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 adminstration; 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 Legislation 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.

(2) Without prejudice to the generality of the powers conferred by the preceding subsection, no Federal law shall, on the ground that it would have extra territorial operation, be deemed to be invalid in so far as it applies—

(a) to British subjects and servants of the Crown in any part of India; or

(b) to British subjects who are domiciled in any part of India wherever they may be; or

(c) to, or to persons on, ships or aircraft registered in British India or any Federated State wherever they may be; or

(d) in the case of a law with respect to a matter accepted in the Instrument of Accession of a Federated State as a matter with respect to which the Federal Legislature may make laws for that State, to subjects of that State wherever they may be; or

(e) in the case of a law for the regulation or discipline of any naval, military, or air force raised in British India, to members of, and persons attached to, employed with or following, that force, wherever they may be.

The Federal Legislature has plenary powers to legislate for the whole of India, including the Federated States, on the subjects which are reserved for that Legislature so far as the States are concerned. But such laws will have to be in accordance with the terms and conditions of the Instruments of Accession of particular Federated States. To the extent that the Princes federating have agreed that the Federal Legislature may make laws for their territories and their peoples, the local sovereignty of those Princes must be taken to have been surrendered to the Federation. The Federal Executive would have automatic power to enforce the Federal laws even within the territories of the Federated Princes,—subject, of course, to the limitations and stipulations of their Instruments of

Accession. Under the provisions of Section 107 (3),* if on any of the agreed subjects of Federation, a local law of a Federated State conflicts with a Federal law on the same subject, the Federal law must prevail, and the State law be a thing of nought. Even within the State, and as regards the subjects of the State, on matters which have been accepted by the Ruler as those on which the Federal Legislature may make laws, that body can do so to the exclusion, or at least to the supersession, of the local Legislature.

The terms of Section 100 do nothing to detract from the wide generality of this provision. The theory, however, of the division of powers between the Federal and the Provincial Legislature is a complete clear-cut separation or distribution of powers, with very little ground overlapping, as shown in the Concurrent List. The Federal Legislature has exclusive authority to legislate on subjects in the so-called Federal List in Schedule VII. Under certain conditions, it may also legislate on subjects in the Provincial List in the same Schedule. No Provincial Legislature, however, has power to legislate on any subject included in the Federal List proper, though in the common or Concurrent List of subjects, both the Legislatures are entitled to legislate. There is only one condition imposed by Section 107 (1): that whenever a Provincial Law conflicts with a Federal Law, on a subject on which the Federal Legislature is entitled to make laws, the latter shall prevail, and the former be void in so far as it is repugnant to the Federal law. In the

*Says that Section:—

"If any provision of a law of a Federated State is repugnant to Federal law which extends to that State, the Federal Law, whether passed before or after the law of the State, shall prevail, and the law of the State shall, to the extent of the repugnancy, be void."

Concurrent List of subjects, however, if a Provincial law is in any respect incompatible with, or repugnant to, an earlier Federal law on the same subject; and if that Provincial law

> "having been reserved for the consideration of the Governor-General, or for the signification of His Majesty's pleasure, has received the assent of the Governor-General or of His Majesty,"

then that Provincial law shall prevail in that particular Province, without prejudice to the right of the Federal Legislature to enact further legislation on the same subject.* Any Bill to make such further provision by Federal law, which would be repugnant to a Provincial law, duly reserved and assented to by the authorities mentioned above, must, however, receive "the previous sanction of the Governor-General in his discretion" before being introduced or moved in either Chamber of the Federal Legislature.†

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

(2) Notwithstanding anything in the next succeeding subsection, the Federal Legislature, and, subject to the preceding subsection, a Provincial Legislature also, have power to make laws with respect to any of the matters enumerated in List III in the said Schedule (hereinafter called the "Concurrent Legislative List").

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

*cp. Section 107 (2).

†Section 100.

(b) Formulation of National Policy

The influence of the Federal Legislature on the formulation of national policy has nowhere been provided for by express terms of the Constitution; but may be presumed to be deduced from

(a) the Responsibility of Ministers;

(b) control over the Federal Finances, especially voting of grants and passing financial legislation;

(c) such other rights of Interpellations to the Ministers, Resolutions of Policy, and miscellaneous Motions like a Motion for the Adjournment of the House to discuss a definite matter of urgent public importance, whereby not only the sentiment of the House could be recorded on given questions of national policy; but also the Ministry collectively can be censured or displaced.

Ministerial Responsibility to the Federal Legislature

The Responsibility of the Ministers to the Legislature is a matter exclusively of constitutional convention. It has little authority in the express terms of the Act of 1935 to justify the maintenance of that doctrine as the keystone of the new Constitution. The Governor-General is bound to act on the advice of his Ministers, except in matters which are left to his sole discretion, or those in which he is required by the law to use his individual judgment.* But there is no provision of the Constitution, which makes Ministers expressly responsible to the Legislature for their actions and policies.

This makes the Ministers not only the nominees of the Governor-General; but dependent upon him for their salaries as well,—until the Federal Legislature by Act determines their salaries. This is the one and

*cp., Section 9 (1).

only important contact of the Ministers with the Legislature. But, even here, the power given to the Legislature over the Ministers is indirect only. The Governor-General appoints them, summons them to office, assigns them their work, and regulates their relations with their departments, subordinates, and himself.* He is instructed, no doubt, by the King-Emperor to appoint as First Minister the person who seems to him to be supported by a majority in the Legislature; but that is a matter for the sole discretion of the Governor-General. The Legislature, or the Assembly, has no direct means to indicate to His Excellency that a majority of its members support his choice, or not. There is a practice in France, for example, for each new Ministry to demand a Vote of Confidence from the *Chambre des Deputes;* and such Votes may make and unmake Ministries from time to time, whether specifically provoked, or coming up accidentally. In Britain, direct votes of no confidence in the Ministers are rare, the last noteworthy instance being that moved by Mr. Asquith in 1924 against the first Labour Government, which being carried, the Government resigned. Usually it is sufficient if a Government in office suffers an irretrievable defeat in the Commons on a major issue of policy, when they must resign.

