The Second Chamber

Its Role in Modern Legislatures

The Twenty Five Years of Rajya Sabha

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Editor: S.S. BHALERAO

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THE TWENTY-FIVE YEARS OF RAJYA SABHA

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न सा सभा यत्र न सन्ति वृद्धा,
वृद्धा न ते ये न वदन्ति धर्मम् ।
धर्मः स नो यत्र न सत्यमस्ति,
सत्यं न तद्यच्छलमभ्युपैति ॥

(महाभारत 5/35/58)

[That's not an Assembly where there
are no eldermen,
Those are not elders, who do not speak
with righteousness,
That's no righteousness where there is
no truth,
That's not the truth which leads one to
deceit.]

←The dome of the Central Hall of the Parliament House when Independent India's National Flag was first hoisted on August 15, 1947

Preface

The Constitution of India which the people of India gave unto themselves as a free people, envisages a bicameral system of Parliament for our country. Accordingly, with the coming into force of the Constitution, the Council of States better known now as the Rajya Sabha was constituted on the 3rd April 1952 and held its first sitting on the 13th May of that year under the chairmanship of Vice-President Dr. S. Radhakrishnan. The Rajya Sabha has thus completed twenty-five years of its existence during which period it has held one hundred sessions.

The General Purposes Committee of the Rajya Sabha thought it appropriate to hold celebrations to mark this occasion in a befitting manner. The present Volume is being brought out as a part of the celebrations.

As the provision for, and the existence of, a Second Chamber is one of the most controversial and vexatious questions of political science, effort has been made in this Volume to familiarise scholars as well as the people at large with the working of the Second Chambers in bicameral legislatures not only in our country but in some other countries as well. Keeping this in view, Presiding Officers, Clerks and Secretaries-General of the Second Chambers in bicameral Parliaments in other countries, Presiding Officers of the Legislatures within the country, members of the Rajya Sabha, some former members of the Rajya Sabha and other eminent jurists, journalists, scholars and constitutional experts were requested to contribute

articles for the Volume. We are happy that in spite of the demands on their time, they have honoured our request by contributing some excellent articles for the Volume. We are indeed grateful to them. Our profound thanks are especially due to the Presiding Officers, Clerks and Secretaries-General of foreign Parliaments for the pains they have taken in sending us their valuable contributions.

The articles in the Volume cover a wide range of subjects on the role, functions and working of Second Chambers of Parliaments in many countries including the Rajya Sabha and the Legislative Councils in some States in India. We believe that the articles included in the Volume would make a fascinating reading in the theory of bicameralism and more particularly in the working of the Upper Houses and their relationship with the directly elected Chambers. For convenience the Volume has been divided into six parts, each dealing with a specific aspect of the subject. The First Part contains articles relating to the working of Second Chambers in foreign countries. The Second Part deals with the general topic on the role and relevance of Second Chambers. The role of Presiding Officers in Legislatures is as important as the working of the House itself. This aspect has been covered in the articles appearing in Part Three. The Part that follows throws light on the various facets of the working of the Rajya Sabha during the twenty-five years of its existence. Not only the constitutional provisions dealing with the Rajya Sabha have been thoroughly discussed in the articles appearing in this Part but a few articles on the relationship between the two Houses of Indian Parliament and the achievements of the Rajya Sabha in various fields like legislation, questions, committees, etc. also find place in it. The Fifth Part touches on the Second Chambers in some State Legislatures in India. The last part, *i.e.*, Part Six of the Volume contains statistical data projecting the various activities of the Rajya Sabha and includes information on the sessions held, work transacted on various items of business that came up before the House, activities of its committees and expenditure on the Rajya Sabha and the Rajya Sabha Secretariat during all these years.

It is natural that a Volume of this nature may have some repetitive element here or there as topics to be discussed particularly those dealing with the powers and functioning of the Rajya Sabha were to be approached with reference to the provisions of the Constitution of India. Understandably such

articles would contain oft-repeated quotations from recognised leaders and authorities on the subject. Every effort has, however, been made to minimise this repetition without affecting the substance and tenor of the articles.

The Volume, presenting as it does the view-points from men of different disciplines and from various walks of life, provides a detailed study on the working of the Second Chambers in modern legislatures and the diverse functions which they are called upon to perform. We, therefore, sincerely hope that the Volume will be a welcome addition to the literature on the subject and would prove useful to all interested in the study of parliamentary institutions and their processes. It is also hoped that the Volume would evoke and generate interest in the study of the working of the Second Chambers, especially in view of the latest swing of the electoral pendulum in India.

Needless to add that the views expressed and the facts and figures given in the articles are entirely those of the authors themselves and the Rajya Sabha Secretariat does not assume any responsibility for them. A word of apology is also due to those who very kindly responded to our invitation to contribute to the Volume but whose valuable contributions could not appear or be included in an edited form. This was due not only to our anxiety to minimise the element of repetition but also to limitation of space.

We take this opportunity also to express our thanks to Messrs National Publishing House, New Delhi, for giving a nice get-up to the Volume and also for its timely printing and publication. Lastly, we would like to place on record the valuable services rendered by the officers and members of the staff of the Rajya Sabha Secretariat who have helped us in many ways. Shri S. J. Singh, one of our staff members, deserves special mention as he has provided almost all the excellent photographs used in the Volume.

New Delhi;
March 31, 1977

S. S. BHALERAO

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Part One

Second Chamber in Foreign Parliaments

1

The Importance of the Senate for the Conduct of Foreign Affairs

E. VAN BOGAERT*

Since the development of democracy, Parliament has an essential function for the relations between its State and other States. The principles of a democracy and the structure of the State are conceived as a division of power. The judicial institutions must judge independently in the application of the law. The legislative power is elected and may legislate. The executive institutions execute the law but take also initiatives for the conduct of the affairs of the State. For this last reason the direction of foreign affairs in general belongs to the executive authority. However, by way of concluding treaties, measures could be taken and introduced in the legal systems of a State without the formal approval of the Parliament. Practically all modern constitutions provide that in the matter of diplomacy and foreign service Parliament will intervene before the coming into force of agreements that will have a legal binding character. The motivation of this relation between executive and legislative powers is to prevent the former to exercise legislative functions by taking recourse to its power to conclude treaties. This relation developed first in Great Britain, where a written constitution does not exist although there were important Acts with a constitutional character. The Habeas Corpus Act of 1640, the Union with Scotland Act of 1706 and the Union with Ireland Act of 1800 are

*Mr. E. Van Bogaert is the Vice-President of the Belgian Senate.

excellent examples of such laws. For important treaties the approval of the Parliament was sought. This was the case for the treaties of peace with France in 1343 and 1354. The treaty between France and England of 1420 was approved by both Houses of Parliament in England. Thus, in the oldest democracy the intervention of Parliament in foreign affairs became a custom.[1]

By the beginning of the Middle ages the same evolution of constitutional law existed in France but towards the end of the 16th century the authority of the Royal House became greater and in the 17th century the advice of parliamentary institutions was no longer obtained. French kings were absolute monarchs and this power was overthrown by the Revolution of 1789. The Constitution of 1791 reintroduced and extended the power of Parliament. It even ratified the treaties. The same can be found in the Constitution of 1793 and the Constitution of 1795. This was changed by the Constitution of 1800 placing this power in the hands of Napoleon. In the Constitution of 1804 the absolute power of Napoleon was the main principle. The Constitution of 1814, restoring the rights of the Bourbons, put a new absolute monarch in power again. The same may be said about the Constitution of August 14, 1830. After the Revolution of 1848 a new Constitution came into force on November 4 under which the President could conclude the treaties but they had to be approved by the National Assembly. This was followed by a new Constitution of 1852 replacing the whole treaty making power in the hands of the Emperor. After the new Revolution of 1870 there came also a new Constitution in 1875. It had a mixed system. The President concluded the treaties but treaties of peace or having an influence on the finances of the State or capable of influencing the status of French citizens or their property, had to be approved by Parliament. This last rule is also to be applied in case of change of territory. After the Second World War there was need for a new constitutional regulation, and it came into force in 1946. Again it was admitted that the President concluded and ratified the treaties but treaties concerning international organisations, treaties of peace, treaties concerning the person and property of the French citizens or including a change of territory must be voted in Parliament and promulgated in the form of a law. Changes of territory are only possible with the consent of the inhabitants. When General de Gaulle became the Head of the State he also brought a constitutional reform, but the system of parliamentary approval remained practically the same as under the preceding Constitution.[2]

1. S. Crandall : Treaties, Their Making and Enforcement, 1904, *passim*; E. Ridges : Constitutional Law, 1950, *passim*; Lord McNair : The Law of Treaties, 1966, p. 70 *e.s.*; R. Jongbloet-Hamerlijnck : Het Aanwenden van de Ratificatie in het Volkenrecht (The Use of Ratification in the Law of Nations), 1972, pp. 28-35.
2. M. Dalloz : Repertoire de legislation, de doctrine et de jurisprudence, 1861, d. 42, II, No. 112; L. Michon : Les traites internationaux devant les Chambres, 1901, pp. 45, 135-136; L. Duguit : Traite de droit constitutionnel,1924, d. IV, p. 801; A. Cocatre-Zilgien : Constitution de 1958, droit, droit international, relations exterieures et politique etrangere, Annuaire francais de droit international, 1958, p. 645 *e. seq*; R. Jongbloet-Hamerlijnck, op. cit., pp. 40-53.

In the United States, according to the Constitution of 1787 the President shall have power to conclude treaties by, and with, the advice and consent of the Senate provided two-thirds of the Senators present concur.[3]

In Switzerland, the Constitution of 1874 provides that the following matters in particular are within the competence of the two Federal Councils : alliances and treaties with foreign States as also the approval of treaties made by the cantons between themselves or with foreign States; nevertheless treaties between cantons shall only be brought before the Federal Assembly when the Federal Council or another canton raises objections.[4]

In the Belgian Constitution of 1831 the matter is regulated by article 68. The system is very close to the system described in the French Constitution. Treaties are ratified by the Crown but certain conventions have no application on Belgian territory if they are not approved by Parliament. This is the case for treaties with financial consequences for the State or commercial treaties or treaties for which there exists a possibility that they could influence the private interests of the citizens. If they are not approved by Parliament such treaties cannot be applied on Belgian soil.[5]

In the Federal Republic of Germany the Constitution of 1949 requires parliamentary approval when the treaty has a political character or concerns legislation.[6]

The Danish Constitution of 1953 imposes a favourable vote for treaties concerning territorial changes or matters of major importance.[7]

The Norwegian Constitution of 1814 requires the consent of Parliament for all matters of special importance in international conventions or for all treaties making a new law necessary.[8]

These examples show clearly that Parliament has an important part in the foreign affairs of a democratic country. It holds the last supervision for the coming into force of international agreements of some importance. It is without doubt an impossible position for any government when it signed or even ratified an important convention with other States and that this convention could not be applied on its territory, towards its citizens or that the State could not use its own finances to execute its international obligations flowing from the treaty.

This parliamentary approval can profoundly influence the conduct of foreign affairs. One of the best known historical examples is the vote in the American Senate concerning the Peace Treaty of Versailles and the Treaty of the League of Nations included in the Peace Treaty. President Wilson of the United States of America

3. W. Munro : The Government of the United States, 1947, p. 291.
4. A. Peaslee : The Constitutions of Nations, 3rd ed., Vol. III, pp. 932-963.
5. P. De Visscher : De la conclusion des traites internationaux, 1943, p.52 *e. seq*; F. Dehousse : La ratification des traites, 1935, pp. 134-136.
6. D. Hass : Abschluss and Ratifikation internationaler Vertrage, Archiv des offentlichen Rechts, 1952, pp. 381-389.
7. A. Peaslee : The Constitutions of Nations, 3rd ed., Vol. III, pp. 253-267.
8. A. Peaslee : op. cit., Vol. III, pp. 689-705.

inspired completely the regulations concerning the League of Nations. It was practically entirely under his initiative and inspiration that the Peace Conference admitted the League of Nations but when the President came before the Senate with this international document, he did not obtain the majority. The majority of politicians was again convinced by isolationism and considered this international pact as contrary to the interests of the United States.[9]

The United States did not become a party to the Peace Treaty and did not become member of the League of Nations. This vote was of very great importance for the policy of the United States but it was perhaps even more important for world policy and history. It is of course exceptional that a vote has such far reaching consequences but it shows how in certain circumstances the parliamentary approval can be essential. As to the Senate it is obvious that as a part of the parliamentary institution it has a substantial function in this process.

The approval of international conventions is, however, not the only way that the Senate can use to intervene in the foreign policy of its government. Foreign policy is regularly the subject of debates and discussions. Several circumstances lead to this. In the first place every foreign minister or state secretary has to explain before the committee for foreign relations what aims he is looking for by his diplomatic action. He also must communicate what the results are that he has already obtained and by what means he reached that goal. He usually tells the committee what diplomatic tactics and strategy he is going to use for the future.

All these explanations sometimes give rise to a profound debate with criticism of the minister as to the policy of the government. It would be wrong to think that the rule of governmental majority is always predominating in such a debate. In the first place a vote of confidence in favour of the government is very exceptional in this committee and it could not even place directly a government in danger because in most parliamentary traditions such a vote may only be held before the entire assembly. Another reason why the debate in the committee can be very difficult comes out of the fact that the public is not allowed and the discussions have a rather secret character. The senators sometimes use words or give vent to ideas which they would not generally use in the same form before the entire assembly. The hearings and debates in the Committee for Foreign Affairs are at times a rather difficult moment for the foreign minister. On important matters the debates can go on for a very long time. It happened already that they went on for a whole day and even for two days.

When the phase of the Committee is passed the problem is placed before, what is called in the Belgian parliamentary language, the open assembly. This means that the entire assembly is supposed to be present and that the public is allowed to assist. Special places are reserved for the representatives of the press and the broadcasting systems. Every word said in such a debate can go immediately to the public

9. H. Faulkner : American Political and Social History, 1957, pp. 776-777.

and can possibly have an electoral value. In such a debate members of Parliament as well as members of government are usually careful.

The discussion before the assembly can have different forms. In the first place it can happen during what is called a hearing. This means that a member of the Senate asks a question about the policy of the minister. This may not be a speech but a simple question. It is the duty of the chairman to watch that the question does not deteriorate into a larger explanation. The minister has only to give a short but clear and sufficient answer.

Secondly, a debate on foreign policy is possible because a member of the assembly took the initiative for a larger question sometimes called interpellation. This is no longer a pure question but becomes a real speech. It can become a real debate in which other senators may intervene. Their time of speech according to a Belgian custom is, however, limited usually to five minutes. After the answer of the minister, the member who took the initiative may again go to the stand and make his remarks about the answer of the member of government. After a second answer of the minister, the chairman declares that the incident is closed. This kind of debate can be followed by a motion of distrust against the government introduced generally by the opposition although in Belgian politics it happened once in the last ten years that such a motion of distrust was introduced by a member of the majority party against one of his own ministers. Usually a motion of that kind does not receive the necessary votes because the majority party sustains its government even when sometimes individual members do not agree with the point of view of one of the members of the government or with the attitude of the government as a whole.

Thirdly, a debate on foreign policy can take place by discussing the budget of the Department of Foreign Affairs. This usually gives opportunity for a broad analysis of the foreign policy of the government. The approval of the criticism is expressed by the vote on the budget which is, of course, practically always sustained by the majority. All these parliamentary procedures are not typical for foreign affairs only but they show that foreign policy is under the same parliamentary control as any other aspect of political life and by the importance of international politics today it is a vital element for a democratic nation.

January 11, 1977

2

The Role of the Second Chamber in Canada

RENAUDE LAPOINTE*

In countries where public opinion is interested in constitutional matters Upper Chambers have often been subject of controversy. John Stuart Mill suggested that bicameralism was one factor distinguishing limited democracy from uncontrolled tyranny, for a large majority in a single chamber may become despotic if released from the necessity of considering whether its acts will be concurred in by any other constituted authority. On the other hand some authors suggest that Second Chambers are inefficient, redundant, expensive or unnecessary and they point out that many successful democracies do not have Upper Houses. In Canada the Second Chamber has long been an integral part of parliamentary life; indeed, during meetings prior to Confederation the assembled representatives spent six of the fourteen days discussing the role of the Senate, much longer than they spent on questions relating to the House of Commons.

The Canadian Fathers of the Confederation desired a constitutional system similar in principle to that of the United Kingdom; however, the less populous provinces wanted an assurance of equal treatment, regardless of population, in at least one of the two Houses of the new Parliament. They wanted to ensure also that

*Miss Renaude Lapointe is the Speaker of the Senate of Canada.

the Upper House had the right either to concur in or reject any piece of legislation emerging from the House of Commons. They wished to establish an Upper House which could be independent both of the Executive and of the House of Commons. Thus there were two deliberate departures from the British system. In the first place, Senators were appointed by the Governor General, for the application of any hereditary or aristocratic principles would have been inappropriate in the new world. It is interesting to note that only one province argued for an elected Upper House. Secondly, the principal geographical areas of Canada were to have equal numerical representation in the Senate without regard to population. No question arose as to the inclusion of a "swamping power", whereby an unlimited number of Senators could be appointed by the Executive so as to alter the composition of the Senate to its own advantage. The maximum number of Senators was fixed in the British North America Act, 1867, and is alterable only by a formal constitutional amendment. It should be added for complete accuracy that special provision was made for the appointment of four, or eight, additional Senators equally representing the four main territorial divisions of Canada. This was a small concession to the idea of a "swamping power", but the provision has not been invoked since Confederation.

In legislation, the two Houses were to be co-equal, saving only that "money bills"—measures designed to impose taxes or authorise the expenditure of public moneys—were to be introduced only in the House of Commons as is the case in the United Kingdom. It must be noted that the Senate was never intended to be a competitor of the House of Commons in the field of legislation. Rather it was to be a reviewing body exercising quasi-judicial powers. One of its principal duties, in the words of the first Prime Minister, Sir John A. Macdonald, was to take a "sober second look" at measures emanating from the House of Commons.

Aside from its value in revising legislation the Senate has, in recent years, taken the initiative in conducting investigations into various current political or social problems. Over the past two decades a number of special and joint committees were established in anticipation of Government policy changes, for example, the committees on Land Use in Canada (1957-1963), Manpower and Employment (1960-1961) and the Joint Committee on Divorce (1966-1967) Other special committees have pursued the improvement of general social welfare in Canada with investigations on Aging (1963-1966), Poverty (1968-1971) and Consumer Credit (1963-1967). A committee on the mass media undertook a comprehensive study of the subject and made recommendations for improvements in a number of areas and a Science Policy Committee investigated the state of scientific development and research. The Government has acted on many of the suggestions of these two committees. The Senate Standing Committee on National Finance has studied the relationship between growth and employment in the economy as a whole and in individual government departments. Thus, far from being an ultra conservative body a type of social reformism has emerged from the work of the Senate. Many members have become involved in special studies of fundamental social and political problems and these studies are beginning to have an impact on the preparatory stages

of the legislative process. This partly explains why there appears to be less and less talk of reforming or abolishing the Upper House. It is true that in 1972 the Joint Committee on the Constitution suggested a number of reforms including an increase in size and redistribution of seats. The Committee also recommended that one-half of the vacancies in each province or territory be filled from a list of nominees submitted by the appropriate provincial or territorial government. It was argued that this and other changes would better recognise the political realities of Canada and give the Senate a more realistic base from which to work.

While every man-made institution is capable of improvement, the Senate cannot be reformed without its consent. In any case the reforms proposed by the Joint Committee are not of any great urgency and the practice of appointing younger and more active men and women to the Senate is probably the best way to ensure that the Upper House will continue to discharge its constitutional functions.

3

The House of Nations in the Czechoslovak Parliamentary System

DALIBOR HANES*

Along with the establishment of the Czechoslovak Socialist Federation, which consists of two equal peoples, the Czechs and the Slovaks, a reconstruction of the State apparatus and of the political system was undertaken both on the federal level and on the level of the national republics—the Czech Socialist Republic and the Slovak Socialist Republic.

In the system of supreme State bodies of the Federation, the Federal Assembly occupies one of the foremost positions being the supreme organ of State power, the only legislative body of the Czechoslovak Socialist Republic and also the highest representative body of the Czechoslovak people. The Federal Assembly consists of two Houses: the House of the People and the House of Nations. Both have a completely equal status. In the House of the People the two national republics are represented in proportion to their population; the Czech Socialist Republic comprises about two-thirds and the Slovak Socialist Republic about one-third of the total population of our federative State. The House of Nations, the other chamber of the Federal Assembly, reflects the equal political and legal status of the two

*Prof. Dalibor Hanes (Dr. Sc.) is the Vice-Chairman of the Federal Assembly of the Czechoslovak Socialist Republic and Chairman of the House of Nations.

national republics. It is composed of 150 deputies of whom 75 are chosen by direct election in the Czech Socialist Republic and 75 by direct election in the Slovak Socialist Republic. The equal number of deputies from the two national republics in the House of Nations highlights the nationality principle on which this Chamber is based.

