This was an anticipation of Section 93 of the Act of 1935. The Government of India Act 1935 was a lengthy document, detailed and complicated having 321 sections and 10 schedules.

The Act introduced certain new features like the establishment of All India Federation comprising the British Empire's Provinces and the Native States and the system of Provincial autonomy in the Provinces.

The Governor remained the Head of the Province who was to be appointed by His Majesty by a Commission under the Royal Sign manual. Under the Act of 1919, he was to be appointed by His Majesty.

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122. Section 52, Government of India Act, 1935. (see Bose, S.N., "The Indian Awakening and Bengal (1960)).
124. Supra note 122, p. 196-197.
Majesty after consultation with the Governor-General. This change seems to have made in view of the introduction of the Provincial autonomy under the Act of 1935.126

Under the Act of 1919, British India was a Unitary State, i.e., its administrative control was by law centred in the Secretary of State—in some respects in a statutory body called the Secretary of State in Council. All powers exercised by the Provincial Governments were derived through the Government of India by delegation from this central authority and were exercised subject to its control. Thus the Provinces had 'no original or independent powers or authority. The Act of 1935 made a fundamental change. On the repeal of the Act of 1919, 'all powers appertaining and incidental to the government of British India' were vested in the Crown; but under the Act of 1935, they were made 'exercisable on behalf of the Crown by the Governor-General, the Governors, and other appropriate authorities established by or under the Constitution Act.'127

According to M.S. Dahiya this was the first Act introduced by the British Government which contained some smell of Parliamentarianism in a technical sense.128 The Governor was to

128. Supra note 126, p. 21.

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exercise the executive authority of the Province on the aid and advice of a Council of Ministers. But he had the power to act in his discretion and individual judgement. The Governor had some "special responsibilities", such as prevention of any grave menace to the peace and tranquillity of the Province, protection of legitimate rights and interests of minorities, Government servants and Rulers of the Indian States, prevention of discrimination of the British interests, securing of 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. Sir Chiman Lal Setalvad has rightly said that Provincial autonomy under the Act of 1935, was "buried in a pile of reservations, safeguards and discretion".

The Governors were also given certain legislative powers. A bill passed by the Provincial Legislature required the assent of the Governors. They could give assent to the bill or withhold their assent or could reserve it for the consideration of the Governor General.

The Governor-General might, in his turn,, assent to the Bill, direct the Governor to return it to the Provincial

129. Section 50(1), Government of India Act, 1935.
130. Sec. 52(1), Ibid.
131. Cited in Chintamani C.Y. and Masani M.R., "India's Commission at work" (1940) P.93.

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Governors were empowered to summon and prorogue the Provincial Legislatures. They could address the members of both the Houses and could even dissolve the lower House. In addition to their ordinary law-making powers, the Governors had certain extraordinary legislative powers also. They were also entrusted with the power to issue ordinances which had the equal power of law. Like the Governor-General, the Governor also had the power to promulgate:

1. Ordinances during the recess of the Legislature as also,
2. Ordinances during the session of the legislature with respect to certain subjects, and to enact

The first category of Ordinances could be controlled by the legislature when it reassembled by the passing of a resolution disapproving it and thereby terminating its operation. The second category of Ordinances could be issued to enable the Governor to take 'immediate action' in connection with matters falling within the scope of his 'discretion' or 'individual judgement.' These required the 'concurrence' of the Governor-General, and the maximum period of validity was one year. A Governor's Act could be enacted when he felt that it was

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'essential' to make legislative provision for the 'satisfactory' discharge of his functions falling within the scope of 'discretion' or 'individual judgement.' This also required the 'concurrence of the Governor-General.' Moreover, every Governor's Act had to be 'communicated forthwith' to the Secretary of State and placed by him before each House of Parliament. In financial matters also, they had a good say. No financial bill could be introduced in the Provincial Legislative Assembly except on the recommendation of the Governor. The Governor could include a sum of money in the schedule of authorised expenditure necessary to discharge his special responsibilities even if the Legislature had not given its assent.