It remains to be seen whether in India, also, such Constitutional Conventions develop, not only to enable the Governor-General to see who has, and who has not, the support of a majority in the Assembly; but also to enable the Legislature to take a more direct initiative in the choice of the Federal Ministers. As, however, the letter of the Constitution stands the Governor-General, **acting in his discretion**, is the sole

*cp. Section 17 and ante p. 239.

authority for the appointment, summoning, and dismissal of the Ministers. There is, besides, nothing in the Constitution to oblige him to dismiss those Ministers, or any of them, who have lost the confidence of a majority in the Legislature.* Even the principle of Collective Ministerial Responsibility depends upon an Article in the Governor-General's Instructions. It has no place in the letter of the Constitution as it stands. In fact, Section 10 (4) might well be interpreted to mean that the Constitution does not contemplate collective responsibility; or at least does not insist upon it, since it forbids any Court,—and, presumably, therefore, also the Legislature, by implication or analogy;—to enquire into the question what advice was tendered to the Governor-General by any given Minister. The rationale of such an interpretation of the Constitution could be found easily in the Instruction that the Ministry should contain representatives of the Federated States, and of important Minorities,—who may not always be found to hold the same political sentiments as the representatives of the Majority in the Legislature. Collective Responsibility among Ministers without an identity of political sentiment is an absurdity. Hence, if these two requirements of the Governor-General's Instructions seem to conflict, obviously the more reasonable interpretation of the Constitution would be to discard the convention of Joint Responsibility. If the Governor-

*We have used the term "Confidence of the Legislature" or "of the Assembly" indiscriminately in these observations. But Article VIII of the Draft Instructions to the Governor-General speaks of the Legislature only, and not of the Assembly. The importance of the Lower House is assumed by us in these observations following the British Constitutional conventions, without sufficient warrant for the same in the relevant Indian Constitutional documents. Needless to add there is no Instruction about the dismissal of Ministers, and the principles on which that act of the Governor-General is to take place. It is a matter literally to the sole discretion of the Governor-General, who may, however, evolve his own conventions for the purpose.

General does not dismiss a Minister or Ministry, and the latter does not resign if a majority in the Legislature is adverse, there is no provision in the Constitution which would compel the Governor-General to dismiss his Ministers, or the latter to resign. This is of particular significance in the Federal Government, where the composition of even the Assembly is such that, with a little adroit wire-pulling a temporary lack of majority for Ministers favoured by the Governor-General could be easily rectified.

The Ministers' connection with the Legislature is found in Section 10 (2), which lays down that a Minister who fails to find a seat in either Chamber of the Federal Legislature "for any period of consecutive six months" must vacate office at the expiration of that period. This is, however, possible to circumvent, if the Governor-General is so minded, by securing the nomination of the individual concerned in either Chamber through one of the obedient Federated Princes, or, in the Upper House, directly by the Governor-General himself. The presence, moreover, of a Minister in a Chamber of the Legislature, is no guarantee that his Responsibility to that body would be more directly enforced; or that it would be a living reality and not a constitutional fiction.

The only means whereby the Legislature can enforce responsibility upon the Ministers is through its power to vote their salaries. Sub-section (3) of Section 10 allows this power to the Federal Legislature; Observe, however, that this power can be used only by a solemn Act of the Legislature, and not by a mere annual vote. Besides, during the term of a Minister in office, his salary cannot be varied (to his prejudice?)

even by an Act of the Legislature. Section 33 (3) (c) includes, among the items "charged on the revenues of the Federation",—*i.e.*, not subject to the Vote of the Legislature,—

> "the salaries and allowances of Ministers, of Counsellors, of the Financial Adviser, of the Advocate-General, of Chief Commissioners, and of the Staff of the Financial Adviser".

One can understand the non-votable character of the salaries of the Counsellors, the Financial Adviser, the Advocate-General and the Chief Commissioners, as also of the staff of the Financial Adviser.* But to include the salaries and allowances of the Federal Ministers in the same category, especially after it has been provided by law that the salary of a Minister cannot be varied during his term of office, seems wholly against the spirit of constitutional usage accepted everywhere where this kind of democratic government is in vogue. If the Federal Legislature, therefore, desires to bring home to the Ministers their responsibility, such as it is, to the chosen representatives of the people, it has no alternative, but to resort to a straight vote of no-confidence; and if that is not attended to,—which it very well might not be,—proceed to amend the law regulating Ministerial salaries, knowing that the Ministers for the time being cannot be affected by any revision downwards of their salaries; and, further, that the law,

*cp. particularly the terms of Section 15 (3), which leaves it to the discretion of the Governor-General (see sub-section (4) of the same Section) to determine the numbers of the staff and their conditions of service in the office of the Financial Adviser. Section 247 (4) charges on the revenues of the Federation the salaries and allowances of all persons appointed to a Civil Service or to a Civil Post by the Secretary of State; and the staff of the Counsellors would be similarly treated, being appointed by the Secretary of State, under Section 244 (2), until Parliament otherwise enacts. It is, therefore, difficult to appreciate the special reason which necessitates the particular mention of the staff of the Financial Adviser appointed by the Governor-General,—unless it be that all the financial functions of the Governor-General, in which the Financial Adviser is to advise him, are not within the sole discretion of the Governor-General.

even if passed by the Legislature, may not be assented to by the Governor-General. It cannot be emphasised too much that the Legislature has no say in the choice or removal of the Federal Ministers, who are selected for their office, and removed from it, by the Governor-General **in his discretion.** Hence the introduction of an element of Ministerial Responsibility,—collective or individual,—is a very shadowy illusive advance in the direction of a working democracy in this country.