The two Chambers meet either in separate or joint sessions, but in joint sessions each Chamber decides independently on each proposal and the vote is always separate. Moreover in matters stipulated in the Constitutional Act majority rule is prohibited (one nation cannot be outvoted by the other). Majority rule is prohibited, for example, with respect to the approval of the Constitution and the Constitutional Acts, medium term state plans of development of the national economy of the Czechoslovak Federation, Federal Budgets and the final budgetary accounts of the Federation, Bills determining taxes, returns and duties, Bills relating to tariff policies, Bills in the field of foreign economic relations and Bills relating to the field of labour, wages and social policies. Majority rule is prohibited in the approval of statements of policy of the Government of the Czechoslovak Socialist Republic and to vote of confidence in the Government. In all cases where majority rule is prohibited, members elected in the Czech Socialist Republic and members elected in the Slovak Socialist Republic vote separately in the House of Nations. Thus the practical activity of the House of Nations combines unity, class-oriented and internationalist representation along with the securing of national equality.

Moreover, the national statehood of the Czech and the Slovak peoples and the sovereignty of their Republics forming the Czechoslovak Federation is reflected in their supreme state organs : the Czech National Council and the Slovak National Council, the Government of the Czech Socialist Republic and the Government of the Slovak Socialist Republic.

Experience has confirmed that the federative form of co-existence of Czechs and Slovaks and the other nationalities has proved itself, that this system of government is historically substantiated as a means of solving the nationality question and it appears to be a viable and prospective solution also for the future. The federative system provides a suitable framework and sufficient scope in which the mechanism of this state system may be adjusted to the conditions and the requirements of the development of the socialist economy, culture and the entire life of the socialist society in such a way as to establish optimal relationship between the interests of the nationalities and the interests of the whole Federation. In this sense the House of Nations of the Federal Assembly has an important mission to fulfil.

January 13, 1977

4

The "BUREAU" of the French Senate*

ALAIN POHER**

Every Parliament has to provide for its representative officers and offices which are entrusted with various responsibilities involved in its functioning. The Senate which is the Upper House of the French Parliament, has also provided for a 'Bureau'[1] which is the most important body in its organisation. Though the Constitution of the French Republic itself makes an indirect reference to the Bureau—for instance, when it mentions the need to have its authorisation during off-session period, for detention of a Member of Parliament (article 26) and again for the amendment of the Constitution (article 89) when the Parliament meets as Congress, the Rules of the Senate provide in detail the terms of the organisation of the Bureau and precisely define its tasks.

Within the set-up of the Bureau itself, a pre-eminent position is assigned to the President of the Senate who also enjoys, by virtue of the provisions of the

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1. The Bureau of each House of French Parliament is composed of the President of the House, several Vice-Presidents and Secretaries drawn from various political groups to assist the President in the conduct of business of the House. (*Ed.*)

Constitution and the Rules of the Senate distinctive powers which testify to his importance as much in the functioning of the Senate as in its various bodies.

At the first session of the Senate following the triennial election to it,[2] an interim Bureau is formed, comprising, besides the senior-most member of the House who acts as the interim President, six of the youngest Senators who perform the secretarial functions, till the permanent Bureau is elected.

The only task of the interim Bureau is to make arrangements for the conduct of election to the office of the President of the Senate. It is, however, customary for the interim President to address the House before it proceeds to elect the President and because of his experience and maturity he is heard on that occasion with due respect when he shares with the House his thoughts on the role of Senate.

Composition of the Senate Bureau and Mode of Election of its Members : The permanent Bureau of the Senate consists of its President, four Vice-Presidents, three Questors and eight Secretaries, a total of 16 persons.

The Constitution of the Republic provides that the election of the President of the Senate shall take place during the first session after each triennial election to the Upper House (article 32) and after the formation of interim Bureau. The meeting of the Senate for electing its President is presided over by the interim President who as stated above is the senior-most member of the House. This election is by secret ballot in which each Senator deposits a ballot paper, bearing the name of the candidate of his choice, in a box placed on the rostrum of speakers.

To win the election, the Presidential candidate should obtain an absolute majority of votes polled in the first or the second ballot; in the third ballot, if held, a relative majority is sufficient. In case of a tie, the oldest among the candidates is declared elected. Such a provision is not of academic interest only, because in 1946, at the time of the election of the first President of the Council of the Republic, Mr. Champetier de Ribes (MRP) was declared elected because of his seniority in age, when he had secured the same number of votes as Mr. Marrane, his Communist rival.

After the result of the election is announced by the interim President, the President-elect mounts the rostrum and announces the date of the next sitting of the Senate, at which other members of the Bureau are elected.[3]

The Vice-Presidents and the Questors are separately elected by secret ballot. At these elections the voter marks his vote on one ballot paper containing the

2. Senators hold office for a period of 9 years, one-third of them retiring on the expiration of every third year. The President of the Senate is elected at the beginning of the session after each triennial election, *i.e.*, he holds office for 3 years only. (Ed.)
3. It may be mentioned here that in October 1974, the Senator who was elected as President of the Senate, met with an accident while he was casting his vote, and consequently, the second sitting of the Senate at which the permanent Bureau was elected, was again presided over as an exceptional case, by the interim President. After the formation of the permanent Bureau, the Vice-Presidents who had been newly elected, presided over the subsequent sittings of the Senate, by turn.

names of all candidates for the four posts of Vice-Presidents and on another ballot paper containing the names of all candidates for the three posts of Questors. If an absolute majority of votes cast is not secured during the first or the second round of voting, by one or more of the candidates, then a simple majority is sufficient during the third round.

After the results of the election to the posts of Vice-Presidents and Questors are announced eight Secretaries are nominated from the list prepared by leaders of various political groups in the Senate keeping in view the strength of the various political groups and the votes cast during the election of the President of the Senate, the Vice-Presidents and the Questors. A list of persons so nominated is then placed before the President who orders its display. This list can be challenged if at least 30 Senators, or the leader of a group, consider that the principle of proportional representation of political groups has not been respected in preparing the list. If there is no opposition to the list, the President announces the nomination of the Secretaries. If, on the other hand, the list is challenged, the President informs the Senate about this fact and asks it to consider the matter again. Rejection by the Senate of the consideration is tantamount to the ratification of the initial list, while, if the Senate votes in favour of its consideration, the contested list stands cancelled. In such an event, leaders of the political groups immediately meet and draw up a new list which is submitted to the Senate for ratification.

The mechanism for election of members to the Bureau is such as to ensure representation to all the existing political groups, according to their numerical strength in the Senate.[4]

Soon after the election of the permanent Bureau, the President of the Senate communicates the list to the President of France and the President of the National Assembly, the other House of the French Parliament. The President of France usually grants an audience to members of the newly elected Bureau who are introduced to him individually by the President of the Senate.

POWERS AND FUNCTIONS OF VARIOUS MEMBERS OF THE BUREAU

(*i*) The President of the Senate

The Presidents of the two Houses of Parliament have always occupied a very important place in the Republic, either by virtue of the high status given to them by the provisions of the Constitution or because of their personality. In this context, it may be recalled that during the Third Republic, five Presidents of the Senate and

4. In September 1974, the representation of political groups in the Bureau was as follows : R.I. (Independent Republicans) 3; U.C.D.P. (Union Centriste des Democrates de Progres) 3; Socialists 3; G.D. 3; U.D.R. (Union des Democrates pour la Republique "Gaullists") 2; Communiste 1; Non inscrit 1; R.I.A.S. 1.

three Presidents of the Chamber of Deputies were elected to the Supreme Court of France.

While the Constitution of October 4, 1958, increased considerably the prerogatives of the Executive, especially those of the President of the Republic, it has also in fact honoured the republican tradition by assigning to the Presidents of both the Houses of Parliament, and in particular to the President of the Senate, a role of the highest importance in the general set-up of the country's public institutions. And experience has shown that the longer their tenure of office, the greater is their influence in their respective Houses.

On his election, the President of the Senate acquires the third position in the order of precedence of the authorities of the Republic. As a result of Ordinance Number 58-1167 of the 2nd December 1958, he is placed immediately after the President of France and the Prime Minister of the Republic. He takes residence in Hotel de Petit Luxembourg, the seat of the Senate, and is provided an apartment in the Chateau de Versailles.

The President of the Senate, like a Minister to the Government, is entitled to have secretarial assistance. He is thus assisted in the discharge of his duties by a Director, a Joint Director, a Chief of Office, technical advisers and heads of departments. In addition to the parliamentary allowances of a Senator, he is also given an annual allowance of 200,000 francs to cover entertainment and many other such expenses incidental to his position. He also receives a special lump sum towards the remuneration of secretarial assistance given to him.

The President of the Senate is entitled to free postal service. Letters addressed to him are also postage-free. He represents the State in civil law suits involving the Upper House or when the House is in litigation with its own staff member, as, for example, in an appeal filed before the Council of State (article 8 of the Ordinance Number 58-1100 of 17th November 1958). The honour which must be shown to the authority of the Senate President is specified in the Decree Number 74-136 of 12th February 1974, modifying the Decree Number 67-1268 of 26th December 1967 regarding rules of service of the summons on him.

Responsibilities of the President of the Senate vis-a-vis the functioning of Public Institution : The Constitution of October 4, 1958, confers on the President of the Senate three types of functions :

(1) He performs, provisionally, the functions of the President of the Republic when the office of the President becomes vacant for whatever reason, or when the President is barred by the Constitutional Council from performing his functions.
(2) He acts as the custodian of the Constitution of the Republic.
(3) The Constitution enjoins the President of France to consult him in certain specified circumstances.

Besides these functions, there are some statutes which confer on him certain powers, especially in the matter of nomination of Senators to other bodies on which

Senators as such are represented and in resorting to the Court of Budgetary and Financial Discipline.

(1) Article 7 of the French Constitution provides that in case the office of the President of France falls vacant for any reason or when the Constitutional Council has, at the instance of the Government, barred him from performing his functions, the President of the Senate provisionally performs all the functions of the President of France, except that he cannot order a referendum evisaged in article 11, or the dissolution of the National Assembly envisaged in article 12, of the Constitution.

As the first round of voting for electing the new President of the Republic must take place between a minimum of 20 days and a maximum of 35 days from the date of vacancy of the office of the President or the date of definite declaration barring the President from performing his functions, the interim period during which the President of the Senate performs the functions of the President of France lasts for about 50 days. After his election to the presidentship of the Senate in 1968, the author has been called upon twice to act as President of France; first, from 28th April to 19th June 1969, after the exit of General de Gaulle following the referendum of 27th April 1969; and secondly, from 3rd April to 27th May 1974, on the death of President George Pompidou on 2nd April 1974. During these periods, the acting President of the Republic exercised most of the prerogatives conferred on the President by the Constitution, like presiding over the meeting of the Council of Ministers, nominating persons to higher government posts, exercising supervisory control over diplomatic and military activities or the promulgating laws passed by Parliament. To mention a few examples : as soon as the author as acting President of France moved to Elysee Palace in April 1974, he started taking all steps for depositing the instruments of ratification of the European Convention on Human Rights, ratification of which was approved by the law on 31st December 1973; a large number of draft legislative measures especially concerning social benefits, were adopted in April and May at cabinet meetings presided over by him. Similarly, it was under his chairmanship that the cabinet adopted new regulations aimed at guaranteeing perfect regularity of voting operations in the election of the President of the Republic both in Paris as well as in the provinces and overseas territories of France.

These examples clearly show the great dispatch and firmness, but without prejudice to the political future of the State, with which the acting President performed all the constitutional functions of his office during this difficult interim period between two Presidents who are elected by universal suffrage.

(2) Provisions of articles 41, 54, 56 and 61 of the Constitution have made the President of the Senate the custodian of the Constitution in the same manner as the President of the National Assembly. Article 56, especially, gives him the right to nominate three out of the nine members of the Constitutional Council—three each of the remaining six being nominated by the President of the Republic and the President of the National Assembly respectively.

Articles 41, 54 and 61 specify the circumstances in which the President of the Senate can take a dispute to the Constitutional Council. The circumstances are :

(*i*) when there is a dispute between him and the government concerning a proposal or an amendment which the government considers to be outside the legislative competence or which in its view conflicts with the powers delegated by article 33 of the Constitution (article 41); or
(*ii*) when he considers that an international agreement contains a clause contrary to the Constitution (article 54); or
(*iii*) when he considers before the promulgation of a law that one or all the clauses of the law are not in conformity with the Constitution (article 61).

The President of the Senate has used this third power on three different occasions, on one of which the Constitutional Council expressed itself incompetent to express any opinion and upheld him on the other two :

(*a*) In 1962, the Constitutional Amendment Bill providing for election of the President of the Republic by universal suffrage, which was previously adopted by referendum, was so referred to the Constitutional Council. The Council by its decision on November 6, 1962, declared that it was beyond its competence to express any opinion in the matter;
(*b*) In 1971, article 3 of the Draft Bill seeking modification of the law of 1901 on Trade Unions was declared unconstitutional by the Council *vide* its decision on July 16, 1971;
(*c*) In 1973, article 62 of the Draft Finance Bill for 1974 was declared unconstitutional by the Council by its decision on December 27, 1973.

(3) The President of the Senate, as laid down by the Constitution, has to be consulted by the President of the Republic, particularly when the latter intends to announce the dissolution of the National Assembly (article 12 of the Constitution) or when he intends to invoke article 16 of the Constitution in circumstances which according to him pose a serious and immediate threat to "the institutions of the Republic, the independence of the Nation or the integrity of its territory or the fulfilment of its international commitments." These consultations, made obligatory by the Constitution, can in normal times be a matter of pure formality but in abnormal times are likely to influence the final decision of the President of the Republic.

Apart from the Constitution itself, there are several statutes which assign many important functions to the President of the Senate. Some of the more important functions are :

(*i*) Section 16 of the law No. 58-1484 of September 25, 1948, modified by the law No. 71-564 of July 13, 1971, which seeks to regularise the lapses in expenditure with regard to the State and other public bodies and provides for the establishment of a Court of Budgetary Discipline, gives the President of the Senate the authority to take cases of such lapses to this Court through the Public Prosecutor;
(*ii*) A number of statutes give him the power to nominate Senators to different bodies and authorities as representatives of the Senate.

Such are the functions assigned to, and powers enjoyed by, the President of the Senate. So far as the interim presidentship of the Republic is concerned, it is worthwhile pointing out that it is for the first time that the Constitution has assigned this function to the President of the Upper House. In the Third Republic this function was reserved for a nominee of the Government and in the Fourth Republic for the President of the National Assembly.

Responsibilities of the President of the Senate in the Set-up of the Senate : After having studied the position occupied by the President of the Senate in the various institutions of the Republic, we may now turn to his functions and responsibilities as President of the Upper House of Parliament.

His role and influence in this regard is pivotal and can be studied from these angles :

(1) Security and functioning of the Upper House
(2) Organising and controlling the debates and presiding over them
(3) As a representative of the Upper House

(1) *Security and function of the Upper House :* In accordance with the provisions of article 3 of the Ordinance No. 58-1100 of November 17, 1958, relating to the functioning of Parliament Houses, the President of the Senate has the responsibility for the internal and external security of the House over which he presides. For this purpose, he is entitled to requisition the services of the armed forces and all the other authorities whose cooperation is deemed necessary. This requisition can be addressed by him directly to all the military and civil officers who are enjoined to comply with it immediately, non-compliance being punishable under the law. The law also authorises the Senate President to delegate this power of requisition to the Questors as a body or to any one of them. In consultation with the Questors, the President of the Senate decides on the number of men to be placed under the general control of the military commander, in the Senate premises in order to ensure the regular and normal security of the House. It is only in cases of emergency and under the pressure of necessity that the President or the Questors use their right of direct requisition. Rule 90 of the Rules of the Senate lays down that the requisitioned military forces are to be placed under the authority of the President and that the regular police force of the Upper House is to exercise its power in his name.

As the representative of the State in legal suits in which the civil liability of the Upper House is involved, the President of the Senate, by virtue of rule 101 of the Rules of the Senate, has, from the legal point of view, overall supervision and

control over all the Departments of the Upper House in his official capacity as well as in his capacity as a part of the Senate's Bureau.

In exercising supervisory authority over the functioning of the various Departments of the Senate, the President ensures that, in all circumstances, they can meet the needs of the Senate relating to its legislative work or control of the executive. If the Rules of the Senate seem to make the President subordinate to the authority of the Bureau in the matter of supervision and control of the Departments, it should be borne in mind that it is the President along with the Questors who play the dominant role, particularly in matters of everyday management of the internal work of the Senate. The collegiate organ's verdict is sought only on a few important nominations or certain decisions which involve totality of views of the Upper House, both from the legal and administrative points of view.

(2) *Organisation and control of the debates of the Upper House :* The most obvious responsibility of the President of the Senate relates to the organising and presiding over the debates in his House. There are very few rules in the Rules of the Senate which do not refer to his role in this regard.

Though the role of the Senate President appears to be of a formal and impartial nature, there is no doubt about the profound influence that he exercises not only on the final shape of legislative measures that come up before the Senate but also on the initiatives taken in all the spheres of the working of the Senate including its functions in the legislative field and executive control.

The President of the Senate has been empowered to call a special session of the Senate in exceptional cases on days other than the days of its usual sittings. As for organising the work of the Upper House, he presides over the meetings of chairmen which draw up the schedule of the Senate's work, on which occasion his role is that of a conciliator as well as a Judge to decide between the demands of the Government's representatives and those of the leaders of the various political groups or chairmen of commissions for taking up various matters in the Senate. He also refers draft bills to respective commissions. However, his most important function is to direct, control and organise the debates in the Senate.

Thus, the President, by virtue of his personality and his authority as an elected representative of the Upper House is in a position to exercise a profound influence on the working of the Senate adhering, at the same time, to the principle of impartiality so integral to his functioning.

(3) *As a representative of the Upper House :* It should be emphasised that it is by playing adroitly his many-sided role as the representative of the Upper House that the President really projects on the national and international planes the image of his House, an image of which he is the embodiment.

By his brief speeches in open session of the Senate, or at the time just after his election to the high office and at the conclusion of sessions, the President of the Senate addresses not only to his colleagues in the Senate but also to the government and, through the press, the whole Nation. His speeches, which take stock of the work done during the session, form the basis of recommendations, be

it for better rapport between the Executive and the Parliament, or for better functioning of the House, or, for that matter, on a more general plane for meeting the needs of current economic, social or political situations. These speeches, thus, testify to the influence that the Upper House exerts on the very life of the nation.

Another aspect of the President's role as representative of the Upper House is seen in the numerous audiences and receptions given by him either to foreign parliamentary delegations on official visits to Paris, or to high dignitaries who wish to meet the third most important person of the Republic, or to leaders of the French political parties who wish to keep him informed about the views of their parties on the general development of the situation in the country.

To sum up, the prestigious position enjoyed by the Upper House among the French institutions has been acquired not to a small measure due to the manner in which its President acquits himself in the discharge of his high and heavy responsibilities. For example, Mr. Gaston Monnerville's presidentship of the Council of Republic and later on that of the Senate had witnessed a steady growth of the rights and powers of the second chamber, a development given a concrete shape in the Constitution of 1958, and Mr. Alain Poher's presidentship since 1968 has demonstrated the prestige of the Upper House, to all France and even to the world at large.

(*ii*) The Vice-Presidents

The four Vice-Presidents deputise for the President and represent him in his absence. The Senate has not laid down any order of precedence between the Vice-Presidents, and their official ranking *inter se* depends on the number of votes secured by each of them during their election to this office. They preside over the sittings of the Senate in the same way and enjoy the same powers as the President when presiding and are called upon to represent him in official ceremonies or at functions when he cannot personally attend them.

When the President of the Senate officiates as President of France as per the terms laid down in article 7 of the Constitution, the Bureau of the Senate meets and designates one of the Vice-Presidents to take his place provisionally. Theoretically, during this period, the Vice-President so designated performs the functions of the President of the Senate. However, it may be pointed out that during this transitional period, the Parliament seldom meets mainly because of the campaign which starts for the election of the new President of the Republic. In fact, the role of the Vice-President as interim President of the Senate is relatively limited. However, if urgent problems crop up, the Bureau does meet under the chairmanship of the Vice-President designated to officiate as the President.

(*iii*) The Questors

The three Questors have been entrusted with responsibility of managing the

entire administration of the Senate, jointly with the President and the Bureau.

In his treatise on political, electoral and parliamentary law, Eugene Pierre observes that through the ages "the representatives of the country have elected from amongst themselves some members whose function is to ensure that nothing impedes or disturbs the progress of legislative work."

It is this role that the Questors perform. Their present nomenclature dates back to Senatus-Consulte of 28 Frimaire, XII[5] year (December 20, 1803). The three Questors of the Senate, elected for three years at the time of each Triennial election of the Senate, have a role of prime importance in the administration of the Senate. In order to ensure that they are able to perform their functions fully well, rule 8 of the Senate Rules has laid down that they cannot become members of any permanent commission. (Such a restriction has not been placed in the Rules of the National Assembly). They are entitled to a special allowance and an apartment in the outhouses of the Palais du Luxembourg and at Versailles.

Insofar as their role is concerned, the Rules of the Senate are not very explicit, merely indicating, in rule 101, that "from the point of view of the administration, they ensure the supervision of the Departments under the control of the Bureau." However, in practice, their role, both from administrative and financial points of view, is all pervasive. The Rules relating to internal administration and accounting furnish useful details regarding the functions of the Questors. They are also called upon to exercise their authority in the matter of Senate's internal and external security when the powers to that effect are delegated to them by their President.

