

would render the position of any given public servant less advantageous than it was before that proposal was made, make the Services Citadel as impregnable as could possibly be devised. No economy, retrenchment, or reform in the Services is possible, so long as this system is enforced rigorously upon us. Even the Indian members of these Services would be unamenable to suggestions of any relaxation in these their enormous and abnormal privileges, their insupportable salaries and allowances, so long as an outside guaranteeing authority remains in the land backed by all the material force the British Government commands in India,—unless the impulse of patriotism, the perception of the real, long-term interests of the country and its people, and the resolute stand taken by the Provincial and Federal Ministers and Legislatures work a miracle.

CHAPTER VIII

THE FEDERAL LEGISLATURE

The institution and functioning of the Federal Legislature is supposed to embody the essence of Responsible Government introduced under the new Constitution in India. This Legislature is different from the hitherto existing Indian Central Legislature, not only because it is a Legislature competent to make laws for the whole of British India and such of the Indian States as have acceded to the Federation; but also because, for the first time in the history of the Indian Constitution, the Legislature is empowered to hold Ministers Responsible to it for the working of the Government. How far this Responsibility is real; and to what extent it can or will serve the interests of political freedom, social reconstruction, and economic well-being in this country will be summed up at the end of this Chapter.

Plan of the Chapter

We shall consider in this Chapter:—

- (i) The composition of the Federal Legislature, including therein:—
 - (a) The Bicameral form of the Legislature; relations of the two Houses; respective powers of the two Chambers; object and purpose of a Bicameral legislature, how far achieved in the Federation of India;
 - (b) The process of election of the Members; Franchise of Voters; Qualifications and

Disqualifications of candidates; Direct vs. Indirect Election;

(ii) Powers of the Federal Legislature;—in

- (a) Law-making; formulation of national policy;
- (b) Supervision and control of administration;
- (c) Finance;
- (d) Division of subjects,—Federal and Provincial;
- (e) Residuary, overriding, and Emergency Powers.

(iii) The Legislature at work; Rules of Procedure; Officers of the Chambers; Privileges,—collectively of the House, and individually of Members; Payment of Members; Interpellations; Resolutions on Policy; other Motions affecting administration as well as policy; Joint Sessions of the two Chambers; Voting of Supplies; enactment of Financial Legislation.

(iv) Legislature and the Governor-General;

(v) Legislature and the Ministry;

(vi) Legislature and the Country.

The Legislature of the new Indian Government is to be instituted under Section 18 of the Government of India Act, 1935.

General

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

(2) The Council of State shall consist of one hundred and fifty-six representatives of British India and not more than one hundred and four representatives of the Indian

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

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

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

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

The Legislative Assembly, its Summoning and Dissolution

The Federal Legislature consists of two Chambers, called, the Council of State, and the Federal Assembly. The former is a permanent body, whose members retire one-third every 3 years, as laid down in Schedule I to this Act, quoted in Appendix I to this Chapter. The Assembly ordinarily has a life of 5 years from the date of its first meeting; but may be sooner dissolved by the Governor-General acting in his discretion.* There is no power, under the new Constitution, for an extension of the life of the Assembly beyond the statutory period of 5 years.†

Conventions have yet to be formed as to the circumstances and conditions under which the

*cp., Section 19 (2).

†cp., Section 18 (5). It is difficult to appreciate the *raison d'être* of this provision. But, perhaps, in circumstances in which the Governor-General might come to feel the continuation of an existing Federal Assembly in office to be preferable to holding fresh elections even after 5 years have elapsed since the last general election, he can rely on the Sovereign British Parliament to amend this section, and strengthen his hands as desired. As it stands, this provision is likely to be mistaken for a step in a liberal direction, strongly out of keeping with the general tenour of the Act.