Since the Legislature's control over the Ministers is thus rudimentary; since they have no voice, directly at least, in determining the personnel of the Federal Cabinet; and much less in their removal from office; since even the financial reins are in the Legislature's hands only limply; and since all conventions regarding the relations of the Ministry with the Legislature have yet to grow,—if they grow at all; and then one cannot say on what lines they would grow,—the rôle of the Legislature in shaping or formulating the national policy is of the slenderest degree.

There, are no doubt, provisions of the Constitution, which warrant the belief that Rules would be made to permit the Legislature to ask Questions to the Ministers, and thereby indirectly criticise the conduct of Government; to move specific Resolutions on general questions of policy, indicating the popular opinion on given subjects of national concern. But even assuming,—which is by no means justified by the terms of the Act,—that the Resolutions on questions of Policy accepted by the Legislature will hereafter be binding upon the Ministry and the Governor-General, at least on those subjects on which the Governor-General is bound to discharge his functions on

the advice of his Ministers,—it would rest with the Government, and more correctly, with the Governor-General, how effect is given to such Resolutions of policy. Except in so far as the line of policy desired by the country is embodied in an Act of the Legislature, duly passed it is impossible to say if the Legislature would really have any say at all, strictly speaking, in the formulation, moulding, or even indicating the National Policy on grave issues of national importance.

Motions for Adjournment on specific matters of urgent public importance, are only a negative help in forming the national policy. Usually they are utilised in censuring the Government,—at least under the present regime,—for acts or events for which the Government could be held responsible. For any positive indication, Adjournment Motions are really of no avail. We may, therefore, conclude, that the rôle of Legislature in forming National Policy would be of the slightest importance in practice, until at least conventions are formed and honoured which accord to the Legislature a rôle that the letter of the Constitution does not give it.

The actual terms of the Section permitting Interpellations, Resolutions, and other Motions of the kind just noted, are worth considering on its own merits.

Procedure Generally

38.—(1) Each Chamber of the Federal Legislature may make rules for regulating, subject to the provisions of this Act, their procedure and the conduct of their business:

Provided that as regards each Chamber the Governor-General shall **in his discretion,** after consultation with the President or the Speaker, as the case may be, make rules—

(a) for regulating the procedure of, and the conduct of business in, the Chamber in relation to any matter which affects the discharge of his functions

in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment.

(b) for securing the timely completion of financial business;

(c) for prohibiting the discussion of, or the asking of questions on, any matter connected with any Indian State, other than a matter with respect to which the Federal Legislature has power to make laws for that State, unless the Governor-General in his discretion is satisfied that the matter affects Federal interests or affects a British subject, and has given his consent to the matter being discussed or the question being asked;

(d) for prohibiting, save with the consent of the Governor-General in his discretion,—

(i) the discussion of, or the asking of questions on, any matter connected with relations between His Majesty or the Governor-General and any foreign State or Prince; or

(ii) the discussion, except in relation to estimates of expenditure, of, or the asking of questions on, any matter connected with the tribal areas or the administration of any excluded area; or

(iii) the discussion of, or the asking of questions on, any action taken in his discretion by the Governor-General in relation to the affairs of a Province; or

(iv) the discussion of, or the asking of questions on, the personal conduct of the Ruler of any Indian State, or of a member of the ruling family thereof;

and, if and in so far as any rule so made by the Governor-General is inconsistent with any rule made by a Chamber, the rule made by the Governor-General shall prevail.

(2) The Governor-General, after consultation with the President of the Council of State and the Speaker of the Legislative Assembly, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Chambers.

The said rules shall make such provision for the purposes specified in the proviso to the preceding subsection as the Governor-General in his discretion may think fit.

(3) Until rules are made under this section, the rules of procedure and standing orders in force immediately before the establishment of the Federation with respect to the Indian Legislature shall have effect in relation to the Federal Legislature subject to such modifications and adaptations as may be made therein by the Governor-General in his discretion.

(4) At a joint sitting of the two Chambers the President of the Council of State, or in his absence such person as may be determined by rules of procedure made under this section shall preside.

If these are to be taken as recognised and effective constitutional means of enforcing Ministerial Responsibility, and for enabling the Legislature to take a real part in formulating national policy; we must point out that:—

(a) The power to make its own rules of procedure and the conduct of business, by either Chamber of the Legislature, is negative rather than positive. The section does not say,—and no other section says,—what particular business the Chamber would be entitled to transact besides law-making and voting supplies. We have seen how these two items are narrowly circumscribed, carefully restricted, and minutely conditioned. In the absence of positive authority laying down the business open to the House to transact, the power to influence national policy is, to say the least, rudimentary.