The Questors meet once a week to consider all the questions falling within their jurisdiction. In the discharge of their functions they have to be familiar with the whole range of problems of administration and monetary limitations that have been imposed on them by their fellow-Senators. The Questors have a direct responsibility in a number of cases such as : financial resources and other amenities provided to the Senators, staff management, and maintenance of the Palais du Luxembourg and its outhouses. They have also a dominant role to play in the preparation and implementation of the Senate's budget. In fact, it has been laid down that no expenditure can be incurred without their authority. The Secretary-General of the Questors' Secretariat cooperates with them, both in the making of the decision and enforcing it.

Though the powers of the Questors are quite extensive, in a number of cases they have to take decisions jointly with the President of the Senate, and, in very important matters, obtain the consent of the Bureau, of which they themselves are a part.

(*iv*) THE SECRETARIES

The eight Secretaries assist the President of the Senate in all voting operations :

5. "Frimaire" is the third month (21 November-20 December) of the Revolutionary Calendar.

control of nominal roll-call, counting of votes when hands are raised, or when they are cast while sitting or standing, and the scrutiny of ballot boxes. The presence of at least three of them is necessary at the time of the sitting of the House, failing which the President can call for three temporary Secretaries.

The minutes of each sitting must be signed by two of them, besides the signatures of the President or the Vice-President who presided at the said sitting.

COLLEGIATE RESPONSIBILITIES OF THE BUREAU

It is primarily in its collegiate meeting that the Bureau of the Senate acquires the full extent of its powers. In fact, as per rule 2 of the Rules of the Senate, "the permanent Bureau has all the powers to preside over the deliberations of the Senate and to organise and manage all its Departments as per the conditions laid down in the existing Rules".

In the legislative sphere, the Bureau is the final authority on the admissibility or otherwise of draft bills which have financial implications; in other words, the decision of the Bureau will bring into play the provision of article 40[6] of the Constitution. If the Bureau thinks that the bill or proposal is not admissible under the said article it will not be put on the agenda of the House nor its copies distributed to the members of the House (rule 24 of the Rules of the Senate).

Same is the case with proposals contained in resolutions, especially those concerning matters of litigation before the High Court of Judicature, when they do not conform to article 18 of the Ordinance of January 2, 1959 (Number 59-1) which applies the organic law to the High Court (rules 24 and 86 of the Rules of the Senate).

The Bureau is also competent to examine proposals for modifications of the minutes of the open sittings of the Senate when the minutes are challenged. It examines these proposals and takes a decision which is then communicated by the President to the Senate. The modified minutes are then placed before the Senate for adoption by open voting without debate (rule 33 of the Rules of the Senate).

So far as discipline applicable to members of the Upper House is concerned, the Bureau is the final judge of the grounds for delegating the right to vote which Senators are permitted to do under conditions envisaged in article 27 of the Constitution, and for grounds listed in the first article of the Ordinance Number 58-1066 of November 7, 1958, regarding Organic Law authorising Members of Parliament, in exceptional cases, to delegate their right of vote, amended by Organic Law No. 62-1 of January 3, 1962 (rules 63 and 64 of the Rules of the Senate).

It is also called upon to comment on requests by Senators for leave of absence, addressed in writing to the Senate President (rule 34 of the Rules of the Senate).

6. Article 40—Bills and amendments introduced by Members of Parliament shall not be considered when their adoption would have as a consequence either a diminution of public financial resources, or the creation or increase of public expenditure.

When there is need to determine, for the purposes of voting, the presence, within the premises of the Palais du Luxembourg, of an absolute majority of Members of the Senate, the Bureau is asked to declare whether or not there is a quorum (rule 51 of the Rules of the Senate).

After the introduction of the Organic Law No. 72-64 of January 24, 1972, which has unified all the different organic laws applicable to parliamentary incompatibilities[7] the Bureau is called upon to scrutinise the declarations of profession or change of profession made by Members of the Senate either during their election or during their term of office as Senators.

It may be pointed out that the Decree No. 71-140 of February 19, 1971, fixing the composition of the National Council for Higher Education and Research, has entrusted to the Senate Bureau the responsibility of proposing the names of two Senators to be appointed on the National Council. This is the only instance where the Bureau has been assigned the task of nominating representatives of the Senate to any extra-parliamentary body.

Thus, again, before the Senate is called upon to give its decision on requests for appointment of *ad hoc* commissions of inquiry made by permanent commissions, the Bureau must give its comments on the expenses entailed by these proposals (rule 21 of the Rules of the Senate).

So far as the organisation and supervision of Senate's Departments are concerned, the Bureau has the overall administrative authority, the supervisory part being performed by the Questors under its control. Thus the appointment of senior staff of the Senate and especially the Secretaries-General fall within its ambit. On the basis of internal rules, it determines the organisation and functioning of each Department of the Senate, the way in which the Departments are complying with the formalities prescribed by the rules as well as by the staff rules, and relations between the Senate management and the staff unions (rules 101 and 102 of the Rules of the Senate).

Finally, through a special regulation, it is empowered to frame rules applicable to the independent Accounts Department of the Senate (rule 103 of the Rules of the Senate).

The President of the Senate convenes the meetings of the Bureau about six times in a year, or, in case of urgency, immediately when for example the President of the Senate officiates as President of the Republic when the latter quits the scene or is barred from performing his functions. In these meetings, the Bureau performs its legislative or administrative functions in close touch with the President or the Questors of the Upper House.

The Bureau is also empowered to constitute working groups for examining modifications in Rules of the Senate to ensure better performance of legislative work or to examine the general set-up of the Departments and submit to the

7. "Incompatibility" in a French term means a bar on the holding of certain posts, *e.g.* a Member of Parliament is barred from holding certain offices of profit. (*Ed.*)

Bureau proposals for reforms it deems necessary. For example, in 1970, a very important report was prepared by a Vice-President of the Senate, which had a great bearing on the Rules of the Senate as well as on the general set-up of the Departments. This report was entitled "Proposals for bringing the Procedures of the Upper House up-to-date". Its acceptance by the Bureau has resulted, since 1971, in some reorientations in the Rules of the Senate and in the set-up of its Departments.

It is, therefore, evident that the day-to-day management of the legislative work and administration of the Upper House are carried on by the President and the Questors throughout the year as a result of the tacit delegation of powers to them by the Bureau and under the control it exercises during its meetings.

January 17, 1977

5

Legislative and Control Procedure of the French Senate*

LOUIS GROS**

"The Grand Council of the French Communes", "Chamber of Reflection and Deliberation" and many other appellations have been used to describe the Senate of France, but these descriptions give an incomplete image of a reality not properly understood.

A high quality of parliamentary activity whether it is in the field of legislation or the control over the executive, can be good summing up of the performance of the Second Chamber; but along with these functions which it has in common with the National Assembly, the Senate has developed a mechanism distinctly its own for the defence of the liberties of the citizen and others, which enhances its importance considerably in our political system.

I. LEGISLATIVE FUNCTION

The Senate's control over the processes of legislation is exercised at two stages of a Bill—first at the stage when a Bill containing legislative proposals is first placed

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** Mr. Louis Gros is the Vice-President of the French Senate.

before it and secondly when the proposals along with amendments thereto come up before it for discussion.

1. LEGISLATIVE PROPOSALS

The Senators display as much initiative in legislative matters as the Deputies of the National Assembly and the Government—for instance, between the years 1959 and 1976, Senators introduced 676 Private Members' Bills. However, it is a fact that only 40 of them were finally passed and found place in the Statute Book. The reason for this modest figure of 40 is not far to seek. In all modern Parliamentary system of Governments, priority is given to measures brought in or taken up by the Government so that nine out of ten laws passed by Parliament are initiated by Government. French Parliament is no exception to this rule, and during the period under reference, the share of Private Members' Bills among the measures passed into law was only 13% of which 2.5% were measures initiated by Senators and a little more than 10% by the Deputies.

It may be pointed out that some legislative proposals initiated in the Senate are still pending in the National Assembly, either because the Assembly has not been able to take them up or because the Government has not deemed it proper to include them in the agenda. It may also be mentioned that some of the measures pending are such as could solve some of the current problems facing the country, for example, right of reply to Radio-Television broadcasts (proposal adopted by the Senate in June 1967); ban on publication of results of gallup polls during election period (adopted in December 1972); or laying down qualifications for election as the President of the Republic (adopted in December 1973). Some other proposals that are pending reflect in fact the wishes of the entire Parliament—for instance, the demands often made to the Government by Deputies of the National Assembly that the Senate proposal (adopted by it in June 1973) seeking to broaden the scope of parliamentary commissions of inquiry and control should be got examined by the National Assembly. In spite of this demand the Government have succeeded in keeping the proposal off the floor of the Assembly.

It is also a fact that by utilising the right to get priority for its measures, Government have introduced Bills, inspired by private members' proposals; the best example is the fixation of the age of majority of persons at 18 years, which was the subject of two Senate proposals adopted by it on June 21, 1973.

However, these figures do not convey adequately the contributions in the shape of imagination and initiative made by the Second Chamber in the field of legislation.

2. MODIFICATION

The right of amendment which the Constitution of 1946 had taken away from the Council of the Republic has been granted to the Senators by the constitutional

reforms of December 1954 and re-affirmed by the Constitution of 1958. Article 45 of the Constitution provides that every "Bill shall be examined successively in the two Houses of Parliament with a view to the adoption of an identical text." Does not the fact that a Bill must be discussed successively by the two Houses and identical text voted by them before the Bill can be finally adopted and enacted, entail loss of time, only very partially compensated by a later technical improvement, if any, in the text of the Bill by one of the Houses ?

A Bill on which the two Houses do not agree goes through a navette (shuttle) between the two Houses until agreement is reached. The two Houses appear to have equal powers in the legislative field but now under article 45 of the Constitution the Government have gained control of the navette and the National Assembly has been given the final say in the matter if the two Houses disagree.

Article 45 provides that after two readings on a Bill, but only one if the Government declare it urgent or in case of Finance Bills, the Minister in-charge of the Bill can call a meeting of a Joint Commission of seven members from each House for reconciling the position of the two Houses and working out a compromise. If the joint commission fails to arrive at a compromise or if the text of the Bill proposed by the Commission is not accepted by either House, the Government can, after a new reading in each House as a last attempt at reconciliation, ask the National Assembly to give its final decision. This is the famous "last word" which deprives the Senate of its position of equality with the National Assembly.

The "shuttle" system cannot be blamed for delaying enactment of laws. On the contrary, it has the indisputable merit of improving the quality of Bills finally adopted.

Discussion of draft laws in the two Houses does not entail any loss of time because if at any time an urgent decision becomes imperative, the Government can always call for a meeting of the Joint Commission and the Bill can then be voted within the course of one parliamentary session.[1] There have been occasions when urgent Bills were voted within a matter of few days. To cite only one example, consideration on an important Bill dealing with the law relating to national service commenced on June 10, and ended on June 29, 1973 an insignificant period when compared with long periods lasting several months that lapse before Bills are adopted.

It may also be pointed out that long drawn-out shuttlings are very rare—the law relating to the responsibility of hoteliers, which had to pass through four readings in the Senate and five readings in the National Assembly, was an exception (it may be mentioned here that in this case, the National Assembly had stood by the Senate's draft in regard to a clause in the Bill which was a subject of much discussion).

Discussions of a Bill by the two Houses undoubtedly improve its quality. It is necessary to point out that 95 times out of 100 the "shuttling" ends in consensus

1. 90 days (maximum) in spring and 80 days in autumn.

between the National Assembly and the Senate. This is a very little known fact which underlines the equality of the Senate with the National Assembly in the legislative field—the "last word" of the National Assembly being but a rarely manifesting reality.

Thus, the bulky Bill of July 24, 1966 on commercial firms was the subject of an especially detailed discussion by the Senators, whose 487 amendments were adopted in the Senate and 407 of which were retained in the final text adopted by the Houses; the Senate's amendments to the Bill relating to parental authority were all accepted by the National Assembly, whose Rapporteur lauded their "high quality". Similarly, more recently, the Senate amendments to the Bill on birth control were fully adopted by the National Assembly.

Apart from the quantitative contribution by its discussions mentioned above, the Senate has also been responsible for its highly qualitative and imaginative contribution to the very contents of the amendments. Some of the important Bills, in fact, do bear the "mark" of the Senate. To cite an example, the basic text of the law on reform in the matrimonial system in the country, was to a large extent, the text which had been passed earlier by the Senate. This law has put an end to the dowry system, and allows for a change in the existing system of marriages.

To complete this rapid survey of the Senate's role in the legislative field, if one examines the Bills on which the two Houses could not agree—only five per cent in all—it is observed that the Senate's contribution during the course of successive readings has not at all been reduced to nothing. In fact, when the National Assembly is called upon to give a final shape to the Bill, when the Joint Commission with equal representation fails and a disagreement still persists at the time of a new reading, it takes up only those clauses which have been in dispute. Thus, the "last word" of the National Assembly concerns only a few points which are at issue with the Senate, and contrary to the general belief does not render null and void the amendments which the Senate had or would have accepted. For example, at the time of the discussion on the Finance Amendment Bill of 1964, the clause relating to the creation of the national department of forests was the subject of persistent disagreement between the National Assembly and the Senate, but other clauses concerning estate fiscal laws and the base of local taxes were voted by the National Assembly on a proposal by the Senate.

The contribution of the Senate, therefore, to our legislation is by no means negligible, whether quantitatively or qualitatively. At the same time, the Senate has sought to make full use of the right to watch and control the actions of the Executive to the extent authorised by the Constitution and its own Rules.

II. FUNCTION OF CONTROL

The oral questions which the Senators put to the Government and the investigations conducted by its permanent commissions and *ad hoc* inquiry and control

commissions represent the traditional weapons with which the Senate is armed, for controlling and criticising Governmental actions. As the Government declare their general policy and implementation of the policy by Governmental agencies gradually unfolds itself, the Senate gets an additional opportunity to watch, guide, criticise and influence Executive action.

1. Control through Questions

Oral questions, with or without debate, are an important way to obtain from the Government information as well as explanation and later on justification for the policies followed by it in various fields which it is required to place before the Senate through answers to these questions. Written questions are also there but these have become means of consultation of a technical and financial nature with the Government. But the control exercised by the Senate through Questions does not turn out to be a repetition of a similar control exercised by the National Assembly, because this expedient which has branched off in a new direction has been used in the Senate in a very efficient manner.

It is not a useless repetition because, during the course of a parliamentary session, the problems raised through Questions in the two Houses are always different or complementary to each other resulting in automatic and spontaneous division of work between the two Houses in controlling the actions of the Executive.

In the list of subjects for oral questions with debate, discussed every year, are subjects which are of constant and special concern to the Upper Chamber, some of which are its own—local finances, in particular, education; agriculture, especially cattle-breeding; foreign policy and European affairs. All these represent a sphere of Governmental activity very vigilantly watched over by the Senators, and the Ministers are often called upon to explain the policies followed by them.

This system works in a very satisfactory manner. The oral questions without debate, especially, with very rare exceptions, are answered during the very session in which they are put and often within eight to fifteen days from the date of their notice, from which one may conclude that the resort to the Anglo-Saxon procedure of "questions of current events" has been much less sharply resented in the Senate than in the National Assembly. As regards oral questions with debate, which concern matters, which are generally political in nature, and which have followed the system of "interpellations" of the Third Republic, the Senators obviously are more fortunate than the Deputies about these being put on the agenda quickly. Quantitative comparisons prove this fact eloquently because the number of these questions put in a session is almost the same in both the Houses whereas the number of those which are given notice of is much more in the case of the National Assembly than in the Senate. If one takes the four year period from 1970 to 1973, the number of questions, which were replied to, out of those given notice of, comes to 70 per cent

in case of the Senate as against merely 43 per cent in the case of the National Assembly.

Thanks to the excellent functioning of this procedure, debates stimulated by these questions, even if a bit clumsily handled, do come close to influencing current events. For example, the observations made by Mr. Poniatowski on the French Communist Party, reported in the Press on the 23rd and 24th October 1974, led to a protest in the Senate by Mr. Duclos on October 29 resulting in a promise from the Minister of State, while replying to an oral question that a debate in the matter would be held in the Senate on November 12 to clarify his statements.

It would be difficult to evaluate the results of such control but, nonetheless, they are not non-existent. Take for example the case of local finances—as a result of several debates raised through Questions in the Senate on this subject, the Senators were able to obtain settlement of a long-standing claim, with considerable impact on the budgets of the communes[2], namely, the reimbursement to the communes of the T.V.A. (added value tax) paid by them during supplies of equipment by their industrial and commercial services.

The Senate has employed the Questions' procedure in a manner which has during the last few years taken different as well as diversified forms. At the initiative of the Finance Commission of the Senate, oral questions henceforth enable a discussion on the Finance Bill during the spring session, through debates on the budget, when the Senators are able to influence the policies of the Government before these are actually arrived at. The Finance Bill for 1974 was in this manner influenced in the Senate in May-June 1973 in three important aspects : the fiscal policy, at the initiative of the President of the Finance Commission, the energy policy and thirdly the monetary policy by questions from the Rapporteur-General of the same Finance Commission.

2. Control through the Commissions

This control is exercised in two ways : First, continuous control by the six Permanent Commissions; secondly, temporary control by *ad hoc* commissions of inquiry and control whose functions are that of an intermediary.

(*a*) *Control by the Permanent Commissions* : Among the six permanent commissions, special mention should be made of the Finance Commission whose special Rapporteurs, entrusted with scrutiny of a particular budget at the time of consideration of the Finance Bill, have the power to check on the spot[3] the use made of amounts allotted by them. These powers of investigation are not negligible because in the 1973 autumn session of the National Assembly during what the Press labelled the "Reporters' quarrel", these powers were taken away from them

2. A 'commune' in France is an administrative or territorial division. (*Ed.*)
3. Powers conferred by clause 164, Paragraph IV, last sub-para, of the Ordinance of December 30, 1958 on the Finance Bill for 1959.

at the instance of the other Commissions for Budget scrutiny. Every year, the Finance Commission and the Economic Affairs Commission also nominate some of their members to "watch and evaluate the management of public enterprises and companies in the joint sector."

Since November 1972 in particular, the Bureau of the Senate has developed and institutionalised the control over enforcement of laws by the Executive, earlier exercised automatically by the Commissions. Each Commission has now been made responsible for overseeing the enforcement of laws which fall within its province and, at the beginning of each session of the Senate, this exercise of control is reviewed at the meeting of the chairmen of the commissions and leaders of political groups in the Senate, who point out excessive delays in the enforcement and consequent lacunae in the laws; these give rise to various interventions by the Senators obliging the President of the Senate to take the matter up with the Prime Minister or resulting in an oral question with debate on this problem being taken up in the Senate. The debate raised on November 20, 1973, at the initiative of the Chairman of the Law Commission, has shown the importance of this control : on that day, Mr. Jozeau-Marigne pointed out that about 20 laws, made before 1972, had not been put into force as yet (this is yet another proof against the contention that the Second Chamber delays legislative processes); he had particularly and justifiably focussed attention on the case of an enforcement of law by the Executive which was contrary to the intention of the Legislature; and it was on the personal intervention of Senator Geoffroy that this ministerial order, which grossly limited the fiscal advantages of long-term rural leases envisaged in the law of December 31, 1970, had been cancelled by the Council of State. The best tribute which one can pay to this control by the Senate was paid during the course of this debate by the then Secretary of State for Parliamentary relations, Mr. Stirn, who declared : "The Government shall be as vigilant as the Senate in preventing conflict of executive orders with the letter and spirit of the laws."

Finally, the permanent commissions send abroad a few members to gather information on specific problems and submit reports thereon to the Senate. These missions can also be appointed for examining a specific problem of the metropolis; thus a mission organised by the Commission for Cultural Affairs is busy during the last few months investigating and preparing its report on the question of educational system. The Senate has at times utilised such fact-finding and inquiry missions (which are common to several commissions) for an objective very much similar to the one assigned to a control commission. For example, the Senate has appointed in the past fact-finding commissions to enquire into the management of a public department. The report of the mission which was asked to look into the management of French Radio and Television in regard to cases of clandestine publicity revealed in the Senate by Mr. Diligent, was very similar to the one which would have been given by a control commission. And the report when it was published in April 1972 was given wide publicity in the Press and had a pronounced influence

on the attitude of the Government[4] in the matter, because shortly afterwards, Mr. Malaud presented to Parliament a scheme for reforming the French Radio and Television, which was adopted in June 1972. This judicious use of the fact-finding missions enables the Senate to avoid the strict rules governing the functioning of the control commissions.