Federal Assembly may be dissolved before the statutory maximum of 5 years has expired. Generally speaking, dissolution should take place whenever a Ministry in office has ceased to command the confidence of a majority of the House at any given moment, on any substantial issue of national policy or finance; and yet is of opinion that an appeal to the country would restore the majority in the Assembly having confidence in the Ministry. There must, of course, be available no alternative Ministry, with which the Governor-General can carry on without a dissolution. The circumstances and conditions under which the Governor-General would dissolve the Assembly, literally *in his discretion*, i.e., without any reference to the Ministry, are difficult to forecast; but the remark may be ventured that, in any dispute between the Governor-General and the Ministry,—which still has a majority having confidence in it in the Assembly; or which, if the Assembly is dissolved on an issue on which it is likely to be returned with the same or increased majority,—the Governor-General would rather rely on his extraordinary powers than challenge conclusions with the Ministers or the Electors. Accordingly, dissolution of the Assembly, exclusively *in the discretion* of the Governor-General, would be an exceptional, rather than a usual device.*

Note has been made, in the volume on Provincial Autonomy, of the fact that, under the terms of the new Constitution, the King-Emperor is associated more

*In the express wording of the Act, there is no right left to the Federal Ministry collectively, or to the Prime Minister individually, to demand a dissolution before the Assembly's term of office expires; and the Governor-General is in no way bound to agree to such a request, even if made. Summoning, prorogation, and dissolution remain exclusively in the discretion of the Executive Chief of the Government. It will all be a matter for Constitutional Conventions to regulate, when they are at last formed.

definitely with the Indian Legislature than was the case under the Act of 1919 and earlier. So far as the Federal Legislature is concerned, this association of the King directly with the Federal Legislature might be ascribed to the admission, in a common system of Indian Government, of the Indian States. But that reason would not explain the similar wording of Section 60, under which the King is made part of the Provincial Legislatures also. It is an imitation of the British Imperial practice, which associates the "King's most Excellent Majesty" in every Act of Parliament. Whether this association would be of advantage to India remains to be seen.

The Council of State

The Council of State is to consist of 156 representatives of British Indian Provinces, of whom 150 will be elected directly by a given electorate; and not more than 104 representatives of the Federated States, as laid down in Schedule I to this section. The remaining 6 are to be nominated by the Governor-General. In an aggregate body of 260, a maximum of 104 seats given to the Indian States seems to be out of all proportion to the population or wealth of the Indian States. The disproportion becomes all the more glaring when one recalls the fact that these representatives of the Federated Indian States will all be nominees of the Princes individually, or collectively as laid down in the Schedule. These, therefore, cannot be regarded as representatives in any proper sense of the term.

Direct and Indirect Election to the Federal Legislature

I (b): Elections to the Legislature

It is one of the strangest anomalies of the new Constitution that, whereas the Lower House, or the

Assembly, is to consist largely of members elected by **indirect** election from the Provincial Assemblies, the Upper House, or the Council of State, is to consist of directly elected members. In some other Federations, the Upper House is made to represent the component States of the Federation, each having equal representatives,—so that the peoples of these units can be said to be represented in the Upper Chamber of the Federal Legislature only indirectly. The Lower House is made to be truly a House of Representatives of the people, elected by direct Franchise of the peoples irrespective of State boundaries within the Federation. In India, on the contrary, it is the Lower House which is made, *pro rata*, representative of the Federating units,—at least so far as the British Provinces are concerned; while it is the Upper House which is, if there is any body truly representative of the people of the country,—representative of the people of India.*

Council of State,—How Far Representative

The claim of the Council of State to be representative of the people of India, however, rests on very slender foundations. The Franchise is exceedingly high, being a compound of high income tax payment, or the holding of some prescribed status, office, or title. Not more than perhaps 150,000 people at most would be entitled to vote at such elections throughout British India. Against this, the Provincial Electorates number, in the aggregate, some 36 million voters; while the adult population of British India alone would not be less than 140 millions. About 1 in a 100 adults is a voter; while each member of the Council would represent 1,000 voters on an average or

*cp., Appendix II to this Chapter.