(b) In regard to those functions which the Governor-General is to discharge in his discretion, or in regard to which he is to exercise his individual judgment, even the rule-making power is taken away from the Houses of Legislature. The Governor-General makes those rules in his discretion; the obligation to consult the Presidents of both the Houses is only a formal courtesy shown to those dignitaries, without any real share being assigned to them to make those rules more liberal than they

would be if the Governor-General promulgated them on his own authority, as he is entitled to make them **in his discretion.**

(c) The obligation on the Governor-General that rules must be made to secure a timely completion of the financial business every year is another hindrance in the way of an effective discussion of public questions. The old British principle of "ventilation of grievances before the voting of Supplies" has been observed, in a manner of speaking, in the existing Indian Legislative Assembly's rules, in that there is neither any time limit, nor any particular rules of relevancy, as regards matters the Members can bring up for discussion in their speeches on the various stages of the Finance Bill. There is a real danger that even this insignificant room for ventilation of public grievances and indirectly influencing public policy, will disappear when the Governor-General makes these rules, and prescribes the Budget time-table through those Rules.

(d) The provisions of sub-section (1) of this section, and the subdivisions of clauses (c) and (d) of the same, bring out the negative nature of this power of the Legislature, since a number of subjects are barred from discussion or even Interpellation, except with the consent of the Governor-General. On the face of them, these exclusions may not seem unreasonable or unprecedented; but they indicate the underlying spirit of restricting and conditioning the powers,—such as they might be,—of the Legislature as narrowly and minutely as could be conceived. Hence the apprehension that, in the face of such limitations, the Legislature cannot possibly have any real influence on the national policy.

(c) Financial Powers of the Federal Legislature

Law-making and general administrative powers being thus limited, the only remaining source of real power and authority might be sought in the region of finance. The Federal Assembly is granted* certain powers of control and voting the Federal supplies. But the effective value of these powers is considerably reduced by:—

(a) The presence of a Special Responsibility on the Governor-General, under Section 12 (1) (b), for the maintenance of the Financial stability and credit of the Federal Government. This is to be a real responsibility, particularly as considerable amounts of unproductive, unwelcome, and external expenditure have been charged upon the Federal Revenues.

(b) The Governor-General being aided, in matters of finance, by an independent Financial Adviser, who will be rather a check on his Ministers, than their help in widening or maintaining intact the powers of the Legislature.

(c) In matters of finance, the Governor-General's rule making powers, to enable financial business in the Legislature to be completed in time. These will also act as an additional restriction on this Power of the Purse supposed to be vested in the Federal Legislature.

(d) The existence of considerable and expensive departments of Government, which are wholly removed from the control of the Legislature or the Ministers responsible to it. The expenses of these departments are estimated and defrayed by the Governor-General in his discretion, that is to say without any reference to the Ministers, or to the Legislature,—except that these amounts may be included in the annual financial statement presented to the Legislature.†

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

†cp., Chapter XI below on Federal Finance.

(e) Under Section 33 (3), the exclusion of specified items of expenditure from a vote of the Legislature, *viz.*:—

(1) The salary and allowances of the Governor-General and other expenditure relating to his office for which provision is required to be made by Order-in-Council;

(2) Debt charges for which the Federation is liable including interest, sinking fund charges and redemption charges, other expenses relating to the raising of loans and the service and redemption of debt;

(3) Salaries and allowances of Ministers, of Counsellors, of the Financial Adviser, of the Advocate-General, of Chief Commissioners, and of the staff of the Financial Adviser;

(4) The salaries, allowances and pensions payable or in respect of Judges of the Federal Court, and the pensions payable to or in respect of Judges of any High Court;

(5) Expenditure for the purpose of the discharge by the Governor-General of his functions with respect to defence and ecclesiastical affairs, his functions with respect to external affairs in so far as he is by or under this Act required in exercise thereof to act in his discretion, his functions in or in relation to tribal areas, and his functions in relation to the administration of any territory in the direction or control of which he is under this Act required to act in his discretion; provided that the sum so charged in any year in respect of expenditure on ecclesiastical affairs shall not exceed 42 lakhs of rupees, exclusive of Pension charges;

(6) the sums payable to His Majesty under this Act out of the revenues of the Federation in respect of the expenses incurred in discharging the functions of the Crown in relation to the Indian States;

(7) Any grant connected with the administration of excluded areas in any Province;

(8) Any sum required, to satisfy any judgment, decree or award of a Court, or arbitral tribunal;

(9) Any other expenditure declared by this or any other Act to be charged upon the revenues of the Federation.

The aggregate of these amounts, in the normal Federal Budget now envisaged, would be considered in the Chapter dealing with Federal Finance. But there can be no doubt, that, thanks to these items being excluded from the vote of the Federal Assembly, the actual region in which the Assembly vote will have any effect is less than $\frac{1}{4}$ of the total Federal expenditure, if even so much.

Within this amount open to the vote of the Federal Legislature, the powers of the Governor-General under section 35 take away practically all the power of the Legislature in voting supplies, thanks to his right to issue a schedule of authorised expenditure. He may, include therein any grant that may have been refused or reduced by the Assembly, if it appears to him necessary for the effective discharge of his special responsibility. This section and the one preceding define the power of the Asssembly and of the Council of State in regard to the Financial Grants; as such, they are well worth quoting in full:—

"34—(1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of the Federation shall not be submitted to the vote of the Legislature, but nothing in this subsection shall be construed as

preventing the discussion in either Chamber of the Legislature of any of those estimates other than estimates relating to expenditure referred to in paragraph (a) or paragraph (f) of subsection (3) of the last preceding section.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Federal Assembly and thereafter to the Council of State, **and either Chamber shall have power to assent or to refuse to assent to any** demand, or to assent to any demand subject to a reduction of the amount specified therein: Provided that, where the Assembly have refused to assent to any demand, that demand shall not be submitted to the Council of State, unless the Governor-General so directs and where the Assembly have assented to a demand subject to a reduction of the amount specified therein, a demand for the reduced amount only shall be submitted to the Council of State, unless the Governor-General otherwise directs; and where, in either of the said cases, such a direction is given the demand submitted to the Council of State shall be for such amount, not being a greater amount than that originally demanded, as may be specified in the direction.