(*b*) *Commissions of Inquiry and Control :* The two Houses of Parliament can constitute inquiry and control commissions only under the strict conditions laid down in the Ordinance of November 17, 1958 regarding the functioning of Parliament's Houses : the commission of inquiry collect details on specific matters which are not yet *sub-judice* and the control commissions study the management, administrative, financial or technical, of public services or national undertakings. The members of these commissions are pledged to secrecy and they have to complete the job entrusted to them within a period of 4 months at the most. Their reports can be published only with the approval of their respective Houses. All these restrictions emphasise the fact that these commissions can become a very effective means of investigating cases of lapse on the part of the Government. Resort to the procedure of appointing such commissions in such matters hardly need any justification as the publication of reports of these commissions has an undoubted impact on public opinion. There is no doubt that the Senate has been putting this procedure to timely and effective use, while the National Assembly was more cautious, at least in the beginning. Way back on December15, 1960, the Senate established a commission on management of the national theatres; subsequently, three other control commissions went into the problems of training and educational selection process in schools, fulfilment of the tasks entrusted to the French Radio and Television, and the extent of implementation of the Fifth Plan in matters of hospital equipment and social benefits. At a time when the National Assembly refused to examine, through this method, what was called the "scandal of the town", the Senate constituted an inquiry commission for the whole range of problems connected with the slaughter-houses in Paris, its report, submitted in April 1971, was extensively commented upon in the Press. The submission of this report did not, however, slacken the Senate's attention to this problem, in fact two oral questions with debate were later addressed to the Government in order to move it to consider and implement the solutions proposed in the report.

It may also be pointed out that there are certain lacunae in the working of these Commissions. For example, the Commission appointed by the Senate in June 1973 to report on the services concerning telephone listening posts encountered difficulties when the Government held that the matters which the Commission intended to enquire were covered by National Security, hence could not be divulged. This incident has shown that the French Parliament does not have the powers enjoyed by the "inquiry committees" of the Anglo-Saxon Parliament Houses. It also shows

4. This effect was jointly achieved with the control commission of the National Assembly on the same subject.

the justification of the Senate's proposal for extending the authority of these commissions of inquiry and control, especially by obliging persons summoned to appear before them under pain of punishment for default, and by conferring on their members the powers of on-the-spot inquiry enjoyed by the special Rapporteurs of the Finance Commission.

3. Approval of Government's Statement of General Policy

Article 49 of the Constitution calls upon the Prime Minister to present to Parliament, at the time of assuming office, the programme or a statement of general policy which his Government intends to follow. The debate which follows such statements[5] provides an opportunity to the Senators to make their observations and exert their influence through their suggestions, on the Government's line of action in solving the problems facing the country.

One should not, however, exaggerate the consequences of such debates. So long as these debates do not end in voting, they only have a persuasive value. However, resort by the Government to the last para of article 49 of the Constitution, which enables the Government to have its statement of general policy approved by the Senate, is fraught with great political significance. Such a possibility arose during the spring session of 1975, when the Senate was invited to give its verdict, through vote, on a statement of general policy by the Government. It must, however, be borne in mind that a negative vote by the Senate does not oblige the Government to resign; no Article of the Constitution imposes such an obligation on the Government. But such a disapproval in financial matters would have definite repercussions in the political game.

III. SPECIFIC FUNCTIONS OF THE SENATE

The role of the Senate is not limited to participation in law-making and to watch and control Governmental actions. It has also its own function which has been entrusted to it by the Constitution.

Article 24 of the Constitution lays down that the Senate "ensures the representation of the territorial communities of the Republic". This representation is ensured by the mode of electing its members through indirect suffrage. Senators are chosen in each Department (Departments in France are equivalent to counties in U.K.) by an electoral college consisting mainly of local councillors. This electoral college of "notables" (deputies, general counsellors, delegates of municipal councils) tend to prefer those people as Senators who have, because of their responsibilities,

5. When the Government discharges its responsibility to the National Assembly by making a statement of general policy, the Senate Rules preclude a debate in the Senate on this statement.

a good knowledge of the problems of their constituencies and who would thus be better equipped to represent them at the national level. Thus, the number of Senators armed with local mandate is impressive : among the Senators, 171 are mayors, 5 are joint mayors of large cities, and 27 are municipal councillors; 147 are general counsellors, and 30 are chairmen of general councils; finally, though the regions may not be territorial community in the Republic, they have not been ignored by the Senators, as 5 among them are chairmen of Regional Councils. Therefore, it is not surprising that the actions of the Senators on all matters that come up before the Senate are marked by a constant concern for local problems.

Many of the Private Members' Bills in the Senate can be seen from this perspective; some of the Bills that were finally adopted, dealt with improving the functioning of our local bodies, whether it was a question of laying down conditions of voting in municipal councils and general councils (the law of June 15, 1974) or the conditions under which criminal cases can be instituted before the mayors (the law of July 18, 1974). This latter law enables a municipal magistrate to escape the emotional reactions of public opinion in the event of a catastrophe in his commune.

Bills proposed by the Government on these subjects are also most meticulously examined by the Senate. Its technical competence in the matter enables it to put forth the viewpoints of the affected people with a first-hand knowledge of their problems thus avoiding mere technocratic solutions. Thus, 25 out of the 26 Senate amendments in the Government Bill relating to municipal management and autonomy of communes have been retained in the Bill as passed by Parliament and have enabled the Senate to push through its viewpoint in matters of mayor's powers, rules relating to constitutions of multi-professional trade unions and financing of educational expenditure. The Senate has examined the law on the merger and regrouping of communes, taking great care to avoid any arbitrary decision; when the National Assembly did not fundamentally modify the Bill, the Senate, by refraining from ordering a merger by a decree in the Council of State even against the wishes of the municipal councils, has allowed freedom for local decision. But when such a stand encounters opposition from the Government and the National Assembly, the Senate's view does not prevail. Thus, it could not have its way in having a single career for the employees of the communes, when the draft Bill on this scheme was under debate in the Senate; nor could it appreciably modify the draft Bill creating regions with a view to safeguarding the prerogatives of the existing local communities and strengthening the autonomy of the regional council against the regional prefect. On repeated demands from Senators for a reform of local finances, the Government introduced a Bill seeking to modernise the fiscal structure in regard to local direct taxes; but the Government, however, excluded therefrom, in spite of insistence by Senators, the question of patents, which later on became the subject of a special Bill dealing with professional taxes. Thus, the Government had refused to allow the Senators to link these two reforms which was a logical step taking into consideration the fact that the professional tax represented 50 per cent of the local fiscal resources.

As in the case of local finances, the questions asked of the Government and debated in the Senate are also devoted, to a large extent, to problems of the communes. The plans to regroup the communes have also figured in Senate's questions, and the enforcement of the law of July 1971 on the merger of communes has been closely observed. Through their questions, the Senators deplored the vast gap between the plans for regrouping drawn by the prefects and the ones as drawn up by the commissions of elected representatives and they were successful in staying the Government's hands long enough to enable the commissions to draw up an exhaustive and final plan for regrouping of communes. Even technical measures with an apparently less direct bearing on communes are not allowed to slip away by the watchful Senators : for example, the conditions for alterations in the national routes and the transfer of their maintenance to the provinces were the subject of a debate in the Senate.

The Government have also formally recognised this particular role of the Senate and have agreed to introduce draft Bills on the subject of local communities first in the Senate.

The Senate's work is also significant in a sphere which is not solely its own but is one in which it has distinguished itself, mainly due to the initiative of its President : *viz.*, protection of the freedom of the citizens. The discussion on the Bill seeking to check certain new forms of delinquency has already shown that the Senate was cautious with regard to the provisions in the Bill relating to "accessory" and "circumstantial evidence" and it has shown its uneasiness about the notion of "collective responsibility" which has been introduced into our rights; it has also sought to insert additional guarantees for workers who go on strike in good faith and during the first reading of the Bill on the subject, it had even rejected the clauses putting restriction on assemblies and political parties. The Press also summed up its performance in a picturesque caption : "The Senate breaks the law of anti-breakers." (France-Soir). In the debate on a Bill dealing with strengthening the guarantee of private rights of citizens, the Senate showed its preference in certain fields (described by some as "exceptional") by adopting an amendment which abolished the State Security Court (Cour de Surete). This was a symbolic opposition because the National Assembly restored the rejected clauses, this opposition by the Senate, however, showed its typical attitude in such matters. As regards the ratification of the European Convention for safeguarding of Human Rights, it had been taken up again in the Senate after a lapse of several years by Mr. Monnerville and was discussed with a special liveliness, during a debate in June 1970. When Mr. Poher was interim President of the Republic, he expedited the presentation of the Instruments of Ratification and the Government showed their recognition of the attention given by the Senate to this question by laying the Instruments of Ratification first on the table of the Senate.

But it is the President of the Senate who, by using his right to take a case to the Constitutional Council, has best demonstrated this spirit of the Upper House. The Senate had constantly rejected, during the course of 'shuttling', a Bill on

partnership deeds as it felt that the Bill compromised the freedom of association. Its President asked the Constitutional Council, by virtue of article 61 of the Constitution to give its verdict on the constitutionality of the Bill. And a decision, handed down on July 16, 1971, by the Council, struck down that very clauses which the Senate thought had contravened the principle of freedom of association. It is in the same spirit that Mr. Poher submitted to the Constitutional Council a clause of the 1974 Finance Bill which he thought was contrary to the principle of equality of citizens before law, in the matter of access to justice.[6] And this clause was deleted by the said Council on the ground that it "made inroads into the principle of equality before law", the very point which led the President of the Senate to intervene.

To conclude, very recently, on January 12, 1977, the Constitutional Council, approached by 79 Senators at the initiative of Mr. Henri Caillavet and Mr. Pierre Marcilhacy, declared as unconstitutional the law authorising the inspection of vehicles on public highways for purposes of search and prevention of breaches of law.

The Senate is, thus, far from being a conservative House applying brakes to the reforming zeal of the so-called 'popular' House. The liberal attitude adopted by the Senate during the debate on termination of pregnancies is sufficient to prove it.

Because of the mode of election of its members, the Second House in fact, brings an element of federalism to our representative system. Working side by side with the National Assembly which is directly elected by the people, the Senate represents tracts of territory like the local communities which have their own entity, independently of the importance of its population. Therefore, it ensures in the Parliament a different kind of link, a rich one at that, binding the Nation as a whole.

The permanent character of the Senate—one-third of the Senators are elected after every three years—guarantees to it a useful role as a "filter" of political currents; the ever-changing public opinion does not immediately get reflected in the Senate, like the one witnessed during the Poujadist era[7] in the Assembly; on the other hand, a group, old and declining, will retain in the Senate a privileged position because such an ever-changing phenomena take much longer to register itself in the Senate than in the National Assembly. But it also ensures a different kind of representation of public opinion in the Parliament at a time when representation becomes oversimplified in the First Chamber as a result of a trend towards bi-party system.

Even if the Senate cannot be labelled as "conservative", it, nonetheless, plays

6. According to the terms of this clause, only those tax-payers affected by the provision of the employment tax could have recourse to the tax tribunal, whose income did not exceed a certain limit.
7. Poujadists are followers of the French politician, Pierre Poujade (born 1920), who are anti-parliamentarians, call themselves champions of the common man and stand for tax reduction. (*Ed.*)

the role of a moderating power in a sense excellently defined in October 1968 by its present President in the following terms : "If one follows the French political tradition, one would find there the permanent concept of a moderating power whose function is to keep the faculty of judgment intact and suspend the action of other faculties till a conclusive decision emerges in its full wisdom and is acceptable to the largest number of people." This concept of the Second Chamber augurs well for its future because, as Mr. Poher recalled : "It is the reflection of the complex character of political decision in the big countries of our times."

January 19, 1977

6

The Senate of Iran

MOHAMMAD SAJJADI*

Ever since the dawn of human civilisation and his emergence from the caves, one of the most ardent desires of man has been to have a say in the determination of his own destiny.

This is abundantly reflected in the pages of history which speak of the tribal ways of life where the chief, hereditary or elected, embodied the will of the members of the tribe and his word was law for all.

Millenia passed in this manner until through the various epochs human knowledge evolved the present parliamentary form in many variations.

Traces of collective rule of the people can be found in all civilisations whether Chinese, Egyptian, Iranian, Indian, Roman or Greek. Even in the days of despotic rulers, there is ample evidence to show that the most sagacious of them ruled with the help of sages of their times or a panel of astute advisers, generally respected for their wisdom and knowledge.

In defining a democratic government, J. Enoch Powell, a noted parliamentarian of Great Britain, writes in his History of the House of Lords that it is a rule

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by the consent of the governed as expressed through the medium of their elected representatives.

Traditions of democracy, as known in ancient times, are deeply rooted in the Iranian society but the present Constitution was not won by the people without effort or sacrifice.

The grant of the Constitution in 1906 by Qajar King Mozaffareddin Shah preceded an epic struggle by the people which included the bombing of the Majlis and loss of many human lives.

In fact, the overthrow of the long-decaying Qajar Dynasty in 1920 had its origins in the political awakening of the people of this land and the assumption of power by the late Reza Shah the Great opened a new chapter in the Iranian social life.

The most pressing need of the country on the advent of the Pahlavi Dynasty on the Iranian political scene was the restoration of law and order within and building of the national image abroad which had suffered greatly through the ineffective rule of the later Qajar monarchs.

Great measures were essential if the country was to enter into the 20th century all at once and leave behind its medieval backwardness. Reza Shah rose to the occasion and modern institutions such as railroad, highways, schools with new techniques and well-organized ministries were created almost overnight.

However, the late Monarch's reign was altogether too short for him to see to the blossoming of a bicameral parliamentary system.

Although the creation of a Senate was provided for in the Iranian Constitution, this could not be accomplished for about fifty years. His Imperial Majesty the Shahanshah Aryamehr was destined to attend to this, even though the outbreak of World War II hampered him in implementing the wide reforms that he had in mind for his people.

Immediately at the end of World War II, Iran was grappling with the problem of secession of a part of its territories and occupied the forefront of national thinking. The fact that while there was so much to occupy almost the entire attention of the country's then young Monarch, yet he paid attention to the establishment of the Senate only proves the undeniable devotion of the Shahanshah to democracy.

The Constitution stipulates a Senate consisting of 60 members, 30 of them elected directly by the people and the remaining 30 appointed by the Shahanshah. The first Senate was inaugurated in a glittering ceremony in 1949 at the Majlis (Lower House) building. Meanwhile, work was started on an imposing home for the newly-established Upper House of the Iranian Parliament in western Tehran. It was completed 10 years later and has since been used for the opening of Parliament and the Speech from the Throne to joint sessions of both the Houses.

In the Iranian society, as well as in almost all other Eastern societies, a respect for elders is instilled in the child from the very earliest time and the word of the elders is listened to with respect. Insofar as the Iranian Senate is concerned this is backed by a constitutional guarantee of equality with the Majlis.

In most developing countries the clamour for rapid progress and development, sometimes far beyond the means of the national resources, is undeniable and often a dangerous characteristic. It is here that the experience by members of the Upper House comes to the rescue of the whole nation.

As everyone knows, any legislation before becoming effective, must be passed by both the Houses of Parliament. However, for the smooth running of the government, like India, the larger Lower House, has been given the authority to withhold all monetary Bills in dispute between the two Houses, before they automatically become law in six months.

Bills may be introduced in the Iranian Senate either by the government or by Senators and may be sent to the Majlis for final approval and *vice versa*.

During the 30 years of its existence, the Senate has had the most smooth working relationship with the Majlis but this may not necessarily mean that all the Bills approved by the Majlis are ratified automatically by the Senate. On the contrary, there is often lively debate on the floor of the Senate and each Bill is considered solely on its merits.

One of the basic qualifications for membership to the Upper House of the Iranian Parliament is that a prospective Senator must have served at least three terms as a Majlis deputy or must be an ex minister, ex-deputy minister, a military officer not below the rank of Brigadier General, a senior businessman or a High Court or Supreme Court judge.

With such a mass of valuable wealth of experience the Senate is in a position to discharge its duties most accurately and to keep youthful ambition in check.

December 25, 1976

7

The Upper House of Jordan

BAHJAT TALHOUNI*

Under the Constitution of the Hashemite Kingdom of Jordan there are three Powers :

(1) The Executive Power
(2) The Legislative Power
(3) The Judicial Power

The Constitution and its later amendments explain the functions of these Powers, their composition and the powers vested in them to direct and supervise the State Affairs. The Third Chapter of the Constitution allocates the powers as follows : Article 24 provides that the nation shall exercise its powers in the manner prescribed by this Constitution. Article 25 provides that the legislative power shall be vested in the National Assembly and the King. The National Assembly shall consist of a Senate and a House of Deputies. Article 26 provides that the executive power shall be vested in the King who shall exercise his powers through his Ministers in accordance with the provisions of the Constitution. Article 27 provides that the judicial power shall be exercised by the different courts of law and all

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judgments shall be given in accordance with the law and pronounced in the name of the King.

The Legislative Power : Under the Constitution (Article 62), the National Assembly consists of two Houses : the Senate and the House of Deputies.

The Senate, including the Speaker, consists of not more than one-half of the number of the members of the House of Deputies. Since members of the House of Deputies are sixty, members of the Senate should be thirty. The Senators are appointed by a Royal Decree for a period of four years. A Senator must have completed forty calendar years and must belong to one of the following classes : present and past Prime Ministers and Ministers, persons who had previously held the office of Ambassador or Minister Plenipotentiary, ex-Speakers of the House of Deputies, President and Judges of the Court of Cessation and of the Civil and Sharia Courts of Appeal, retired military officers of the rank of Lieutenant General and above, Deputies and other similar personalities who enjoy the confidence and trust of the people in view of the services they had rendered to the nation and country. There are other conditions required for those who are appointed as Senators or elected as Deputies. These conditions are mentioned in Article 75 of the Constitution which provides that no person shall become a Senator or Deputy (*a*) who is not a Jordanian; (*b*) who claims foreign nationality or protection; (*c*) who was adjudged bankrupt and has not been legally discharged; (*d*) who was interdicted for any reason and the interdiction has not been removed; (*e*) who was sentenced to a term of imprisonment exceeding one year for a non-political offence and has not been pardoned; (*f*) who has a material interest in any contract other than a contract or lease of land and property with any Department of Government provided that this provision shall not apply to any shareholder in a company of more than ten members; (*g*) who is insane or imbecile, or (*h*) who is related to the King within a degree of consanguinity to be prescribed by a special law. The term of office of Senators is four years as previously mentioned. Their appointment is renewed every four years. The Senators whose term of office expires may be reappointed for a further term. The term of office of the President of the Senate is for two years but he may be reappointed for a further term. The President of the Senate presides over the National Assembly when it meets in a joint session in certain cases fixed by the Constitution, namely :

(1) When the King opens the ordinary session of the National Assembly on the first day of October of each year to deliver the speech from the Throne.
(2) When the two Houses, the Senate and the House of Deputies meet in a joint session to consider a divergence of views on a draft law, or
(3) When His Majesty the King takes an oath on ascending the Throne.

Membership of Senators : The term of office for each Senator expires in the following cases :

(1) When the term of office of the Senate expires and the member is not re-appointed.
(2) When he resigns from the membership of the Senate.
(3) In cases of disqualification as provided for in the Constitution.
(4) If he is relieved of his task by a Royal Decree for reasons other than those mentioned in the previous paragraph.
(5) In case of death.

Immunity : No Senator or Deputy should be detained or tried when the National Assembly is in session, and the Senate or the House of Deputies, as the case may be, decides by a majority resolution, that there is sufficient reason for his detention or trial, or if he was arrested in the course of committing a criminal offence. In the event of his arrest in this manner, the Senate or the House of Deputies must be notified immediately. If a member is detained for any reason while the National Assembly is not in session, the Prime Minister shall notify the Senate or the House of Deputies when it reassembles, of the proceedings which were taken against the member with the necessary explanation. In all cases a member of the Senate can never lose his seat except by a resolution of two-thirds of the House which should be ratified by the King.

Procedures in the Senate and the House of Deputies : The Senate and the House of Deputies each makes its own Standing Orders for regulating its proceedings. According to this provision the Senate's Standing Orders must be confirmed by the King.

After His Majesty the King delivers his Speech from the Throne in the ordinary session, the two Houses hold a separate meeting presided over by its Presiding Officer.

The sessions of the Senate must have a working programme prepared previously. The President of the Senate and the newly appointed Senators must take an oath provided for in the Constitution. A committee is then elected to prepare the reply of the Senate to the Speech from the Throne. Then the Senate moves to another stage of electing the members of the Standing Office which comprises :

(*a*) Two Vice-Presidents, the first to act for the President in his absence and the second acts during the absence of the first Deputy President.
(*b*) Two Assistants to the President, to perform certain functions such as recording deliberations of secret sessions; collecting and sorting votes; supervising matters connected with keeping order in the House.

Committees : In accordance with the Standing Orders, the Senate elects at the beginning of its session, following its appointment, committees for a period of two years as follows :

(1) The Judicial Committee whose functions are to examine and scrutinise the draft laws passed by the House of Deputies and the legal proposals submitted by the members of the House.
(2) The Financial Committee whose functions are to examine the State Budget or financial laws or any law dealing with increases or decreases of revenues or expenditures or any proposal which has connection with the Budget and financial matters.
(3) The Administrative Committee whose function is to consider the complaints and deal with matters of general administration.
(4) The Foreign Relations Committee with the functions of considering the treaties and conventions affecting the foreign policy and foreign affairs.

The House may set up other committees to investigate other specified matters. Their terms of office expire on the completion of their mission.