100,000 adult people. The Council being a permanent, non-dissoluble body, its title to be always reflecting the popular opinion is questionable. Public opinion may well be assumed to be changing considerably in a space of 9 years, during which the entire membership of the Council may be said to have undergone the process of a new election. An elective body being made permanent, like the British House of Lords consisting of hereditary legislators, is itself incongruous. Add to this incongruity its initially non-representative character, and there will be no difficulty in holding that the Council of State can scarcely claim to be a representative institution.

The proportion of the representatives of the Federated States,—or, rather, of the Federated Princes,—is also much larger in the Council of State (40% of the maximum strength) than in the Assembly, where it is 33 and 1/3% of the total strength. The Representatives from the federating Princes can scarcely be called representatives, even in the sense that the representatives from the Provinces could be called representatives of the people. The States are, in point of population, about a third as important as British India,—or less, 271.5 millions against 81.3 millions in the States. Even if we take off the 14.667 million people of Burma the proportion would be 256.85 to 81.3 or over 3 to 1. In point of wealth the disproportion is much greater, British India being infinitely more wealthy. In point of the Revenues derived by the Federation the British Indian contribution will be, all told, over 90%, while the States might be said to contribute 10% or less, only if we reckon a part of the customs, salt and other indirect taxes as being paid by the States' peoples,—who

are not to be represented in the Federal Legislature at all. In point of political consciousness and intellectual advance, there can be no comparison, British India being incalculably superior in the aggregate to the Indian States collectively. Nevertheless, disproportionate weightage is given to the States,—or rather the Princes,—joining the Federation in the Federal Legislature—most likely because British Imperialism must pay this price, at the expense of British India, to secure the adhesion of those reactionary elements in India which they conceive to be the best guarantee for the maintenance of British domination and of the British vested interests in India. It is not the only irony in the situation that this is alleged to have been necessary in order to concede “responsibility at the Centre” in the new Constitution of India.

I (b) Strength and Composition of the Council and the Assembly.

The subjoined Tables give the number of representatives from each Province to the Council of State and to the Federal Assembly, as well as the scheme of rotation prescribed for the members of the Council of State.* Speaking generally, the number assigned to each Province is made proportionate to its population, wealth, and the hitherto accepted place in the scheme of Indian policy.

*See Chapter II, for the Table of Representatives of the Indian States, ante p. 195 et seq.

THE TABLE OF SEATS

The Council of State

Representatives of British India.

(i) Allocation of seats.

1. Province or Community	2. Total Seats	3. General Seats	4. Seats for Scheduled Castes.	5. Sikh seats	6. Muham- madan seats.	7. Women seats
Madras. ...	20	14	1	—	4	1
Bombay ...	16	10	1	—	4	1
Bengal ...	20	8	1	—	10	1
United Pro- vinces ...	20	11	1	—	7	1
Punjab ...	16	3	—	4	8	1
Bihar ...	16	10	1	—	4	1
Central Pro- vinces and						
Berar ...	8	6	1	—	1	—
Assam ...	5	3	—	—	2	—
North-West...						
Fr. Province	5	1	—	—	4	—
Orissa ...	5	4	—	—	1	—
Sind ...	5	2	—	—	3	—
British Balu- chistan	1	—	—	—	1	—
Delhi ...	1	1	—	—	—	—
Ajmer-Mer- wara	1	1	—	—	—	—
Coorg ...	1	1	—	—	—	—
Anglo-Indians	1	—	—	—	—	—
Europeans ...	7	—	—	—	—	—
Indian Chris- tians ...	2	—	—	—	—	—
Totals ...	150	75	6	4	49	6