(3) If the Chambers differ with respect to any demand the Governor-General shall summon the two Chambers to meet in a joint sitting for the purpose of deliberating and voting on the demand as to which they disagree, and the decision of the majority of the members of both Chambers present and voting shall be deemed to be the decision of the two Chambers.

(4) No demand for a grant shall be made except on the recommendation of the Governor-General".

Section 35.—(1) The Governor-General shall authenticate by his signature a schedule specifying—

(a) the grants made by the Chambers under the last preceding section;

(b) the several sums required to meet the expenditure charged on the revenues of the Federation, but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the Legislature:

Provided that, if the Chambers have not assented to any demand for a grant, or have assented subject to a reduction of the amount specified therein, the Governor-General may, if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities, include in the schedule such additional amount, if any, not exceeding the amount of the rejected demand or the reduction, as the case may be, as appears to him necessary in order to enable him to discharge that responsibility.

(2) The schedule so authenticated shall be laid before both Chambers, **but shall not be open to discussion or vote therein.**

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the Federation shall be deemed to be duly authorised unless it is specified in the Schedule so authenticated."

Stages in Budget Procedure in the Federal Legislature

The four sections, 33-36, lay down the stages of the Budget procedure in the Legislature as a whole, and define also the powers of either Chamber, as well as of the Governor-General, in regard to national finance.*

The first stage commences with the submission of an annual Financial Statement to *both the Chambers*. There is neither priority nor pre-eminence accorded to the Lower House in this behalf, which is a significant feature of the new Constitution. This statement must distinguish between expenditure *charged upon the Federal Revenues*, and therefore nonvotable by and that open to a vote of the Legislature. It must also distinguish between Capital and Revenue expenditure proper; and finally, it must distinguish between the sums directed by the Governor-General to be included because he considers them to be indispensable for the due discharge of his special responsibilities; and those sums without any such direction.† Even at this

*We are not concerned, in this study of the Constitution, with the regulations governing the preparation of the Annual Financial Statement or Budget in the various Executive Departments of Government. It is, however, a most interesting and important process in the administration of the country, and has a close bearing upon its efficiency. The student interested in such matters is referred to the **Sixty Years of Indian Finance** by the present writer.

†cp. Sections 33 (1) and (2).

first stage of the Budget, the Legislature is made aware of what sums they cannot vote; and what, if voted upon differently from that shown in the Statement, may necessitate the Governor-General utilising his special powers to restore such sums as he had originally directed them to be included.

The second stage commences with a general discussion of the Financial Statement as a whole. Under Section 34 (1), only 2 of the 9 times charged upon the Federal Revenues are excluded from a general discussion in the Legislature,—*viz.*, the salaries and allowances of the Governor-General, and the sums paid to the Representative of the Crown in its relations with the Indian States. A review of the administration in general; a criticism of the policy pursued by the Government in any department; and a discussion even of the items which are not open to a vote of the Legislature for being granted, may take place during this stage. Rules of procedure made by the Governor-General *in his discretion*, to see that the financial business is completed in time, may come into operation at this stage. They may curtail the right of the Legislature to review the national policy to ventilate the grievances of the people, and to make suggestions even on the excluded or reserved departments, on the ground of the larger membership in the Federal Legislature. This discussion is ineffective, not only because no vote need be taken upon it on any specific issue; but also because the very latitude of discussion may occasion repetition, irrelevance and mere verbosity. It is, however, necessary for the ordinary member to tell his constituents what part *he* is playing; and as such, in a democratic government, cannot be dispensed with.

The third stage would commence with the submission of **demands for grants** on particular heads. These demands are first to be submitted to the Assembly, or the Lower House. After that body has voted upon each of these demands, as many of them as have been passed, or upto the reduced amount upto which a demand has been passed by the Assembly, may be placed before the Council of State. *Both Chambers have equal rights in voting grants which are open to* their vote. Thus the Assembly has a slight priority in the submission of each grant. If a grant is refused by the Assembly, it cannot be placed before the Upper House at all, unless the Governor-General specially directs that the amount originally asked for, or less, should be submitted for vote by the Council of State. In the case of a reduced grant, only the reduced amount can be asked for from the Council of State, unless otherwise directed specially in that behalf by the Governor-General. The intervention of the Governor-General at this stage is unprecedented, unnecessary, and likely to produce of needless irritation, which might well have been avoided, in view of the fact that the ultimate authority is left with him in any case.

It must be noted that no grant can be asked for except on a recommendation from the Governor-General in that behalf.* This is supposed to serve the interests of economy which are believed to be endangered in a democratic regime. In fact, in our Constitution, and under Indian conditions, it serves to emphasise the overriding powers of the Governor-General, even in financial matters, which are supposed

*cp., Section 34 (2).

to be the keystone of Responsible Government. There is, indeed, the British precedent to warrant this particular provision of the Constitution; but there is no comparison between the powers and authority of Parliament and of the Ministers of the Crown in Britain, and their prototypes in India under the new Constitution.