As a matter of fact, the special powers conferred on the Governor made him control all the executive, legislative and

133. Sections 88-90, Ibid.
financial fields. Though the Instrument of Instructions was intended to encourage the working of responsible government in the Provinces, there was no legal curbs on the powers of the Governor. The Governors were expected to be merely the constitutional heads of their respective Provinces. But in fact, the Governors were vested with plenty of discretionary powers to deal with the emergent situations arising on account of the failure of the constitutional machinery in the Provinces. They could take all or any of the powers vested in or exercisable by any Provincial body except those exercisable by the High Court.

135 The Instrument of Instructions provided guidelines for the Governor with regard to the performance of his statutory duties. For example, the Governor was required to select his Ministers "in consultation with the person, who, in his judgement, was most likely to command a stable majority in the legislature, to appoint those persons... who will best be in a position collectively to command the confidence of the legislature", bearing in mind "the need for fostering a sense of joint responsibility among his ministers". Save in respect of those functions which fell within the scope of 'discretion', he was to be 'guided by the advice of his ministers unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities', or with the 'proper discharge' of any of the functions falling within the scope of 'individual judgement.' Also, he was required to 'encourage the practice of joint consultation between himself, his counsellors and his Ministers.' (ICD, Vol.IV, pp.65-69, See also, Rudra, A.B., "The Viceroy and Governor-General of India", pp.334-338).

136. Masaldan rightly described the Governor as "an autocrat" presiding over the provincial despotism. (Masaldan, P.N., op. Cit. P. 53).
The Act stipulated that "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".

The Act also provided for a Council of Ministers with the Chief Ministers at the head to aid and advice the Governor in the exercise of his ordinary functions. The Governor had to appoint such person as Chief Minister, who had a stable majority in Legislature. Other Ministers were to be appointed by him on the advice of the Chief Minister, but all these acts fell under his discretionary powers. It was considered the sacred duty of each Governor to support "frankly, honourably, and with all his might, the ministry of the time whatever it may be, so long as it commands a majority and governs with integrity for the welfare of the country".

Although an attempt was made through an instrument of instructions to make the Governors to act as constitutional heads of their Provinces, yet the conferment of the special powers like

137. Sec. 93, Government of India Act, 1935.
138. Sec. 51 (5) Ibid.
the power to use their discretion and individual judgement, made them more effective and powerful. By taking advantage of these discretionary powers, the Governor of Sind dismissed Premier Allah Bux in Oct, 1942, and the Governor of Bengal forced Premier A.K. Fazlul Haq to tender his resignation in March 1943.

To give effect to the provisions of the Government of India Act, 1935 relating to the Provincial Governments, general elections were held in the country in February, 1937. The Congress party emerged victorious in six Provinces (Madras, Bihar, Bombay, U.P, C.P. and Orissa) out of eleven. There was a considerable difference of opinion among the Congressmen whether or not they should form Ministries. The left wing of the Congress led by Pt. Nehru was not in favour of forming the Ministries in the Provinces. But the rightists like Dr. Rajindra Prasad, C. Rajagopalchari, Sardar Patel and Maulana Azad on the other hand, showed their willingness to accept the offices. Regarding this controversy, Maulana Azad clearly stated:

".....a section of those who had participated in the elections opposed assumption of office by Congress nominees. They argued that with special powers reserved to the Governors, Provincial autonomy was a mockery. Ministers would hold office at the Governor's pleasure. If Congress wished to carry out its election pledges, a clash with the Governor was inevitable. He argued that Congress should,
therefore, try to wreck the Constitution from within the legislature. On this issue also I had the opposite view and argued that the powers given to the provincial governments should be exercised to the full. If the clash with the Governor arose, it should be faced as and when occasion demanded without actual exercise of power the programme of the Congress could not be carried out. 140