*The Federal Assembly
Representatives of British India*

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.
Province.	Total Seats.	Total of General Seats	General Seats for reserved Sche- duled Castes.	Sikh Seats.	Muham- madan Seats.	Anglo- Indian Seats.	Euro- pean Seats.	Indian Christian Seats.	Seats for repre- sentatives of Commerce and Industry	Land- holders Seats.	Seats for repre- sentatives of labour	Women Seats.
Madras	37	19	4	—	8	1	1	2	2	1	1	2
Bombay	30	13	2	—	6	1	1	1	3	1	2	3
Bengal	37	10	3	—	17	1	1	1	3	1	2	1
United Provinces	37	19	3	—	12	1	1	1	—	1	1	1
Punjab	30	6	1	6	14	—	1	1	—	1	1	1
Bihar	30	16	2	—	9	—	—	—	—	—	—	—
Central Provinces and Berar	15	9	2	—	3	—	1	1	—	1	1	1
Assam	10	4	1	—	3	—	—	—	—	—	—	—
North-West Frontier Province	5	1	1	—	4	—	—	—	—	—	—	—
Orissa	5	1	—	—	3	—	1	—	—	—	—	—
Sind	5	1	—	—	1	—	—	—	—	—	—	—
British Baluchistan	2	1	—	—	1	—	—	—	—	—	—	—
Delhi	1	1	—	—	—	—	—	—	—	—	—	—
Almer-Merwara	1	1	—	—	—	—	—	—	—	—	—	—
Coorg	1	1	—	—	—	—	—	—	—	—	—	—
Non-Provincial Seats	4	—	—	—	—	—	—	—	3	—	1	—
Totals	250	105	19	6	82	4	8	8	11	7	10	9

Qualifications of Candidates and Voters

Of the qualifications required of any one standing as a Candidate to a seat in either Chamber of the Federal Legislature and as representative of British India, the most important are that:*

- he, or she, must be a British subject, or the Ruler or subject of an Indian State which has acceded to the Federation;
- is at least 30 years of age, if he (or she) proposes to stand for the Council of State, or 25 years of age if he (or she) proposes to stand for the Federal Assembly;
- and possesses such other qualifications, if any, as may be prescribed.

The Ruler or subject of an Indian State which has not acceded to the Federation is not disqualified under the provision of (a) above, if he (or she) is eligible to a seat in the Provincial Assembly.

Members elected in the first instance are entitled, on the expiry of their term of office, to offer themselves for re-election. Those elected to fill casual vacancies are to hold office for the balance of the original term. The total seats are divided into: (i) General seats, made up of representatives of Hindus, and such other Minorities as have not been accorded separate representation through constituencies of their own; (ii) seats reserved for the scheduled Castes; (iii) Sikhs, (iv) Muham-madans; (v) women. There are, in addition, seats for the Anglo-Indian, the European and the Indian Christian Communities, which may be filled by Electoral College of each of these Communities consisting of the members of these communities in the Provincial Legislative Council, or the Assembly, as the case may be.

*cp., Appendix II to this Chapter.

Every Governor's Province and every Chief Commissioner's Province must be divided into territorial constituencies to fill (a) General Seats; (b) Muhammadan seats; and (c) Sikh seats, if any. To each of these territorial constituencies a given number of seats may be assigned for election to the Council of State.

Voters in the Sikh and Muslim Constituencies for election to the Council of State must be themselves, respectively, Sikhs or Muslims; and no one included in the electoral roll for either of these classes of constituencies is entitled to vote for a General seat. Anglo-Indians, Europeans, and Indian Christians are similarly disqualified from voting for General seats.

Representatives in the Council of State of British Baluchistan are specifically excluded from the foregoing rules, and may be chosen in any manner that may be prescribed.

Representatives of the Scheduled Castes in any Province must be chosen by representatives of the said castes in the Provincial Legislature; and the same rule applies to the women representatives.

Every candidate for a seat in the Council of State from a territorial constituency must be qualified to vote within that constituency. Anglo-Indians, Europeans, or Indian Christians, offering themselves as candidates for their respective seats in the Council of State, must possess such qualifications as may be prescribed in their case, though, apparently, they need not themselves be members of the Electoral College electing them.