If the Chambers disagree as to any grant, the Governor-General is required by law to call a **joint sessions** of the two Chambers. Joint sessions were, though permitted under the Act of 1919, never tried. Under the new Constitution they threaten, thanks to such provisions, to be an annual epidemic. For, in such a case the Governor-General has no option, nor discretion. The collective vote of the two Chambers sitting together being regarded as the final vote on any demand, it can be readily understood what indirect influence is accorded to the Governor-General in controlling the financial policy and administration of this country under the new Constitution. The composition of the two Chambers, sitting together is such,—as we have already seen,—that the will of the Governor-General will have 3 chances out of every 4 to prevail in such joint sessions.* There is no precedent for such compulsory joint sittings of the two Chambers of a Federal Legislature in matters of finance, in which, under the general constitutional usage all over the British Commonwealth, the Lower House is supreme.

*In a full sessions of the two Chambers, 230 members would be drawn from the States, who would, of course, be always available to do the Governor-General's bidding. Of the remaining 355, if the Governor-General can secure 65 votes from all the Landlords, Communalists, Commercial magnates, Anglo-Indians, Europeans, Indian Christians, and non-provincial members, which number 38 in the Lower House without counting 82 Mussulmans, 10 Labour, 9 Women, 6 Sikhs and 10 depressed classes, and at least 10 in the Upper House, the Governor-Genral can always snap his fingers at the Assembly every time it differs from him on a financial issue.

In so far as this device succeeds in enabling the Governor-General to avoid the exercise of the still more extraordinary and overriding power reserved to him by the Constitution, it will only emphasise the difference of viewpoint between the Governor-General and his Minister, or the Lower House; and make the Upper House more clearly the mouthpiece of the Governor-General.

The next stage deals with the procedure when all demands have been voted upon, whether singly by each Chamber, or in joint sittings. The verdict of the Legislature, even in the very limited field left open to it, is not final, whether each Chamber has singly considered the several demands for grants, or in joint sessions. While authenticating the schedule of Authorised Expenditure, the Governor-General is entitled, under the proviso to Section 35 (1), to restore a grant refused by the Chambers, or to restore a grant in its original amount if the same had been refused by a Vote of the Chambers,

> "if in his opinion the refusal or reduction would affect the due discharge of any of his special responsibilities".

This is a very elastic excuse, and might be used to neutralise any vote of the Legislature, if the Governor-General feels so advised, the more so as this authenticated schedule of authorised expenditure is, under sub-section (2) of Section 35, not open to any vote by the Chambers to whom it is submitted as piece of information only.

As the same rule applies to Supplementary Expenditure* not provided for in the Annual Financial

*cp., Section 36.

Statement, any amount of expenditure can in effect be incurred and defrayed by the executive without the authority or vote of the Legislature.

The last stage of the Financial procedure might be said to be comprised in any Financial Legislation which becomes necessary as the result of the year's budgeting. This is provided for under Section 37, which defines Financial Legislation, and restricts its introduction only to the Assembly in the first instance, and that, too, subject to the recommendation of the Governor-General, as an indispensable condition precedent for its introduction.* This is the only distinctive privilege of the Federal Assembly, or the Lower House of Legislature in matters of finance,—if it can be called a privilege at all. In all other matters, of voting the supplies, or considering the Financial Statement, or discussing any item therein as a matter of national policy, the powers of the two Chambers are identical.

Summing up the financial powers of the Legislature, we cannot but recognise that the field of finance open to the Legislature is strictly limited. Even in the limited field, every attempt is made to drown or neutralise the voice of the chosen representatives of people in the Lower House. At every stage in the course of the annual Budget through the Federal Legislature, the Governor-General is given powers of intervention, suggestion, and dictation. The last word rests with the Governor-General, and his word shall prevail, even after the combined vote of the two Chambers of the National Legislature has decided a case against the suggestion of the Governor-General. As finance is the keystone of the arch of Responsible

*cp., Section 37.

Government, these restrictions on the authority and powers of the Federal Legislature in matters of finance tell their own tale of suspicion and distruct of the Indian politician, of a grim resolve of the British Imperialist elements to keep India, subject and an undiminished field for their exploitation.

(d) Supervision and Control of the Administration

The powers of the Federal Legislature in respect of the general supervision and control of the Legislature have already been discussed, indirectly at least, while considering the question of Ministerial responsibility. There is little more to be added, except that, such powers as there are left to the Legislature in this behalf by the Constitution can be exercised only indirectly. Questions on specific issues of administration, or popular grievances with the work of administrative department; Resolutions on matters of general policy; Motions for adjournment or inquiry,—these are the commonest forms of supervising and controlling the Administration.

Committees of the House

The routine work of the Assembly would, to a great degree, be conducted by Committees, which are not mentioned in the Constitution, but which will nonetheless be set up. These Committees are usually of an advisory or investigating character; and have no powers of initiative. They are generally appointed in relation to questions in which no great imperialist interest is at stake.

There are *Standing Committees*, under the existing Constitution, on Finance, Railways, and Public Accounts, which are almost certain to be repeated in

the new Constitution. These may not be doing any specially constructive or initiative work; but they serve as controlling or checking agents on behalf of the Assembly, and will be more increasingly useful under the new regime. Advisory Committees, like those in the Department of Commerce; or administrative committees, like the so-called Kitchen or Library Committees, may also wear the label of Standing Committees. The new Legislature might have to set up many more of such committees, *e.g.*, for the accommodation and conveyance of members during sessions time; a Press Committee, or even a Committee of Privileges if so considered desirable. Select Committees on particular measures, or *ad hoc* Committees, may also be set up to do the detailed, uninteresting, but most important and useful, work of the Legislature, to which the executive Government, or a part of it, is supposed to be responsible.