Consideration of Laws : A Bill or a provisional law when delivered by the government, is first addressed to the House of Deputies. The latter, when necessary, refers the Bill to the competent committee which fully examines it and reports to the House. It may approve the report prepared by the committee or amend it. The Bill either rejected or passed by the House of Deputies is presented to the House of the Senate to examine it. If both Houses pass the Bill, then it becomes ready for Royal ratification, after which it is published in the Official Gazette. These Bills are usually submitted to the King through the Prime Minister. If both Houses differ in passing a Bill, it goes back to the House of Deputies, then sent to the Senate. If again they disagree in passing a Bill then a joint meeting should be held for the two Houses under the chairmanship of the President of the Senate. Such a meeting should be attended by not less than two-thirds of the total number of members of the National Assembly. A majority of two-thirds of the total votes should be obtained to pass that Bill. If the draft law is rejected, it shall not be placed again before the House during the same session.

Every Senator or Deputy has complete freedom of speech and expression of opinion. He is free to address questions and submit proposals to the government. He has also the right to propose amendments to draft laws while being considered by the House.

Ten members from each House may tender a Bill to be put before the House for further study. If it meets with the approval of the House, it is then referred to the competent committee to report on it. Then it goes back to the House to decide whether it should be referred to government requesting it to put the draft into a Bill and present it to the House in its present or the next session.

Ratification of Laws : A law becomes effective upon its ratification by the King and after thirty days from the date of its publication in the Official Gazette unless it is specially provided in the said law that it shall come into force on another date. If the King withholds approval of the said law, he may within the space of six months from the date on which the law is submitted to him, return it with a statement of the reasons for his veto. If the proposal for a law, except the Constitution,

is referred back within the period specified in the preceding paragraph and is accepted for the second time by two-thirds majority of the members of each of the Senate and the House of Deputies it shall then be promulgated. Should the law be not approved within the period prescribed above, it shall be considered as promulgated and in force. Should the Bill fail to obtain the two-thirds majority in that session it may not be resubmitted during the same session. However, the National Assembly may reconsider the Bill during the next ordinary session of the Assembly.

The President of the Senate presides over and controls the meetings of the Senate. He represents the Senate, speaks on its behalf and according to its will, observes the application of the rules of the Constitution and its rules of procedure and maintains order and discipline among its members. He opens the meetings, closes them, controls and directs the discussion, gives permission to members to speak, confines the subject under discussion, announces the resolutions adopted by the House and controls the work of the Secretariat. In short he has general administration over all the clerical as well as the administrative duties and supervises the good order of carrying out all procedures of his House.

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8

The Senate of the Republic of Turkey

ERGUN ERTEM*

Reasons for Establishment of the Senate : The reason for transition to a bicameral system after the 1961 Constitution of the Republic, though there was only one legislative body known as the National Assembly until 1961, was the desire to ensure democratic order and to resolve a political crisis. It was considered that a second review of the laws which had been passed by the National Assembly would prohibit the dominance of the political power over the legislative power and avoid the adoption of laws as a result of one-party's dominance. The Senate of the Republic has been established on the lines of the other non-federal States and it has been granted powers different from those of the National Assembly. Though there is no authority of the Senate in establishing the Government and holding it responsible, its role in the final discussions and its supervising function of the Government in parliamentary investigations has been accepted.

Composition of the Senate : According to the 1961 Constitution, the Senate is composed of a hundred and fifty members elected by general ballot and fifteen members appointed by the President of the Republic.

Permanent members, *i.e.*, life-long members of the Senate are the former

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Presidents and the members of the National Unity Committee. There are 18 such permanent members. So far as fifteen members appointed to the Senate by the President of the Republic are concerned as they constitute one-tenth of the number of members elected by general ballot, the Constitution provides that these 15 members should be neutrals, i.e., they should not belong to any political party or group.

Election and Qualifications of the Members of the Senate : All the citizens of Turkey entitled to vote at the election to the National Assembly exercise the same right under the same conditions in the election to the Senate.

Every Turk who has completed his fortieth year, and has received a higher education, and who has no cause impeding his election to the National Assembly can be elected to the Senate. Fifteen Members appointed by the President of the Republic are selected from among people distinguished for their services in various fields and they must have completed their fortieth year and at least ten of them are to be appointed from among persons who are not members of any political party.

Persons who have committed crimes which have impeded their election to the National Assembly and persons who are not citizens of Turkey cannot be elected to the Senate.

Term of office of the Senate Members : The term of office of the members of the Senate is six years. Members completing their term of office may be re-elected. One-third of the members elected by general ballot and appointed by the President of the Republic are rotated every two years.

When the year of elections for the renewal of membership to the Senate coincides with the year of the general elections to the National Assembly the two elections are held simultaneously. However, where there is no such coincidence the elections to Senate are held two years later following the general elections to the National Assembly and in the same month in which the general elections were held.

In cases of decision to postpone the elections in accordance with Article 74 of the Constitution, or to renew them in accordance with Articles 96 and 108, the elections for the renewal of the membership of the Senate are postponed or held on an earlier date for the purpose of holding them simultaneously with the general elections to the National Assembly.

If the term of office of a member of the Senate expires or if a vacancy occurs in the membership for any other reason, the President of the Republic appoints a new member in his place within a month. The member so appointed holds office till remainder of the term of office of the member in whose place he has been appointed.

Chairmanship Council of the Senate : The administration of the Senate vests in the Chairmanship Council. The Council is composed of one Chairman, three Vice-Chairmen, three administrative Managers and six Secretaries, two of whom are present in the general session in turn. Since the Constitution foresees the participation of all the political parties in the Chairmanship Council in proportion to the

strength of their representatives in the Senate, the ratio of all such groups in the Senate is determined prior to the composition of the Council. Taking account of the tasks and responsibilities, the positions in the Chairmanship Council of the Senate is given certain points as, 19% for the Chairman, 10% for each of the Vice-Chairmen, 7% for each of the Administrative Managers and 5% for each of the Secretaries.

Convening of the Senate : In accordance with the regulations of the Senate, the Senate is convened to meet on Tuesdays and Thursdays. A sitting of the Senate is duly constituted with the presence of the absolute majority of its total membership and as a principle the resolutions are adopted in the Senate with the same majority.

The Senate, like the National Assembly, may also hold secret sessions.

Precedence in the Discussions on the Budget and the Laws : The laws are first considered in the National Assembly and then in the Senate, but the budget is first considered in the Senate and then in the National Assembly.

Limitations on the Tasks of the Senate with respect to the National Assembly : Though the legislative power is exercised jointly by the National Assembly and the Senate, on certain subjects the resolutions of the National Assembly are of greater significance. The right of interpellation is vested exclusively in the National Assembly.

Similarly, when a new government is being established, the programme of the Government is read in both the legislative bodies, but the right to reject vote of confidence is vested in the National Assembly only.

Government programmes are not voted in the Senate. The reason for such difference and National Assembly's superiority in this matter is that all the deputies in the Assembly are "elected" whereas in the Senate there are certain members who are not elected but are appointed by the President

The authority for the final adoption of the laws is vested in the National Assembly. If there is a disagreement between the two legislative bodies on the adoption or rejection of the Bill or proposal, the final decision rests with the National Assembly.

If a Bill or proposal rejected in the National Assembly is adopted by the Senate, then it is reconsidered in the National Assembly. In case the National Assembly again rejects the Bill or the proposal, then the Senate does not further insist on it.

Deputation of the Chairman of the Senate for the President of the Republic under certain conditions : In the event of the President of the Republic being temporarily absent on account of illness or foreign travel, the Chairman of the Senate acts as his deputy until the President returns to his post and in the event of the occurrence of a vacancy for such reasons as demise, resignation or for any other reason, the Chairman of the Senate acts as a deputy until a new President of the Republic is elected.

January 18, 1977

9

A Significant Instrument of Equality

The Chamber of Republics and Provinces of the Assembly of the Socialist Federal Republic of Yugoslavia

KIRO GLIGOROV*

For various and different positions and interests of individual segments of society to be confronted and coordinated and for an appropriate process of political decision-making to be established in a federal polity, it is certainly extremely important for each given society to have at its disposal an adequate political system and within its framework a corresponding parliamentary mechanism. This is of singular significance, in our opinion, in the case of multinational societies in which the coordination of interests of individual nations comprising the state community carries special weight. If the federative structure of the state also coincides with its ethnic structure, relationship between federal units and their representation in federal organs of decision-making obviously acquires first-rate significance.

Just as the position, role, character and method of work of a parliament in a federal state are affected by numerous factors, such as tradition, ideological heritage, the nature of the social order and the contents of class relationship, so are the relationships between the nations and nationalities living in that state also affected,

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and decisively at that, by numerous factors, the parliamentary mechanism being only one of them.[1]

We shall deliberately leave out at this stage all the "extra-parliamentary" channels for the realisation of those relations in order to look more closely into the one contained in a given parliamentary system. The very nature of a federal state makes it incumbent upon its parliament, if there is one and regardless of all its characteristics, adequately to represent the federal units and their interests. That is why we find that in almost all such cases there is, in addition to a representative House of "general competence" elected on the basis of general suffrage, another House in which parliamentary matters are dealt with mostly or exclusively from the point of view of relationship between individual federal units. (In the case of Yugoslavia, as we shall see later on, the mentioned "first" House is not based on the usual principle because according to the new Yugoslav Constitution of 1974, both Houses are composed on the basis of the delegation principle while each has separate competences in the legislative process.) The representation and coordination of various and necessarily differing interests of the federal units—the Republics and Autonomous Provinces—in Yugoslavia's case is identical in content with the coordination of interests of all the nations and nationalities of this country.

My intention here is not to engage in any theoretical deliberations of political science or constitutional law or to provide an in-depth analysis of the conception and relevance of second chambers in federal polity, but merely to prompt reflexion among readers in the friendly and non-aligned India and particularly among its parliamentarians, by drawing their attention to certain institutional structures and their functioning and to the experiences gained so far with the bicameral composition of the Yugoslav Parliament and to the significance of the "second chamber", namely, the Chamber of Republics and Provinces in the Yugoslav federated community.

According to the Yugoslav constitutional conception and practice, the "second chamber", namely, the Chamber of Republics and Provinces is primarily responsible for coordinating the positions of the Assemblies of the Republics and Autonomous Provinces in those matters in which its decisions are final (promulgation of laws, passage of declarations and resolutions) and in those on which it makes recommendations. These are, however, extremely important legislative acts. The Chamber of Republics and Provinces decides on all matters within the joint competence of the Republics and Provinces as stipulated by the Constitution. In principle, those are all decisions concerning economic relations, the material position and

1. In Yugoslavia, for example, the nations and nationalities realise and ensure their sovereignty and coordinate their joint economic and social development and other joint interests through the federal agencies, by direct coordination, direct cooperation or agreement among the Republics, Provinces, communes and other socio-political communities, by self-management agreements, social compacts and association of work and other organisations and by the activities of organisations and associations and the free, all-round activities of citizens,

obligations of Republics and Provinces and their economic interests, in other words, this Chamber decides on Yugoslavia's overall economic policy. At the same time, it makes decisions regulating the mutual relationships between the Republics and Provinces in the Yugoslav state community.

Upon the collapse of all the institutions of the former State of Yugoslavia—which was characterised by political, social and national oppression—in their National-Liberation War and socialist revolution, the nations and nationalities of Yugoslavia, each one for itself, made the fateful, historic decision to ensure their existence, sovereignty and progress together with the other nations and nationalities in a joint, independent and sovereign Yugoslavia. Through their determined common struggle against the fascists' attempts to enslave and divide them, they forged their brotherhood and unity which is the main gain that victory, for which they had made immense sacrifices, brought them. That is why the complete equality of the Republics and Autonomous Provinces is the pre-requisite of the sovereignty and independence of each nation of Yugoslavia. As sovereign States, the Republics have agreed to pool a part of their competences and transfer them to joint federal agencies while keeping most of their rights independently to decide their destiny. The fundamental feature of the position and mutual relationship of the Republics is that neither do they place too much authority in the hands of a federal centre nor do they keep too much of that authority for themselves when dealing with all those matters which they feel are best dealt with jointly and on a footing of equality with the other Republics.

That is why the SFRY Constitution stipulates that a part of the rights and duties in ensuring common interests shall be exercised by the federation through its federal agencies while all the remaining rights and duties shall be exercised by the republican and provincial Assemblies through their delegations in the SFRY Assembly and by direct decision-making. Hence the existing division of competences between the chambers of the Yugoslav bicameral Parliament. This "bicameral" structure, however, is quite specific and has no precedent in the history of federal structures for, with the exception of certain, minor cases,[2] each of the two chambers' decisions within its terms of reference, are final. The decisions of either Chamber are decisions of the Assembly. While the competence of the "first chamber", *i.e.* the Federal Chamber embraces matters of foreign policy and international relations, the country's defence and security and of ensuring the unity of the socio-economic and political system of Yugoslavia, the Chamber of Republics and Provinces is responsible for all essential questions of economic policy so that, among other things, it approves the social development plan, establishes the total volume of expenditures in the Federations' budget and determines the policy and passes federal

2. The election and relief of office of dignitaries of the Assembly of SFRY, the President and the members of the Federal Executive Council (Cabinet), federal office-bearers, the President and the judges of the Constitutional and the Federal Courts of Justice, the members of the Council of the Federation and the like, the ratification of certain international agreements, the extension of the mandate of delegates in the Assembly, etc.

laws regulating relations in the area of the monetary system, foreign trade, crediting of the accelerated development of the economically under-developed Republics and Autonomous Provinces, etc. decides to set up funds and take over the obligations of the Federation, always on the basis of agreement of the Assemblies of the Republics and Autonomous Provinces. In addition, this Chamber has certain competences of its own.

The Chamber of Republics and Provinces, therefore, is not a parliamentary chamber which serves to correct or "filter" the decisions of the first chamber, but it has exclusive responsibilities in a very important legislative area—that which affects the material position, obligations and mutual relationship of the Republics and Provinces and their economic interests—and it passes laws independently of the Federal Chamber, without the Federal Chamber participating in any way or making any parallel decisions. Thus, in Yugoslavia, though we do have two chambers of Parliament in the Federation, we do not have bicameral legislative procedure.

While the Federal Chamber stands for one of the two fundamental principles of the Yugoslav socialist political and economic order, the principle of self-managements, as it is composed of delegates of self-managing organisations and communities and socio-political organisations, the Chamber of Republics and Provinces stands for the other, equally important principle: that of complete equality of nations and nationalities. This latter Chamber is exclusively composed of delegations elected for that purpose by the Assemblies of the Republics and Autonomous Provinces from among their ranks.

Taking into consideration the method of its Constitution, its composition and method and results of work, the characteristic of the Chamber of Republics and Provinces is the complete equality of the delegations. This is quite understandable as the primary duty of this Chamber is to ensure the equality of nations and nationalities in the Yugoslav society. The principle of equality is not merely one of the ideological premises, aims and ideals of progressive forces in Yugoslavia but a *conditio since qua non*, the most elementary pre-requisite of the very survival and progress of each nation and nationality of Yugoslavia and of the entire Yugoslav multi-national community. The Chamber of Republics and Provinces is composed of twelve delegates from each of the Republican Assemblies and eight from each of the Assemblies of the two Autonomous Provinces. The parity principle is thus applied regardless of the size of the territory, the number of inhabitants or the economic strength of the federated units. A Republic with eight million inhabitants has the same number of delegates in the Chamber as a Republic with only 400 thousand inhabitants.[3]

3. The principle of parity representation is also applied in the composition of the Federal Chamber, in which there are 30 delegates from each of the Republics and 20 from each of the two Autonomous Provinces. As the languages of the nations and nationalities in Yugoslavia are equal, both Chambers of the Assembly of SFRY print all their documents, from the preparatory to the final stages, in the languages of all the nations and of two nationalities, all versions being considered authentic, and the delegates speak in their

The complete equality enjoyed by all the Republics and Provinces and what is more, full recognition of mutual interests and positions are manifested particularly in the method of work of the Chamber of Republics and Provinces. For example, in the majority of cases decisions are made by consensus or unanimity of all delegations. In this Chamber, the majority cannot outvote the minority. Actually it never even comes to voting and it is the duty of the Chamber of Republics and Provinces to seek and find the agreement of delegations of republican and provincial Assemblies so that decisions are not made until their views are completely in accord. As a rule, the members of the Chamber of Republics and Provinces cast their personal votes in the republican and provincial Assemblies when they take stand and decide on the instructions they will give their delegations as to how they should act in the Chamber of Republics and Provinces, that is in the preliminary state preceding consideration of the matter in the Chamber. When they go to the Chamber of the Republics and Provinces, however, the delegation members act as a delegation. The Chamber is, therefore, a specific venue of negotiation and association of political will, of the confrontation and harmonisation of interests of all the Republics and Provinces. It should be noted that this Chamber evidently is not the scene of the usual confrontation between the government and the opposition nor a collective representative of public opinion as opposed to executive authority.[4]

In view of the consistence with which the principle of consensus is applied in decision-making on all matters concerning the rights and duties of Republics and Provinces as constitutive elements of the Yugoslav Federation, no one can impose any decision which is not acceptable to all the Republics and Provinces. Thus there is no other body, outside the Republics and Provinces, which can affect their joint decisions. As a result, all the nations and nationalities look upon the adopted decisions as being their own. They feel and know that in such a community they can ensure their sovereignty and optimal development so they are prepared to stand up and defend that community as their own.

Equality is not manifested in the method of work alone but even more in the results of that work : the fruits of unanimous decision-making on a footing of equality on mutual relationship can but enhance genuine equality. Decisions are made, for instance, on the percentage of the national income that all the Republics and Provinces contribute to the Federation's fund for financing the development of under-developed parts of the country. The slogan "Brotherhood and Unity" with which the Communist Party of Yugoslavia, headed by that rare personage, Josip Broz Tito, so successfully led all the peoples of Yugoslavia into the struggle against a fratricidal war and for liberation, is thus being fully implemented. The equal

mother tongue with simultaneous or consecutive interpretations being provided into the other languages.

4. Parliamentary control over the Executive and the Administration is exercised in the customary manner as the Federal Executive Council (or Cabinet) is a political-executive organ of the Assembly so that Parliament has all the familiar instruments in the constitutional practice of democratic States at its disposal.

position of Republics and Provinces in joint decision-making as described, on the other hand, enhances the responsibility of the constituents themselves for making a constructive contribution to the quest for mutually-acceptable solutions. The knowledge that every delegation, even from the smallest province, has the right and genuine possibility of not accepting a solution which, in its opinion, or rather, in the opinion of its Assembly, does not conform to the interests of that Province, stimulates the delegation's members' readiness to coordinate views and arouses them to the need, as equal masters of a joint household, as equal subjects, disregarding all external influences, to look for the optimal solutions together.

Experience so far has established a number of procedures to achieve the required consensus: working meetings of the Chamber's Committees,[5] working bodies for coordinating views formed in keeping with the principle of equal representation of Republics and corresponding representation of Provinces, consecutive deliberations on the matter in the Chamber and in the Republican Assembly, etc. However, experience has taught us something more important than these organisational procedures—how much patience and toleration, understanding and respect of the opinions and all-round interest are required. Once a solution is found and a decision taken, by its political contents, and the degree to which it is generally accepted, it is certainly far more sound that any decision made by a central agency without the participation of the Republics or Provinces or by a majority of votes.

Though the experience gained with the described procedure in the Chamber of Republics and Provinces in the new delegation Assembly is relatively short (the elections on the basis of the new Constitution and the Law on the election of delegates based thereon, were held in the spring of 1975), it unequivocally indicates that the legislative process according to the described procedure is not nearly as time-consuming as might have been expected and indeed, as was forecast during some debates prior to the promulgation of the new Constitution. On the contrary, the legislation can rightly be said to be developing at a faster pace now than before and the most important legal decisions are being made even before they are due.

Furthermore, if the effectiveness of the legislature is measured by the extent to and the manner in which laws are carried out and by their contribution to the attainment of desired social goals, the scales clearly tip in favour of the new, *i.e.* equitable and unanimous method of decision-making by all the constituents of the Federation.

Finally, practice so far has also shown that only exceptionally do situations such as are in effect possible within the system, arise when the delegations of one or several Republics and Provinces "veto" a solution or, in other words when agreement of the republican and provincial Assemblies is not reached though a solution has to be found to prevent or remove major disturbances on the market,

5. Committee for Social Plan and Development ¡Policy, Committee for Socio-Economic Relations, Foreign Economic Relations Committee are the examples of some such Committees.

to prevent any serious damage being done to the community, the interests of national defence being called in jeopardy or the fulfilment of the country's foreign commitments and the like. In such cases, the Constitution stipulates that upon the proposal of the Government and with the approval of the Presidency of SFRY (the collective Head of State), the Chamber of Republics and Provinces should pass a law by a two-thirds majority on provisional measures which remain in force until agreement of all the Republics and Provinces is obtained and not longer than one year. Should a two-thirds majority fail to be obtained, the Presidency of the Republic may declare such a wording of the law valid as was supported by the majority of delegates in the Chamber until the definitive wording is agreed upon.