Practically the same rules apply for election to the Federal Assembly, except that, in that case, the constituencies are made up of the Provincial Representatives of each community in the Provincial Legislative Assembly. In the N.W.F. Province and for backward areas or tribes, the holders of these seats in the Pro-

vincial Assembly concerned are to be treated as holders of general seats, and the election takes place according to the principle of **Proportional Representation by means of the single transferable vote.**

Representatives of the Scheduled Castes to the Federal Assembly are to be chosen by an electorate consisting of the successful candidates at primary elections to the Local Assembly. This Primary Electorate must elect 4 persons as candidates for each seat reserved for that community; and one of these is to be elected in respect of each seat reserved for that community to the Assembly. No one except these candidates shall be entitled to stand for such election to the Federal Assembly from the Scheduled Castes.

Women representatives in the Federal Assembly are to be chosen by an Electoral College in each Province consisting of the women members of the Provincial Assembly. Of the 9 women's seats, 2 at least must be Muslims, and 1 at least an Indian Christian.

Substantially the same rule applies for election to the seats in the Federal Assembly reserved for the Anglo-Indian, European and Indian Christian Communities, provided that voting in the Electoral College of the Indian Christian Community shall be on the principle of **Proportional Representation by means of the single transferred vote.**

Four non-provincial seats are reserved in the Federal Assembly for representatives of Commerce and Industry, and one for that of Labour. In addition, there are 8 representatives of Commerce and Industry and 9 of Labour allotted to the Provinces, as per table given ante p. 288. Seven seats are similarly allotted to Landholders and distributed in the different Provinces as set out in the Table referred to above.

The British Indian Representatives in the Federal Assembly will thus be divided, as between communities, as follows:—

General seats (including 19 for Scheduled Castes)	105
Sikh seats	6
Muhammadian seats	82
Anglo-Indian seats	4
European seats	8
Indian Christian seats	8
Commerce and Industry seats	11
Landholders seats	7
Labour seats	10
Women seats	9
Total	250

This secures, in British Indian Representatives, 33 per cent. of the total seats at least to the Mussulmans. And, if we add 2 women, 3 landholders, 3 Labour and 2 Commerce and Industry seats, as likely to be Mussulman seats, there will be an aggregate representation of the Mussulmans of 37 per cent. Europeans, Anglo-Indians and Indian Christians will, between them, secure at least 22 seats (20 ordinary seats, and 2 at least in the Commerce and Industry section), or 9 per cent. of the total, against a population not amounting to $1\frac{1}{2}$ per cent. The majority community of the Hindus, including Scheduled Castes, Jains, Buddhists, and Parsis, is left with the so-called General seats aggregating 125 or 130 at most, or from 50 per cent to 52 per cent of the total British Indian seats. This is, of course, apart from the nominees of the Federated Princes.

As between the Provinces, the seats are distributed:—

Madras	37 or 15%	British Baluchistan (1),
Bombay	30 „ 12%	Delhi (2), Ajmer-Mer-
Bengal	37 „ 15%	wara (1), Coorg (1) and
United Provinces	37 „ 15%	Non-Provincial seats (4)
Punjab	30 „ 12%	make up the total of 250.
Bihar	30 „ 12%	
Central Provinces	15 „ 6%	

Assam	10 „ 4%
N.W.F. Provinces	5 „ 2%
Orissa	5 „ 2%
Sind	5 „ 2%

Direct vs. Indirect Elections

No considerable space need be devoted to the discussion of the relative merits of Direct vs. Indirect Election to such a body as the Chambers of the Federal Legislature in India; nor to the basis of Franchise and elections. The only ground on which Indirect Election to the Lower House could be defended is that of the immense areas and population of each electoral unit, if representatives to the Federal Lower House were to be chosen by direct election. There is force in that argument; but it can be carried to excess. In the Provincial Assembly elections, constituencies numbering over 100,000 voters are by no means exceptional, at least in the General Constituencies. Had the Franchise for the Federal Assembly been the same, the Federal constituency would be about 3 times as large. This will not be impossible to manage, especially as literacy and political consciousness spread among the Voters, and as more and more use is made of mechanical devices to collect voters, record votes, count them and declare the result. The existing difficulties are due largely to the ignorance and unfamiliarity of the Electorate as a whole with these forms of modern popular government; but they apply just as much whether the constituency is of 1,00,000 or 3,00,000. The method adopted in this Constitution, of indirect election through Provincial Assemblies, and by means of a single Transferred Vote on the basis of Proportional Representation, may reflect the balance of political opinion in the country; it will never reflect the real political opinion