Committees may not be of much service in the more spectacular aspects of these democratic institutions; and they might not be of much use in shaping fundamental policy, or laying down basic principles of Government. But they are utterly indispensable for the detailed work of supervision and control of the Administration. Not infrequently do they carry out great pieces of constructive legislation, or public economy. Investigation of a complicated social problem, prior to legislation, may be, and frequently is, carried out by such Legislative Committees, the value of whose service can never be exaggerated. In the days of full responsible Government, they would be excellent means of liaison between the Ministry and the public in educating them in a proper perception of the real

achievements of a given Ministry. But this has yet to be; and all that we can say at the moment is that the device is too good, too common, and too serviceable, particularly when the Legislature is composed of fairly large numbers, to be neglected or abandoned under the new regime.

Of the extraordinary features of the Legislature at work, it is impossible to say anything at present, while these bodies have yet to be established. But, given the Federal Constitution, and certain excluded Departments, it is not unlikely that some standing machinery may be instituted to make the Legislature keep in touch with these Departments, at least from their financial side; and, secondly, to avoid overlapping or conflict with the Provincial Governments or Legislatures. A Committee of Federal Defence; another on Federal, State and interprovincial relations to keep watch on these matters, and report to the Legislature from time to time, so as to smoothen administration, and bring the national policy more and more into line with the wishes of the people, may also come to be regular features of the Federal Legislature.

(d) Residuary, Overriding and Emergency Powers of the Federal Legislature

The Residuary, Overriding, and Emergency powers of the Federal Legislature are confined only to the making of laws. In each case, they are subject to the special permission of the Governor-General. The Constitutional provisions in this regard are to be found in Sections 102, 103, 104 and 107.

Residual Powers.

The residual powers of the Federal Legislature are provided for in Section 104:

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

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

Though, in the theory of the Constitution Act, there is a clean division of subjects for legislation between the Federal and the Provincial Legislatures; and though, further, there is a concurrent List for legislation on which, under given conditions, both the Provincial and the Federal Legislatures can legislate, this provision is inserted to guard against new developments and unforeseen subjects for legislation, which the march of human progress and science might give birth to. On any subject, which is not definitely classed in any of the three Lists given in Schedule VII to the Act, the Federal Legislature is entitled to legislate provided the Governor-General empowers, by public notification issued **in his discretion** that Legislature to do so. He may, however, similarly empower even a Provincial Legislature to legislate on any such unclassed topic. It is, therefore, not strictly accurate to say that the Federal Legislature is alone the repository of the undistributed, residual, powers. The real,—the one and only—repository of such residual power is the Governor-General acting in his discretion; and the authority to the Legislature, Federal or Provincial, is only an empty husk.

Federal Legislation for Two or More Provinces

The power of the Federal Legislature to legislate for two or more Provinces on a Provincial matter for legislation is regulated by Section 103. This power is exercisable only if the Provinces concerned agree to have a common legislation by the Federal Legislature. The willingness of the Provinces concerned to have such a common central legislation must be evidenced by formal resolutions passed to that effect by all the Chambers of the Provincial Legislatures affected. And even so, after such Federal Legislation has been enacted, the right of the Provinces affected to repeal or amend such legislation by their own local legislation is absolutely reserved.

Federal Legislation supersedes in Cases of Conflict

We have already noticed Section 107, which allows the Federal Legislation a sort of pre-eminence in the event of a conflict between the Provincial Legislation and the Federal Legislation, on subjects on which both were equally competent to pass laws; and so need not repeat what has already been said.

Emergency Powers

The most considerable of these is the power to legislate for all India in an emergency. This is provided for by Section 102, which says:—

102.—(1) Notwithstanding anything in the preceding sections of this chapter, the Federal Legislature shall, if the Governor-General has in his discretion declared by Proclamation (in this Act referred to as a "Proclamation of Emergency") that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, have power to make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List:

Provided that no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, and the Governor-General shall not give his sanction unless it appears to him that the provision proposed to be made is a proper provision in view of the nature of the emergency.

(2) Nothing in this section shall restrict the power of a Provincial Legislature to make any law which under this Act it has power to make, but if any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Legislature has under this section power to make, the Federal law, whether passed before or after the Provincial law, shall prevail, and the Provincial law shall to the extent of the repugnancy, but so long only as the Federal law continues to have effect, be void.

(3) A Proclamation of Emergency—

(a) may be revoked by a subsequent Proclamation;

(b) shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament; and

(c) shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by Resolutions of both Houses of Parliament.

(4) A law made by the Federal Legislature which that Legislature would not but for the issue of a Proclamation of Emergency have been competent to make shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

A Proclamation of National Emergency, under this section, due to internal disturbance or a foreign war, is in marked contrast with a similar Proclamation issued by the Governor-General in his discretion, under Section 45. While in issuing a Proclamation under Section 45, the Governor-General has merely to satisfy himself

> "that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of this Act",

and therefore may be due to a purely political impasse, or irreconcilable difference between his Ministers and the Legislature, or between the Ministers and the Legislature on the one hand, and the Governor-General with his extraordinary powers on the other; a Proclamation under Section 102 can be issued only if the Governor-General declares

> "that a grave national emergency exists whereby the security of India is threatened, whether by war or internal disturbance".