After prolonged discussion, on March 18, 1937, the All India Congress Committee adopted a Resolution that the Congress party would form the Ministeries only if the Governors did not exercise their special powers and acted on the aid and advice of the Council of Ministers. Initially, the British Government was opposed to give any such assurance but later on, on the assurance of the then Secretary of State for India and the Governor-General, the Congress party accepted the invitation of forming the Governments in the six Provinces. However, responsible Govts. functioned more or less smoothly for some time in the Congress Provinces, because "a measure of cooperation was extended by the Governors to the Ministers". 141 But this cooperative attitude of the Governors did not last long and this experiment of Provincial autonomy also miserably failed, because in the first instance, in 1938, the Chief Ministers of Bihar and


U.P. came into direct clash with their respective Governors as the Governor-General under Section 125 (5) of the Act interfered in the affairs of the Provinces in regard to the release of political prisoners. This undesirable action on the part of the Governor-General led the two Ministries to resign. The controversy continued for about ten days and ultimately the crisis was over with the joint statements issued by the Governor of U.P. and the Chief Minister, Pandit Govind Ballabh Pant in Lucknow and by the Governor of Bihar and the Chief Minister, Babu Sri Krishna Sinha in Patna.

The Ministerial crisis did not end there rather the action of the Governor of Central Province dismissing three Cabinet Ministers and inviting Dr. N.B. Khare to form the new Ministry was severely criticised by the Congress Working Committee.

Above all, a first rate constitutional deadlock occurred in two Congress-dominated Provinces, Bihar and Uttar Pradesh when the Premiers of these Provinces decided to release all political prisoners, as declared in their manifesto at the time of elections. On the instructions of the Governor-General, the Governors in both Provinces rejected the advice of the Premiers. An interesting comment on the situation appeared on Feb.17, 1938 in the form of a letter in 'The Times' (London) from Lord Lothian: "It is difficult to believe that the release of a small number of political prisoners constitutes in itself 'a grave
menace'. Surely the right course in cases of this kind is for the Governor formally to warn the Ministers about the dangers he fears, and make it clear to them that if their judgement with regard to their own capability to protect life and property proved to be wrong and serious trouble occurs or threatens, he will not hesitate to use his powers as his justification in warning to Ministers in regard to the probable consequences of their action.¹⁴² The two Ministers resigned on Feb. 15, 1938, following rejection of their advice. A few days latter the Governors and the Chief Ministers arrived at "agreed conclusions" and the Ministers" resumed office".¹⁴³ In Orissa, too, the Ministry intended to resign when J.R. Dain (Revenue Commissioner) was appointed as the acting Governor in place of the Governor, Sir John Hubback, who was proceeding on leave. It was unconventional to appoint a subordinate official to Ministers as their head. Incidentally, the crisis was averted by the Governor who got his leave cancelled.

The Governor was empowered to prorogue and summon the Legislature. He had the power to dissolve the Lower House. All these functions fell under his discretion.¹⁴⁴ Though the power to summon and prorogue the Legislature does not seem important,

¹⁴² Supra note 131, p.40.
the Governor could play quite an important role if he was favourably inclined to support a particular party. In N.W.F.P. the Congress being in opposition demanded the summoning of the Assembly on the ground that the Ministry had lost the confidence of the Assembly, but the Governor did not pay any heed to it, and the Ministry continued to function.145

The most obnoxious power conferred on the Governor was of promulgating ordinance in his individual judgement during recess of the Legislature, if he was satisfied that the circumstances existed to take immediate action. This type of ordinance required subsequent approval of the Legislature.146 In regard to this power it was stated in the House of Commons that such ordinances would be "made upon the advice of the Ministers who are themselves responsible to the Provincial Council."147 Besides this the Governor had the power of issuing another type of ordinance, when he considered an immediate action necessary to discharge his functions in his discretion or individual judgement. This power was not subject to the approval of the Legislature148. However the Governor didn't dare to resort to the