Naturally, all this is enabled or facilitated by the general atmosphere in the country, by the spirit conducting negotiation, unity and stable development of Yugoslavia along the lines of the fundamental values of its socialist revolution among which, in addition to the dominant role of the working class and self-management, the equality of the nations and nationalities is of primordial significance. This positive atmosphere is certainly attributable, among other things, to the past bold (and in the past insufficiently understood abroad) but absolutely consistent and continuous adjustment of legal and institutional forms of our revolutionary process to the attained level of material development and knowledge acquired through practice and free struggle or opinion and, perhaps most frequently, to the adjustment of those forms to the already advanced development of social relations and needs, an adjustment that is sometimes described as the "Yugoslav experiment". We have never advocated the *status quo* and we know from personal experience that stubborn insistence upon established institutional frameworks, *i.e.* legally fixed relationships, hampers the settlement of current problems or even aggravates them and frequently produces reactionary effects. Conversely, the reassertion of the fundamental values of our revolutionary tradition, including the principle of national equality in every new situation that life and the new circumstances of material and social development—has stimulated and invested the Yugoslavs with strength and faith in their historic option, consolidated political stability and unity and enabled their more successful work.

We have drawn, in main lines, a sketch of a segment of our Yugoslav experience which constitutes for us, our own relatively new formula and one that has yet to be elaborated. We are convinced that it suits us and we even believe that under our conditions, other solutions would not be sufficiently democratic. Just because we resolutely uphold these views, because the equality of nations and nationalities has become our way of life, because we find it difficult to conceive of decision-making in the country without the method of consensus,[6] we cannot

6. The principle of consensus is widely applied in the Federal Chamber of the Assembly of the SFR of Yugoslavia as well though in that Chamber, according to the Constitution, only a simple majority of votes is required. Though legally possible, in practice the imposing of majority rule over delegates from any, even the smallest Republic or Province, is virtually inconceivable.

approve of different relations and procedures in the world. That is why we advocate, for instance, that decisions at non-aligned gatherings should be made by consensus. We do not want to recommend our described system to anyone, particularly as we know that in given different conditions it would not prove adequate.

Nonetheless we thought it worthwhile to draw attention to our system in order to indicate the possibility of developing unconventional solutions when talking about the relevance of second chambers in federal polity. For the parliamentary system which came into being at a given stage of history to meet the needs of a given stage of society's development, is not something laid down once and for all, and, as we know it has already been amply modified in both form and substance. There is no doubt that it will suffer many more modifications particularly in countries with fast developing societies.

December 20, 1976

10

The Concept and the Relevance of Second Chambers—Shown by the various stages of Austrian Parliamentary History

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AND
HELLMUT LOSCH*

In the history of the parliamentary institutions of most democratic countries a separation into a upper chamber (House of Lords) and a lower chamber (House of Commons) set in at an early stage. The aristocratic upper chamber frequently played a dominant role which was only gradually curtailed by the emergence of a democratic chamber, the House of Commons.

Beside the prototype of the gradually developed aristocratic upper chamber quite a different conception of a second chamber came into existence in Continental European countries, above all in France. This type of a second chamber—frequently called a Senate—was to act as a counterbalance to the popular chamber, similar to the function of the House of Lords.

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Generally speaking additional qualifications for voting were required for elections to the Senate (France, Italy, Belgium, etc.), as for example a higher age, special educational requirements, the payment of a certain level of taxes, etc. In some cases the second chamber was not elected in a direct vote, but by electors or certain bodies in a two-tier procedure. Moreover, the monarch or president, respectively, were entitled to appoint some members to the above-mentioned type of a second chamber, and some constitutions provide for membership in connection with the tenure of certain offices. In an apparent analogy to the British House of Lords the principle has evolved in senate-type second chambers that money bills (financial and budgetary matters) are the exclusive concern of the respective popular chambers.

In federal states, in which under the constitution of the federation there is separation of competences at the federal and state levels, the existence of a "Senate" representing the individual states is generally considered as an indispensable feature of a federal State.

In theory the participation of States in federal legislation is also conceivable in other ways than through a second chamber. State legislatures or State Governments might, for example, directly cooperate in certain matters of the legislation or executive tasks of the federation. In practice, however, federal States do in general have a "Senate", whose function it is to represent the interest of the member states *vis-a-vis* the federation.

In the course of the history of the Austrian Parliament almost all of these theoretical considerations had been put into practice at one time or another. During the days of the monarchy (until 1918) under the "Basic Law on the Representation of the Realm" of February 26, 1861, beside the "Abgeordnetenhaus" or House of Representatives there existed an upper chamber, the "Herrenhaus", whose members were not elected. The princes of the Imperial dynasty and the heads of the Austrian landed aristocracy whom the Emperor awarded life-long membership of the "Herrenhaus", archbishops and prince-bishops as well as men appointed life-peers on account of their achievements in public life, in the Church, the sciences and the arts were represented in the "Herrenhaus".

In 1918, at the end of the First World War, the 210 German-speaking Members of the Reichsrat were convened and constituted themselves at the "Provisional National Assembly" (Provisorische National versammlung). Austria was proclaimed a democratic Republic by the Provisional National Assembly in November 1918. On February 16, 1919, the first general elections of the newly-proclaimed Republic were held for a Constituent National Assembly, charged with the drafting of a Constitution. The Federal Constitution was, in effect, adopted by the Constituent National Assembly on October 1, 1920. This Federal Constitution was thoroughly amended both in 1925 and 1929, and abrogated in 1934. After Austria had regained her freedom and independence in 1945 it was formally decided that the Austrian Republic was to be resurrected in the spirit of the Constitution of 1920. Thus the Federal Constitution of October 1, 1920 is still the Basic Law on

which the present parliamentary institutions of the Republic of Austria are founded.

The Parliament of the Austrian Republic consists of two chambers : the National Council (Nationalrat) and the Federal Council (Bundesrat).

In contrast to the upper chamber (until 1918), which represented "aristocracy" in the former Austrian State, the present second chamber is a legislative body representing the States and is thus a symbol of the federal structure of the Austrian Republic at the Parliamentary level.

The members of the "Bundesrat", as those of the "Nationalrat", are bound in the exercise of their function by no mandate. They enjoy their tenure of office for the whole duration of the legislative period of their respective "Landtag" which cannot previously revoke them.

For each member of the "Bundesrat" a substitute is to be elected, who automatically becomes a member if the elected full member has died, resigned from his office or if for any other reason, his seat has become vacant.

In contrast to the "Nationalrat" the "Bundesrat" has no fixed membership. The Federal Province or State ("Land") with the largest number of citizens delegates twelve members, every other State as many as the ratio in which its citizens stand to those in the first mentioned State. Every State is, however, entitled to a representation of at least three members. The number of members to be delegated by each State will be laid down after every general census by the Federal President. On account of the 1971 census the seats in the "Bundesrat" are distributed among the States as follows : Burgenland 3, the Carinthia 4, Lower Austria 11, Upper Austria 9, Salzburg 3, Styria 9, Tyrol 4, Vorarlberg 3 and Vienna 12.

As opposed to the "Nationalrat" there are neither legislative periods nor sessions in the case of the "Bundesrat". The "Bundesrat" is, so to speak, permanently in session, and its membership is partially renewed at different times after elections to the Provincial Diets or State Legislatures ("Landtag") had been held.

The States succeed each other in alphabetical order every six months in the chairmanship of the "Bundesrat". The member of the "Bundesrat" who heads the delegation of the State entitled to the chairmanship, acts as Chairman of the "Bundesrat". The "Bundesrat" elects two deputies of the Chairman from among its members. Permanent committees for the preliminary deliberation of business are set up by the "Bundesrat" as it is the case in the other House, the "Nationalrat". If in the course of elections to Provincial Diets or State Legislatures (Landtag) the political composition of the "Bundesrat", as the representative body of the states, has been substantially altered, the committees will be newly elected. The members of the "Bundesrat" belonging to the same political party join a parliamentary party or caucus.

COMPOSITION OF THE BUNDESRAT SINCE 1945

(a) Break-up as to the seats allocated to the Federal Provinces or States

	1945/12/19 until 1952/11/15	1952/11/16 until 1962/07/06	1962/07/07 until 1972/02/07	from 1972/ 02/08
Vienna	12	12	12	12
Lower Austria	10	9	10	11
Styria	7	7	8	9
Upper Austria	6	7	8	9
Carinthia	3	3	4	4
Tyrol	3	3	3	4
Salzburg	3	3	3	3
Burgenland	3	3	3	3
Vorarlberg	3	3	3	3
Sum	50	50	54	58

(b) Break-up on party lines

				OVP	SPO	WdU	LB*	Sum
Dec.	1945—Dec.	1949	...	27	23	—	—	50
Dec.	1949—April	1953	...	25	20	4	1	50
April	1953—Oct.	1954	...	25	21	3	1	50
Oct.	1954—Dec.	1954	...	25	22	2	1	50
Dec.	1954—Nov.	1955	...	25	23	2	—	50
Nov.	1955—March	1957	...	25	24	1	—	50
March	1957—July	1962	...	26	24	—	—	50
July	1962—May	1964	...	29	25	—	—	54
May	1964—Nov.	1967	...	28	26	—	—	54
Nov.	1967—Nov.	1969	...	27	27	—	—	54
Nov.	1969—March	1970	...	26	28	—	—	54
March	1970—Feb.	1972	...	25	29	—	—	54
Feb.	1972—Nov.	1973	...	28	30	—	—	58
From Nov. 1973			...	29	29	—	—	58

*SPO Socialist Party of Austria (Sozialistische Partei Osterreichs)
OVP Austrian People's Party (Osterreichische Volks Partei)
WdU Independents (Wahlpartei derunabhangigen)
LB Leftist Front (Communists and Progressive Socialists) (Linksblock—Kommunisten und Linkssozialisten)

An enactment can be authenticated and published only if the "Bundesrat" has not raised a reasoned objection (veto) to this enactment.

Such an objection must be communicated in writing to the "Nationalrat" by the Federal Chancellor within eight weeks of arrival at the "Bundesrat". If the "Nationalrat" once more carries its original resolution, in the presence of at least half of its members, the original enactment comes into force despite the objection (veto) of the "Bundesrat" ("Overriding veto" of the "Nationalrat").

The "Bundesrat" can raise no objection to a resolution of the "Nationalrat" concerning a law about the Rules of Procedure of the "Nationalrat", the dissolution of the "Nationalrat", the substitution of the Federal President, the appropriation of the Federal budget estimates, the sanction of the final Federal budget estimates, and the raising or conversion of Federal loans or the disposal of Federal property. Such resolutions of the "Nationalrat" are only communicated to the "Bundesrat".

On the other hand there are certain enactments which must obtain the express agreement of the "Bundesrat" and can thus not be carried by the "Nationalrat" against the will of the "Bundesrat". This applies, above all, to constitutional provisions bearing on the "Bundesrat" itself, which can only be amended with its express consent.

Thus the "Bundesrat" or the Federal Council is not a second chamber equal to the National Council nor does it enjoy the same parliamentary right of control. Yet the Federal Council reflects—as all of the history of the Austrian Parliament—the classical function of a parliamentary body subordinate to the popular chamber (National Council) proper. The Federal Council is the expression of a separation of powers within Parliament itself and offers a permanent possibility of reviewing decisions taken by the first chamber.

December 16, 1976

11

Speaker of the Canadian Senate

ROBERT FORTIER*

The Speaker of the Senate of Canada is appointed by the Governor General pursuant to section 34 of the Canadian Constitution (*i.e.* the British North America Act of 1867). The section states :

> "The Governor General may from time to time, by Instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his stead."

Although appointed by the Governor General, the choice of Speaker rests with the Prime Minister of Canada. While all appointments are made without the formal approval of the Senate, the Prime Minister of the day usually consults a number of Senators before making a decision. Generally, a new Speaker assumes his responsibilities at the first sitting of the first session of a new Parliament. Capped and gowned, the Speaker enters the Chamber and occupies the Clerk's chair at the head of the Table, and, placing his hat on the Table and holding his Commission he informs the Senate that a Commission under the Great Seal has been issued

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appointing him Speaker of the Senate. He then hands his Commission to the Clerk and remains standing while the Clerk reads it. The Leader of the Government and the Leader of the Opposition then conduct him to the Chair.

Traditionally a new Speaker is chosen for each new Parliament, the appointment rotating between Francophone and Anglophone Senators. It is of particular interest to note that the Senate's first woman Speaker was appointed in 1972. The present Parliament, which opened in September 1974, has seen the Anglophone/Francophone practice maintained with appointment of first French Speaking woman as Speaker. The outgoing Speaker, traditionally, is made a Privy Councillor.

Although the Speaker has the duty of preserving order in the Senate, an appointed body, it has long been established that all Senators, including the Speaker, are equal. Nevertheless, it is true to say the Speaker is first among equals. As the Senate has a tradition of orderly debate and gentlemanly conduct the problem of maintaining order in the Senate has never been a formidable one. According to rule 15 of the Rules of the Senate :

> "The Speaker shall preserve order and decorum, and shall decide points of order, subject to an appeal to the Senate. In explaining a point of order or practice the Speaker shall state the rule or authority applicable to the case. When the Speaker rises, all other Senators shall remain seated or shall resume their seats."

There are two other rules, 17 and 48 that guide the Speaker in the exercise of his role.

> "17. If at any sitting of the Senate, or in Committee of the Whole, any senator shall take notice that strangers are present, the Speaker or the Chairman (as the case may be) shall forthwith put the question, 'That strangers be ordered to withdraw', without permitting any debate or amendment : Provided that the Speaker or the Chairman may, whenever he may think fit, order the withdrawal of strangers, from any part of the Senate."
>
> "48. A notice containing unbecoming expressions or offending against any rule or order of the Senate shall not be allowed by the Speaker to appear on the notice paper."

Of course, it is up to the Senate to decide any particular issue that may arise regarding the powers of the Speaker.

There are other rules which have particular relevance for the Speaker. Rule 42, for instance, indicates that the Speaker shall leave the chair and speak from the floor when participating in a debate, and rule 49 which permits the Speaker to vote, but he has no casting vote. As far as the former rule is concerned, the Speaker has only infrequently taken part in debate—especially so in recent years. As to the latter rule a vote from the Speaker has, since 1921, become a rarity.

In the Senate Chamber, the Speaker performs certain specific ceremonial duties at the opening, during sessions and at closing of Parliament that alone are the prerogative of the Speaker. In summary then it is the duty of the Speaker within the Chamber to preside over the Senate (except when the House is in Committee of the Whole), to maintain decorum and to decide points of order and questions of privilege as they arise, subject to an appeal to the Senate at the request of any one Senator.

There is no Deputy Speaker appointed to the Senate. When the Speaker is unavoidably absent, the Clerk at the Table, pursuant to the Speaker of the Senate Act, informs the Senate accordingly and the Senate chooses, on motion to that effect, another Senator to preside as Speaker during such absence; such Senator executes all the powers, privileges and duties of Speaker until the Speaker himself resumes the chair or another Speaker is appointed by the Governor-General. Every act done by any Senator so presiding as Speaker has the same effect and validity as if the act had been done by the Speaker himself.

The Speaker also has duties to perform outside the Senate Chamber. There are commitments to be fulfilled by virtue of the Speaker's membership on certain joint parliamentary committees such as those dealing with services that effect both the Houses of Parliament. The Speaker is also an active participant in the activities of many associations, particularly those concerning parliamentary affairs such as the Commonwealth Parliamentary Association, the Inter-Parliamentary Union, *l'Association des parlementaries de langue francaise* and the Canadian World Federalist Parliamentary Association. Finally, there is a measure of control exercised by the Speaker over the Senate staff although it must be pointed out that effective control is exercised on the Senate's behalf and subject to confirmation by the Senate by the Standing Committee on Internal Economy, Budgets and Administration.

The office of the Speaker is an office of dignity and tradition that makes heavy additional demands upon the holder. There are visiting dignitaries to be received and endless groups from all walks of life to be officially welcomed and entertained. Even "off-duty" hours are taken up with a never-ending list of invitations to government sponsored meetings and embassy receptions, and there are the additional responsibilities that come automatically with each visit to Canada by a Head of State. Finally, there are those invitations from abroad, that, however interesting, are nevertheless demanding of a Speaker's time, energy and fortitude.

In recent years successive Speakers of the Senate have preserved and added to the prestige attaching to the Chair of the Senate.

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12

The Status, Powers and Functions of the French Senate*

ARNAUD TARDAN**

STATUS

An assessment of the legal status of the Senate presents some difficulties. The jurists still continue discussing whether parliamentary assemblies have any moral basis and whether they are public institutions only. The doctrinal controversies on this subject no doubt deserve much deeper research as the exact position and status have not yet been clarified with precision.

Under the Fourth Republic, the Act of January 6, 1950, containing modification and codification of the law relating to public authorities, specified certain provisions with regard to the Council of the Republic and the National Assembly, and more recently, the Ordinance of November 17, 1958, relating to the functioning of the Houses of Parliament, contains quite a few provisions relating to the working of the Senate and the National Assembly of the Fifth Republic. However, despite these provisions a number of imponderables still exist.

After all, the only certainty is the close connection that exists between the legal

*Original article received in French.

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concept of the status of the Senate and, in more general terms, the political system that prevails and the place accorded to Parliament in the public institutions of the country. In the framework of what can be called "absolute Parliamentarism" of the Third or the Fourth Republic, the sovereignty of Parliament gave it a pre-eminent position among public institutions and, to a large extent, kept it beyond the purview of any external control. Now, the spirit and letter of the 1958 Constitution have set limits to the privileges of Parliament and, consequently, of the Senate as well. The least that can be said is that the dominant feature of the legal status of the Senate is still its autonomy, though the absoluteness of it has tended to diminish. The proof of this autonomy is found in various aspects of this legal status.

AUTONOMY TO FRAME RULES

Way back in 1902, in his treatise on political rights, both electoral and parliamentary, Eugene Pierre declared : "The Rules are to all appearances, nothing but the internal law of the Houses, a miscellany of regulations meant to help conduct methodically the meetings (of the House) where many contradictory attitudes meet and clash. In reality, these (Rules) are a powerful weapon in the hands of the parties (in the House). They always have more influence than the provisions of the Constitution itself on the course of public affairs."

In fact, the main concern of each of the successive French (political) Assemblies, since the Revolution, has been to give itself a body of Rules, as it was indispensable for these Assemblies to have their method of work and their organisation precisely defined. This right of the Assemblies to frame Rules for themselves can be considered as part of the republican tradition.

But the 1958 Constitution has considerably modified the powers of the Houses of Parliament with regard to the formulation of their own Rules. Article 61 of the Constitution provides that the rules of the Parliamentary Assemblies, before they come into force, must be submitted to the Constitutional Council, which shall rule on their constitutionality. And the Ordinance of November 7, 1958, containing organic law regarding the Constitutional Council, lays down that it is for the President of a House of Parliament to place a doubtful provision before the Constitutional Council and that no provision declared unconstitutional can be applied.

The Constitutional Council has been given one month's time to give its ruling; this period can be reduced to eight days at the Government's request in case of urgency. The constitutionality or otherwise of a Rule is judged by the Constitutional Council in the light of the provisions of the Constitution itself and the organic laws envisaged by it as well as by the legislative measures necessary for the setting up of institutions for the functioning of the governmental authorities adopted by the Council of Ministers (after consultation with the Council of State) in terms of the first paragraph of Article 92 of the Constitution.

At the time of framing its Rules in 1959, the Senate adopted for itself a very large number of clauses from the Rules of the Council of the Republic; in particular the Senate sought to incorporate in the Rules a provision entitling Senators to introduce resolutions which would lead to a voting at the conclusion of a debate on an oral question. It also sought to provide for the possibility of voting (thereby pronouncing its decision) on a statement made by the Government.

Around these various points, a lively controversy arose between the Senate and the then Prime Minister over the interpretation of the powers of the Houses of Parliament in the matter of framing their Rules. The spirit of independence and autonomy shown by the Senate were at that time upheld, but the Constitutional Council, in judging the constitutionality of the Rules of the Senate, by its decision on the 24th and 25th June 1959, struck down as unconstitutional 13 clauses of the provisional Rules. It was only after a number of modifications were made that the Rules of the Senate were declared to be in conformity with the Constitution by resolutions of January 16, 1959, June 9, 1959 and October 27, 1960.

Among some of the rules struck down by the Constitutional Council, one related to the proposals on resolutions, others related to the approval of the minutes of the proceedings of the sitting during the second reading of a Bill, and to the time within which Ministers were required to inform the House about the follow-up action taken by them on petition, etc. All this clearly demonstrated that the function of control devolving on the Constitutional Council was performed by it with great rigour irrespective of the fact whether the issue involved was an important one or not. The Constitutional Council also gave its verdict during each subsequent modification of the Rules by the Senate. On July 8, 1966, it struck down a decision of the Upper House that the time-limit of four months given to its Inquiry and Control Commissions shall be valid only during the sessions of the Senate. Likewise, on May 17, 1973, a new rule concerning the conditions of admissibility of amendments to an amendment was partially struck down, while another concerning the delegation of the power to vote was totally struck down. At times, the Constitutional Council has played a subtler role—without striking down a rule, it expressed certain "reservations" thereon, thereby avoiding giving a clear opinion whether the rule in question was in conformity or not with the spirit of the Constitution. The working of the Constitutional Council has thus given rise to a new source of parliamentary law.