On no other ground can a National Emergency of the type here contemplated be declared; and, without a declaration of such an emergency, there can be no occasion for the use of such special powers as this section vests in the Federal Legislature.

Secondly, whereas for the coming into effect of Section 102, so far as the law-making powers of the Federal Legislature are concerned, the Governor-General's previous sanction or permission for the introduction of any bill or amendment of an existing law on the subject must be obtained, there is no need of any such previous permission, sanction, or approval from any superior authority for such measures as the Governor-General takes in virtue of a Proclamation under Section 45. This clearly establishes the Governor-General as a superior, controlling, even overriding authority over the Legislature; while he himself acknowledges no such superior, or check,—not even the Secretary of State, or the British Parliament. All his deeds under the Proclamation under Section 45 are, so to say, approved in advance by his superiors, whatever they may be. He is, of course, in no way responsible to the Indian Legislature for anything done

under that Proclamation in respect of a purely Constitutional impasse. To appreciate fully the enormity of this difference let us give one illustration of what could or may have to be done in each of these two cases. To meet a merely political emergency,—like the one we had in the Provinces between April and July 1937,—the Governor-General can, by Proclamation under Section 45, suspend the entire Federal Legislature, and arrogate to himself all its law-making and financial powers. For doing so, he is in no way responsible to the Indian Legislature, and is exculpated in advance for any responsibility he may owe to Parliament. On the other hand, in a real national emergency, threatening the very existence of this country, *e.g.*, an invasion from Russia and Japan simultaneously, which may necessitate the conscription of our entire man power, and the commandeering of all private wealth and property to cope with, even though the Governor-General has issued a Proclamation, and recognised the immense gravity of the situation, the Federal Legislature would still have its hands not completely free; and, under contingencies that are not utterly inconceivable, the Governor-General may veto its measures, duly passed, even though he had himself sanctioned their introduction in the first place.

Needless to add, that even though the Governor-General has previously sanctioned the introduction of a Legislative measure in the Legislature, to deal with a grave national emergency threatening the very existence of the country, he is not bound to assent to any law that may be passed, even after such previous approval of that measure. Section 109 is very clear on this point. Wherever in any instance the previous

sanction of the Governor-General is necessary under the provisions of the Constitution for the introduction of any Bill or amendment in the Federal Legislature, and such sanction has been given by the Governor-General *in his discretion*,

> "the giving of the sanction or recommendation shall not be construed as precluding him from exercising subsequently in regard to the Bill in question any powers conferred upon him by this Act with respect to the withholding of assent to, or the reservation of, Bills".*

The previous sanction is, in effect and in essence, only a procedural formality. This is made still more clear by subsection (2) of Section 109, which recognises Federal and Provincial legislation to be valid, even though the required previous sanction was not obtained, if assent to that legislation was finally given by the same authority or one higher than the one whose previous sanction was needed, *i.e.*, by the Governor-General or the King, in the case of Provincial Legislation needing previous sanction of the Governor, and by the Governor-General himself or the King, in the case of Federal Legislation.

Thirdly, the Governor-General is precluded from giving his previous sanction to any legislative measure to be introduced in the Federal Legislature, in the case of a grave national emergency,

> "unless it appears to him that the provision proposed to be made is a proper provision in view of the nature of the emergency".

No corresponding safeguard is included in Section 45.

Fourthly whereas the state of grave national emergency, endangering the very existence of the country,

*Section 109 (1).

only allows the Federal Legislature to make laws for a Province even on subjects primarily within the scope of the Provincial Legislature, the Proclamation under Section 45, even though designed to meet a merely political deadlock, allows the Governor-General:

(i) to extend his discretionary functions, *i.e.*, those in which he need not refer to his Ministers at all, to any extent he specifies in the Proclamation;

(ii) to assume all or any of the powers vested by the Constitution in any Federal institution,—except the Federal Court;

(iii) make, by the same document, any consequential and incidental provisions which he considers necessary or desirable to give effect to the objects of the Proclamation. (A Constitutionalist would shudder to contemplate what may be included in this wide sweeping authority vested in the Governor-General);

(iv) to suspend the entire Constitution in so far as it relates to any Federal authority, except the Federal Court.

None of these vast powers, or any semblance of them, is given to the Federal Legislature to legislate in a grave national emergency imperilling the very life of the nation. The Governor-General's power and authority, by the Proclamation under Section 45, may extend even to the Indian States in the Federation; but the Federal Legislature's power to make laws under Section 102 can only extend to British India. While the Governor-General, under a Proclamation issued under Section 45, can arrogate to himself even law-making powers, suspending the entire Federal Legislature,

the latter under Section 102 has no room in the executive powers and authority of the Governor-General; much less can it in any way suspend or supersede the Governor-General as the chief executive in the Federation.

The duration of the Emergency legislation,—and even the Proclamation of Emergency under Section 102, is limited to a much shorter period than the duration of the state of suspended Constitution by Proclamation under Section 45; for there is nothing in Section 102 to correspond to the *proviso* in Section 45 (3):—

> "Provided that, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this subsection it would otherwise have ceased to operate".

The maximum period of such operation of a regime of Proclamation is three years at any one time, after which Parliament may amend the entire Constitution. The same applies to the Governor's Proclamation under Section 93.

III. LEGISLATURE AT WORK

We shall next consider the Federal Legislature at work.

This subject may be subdivided into the following heads:—

(i) Assembling of the Legislature, including summons, oath by Members, etc., Disqualifications of Members.

(ii) Election of officers of each Chamber,—*i.e.*, Speaker of the Assembly, President of the Council of State, deputies for both these