of the country collectively. The existence of provincial blocks for electoral purposes will, moreover, serve to emphasise provincial differences in interests or viewpoint, and not the national solidarity, which it is the desire of every Indian to promote. The elective element, such as it is, in both Houses, is likely to be swamped,—or at least considerably neutralised, by the presence of the Federated Princes' nominees in such huge blocks, constituting 1/3rd of the Assembly, and 2/5ths of the Council of State;—so that, what seems to have been granted by one hand is more than taken away by the other. The Federal Legislature, therefore, collectively, or in either Chamber, is so constituted as not to be able always to reflect truly the prevailing Indian public opinion on the political issues agitating the public mind, especially where it is in opposition to the vested interests, or British Imperialism.

Communal Electorates

We have already commented, in the volume on Provincial Autonomy, upon the undesirable consequences,—from the standpoint of national solidarity,—of the existence of so many separate Communal and class electorates in the Indian Legislature; and so no more need be said on that subject in this place. This is, of course, not to say that considerable Minority communities,—like the Mussulmans of India,—should not seek to obtain their fair share in the representative institutions of the country. But, if the same objective can be achieved through Joint Electorates of the communities concerned, by such devices as a guaranteed number of minimum reserved seats; or proportional representation, the national unity would never be impeded; and the common welfare of the country at large

doubly assured because of the absence of bitterness that is engendered in such separate electorates and special treatment.

If the Franchise is widened to make every adult citizen a voter, irrespective of any of the numerous and complicated qualifications now disfiguring Schedule I to the Act of 1935, no community need fear its representation falling below its legitimate share, especially if some form of Proportional Representation is adopted. Besides, what is reasonable, even innocuous, and duly safeguarded, for such large Minorities scattered throughout the country as the Mussulmans, becomes an unmitigated obstacle and altogether undesirable, when extended to such microscopic Minorities as the Europeans, Anglo-Indians and Indian Christians; and that, too, with such disproportionate weightage in seats as has already been shown in the case of these 3 communities named.

Even without the artificial emphasis which these separate electorates undoubtedly lend to the Communal sentiment, India has, it must be confessed, Communal divisions among its peoples. But whereas the Indian statesman, anxious to achieve and cement the national solidarity, seeks to minimise communal sentiment even when it cannot be altogether avoided, the framers of the new Constitution have extended the vicious principle of separate Communal Electorates in every direction they could possibly think of, regardless of the unquestionably evil tendencies of that principle of the evolution and perfection of national solidarity in this country.

Bicameral Legislature: Conflict between the two Chambers

The institution of a Bicameral Legislature for the Federation is calculated to complicate needlessly the governmental machinery. The Second Chamber, or the Council of State, is, it must be admitted, not such an absolute innovation in the Central Government of the country, as it is in the Provinces. But even at the Centre, it is not more than 16 years old, dating, as it does, only from the Government of India Act, 1919. The reasons which led Lord Morley, in 1909, to reject the proposal for a Second Chamber in the Central Legislature were as operative in 1919 as in 1909, and in 1935. But while the old Democrat Morley would not hear of setting up this obsolete relic of British Feudalism in India, his successor Montagu could not avoid looking upon the Council of State as a desirable and necessary bulwark against the very mild dose of the popular element introduced in the Central Legislature of those days (1919). The framers of the Act of 1935, in their turn, found, in the proposed institution of the Federation of all India, a Second Chamber, or the Council of State, in the Federal Legislature altogether indispensable for the due representation and proper safeguard of all communities and interests, and above all of British Imperialism. The Council of State in the Indian Federation is, of course, not a representative of the component units of the Federation, in the sense in which the Senate in the United States is of the different States. Its powers and functions, moreover, are, as will be seen more fully below, such that its possible claim to be the special guardian of Minorities, or the particular safeguard for national interests which would otherwise