Controlled by the Constitutional Council, the parliamentary powers of the Houses are equally limited in their field of action. Some of the subjects, for example, the number of permanent commissions that a House can have, daily agenda of the House, right of personal vote by members, right of speech by Ministers, triennial election of the President of the Senate, etc. are subjects, which till 1958 were left to the sole consideration of the Houses but have now been included in the Constitution itself. Here, then, is a phenomenon of transfer of authority which rightfully belongs to a House and which has no negligible influences on its autonomy.

However, the importance of these Rules in parliamentary life is in no way

reduced by such transfer. Once adopted, it becomes imperative for the Senate and the National Assembly to observe all their Rules. The Rules are the mainspring of parliamentary procedure and also a book of reference for internal organisation of the House. They thus form the pivot around which the status of the Senate revolves.

FINANCIAL AUTONOMY

In order to ensure the proper functioning of its Departments and to meet expenses towards the payment of Senators' allowances and emoluments of staff, the Senate has been granted a special budget, which is distinct from that of the general State budget, though it is included in the draft Finance Bill and is voted along with the State budget. The amounts are shown under Head II "Public Departments", of the budget of general expenditure, one chapter being devoted to the Senate and another to the National Assembly.

The need to maintain the independence of legislative authority *vis-a-vis* the executive authority has, in fact, led to the institution of a financial system which guarantees the autonomy of the two Houses of Parliament. Here, too, the nature of such a system largely depends on the place of Parliament among public institutions. Thus, the absolute sovereignty of Parliament under the Third and the Fourth Republics gave rise to its complete financial autonomy. There was no intervention by any Government Department either in the allocation of funds or in the spending of these funds by the Senate as well as by the National Assembly, both operations being essentially within the province of the two Houses.

The 1958 Constitution has greatly changed the balance of power among public departments and, in view of the spirit of this reform, the financial autonomy of Parliament has, in practice, been rather restricted. In reality, the present position represents a compromise between two extremes—the autonomy of the Senate has undoubtedly been limited in respect of allocation of grants, but it is complete in respect of spending them.

Article 7 of the Organic Law of November 17, 1958 relating to the functioning of the Houses of Parliament is an illustration of the ambiguity of this system. While on the one hand it lays down (in fact, in its very first paragraph) the principles of financial autonomy, on the other, it also defines the role and the composition of the "General Commission" which determines allocation of funds to "run" the Senate.

The autonomy of the Senate remains complete at the level of formulation of the proposals for grants. Unlike the preparation of budgets of different ministerial departments, where the role of the Ministry of Finance is decisive, there is no governmental intervention in the formulation of proposals for grants for the Senate. Article 7 of the Organic Law lays down that the "funds needed for the expenses of the Houses of Parliament shall be the subject of proposals prepared by

the Questors of each House", and in conformity with this provision the proposals for grants are made under the authority of the Secretary-General of the Questuary by the Budget and Accounts Departments of the Senate. These proposals are submitted for scrutiny of the Questors in-charge of general administration of the Senate who are to finally determine the amount of funds considered by them necessary to meet the expenses of the House.

Thus, throughout this phase of preparation of proposals no authority, external to Parliament, invervenes. Similar was the position prior to 1958. Where the new practice differs is at the time of final and actual allocation of grants. Final and actual allocation is now no longer a matter within the complete jurisdiction of Parliament. This power has now been transferred to the General Commission whose composition and powers have been laid down by Article 7 of the Ordinance referred to above. The Commission consists of the Questors of the Senate and the National Assembly (say, six Members of Parliament) and the Chairman of the Audit office who is nominated by the Auditor-General from among his officers, to preside over the General Commission. The Commission is assisted by two officers of the Audit Office who have only a consultative status during the deliberations of the Commission and act as Rapporteurs of the Commission. One of them is entrusted with the scrutiny of the proposals of the Senate and the other with that of the National Assembly. The involvement of these two Rapporteurs in the process of scrutiny of grants brings about an element of control. On the report of these two officers, the proposal for grants is checked by the General Commission which forwards its recommendations to the Ministry of Finance for inclusion in the draft Finance Bill. An explanatory report by the Commission accompanies these recommendations.

At this stage, the soundness of this procedure can be questioned. Several difficulties can arise because of the hybrid nature of this system.

For instance, what is the real influence exerted by the audit officer who presides over the meetings of the General Commission ? The six Questors are obviously in absolute majority in the Commission when compared to the sole representatives of the Audit office and there is no doubt that, by and large, their interests are common. In this context, what can be the effect of the Chairman's opposition to the proposals formulated by the Questors to meet the requirements of their respective Houses, which they are in a better position to judge ? The Organic Law of 1958 has no clear answer to these questions. There lies the theoretical lacuna and ambiguity of a system which can create conflict but has no built-in solution or means of their redress. So far, however, in practice, this system has worked without any serious difficulties.

After the fixation of grants by General Commission, the amounts are voted at the same time as the draft Finance Bill. This procedure of approval is, therefore, the same as was in existence in the financial system prior to 1958. The tradition is that the budget of one House is not discussed by the other House. A question can be posed as to whether the usual procedure of amendment is applicable to the

budget proposals of the two Houses of Parliament. It may be stated that in fact and in practice, public intervention in the grants for the Senate is extremely rare.

It goes without saying that the entire procedure outlined above, is followed also for supplementary grants which are required in case of insufficiency of funds. The amounts are then included in the supplementary draft Finance Bill.

If the autonomy of the Senate appears limited in respect of framing proposals for grants, it is on the contrary, as stated above, complete in respect of expenditure of amounts from out of the grants, and no new regulation has come in the way of exercising this authority. This independence is in evidence both at the time of utilising the grants and at the time of final accounting of the budget. The Questors who are members themselves and are responsible for the general administration of the Senate, under the authority of the Bureau, are in-charge of administering the budget. Their powers are exercised within the framework of accounting rules adopted by the Bureau which in essentials follow the basic principles of Public Accounts.

The procedure for sanctioning the expenses is proof of the autonomy enjoyed by the Questors in this sphere. One of the most important points is, without doubt, the absence of an officer of the Government acting as a financial controller, whose intervention in the subsequent utilisation of the amounts would have amounted to an assault on the autonomy of Parliament. The tradition in this regard is that the control in these matters is exercised in theory by the Parliament itself and, in practice by the Questors acting as representatives of Parliament.

The financial autonomy of the Senate is also reflected in the method of regulating its budget. The duty of auditing of parliamentary accounts is cast on members without any intervention from outsiders. Rule 103 of the Rules of the Senate provides for a special Commission for checking and auditing the accounts. The Commission of 10 members, elected at the commencement of each ordinary session in autumn as per the procedure laid down for the election of permanent commission, enjoys, for the purposes of "auditing of accounts", the privileges which devolved in the Fourth Republic on the Accounts Commission. At the end of the financial year, the Questors draw up, in co-operation with the Secretary-General of the Questuary and the Department of Budget and Accounts, an administrative report showing the expenditure during the financial year. The Rules of Accounts of the Senate lay down that the Special Commission is the only competent authority for checking and auditing the accounts of a financial year and furnishing to the Senate Officers responsible for direct administration of the funds, certificates in respect of proper spending of the public money. Its powers are far-reaching and it can examine and audit on the spot all the pay orders issued during the course of the financial year concerned.

Amidst these different regulations, the financial autonomy of the Senate seems to be very real insofar as expenditure of the allocated money is concerned. So far as the actual amount that is granted to the Senate is concerned, the law and procedure described above is more striking than its size. In fact, the grants for 1975

totalled 256,500,000 francs; those of the National Assembly for the same year were 390,250,000 francs. A comparison with Parliaments of other countries will easily show the relatively modest size of funds that the French Parliament is allocated for its expenditure.

AUTONOMY IN MATTERS OF SECURITY AND CONTROL OVER THE POLICE

The problem of internal and external security and, in more general terms, control over the police, within the precincts of the Senate, which include the Luxembourg Palace and the surrounding gardens, is an important one because it involves not only the security of persons and properties within the said precincts but also the freedom of deliberations in Parliament.

The authority of the Senate to look after its own security is one of the elements of its autonomy. The right to control the police and the right to requisition armed forces enjoyed by the Senate of the Fifth Republic can be traced to the Ordinance of November 17, 1958, relating to the functioning of the Houses of Parliament, which in this field also, is the basic law. Article 3 of the said Ordinance lays down : "The Presidents of the Houses of Parliament are responsible for the internal and external security of their respective Houses, over which they preside. They can, for this purpose, requisition the armed force and all authorities whose cooperation they deem necessary. This requisition can be made of all the military and civilian officers who are required to comply with it immediately under threat of punishment under the law. The Presidents of the Houses can delegate this power of requisition to one or more Questors."

In addition, rule 90 in Chapter 16 of the Senate Rules, entitled "Internal and External Police of the Senate", specifies :

"1. The President (of the Senate) is responsible for the internal and external security of the Senate. For this purpose, he determines the strength of the military forces which he thinks are necessary; then these are placed under his orders.
"2. The police of the Senate is controlled in the name of the President."

All these provisions are traditional in the French law. They are found, with slight variations, in the different laws relating to the powers of Parliament over the police, since the beginning of the Third Republic and even before that.

Thus, in case of trouble, the Senate, through its President or the Questors with delegated powers, can take necessary measures and have under their command an effective force of military troops. However, difficulties can arise on the one hand on the scope of the right of direct requisition and the authority and the quantum of the forces required for the Senate's security, and on the other, on the question

about how far the powers of the Senate authorities are compatible with article 15 of the Constitution under which the President of the Republic is the chief of the armed forces.

In normal times, the security of the Senate is ensured with the help of forces placed at its disposal and working under the command of the General in-charge of the military district of Luxembourg Palace who is nominated by the President of the Republic himself.

Insofar as internal security is concerned, control is exercised over the movements of persons who are neither members of the Senate nor of its staff, especially for access to the hall where the House meets. Rule 91 of the Rules of the Senate prescribes the conditions under which members of the public are admitted to the galleries of the Senate.

Finally, so far as the maintenance of discipline of the Senators themselves is concerned, it is covered by Chapter 17 of the Senate Rules, providing for a graded disciplinary punishment ranging from a simple "call to order" to a censure with temporary suspension from the House.

The autonomy of the Senate in matters of its security appears, thus, to be guaranteed to a great extent.

ADMINISTRATIVE AUTONOMY

The administrative autonomy of the Senate can be examined from two angles. The first is the question of finding out the authority responsible for the administration of the Senate and the powers enjoyed by it and the second is to examine the remedies that are available to individuals when the decisions of this authority are prejudicial to their interests.

Administrative autonomy implies that the personnel, who form part of the Senate administration, should be independent of governmental control in all respects—recruitment, remuneration, promotion, discipline, retirement etc. This special aspect of Senate administration is the result of the application of the principle of Parliament's autonomy, a necessary concomitant to the theory of separation of powers, though it should be remembered that the system of Senate administration—like that of the National Assembly—is the result of a process of evolution, especially since 1958. Very few written laws, however, deal with this aspect which is determined directly by the officers of the concerned House. The Ordinance of November 17, 1958, relating to the functioning of the Houses of Parliament, in its article 8 as modified by clause 72 IIb of the Finance Act of 1963 (numbers 63-156 of February 23, 1963) has, laid down that "incumbent officers of the Departments of Houses of Parliament are officials of the State whose conditions service and system of retirement are determined by the Bureau of the respective House, and administrative jurisdiction is applicable in all litigation between the officers and the concerned House". Clause 72 of the Finance Act of 1963 lays down

very clearly that the general conditions of Government service do not apply to the personnel in the service of the Houses of Parliament.

The extent of significance of these different laws is difficult to evaluate, especially as regards the consequences of designating them as officials of the State; but the most important point undoubtedly is the great freedom of action enjoyed in these matters by the controlling authority of the Senate. The Regulations lay down that the President of the Senate has, from the legal point of view, supreme control and authority over all the Departments. From the administrative point of view, however, authority over the Departments belongs to the Bureau of the Senate while the day-to-day management is taken care of by the Questors under the supervision of the Bureau. The internal rules approved by the Bureau determine the organisation and working of Dapartments as well as the conditions of service of the staff.

The members of staff of the Senate are entitled to social security benefits and non-contributory pension. On the whole, the rules applicable to the staff are those in force in Government service, even though the latter are not made applicable automatically.

The second aspect of administrative autonomy is connected with procedure followed by, and the remedies available to, individuals in case of litigation resulting from action taken by, or in the name of, the Parliament.

Till 1958, the Senate enjoyed complete autonomy in administrative management, due to the Council of State's attitude, resulting from the traditional jurisprudence, that legal acts performed within the framework of the Rules of the Houses of Parliament and the material acts relating to the activities of these Houses are not justiciable. As a result, private persons affected by any prejudicial act of the Senate, could not go to any court of law for redressal of their grievances. The members of Senate staff also could not resort to litigation to safeguard their rights, if and when these were impinged by the action of the Senate. The situation has now changed with the passing of the Organic Law of November 17, 1958, especially its article 8, relating to working of the Houses of Parliament. This article enunciated the principle that the State is responsible for any kind of damage caused by the Departments of the Houses of Parliament and that disputes in the matter can be taken to a competent court of law, the President of the House concerned representing the State. As regards disputes involving officials of the Senate, the administrative courts (at Paris) have been declared competent to take cognizance of them.

While the principles laid down by the organic law seem to offer little solution to problems, the interpretation of laws too is not bereft of controversies. The experience that would be gained by the application of this law and the study of subsequent judgments interpreting it alone would help us in appreciating the significance of the changes introduced in 1958.

CONDITION OF WORK

In order to ensure the independence of Senators in the discharge of their duties, some resources have been placed at their disposal over and above the parliamentary allowances granted to them. These are resources both in men and material.

Article 2 of Ordinance of November 17, 1958, declared that the Luxembourg Palace has been placed at the disposal of the Senate. The Departments of the Senate are located inside this Palace. The Bureau of the Senate provides the Senators adequate accommodation in the Palace to enable them to work in as comfortable conditions as possible. The Bureau has also decided to construct a building near the Luxembourg Palace to house the personal staff of the Senators so that the conditions of work are commensurate with the varied tasks demanded of them by the activities of a modern Parliament.

The Senators have also the use of a vast library which has nearly 500,000 books on its shelves. The present acquisitions of books cover all fields, especially, of politics, sociology, jurisprudence and economics, in order to meet the functional needs of the Senate. The library subscribes to more than 600 periodicals. The books and periodicals have been carefully indexed, and brief analyses of the most important among them are published in a quarterly abstract which is sent to all the Senators and all the Departments of the Senate.

Transport facilities have also been granted to all the Members of Parliament who have a free pass to travel on the French railways. Similarly, there is an agreement with Air France and Air Inter, to allow the Senators to make a certain number of trips between their constituency and Paris, the aim being to facilitate the maximum number of visits by the Senators to their constituencies in effectively fulfilling their mandate.

Similarly, the Senate provides the Senators with motor-cars to facilitate their movements within Paris and to enable them to visit Departments and Ministries of the Government located in the Capital.

The Members of Parliament have also, by virtue of Law 49.211 of February 16, 1949, and by an official order No. 72-700 of July 26, 1972, certain facilities in the matter of telephone bills. They have free postal facilities also.

In the Luxembourg Palace itself, for their correspoi dence, the Senators can utilise the services of stenographers from a pool, formed for that purpose, during a limited period Finally, the Senators can find in the Palace a restaurant, a tobacco shop and a hair-dressing saloon.

In order to assist Senators in the discharge of their duties as well as to ensure the maintenance of the complex of buildings constituting the Luxembourg Palace, its architectural beauty and its gardens covering an area of 25 hectares, the Senate has engaged a large staff consisting of secretaries, clerks, deputies, ushers, gardeners, assistant administrators, administrators—recruited through competition examinations and governed by special conditions of service.

The Departments of the Senate are divided into two main categories—legislative departments and administrative departments, which have their own subdivisions and specialised units. In accordance with their assignment, which can vary during the course of their career, in one Department or the other, the staff of the Senate perform their tasks of technical, procedural and managerial assistance. The existence of such a staff is justified by the need and concern to ensure the independence and autonomy of the Legislature by making the efficiency of legislative work independent of the sweet will of the Executive.

The working conditions of Parliament are, indeed, an important factor contributing to this efficiency. It is essential that men and material available to Parliament should be sufficient to enable it to discharge efficiently its functions of representation, passing of legislative measures and control of the Executive. Efforts are constantly made and researches undertaken, particularly in information service, to increasingly adapt the means and methods available to Parliament to suit modern developments and the resultant complexity of tasks.

January 18, 1977

13

The Senate of the Italian Republic

GAETANO GIFUNI*

The two-House system: The Italian Parliament consists of the Chamber of Deputies and the Senate of the Republic.

The Italian Constitution which came into effect on January 1, 1948 encompasses a perfect principle of a two-House system, as the two Chambers have identical powers whether in controlling the political trend of the National Government or in the legislative sphere or, finally, in parliamentary control.

The Chamber of Deputies and the Senate of the Republic have also the same political life : 5 years. In 1963, in fact a revision of the Constitution eliminated the original provision that had established the duration of the Senate for 6 years. Therefore one element of difference between the two Houses was negated. The only differences that now remain are the criteria for the composition of the two Houses and for the requirements in order to be elected or to elect to either House.

The functions of the Italian Senate are typical of a second chamber in a two-House system; this leads to an appropriate distribution of the legislative work between the two Houses and satisfies the need for the rethinking and perfecting legislative measures.

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Parliament in common sitting : The Italian Constitution allows for the meeting in a common sitting of the members of the Houses for the carrying out of certain functions, which are : (a) election of the President of the Republic, that is of the Head of State. (In this case the delegates of the separate Regions join with the Deputies and the Senators.) One must remember that the Italian Republic which is not a Federal State is in fact divided into Regions, Provinces and Municipalities. These governing bodies have various independent responsibilities according to the principles laid down in the Constitution itself. These bodies, however, do not go against the unity or strength of the Republic, (b) swearing in of the President of the Republic, (c) impeachment of the President of the Republic, (d) impeachment of the Prime Minister and of Ministers, (e) nomination of five Judges for the Constitutional Court (a body made up of 15 Judges responsible for ensuring that the laws are in conformity with the Constitution), (f) nomination of 45 citizens from amongst whom are chosen by lot 16 members who go to make up part of the Constitutional Court which judges the cases above-mentioned, (g) nomination of a third of the members of the Judicial High Council (a body for the self-government of Judges).

When Parliament is in common sitting, the President and the Presiding Committee are those of the Chamber of Deputies. This constitutional regulation is linked up with the provision according to which, should the President of the Republic be unable to carry out his duties, the President of the Senate can deputise for him.

Composition of the Senate : The Senate of the Republic is elected on a regional basis, that is, in constituencies whose area is contained within the regional boundaries.

No Region may have fewer than 7 Senators, with the exception of two small Regions, whose number of Senators is fixed by the Constitution (respectively : 2 and 1). The allocation of seats among the Regions is based on the proportion of the actual population of the Regions, according to the latest general census.

The electoral systems adopted respectively for the Chamber of Deputies and the Senate are different. The first in fact is elected by a candidates' list system and the delegating of seats among the listed candidates is carried out proportionally, by the division within the individual constituencies and by the gathering of the remaining votes into a single National Constituency. The election of the Senate, which consists of 315 Senators, is carried out instead on the basis of a combination between the majority system and that of the lists. In fact if a candidate obtains in a constituency a number of votes which is not less than 65% of the electorate, he is declared elected under the majority system. For the other constituencies—and in fact this refers to most of them where no candidate gets the above majority—the distribution of the seats is carried out regionally following the so-called D'Hondt system.

There exists, however, a high homogeneity in the electoral results that makes

it rather difficult for an irremediable conflict to arise between the two Houses of Parliament.

The Senators are elected by universal suffrage by an electorate that is over the age of twenty-five years whereas eighteen years is the required age for the Chamber of Deputies. To be elected as Senator one has to be over forty years of age which in the case of Deputies is 25 years.

Besides these elected Senators there exist two other categories of Senators. According to the Constitution anyone who has been the President of the Republic is a Senator by right and for life unless this right is expressly given up by the person concerned. At present there are two such Senators by right and for life The Constitution also states that the President of the Republic can nominate five citizens for life who have highly honoured their country by their achievements in the social, scientific, artistic and literary fields. The constitutional provision has been interpreted in theory and in practice—in the sense that the Senate cannot include contemporaneously more than five Senators nominated by the President.

Thus, while the Chamber of Deputies has a fixed number of members, only elected, (630), the members of the Senate can vary according to the number of non-elected Senators, who are added to those elected (315).

Duration : The normal duration of the Senate as well as that of the Chamber is five years. The President of the Republic can, however, after consultation with the Presidents of the respective Houses, dissolve the Houses or only one of them upon the expiration of this period of five years. Similarly the life of the two Houses cannot be extended except by law that too only in the case of war. Until the new Houses sit the life of the previous ones are extended. The elections of the new Houses take place within seventy days of the dissolution of the previous ones.

Summoning, meeting and deliberations : The Senate and also the Chamber by right meet on the first working day of February and October every year. The Senate and also the Chamber can be summoned in extraordinary sessions through the initiative of its President, or the President of the Republic or by a third of its members. When the Senate meets in these extraordinary sessions, the chamber of Deputies is also called to meet as a matter of right and *vice versa*.