146. Sec. 88, Government of India Act, 1935.

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mechanism, so far as the Congress dominated Provinces were concerned. But this power was used in the Province of Sind, where a coalition government of non-congress parties was in power. In the defence of this power it was argued in the British House of Commons that in view of the "Special responsibilities" placed on the Governor, "It may be necessary for him to proceed by ordinance." Above all the Governor was given another special power in the field of legislation by providing that he could have permanent "Governor's Act" to discharge his functions in so far as he was by or under the Act required to act in his discretion or individual judgement. Every such act was to be communicated forthwith through the Governor-General to the Secretary of State and was to be laid by him before each House of Parliament. While defending this power, it was stated in the House of Commons that it was not the intention that such "power should be frequently used, but......that it is a power which the Governor ought to have." If there occurred a constitutional breakdown, the Governor was empowered to assume all the executive and legislative powers of the State in his discretion. As a matter of fact, in a

149. R. Coupland, Indian politics 1936-42 (Oxford, 1943), P. 118.
151. Section 90, Government of India Act, 1935.
technical sense, the situation did not warrant the imposition of Governor's Rule in the Provinces, but owing to the differences between the Congress and the British Government over the war issue, Provincial Ministeries resigned in all Congress-dominated Provinces, following instructions from the Congress Parliamentary Sub-Committee, and it led to the declaration of the constitutional breakdown. On the resignation of the Congress Ministries, the administration of Congress Provinces, except Assam, where an alternative government was formed, was taken over by the Governors between 30th October and 10th Nov. in seven Provinces, namely Madras, Bombay, U.P., C.P., Bihar, Orissa and the N.W.F.P.

In reality, the Provincial autonomy was dead after the Congress Governments, tendered their resignations. Since the most important feature of the Act of 1935 was the system of Provincial autonomy, after the enforcement of Section 93 in major


155. Proclamation were issued by the Governors on the following dates: Madras - 30th Oct. 1939; Bombay - 4th Nov. 1939, N.W.F.P. - 10th Nov. 1939; Orissa - 6th Nov. 1939; C.P. - 10th Nov. 1939; U.P. - 3rd Nov. 1939. In Assam, on the resignation of the Chief Minister, Bardolai (Congress) an alternative Govt. was formed with Sir Mohammad Saadulla as the Chief Minister. He resigned in Dec. 1941. This led to the imposition of Section 93. The proclamation was revoked in August, 1942 and a Non-Congress Government was again formed under Sir Mohammad Saadulla. In Orissa a Non-Congress Government was formed in Nov. 1941 and Section 93 was revoked.
part of the country, only a feasible part of the Act of 1935 may be said to have remained in existence. This state of affairs continued up to 1946, when the Congress Government resumed office in various Provinces.

The Governors continued to play a significant role till the passage of the Indian Independence Act, 1947. With the passage of Indian Independence Act, 1947, the British Rule in India came to an end, and India became an independent and sovereign country. This also affected a change in the office of the Governor. Under Sec. 8 of the Indian Independence Act, 1947 and India (Provincial Constitution) Order, 1947, the Governors were made the constitutional heads of the Provinces. Though India continued to be governed by the provisions of the Act of 1935, the Governor-General was empowered to make amendments in the provisions up to 31 March, 1948.

By the time the Indian Independence Act, 1947, became effective, the Governors in various States tendered their resignations to the Governor-General to be effective from 15th Aug., 1947. Except Madras, Bombay and Assam, fresh appointments were made in every Province. The appointments of these Governors were approved by the King-Emperor. In fact, appointments were made by Congress High Command in consultation with the Chief Ministers of Provinces.156

Hence the role of the Governors in comparison to what was in pre-independent-India became less important. They were henceforth, required to act on the aid and advice of the Council of Ministers, who in turn were responsible to the popularly elected Legislatures. The Constitution of India which came into force on 26th January, 1950 brought many changes in the position of Governors.