be helpless in the unheeding march of Democracy, is wholly illusory. It has coordinate powers in all matters of Legislation,—except in regard to Finance Bills, which can only be introduced in the Assembly; and in regard to the voting of supplies, the grants for which can be moved only in the Lower Chamber.* There is no right to insist upon a Joint Sessions of the two Chambers to settle, by a majority of votes at such a joint sitting, differences on matters of legislation between the two Houses. If and when the Governor-General is pleased to call a Joint Session,† the Upper House has no special power to make its viewpoint prevail. In all matters in which there is a disagreement, between the two Chambers, the view of the Lower House would ultimately prevail, if the British model of constitutional practice is followed in this regard, even though the Upper House is directly elected, and the Lower House only a pale shadow of the Provincial Assemblies in their aggregate. The only power the Council of State has is to delay, not to negative, the decision of the Lower House. With no other rights or functions belonging to it than what ordinarily appertains to a Legislative Chamber,—i.e., without the Judicial powers of the House of Lords in Britain, or the title to be peculiarly the representative of the Communes, or the Rural districts which the Senate can claim in France,—the Indian Federal Council of State would have no reserve of indirect power or influence to make its view prevail, even for the time being. Finally, the Constitution of the Council is so reactionary and ossified, that any hope of a progressive policy from the Council, any chance of a truly popular sympathy, must be ruled out; while the

*cp., Sections 34 (2) and 37.

†See ante p. 188 and p. 320 also Section 31.

objects usually sought to be achieved through a Second Chamber in a Federal or unitary Legislature are equally impossible to accomplish through the Indian Council of State.

(a) Powers of the Federal Legislature

Let us next consider the powers of the Federal Legislature. We might study that subject under the following subheads:—

- (a) Legislative Powers;
- (b) Formulation of general National Policy;
- (c) Finance;
- (d) Supervision and control of the administration; enforcement of Ministerial Responsibility;
- (e) Residuary, overriding, and emergency powers.

(a) Legislative Powers

The Legislative powers of the Federal Legislature are defined by Sections 99 to 110. Of these, Section 99 lays down the general Legislative Powers, Section 100, the particular subjects (contained in the Lists given in Schedule VII to this Act) on which the Federal Legislature may legislate exclusively, concurrently or in super-session, as it were, of the Provincial Legislature; Section 101 excludes the power of the Federal Legislature to legislate for a Federated State

“otherwise than in accordance with the Instrument of Accession of that State and any limitations contained therein.”

Section 102 gives power to the Federal Legislature to legislate even for the Provinces in an Emergency,

“whereby the security of India is threatened, whether by war or internal disturbance”.

Section 103 lays down the power of the Federal Legislature to legislate for two or more Provinces by mutual consent even on Provincial subjects; while Section 104 defines the Residuary Powers of legislation vested in the Federal Legislature, as empowered by notification of the Governor-General issued in his discretion. Section 105 authorises the Federal Legislature to provide by Act for the maintenance of discipline in the Indian Naval Forces; Section 106 gives power, with the previous consent of the Governor of the Province, or of the Ruler of the State affected, to legislate for giving effect to international agreements. Provision is made, in Section 107, for the settlement of conflict between Federal and Provincial Legislation, while certain restrictions and conditions for introducing Bills in the Federal (and Provincial) Legislature are laid down in Section 108. These requirements of the previous sanction of the Governor-General (and of the Governor in certain cases, and of recommendation in others, are matters of procedure only, says Section 109; while the final Section in that Chapter contains certain savings.

Having considered, in the volume on Provincial Autonomy, the general nature of these provisions and their effects, it is unnecessary to devote any great space to that subject in this Chapter. Points of special interest in connection with the Federal Legislature particularly may, however, be noticed with advantage. Under Section 99—

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