The sittings of the Houses are public. However, the Senate (and also the Chamber) can decide to have a private sitting.

The members of the Government, even if they are not members of the Senate, have the right and, if requested, the obligation to participate in the sittings. They must be heard on request.

The deliberations of the Senate are not valid if the majority of the members are not present and if they do not obtain a majority vote.

Constitutional autonomy : The constitutional autonomy of the Houses finds particular expression in the power that they have to elect their President and the committees from amongst their members, and in the adoption of their own Rules of Procedure agreed to by a clear majority of their members.

Status of the Senators : The Senate can be the only judge for deciding on the

qualifications for its membership and for ruling whether holding a particular post is incompatible with the Office of a Senator. The factors regarding incompatibility have been expressly provided by many rulings, and also by constitutional provisions and carry the obligation to resign as a Senator or from the office which is seen in the regulations as being incompatible with the parliamentary mandate. The rulings concerning ineligibility and incompatibility are identical for Senators and Deputies. Also the salaries of the members of the two Houses are the same.

Amongst the principal privileges of the Senators it is necessary to mention their immunity, demonstrated in their inviolability and freedom from censure, which are also enjoyed by the Deputies.

Freedom from censure consists of penal, civil and disciplinary freedom for the opinions expressed and for the votes given in the carrying out of their duties as Senators. Such independence, which concerns only the thoughts and the wishes whether written or spoken and not their actual actions, is not available for the activities the Senators carry out in fields other than the parliamentary field.

On the other hand, the inviolability protects the Senator from any prosecution criminal or otherwise. In fact, without authorisation of the Senate, no Senator can be tried under the penal code, nor can he be arrested or otherwise deprived of personal freedom or have his person or residence searched, except for a case when he is caught in the act of committing a crime for which a warrant of arrest is obligatory. The same authorisation is necessary to arrest or detain a member of Parliament in the execution of a judgement.

Legislative action : The initiative for law-making besides being available to the Government and to other bodies laid down in the Constitution, is also available to each Senator and to each Deputy. Since law-making is carried out collectively by the two Houses, a Bill becomes law when it is approved successively by the two Houses in the same text.

Political trend : The Italian Constitution encompasses the system of parliamentary government. Thus the Senate (like the Chamber) gives or withholds its confidence in the Government through motions in which it gives its reasons; the motions are voted on by a roll-call system. This constitutes one of the most important political functions for both of the two Houses.

While it is necessary that the Government appointed by the President of the Republic obtains a vote of confidence from each of the Houses, the withholding of the vote of confidence by only one of them is sufficient to oblige the Government to resign. However, the Constitution prevents the resignation of the Government simply because of a contrary vote of one of the Houses over a Government proposal. For this to be effective, a special procedure for the withholding of confidence is necessary. For these reasons Italian Parliament is known as "stabilised" or "rationalised" Parliament.

Parliamentary control : So far as the activity of the Senate relating to the control of the Executive is concerned, the members of the Senate can question the Government on the reasons and the intentions for their actions and question them

to obtain information and explanations on specific points.

The Senate, in addition, can carry out inquiries on matters of public interest. With this aim it nominates from its own members a Commission formed in such a way as to reflect the proportion of the various political groups present in the Assembly. The Commissions of Inquiry carry out their investigations and have the same powers and limits as the investigating magistrate when carrying out his duties.

The Senate through the Standing or Special Commissions can conduct hearings also.

The same system is used for controlling the activities of the Executive by the Chamber of Deputies.

Rules of Procedure : The majority of the Rules of Procedure are contained in the Regulations of the Senate. The Constitution, however, determines certain fundamental principles, regarding the examination and approval procedure of laws and also regarding the adoption of the "system of Commissions".

This system, known in almost all Parliaments, displays in Italy a unique characteristic of its own which is not found in other countries. The Parliamentary Commissions in Italy—made up in such a way as to reflect the proportion of the political groups present in the Houses—can in fact discuss and approve in a definite way Bills without the whole House deliberating upon them.

In such cases, until their definite approval, the Bills are returned to the House if a tenth of its members or the Government or a fifth of the Commission members ask that it should be discussed and voted upon by the entire House.

The above-described method constitutes a decentralised procedure. According to normal procedure, the draft of the Bill is examined by a Standing or a Special Committee and is then discussed by the entire House, which approves it by a final vote after discussing and adopting each clause of the Bill.

The Rules of Procedure lay down shorter procedures for draft Bills which are considered urgent. The Rules also determine how the proceedings of the Commissions are publicised.

The normal procedure of examination and approval on the part of the Senate (also of the Chamber) is always adopted for draft Bills concerning constitutional and electoral issues and for those concerning the delegation of legislative powers to the Executive Branch of the Government, the ratification of treaties, the approval of budgets and/or urgent Government orders having the effect of law, and the re-examination of laws in the Houses for a fresh deliberation formally and specifically requested by the President of the Republic.

March 14, 1977

14

The House of Lords

PETER HENDERSON*

1. The History of the House of Lords : Parliament originated in the Councils summoned by English kings in the 11th, 12th and 13th centuries. Assemblies of this kind, attended by varying numbers of archbishops and bishops, abbots, earls, barons, other lay magnates and royal ministers, met to give the King counsel on the wide variety of matters, and, in exceptional circumstances, to make special financial grants to him. By 1236 some of these councils were being called "parliaments". During the 13th century representatives of the "communities of the realm" from counties, cities and boroughs were summoned with increasing frequency to assist, their attendance in Parliament becoming unvarying after 1327. By the end of the 14th century they formed a separate House, the House of Commons (that is, of the Communities), with its own Speaker and Clerk

The Lords similarly acquired identity as a separate House of Parliament, being usually known either as *domini (spirituales et temporales)* or as *domus superior* until, in the 16th century, the term "House of Lords" became normal.

From the earliest times the House of Lords has been composed of Lords Spiritual and Temporal : the Lords Spiritual originally consisted of the bishops and

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certain abbots and priors whose membership lasted as long as they held this office; and the Lords Temporal, whose membership was a matter of hereditary right. The Lords Temporal became known as 'peers', indicating that they were then equal (in latin, *pares*) amongst themselves in standing. The peers, however, became increasingly divided in rank, there eventually being, as there now are, five degrees, the most ancient those of Earl and Baron, the more recent of Duke (first creation, 1337), Marquess (first creation, 1385) and Viscount (first creation, 1440). In addition, from 1302 the Prince of Wales was summoned to Parliament.

By the mid-15th century the membership of the group of Lords in Parliament is typified by those summoned for the 1453-54 session : 2 archbishops, 18 bishops, 27 abbots and priors, 5 dukes, 12 earls, 3 viscounts and 44 barons, 111 in all; the number summoned then declines, the total in 1485 being 78 and in 1509, 84. The actual attendances in Parliament were often far fewer.

After the suppression of the monasteries, abbots and priors no longer sat. In 1642 the remaining Lords Spiritual were excluded from Parliament, and in 1649 the House itself, by Ordinance of the Commons, ceased to exist. An upper house again met in 1658 and 1659 under the title of the "Other House". The Convention Parliament of two Houses sat in 1660 without bishops, but the Parliament of 1661, by the Clergy Act, restored bishops to the House of Lords.

From 1707 until 1963 there were 16 Representative Peers for Scotland in the House; since 1963 all holders of peerages of Scotland have had the right to be admitted to the House of Lords. Similarly there were 28 Representative Peers for Ireland elected for life from the Union in 1800 until 1922, since when no further Irish peers have been elected. Four bishops also served in rotation for Ireland from 1800 until the disestablishment of the Irish Church in 1869.

Until 1847, in addition to the Irish bishops, all the English and Welsh diocesan bishops and archbishops sat in the Lords. As a result of the Bishopric of Manchester Act, 1847, and later Acts, subsequent creations of dioceses have not led to an increase in the number of Lords Spiritual. The Archbishops of Canterbury and York, the Bishops of London, Durham and Winchester, and 21 other diocesan bishops, according to the seniority of their appointment to diocesan sees, have sat. The Welsh bishops ceased to sit as a result of the Welsh Church Act, 1914.

In 1856 a peerage for life was conferred on Sir James Parke in order to strengthen the judicial membership of the House but the House resolved that such a life peerage did not entitle the grantee to sit and vote in Parliament. The Appellate Jurisdiction Act, 1876, however, enabled the Sovereign to create 4 Lords of Appeal in Ordinary, enjoying the rank of baron for life. Until 1887 their right of sitting and voting continued only so long as they exercised their office; since 1887 this right has lasted for life. The maximum permitted number of Lords of Appeal was increased to 6 in 1913, 7 in 1929, 9 in 1947 and 11 in 1968. The Life Peerages Act, 1958 has enabled the Sovereign to grant by Letters Patent baronies for life, without limit of number, to persons of either sex, membership of the House having hitherto been restricted to men. Subsequently, the Peerage Act, 1963 gave women holders of

hereditary peerages of England, Scotland, Great Britain and the United Kingdom the same right to receive writs as men.

The Peerage Act 1963 also enabled disclaimers to be made for life of hereditary peerages. Instruments of Disclaimer are delivered by the peers to the Lord Chancellor; the disclaimers are announced to both Houses and are recorded in the Journals.

2. Place of sitting and present membership of the House : The House of Lords has generally met at Westminster since at least the fourteenth century. From the fourteenth century until 1800 sittings of the House of Lords were customarily held in a Chamber called the "White Chamber". From 1801 the House met in the former "Court of Requests". In 1834 the old Palace of Westminster was almost entirely destroyed by fire and the Lords moved to the Painted Chamber, which had been only partly damaged. Following the fire, the Palace of Westminster was completely rebuilt, to the design of Sir Charles Barry, between 1840 and 1860. The Chamber of the House of Commons had to be rebuilt after being destroyed by enemy action in 1941, and a large number of extra rooms have been added in the courtyards, but otherwise the Palace remains much as Barry designed it. The Chamber of the House of Lords was first occupied in 1847, and has been only slightly altered since. The decoration was the work of Barry's assistant, Augustus W. N. Pugin.

The Chamber has been used continuously by the House of Lords since 1847, except between 1941 and 1951, when the Lords gave it up to the Commons (whose own Chamber had been destroyed by enemy action) and met in the Queen's Robing Room, at the southern end of the building.

The Chamber is 80 feet long, 45 feet wide, and 45 feet high. At its southern end, facing the Strangers' Gallery, is the Throne, designed by Pugin. The Canopy above the Throne represents the Cloth of Estate, to which Lords bow on entering. When the House is sitting, the eldest sons of Peers, Bishops who are not members of the House Privy Counsellors and certain other distinguished persons may sit on the steps of the Throne. For the opening of Parliament the brass rail around the Throne is removed and the Queen reads the Gracious Speech from the Throne. The members of the House of Commons then stand behind the Bar of the House—a barrier which marks the boundary of the House.

In front of the Throne is the Woolsack, which is stuffed with wool from England, Wales, Scotland, Northern Ireland and the countries of the Commonwealth. The Lord Chancellor or his deputy sits on the Woolsack as Speaker of the House of Lords.

Before each day's sitting, the Lord Chancellor walks in procession to the Chamber down a Division Lobby and through the Peers' Lobby, with the Mace borne in front of him. Bystanders bow to the Mace, the emblem of Her Majesty's authority, as it passes. It is then placed on the Woolsack.

In front of the Lord Chancellors' Woolsack there are two other Woolsacks and the Table of the House. Two Despatch Boxes are placed on the Table, at which

Front Bench speakers stand when addressing the House. Seated at the Table, facing the Throne, are the Clerks, whose responsibilities include the calling and recording of the business of the House.

Shorthand writers preparing copy for Hansard (the Official Report of the Proceedings) sit behind the Clerks, and behind them, just in front of the Bar of the House, are the Cross Benches. On these sit those Lords (apart from Bishops) who are not associated with either the Government or the Opposition. The benches on the left (as seen looking towards the Throne) are for supporters of the Government, and those on the right for supporters of the Opposition. Liberal Peers normally occupy the two front benches on the right nearest the Woolsack. The leading members of each party traditionally sit on the front benches.

The Government side of the House, where the Leader of the House and Ministers of the Crown sit, is known as the "Spiritual Side" and the Opposition side as the "Temporal Side". This is because originally one side was reserved for Bishops, the "Lords Spiritual", and the other side for Peers, the "Lords Temporal". The House has never followed the practice of some countries in seating its members in a semi-circle. The two benches nearest the Woolsack on the Government side are still reserved for the Bishops, the front bench being furnished with elbowrests.

At present (December 1976) the membership of the House includes :

(*i*) 26 Archbishops and Bishops
(*ii*) 758 hereditary peers who have succeeded to their titles (including 18 peeresses in their own right)
(*iii*) 59 hereditary peers who have had their titles conferred on them
(*iv*) 16 life peers created under the Appellate Jurisdiction Act, 1876. These include both serving and retired Lords of Appeal
(*v*) 279 life peers created under the Life Peerages Act, 1958.37 of these are women. A total of 338 life peerages have been conferred under the 1958 Act, 42 of them on women.

94 Lords have not received a writ of summons (without which they may not take their seats). Of these 6 are under the age of 21 and therefore debarred from sitting.

143 Lords have leave of absence (granted for the duration of a Parliament to Lords who are unable or unwilling to attend the House).

3. Sittings of the House of Lords : The House sits during about 38 weeks in a year. There are long adjournments (normally known as "recesses") over Christmas (about 4 weeks), Easter (about 1 week), the Spring Bank Holiday (about 1 week) and in August, September and usually early October. It normally sits on Tuesdays, Wednesdays and Thursdays, often on Mondays, and occasionally on Fridays. Altogether there are about 150 sitting days a year. On Mondays, Tuesdays and Wednesdays it sits at 2.30 P.M., on Thursdays at 3.00 P.M. and on Fridays at 11.00 A.M. During the 1975-76 Session (a busy one, lasting slightly more than a year) the House sat on 155 days, for a total of 970 hours.

The average daily attendance is about 275. In the course of a year over 800 Lords attend sittings of the House.

4. The work of the House of Lords: (*i*) *The supreme court of appeal:* The House of Lords acts as the final court of appeal, on matters of public importance, for the whole of the United Kingdom in civil cases and for England, Wales and Northern Ireland in criminal cases. The judicial work of the House is very largely separate from its other functions. The only peers who participate are the Lord Chancellor, the Lords of Appeal in Ordinary (who are appointed to hear appeals to the House, and are salaried), and Lords who hold or have held high judicial office. The last category consists principally of retired Lords of Appeal in Ordinary. Cases are normally heard in a committee room, but decisions are always announced in the Chamber. Special sittings are held for this purpose.

(*ii*) *The provision of a forum for full and free debate on matters of public interest:* Over a fifth of the time of the House of Lords is spent on general debates on a wide variety of subjects. For most of the year Wednesdays are set aside for such debates. While they are sometimes initiated by the Government or the opposition there is plenty of opportunity for backbench members to initiate debates.

(*iii*) *The revision of public bills brought from the House of Commons:* In order to become an Act of Parliament, a Bill—which is a draft Act—must normally be passed by both Houses, after which it receives the Royal Assent, thereby becoming an Act.

About two-fifths of the time of the House is devoted to consideration of Public Bills passed by the House of Commons. Nearly all of these are Government Bills, but there are a few Bills promoted by private members. These are usually either uncontentious or supported by the Government (and are generally both).

A Bill receives three readings—so called because there was a time when the Bill was read out by a Clerk. The First Reading is now a formal proceeding whose purpose is to give notice to the House of the Bill's presentation or arrival from the Commons.

Second Reading provides the opportunity for a general debate on the Bill, on the motion that the Bill "be now read a second time". About a fifth of the time spent considering Commons Bills is devoted to Second Reading debates.

Following Second Reading, Bills are usually considered in Committee. While in the Commons Bills usually go to a Standing Committee, in the Lords they are almost always considered in the Chamber by a Committee of the whole House. Each clause is separately approved with or without amendment. About half the time spent considering Commons Bills is devoted to the Committee stage. Certain Bills of a financial nature are not normally considered in Committee, as the Lords are prevented by Commons financial privilege from amending them. Bills which are certified by the Speaker as Money Bills (*i.e.* Bills relating wholly to the levying of national taxation or to the expending of public money) may, under the provisions of the Parliament Act, 1911, be passed into law forthwith if the Lords do not agree to them without amendment within one month,

The next stage is the Report Stage, though this is usually omitted if the Bill has not been amended in Committee. This is technically the occasion when the Committee reports the Bill, as amended, to the House, and it provides the opportunity for further amendments to be moved. About a third as much time is spent considering Bills on Report as in Committee.

The final stage is the Third Reading and Passing, which is often normal, though there may be a brief debate, and amendments can again be moved at this stage.

If a Bill has been amended it is returned to the House of Commons for consideration of Lords amendments. The majority (85-90%) of Lords amendments are accepted by the Commons. When Lords amendments are rejected by the Commons the Lords usually do not insist on them. Should they do so, and should no compromise solution be found, or should the Lords reject a Commons Bill altogether, then (unless it is a Money Bill) the Bill cannot become law during the session in which it was introduced. Parliamentary sessions last about a year, beginning in October or November, and Bills which are not enacted in the course of a session are lost at the end of it. A Commons Bill lost because it is not accepted by the Lords can, however, under provisions of the Parliament Acts, 1911 and 1949, be passed in the following session without the consent of the Lords. A Bill which, with certain exceptions, must be identical with the Bill that was lost, is introduced into the House of Commons, and sent up to the Lords at least one month before the end of the session. Provided there is a gap of at least a year between the Commons' Second Reading of the original Bill and the Commons' Third Reading of the identical Bill, then the Bill may receive Royal Assent, thereby becoming an Act. In practice, therefore, a Bill can become law without the consent of the Lords in a minimum of thirteen months.

(*iv*) *The initiation of public legislation, including in particular those Government Bills which are less controversial in party political terms and private members' Bills*: In the 1975-76 session 88 Public Bills received Royal Assent, and 40 of these originated in the House of Lords. In fact these figures exaggerate the role of the House of Lords as a Chamber in which legislation is initiated. The more important and controversial Bills almost invariably begin in the House of Commons, as the responsible departmental minister is nearly always a member of the House of Commons on whose support the Government's continuation in office depends. (Every department, however, has its spokesmen among the peers on the front Bench of the Lords.) Commons financial privilege requires that all Supply Bills should begin in the House of Commons. By convention all Consolidation Bills (Bills which do not alter the law but replace a number of Acts dealing with a particular subject matter by a single Act) begin in the House of Lords. Such Bills take up very little time in the House, being considered chiefly by a Joint Committee of the Lords and the Commons. 13 of the 40 Public Bills which were initiated in the House of Lords and received the Royal Assent in the 1975-76 session were Consolidation Bills.

An indication of the comparative importance of the Lords Bills and Commons Bills considered by the House of Lords is given by the amount of time devoted to

them—only about a third as much is devoted to the consideration of Lords Bills as to the consideration of Commons Bills. Since major Commons Bills do not begin their passage through the Lords until quite late in the session, the Lords are always a great deal busier at the end of a session than at the beginning. In the last weeks of a session very little business other than legislative business is taken in the House.

All members of the House of Lords are free to introduce Bills into the House, and there is no difficulty in finding time for them to be debated. However, it is difficult to find time for such Bills to be considered in the House of Commons. In the 1975-76 session 11 Private Members' Bills were introduced into the House of Lords, 4 were passed, and 2 received Royal Assent.

(*v*) *The consideration of subordinate legislation :* Many Acts of Parliament give power to Ministers to make orders and regulations, known as "delegated legislation" or "subordinate legislation". Usually delegated legislation is subject to some form of parliamentary control. In some cases instruments may be annulled on a resolution of either House of Parliament; in others a resolution of each House approving the instrument is required. In the latter case the House always has an opportunity to debate the instrument. In the former case any member may move a motion to annul the instrument; while in the Commons time often cannot be found to debate such motions, in the Lords there is no such difficulty. However, the House has never actually annulled an instrument in this way, though the Parliament Acts do not apply to delegated legislation, and in theory the House has the same powers as the House of Commons. Only rarely does the House refuse to approve an instrument requiring an affirmative resolution—it has not done so since 1968.

(*vi*) *The scrutiny of the activities of the executive :* There are several methods of questioning Government Ministers in the House of Lords about aspects of Government policy in addition to those provided by general debates on 'Motions for Papers' or to 'Take Note'.

Each day four "starred questions" may be asked. 'Question time' takes place at the beginning of business. Supplementary questions may be asked (by any member), but there may not be a debate.

"Unstarred questions" are taken at the end of business, and a debate may take place before the Minister replies.

Private notice questions maybe asked on matters of urgency : it is for the Leader of the House or, alternatively for the House itself, to decide what constitutes a matter of urgency.

Questions for Written Answer may be placed on the Order Paper. They are normally answered within a fortnight, and the answers are printed in the Official Report (Hansard).

In all cases questions are addressed to Her Majesty's Government, and not to individual Ministers. The number of questions in each category asked during the 1975-76 session was : starred questions—553; unstarred questions—41; private notice questions—1; questions for written answer—517. Starred and unstarred questions each occupied about 5% of the time of the House.

(*vii*) *The scrutiny of private legislation :* Private Bills are promoted by bodies (often local authorities) to give them special powers not granted by the general law. Thus a local authority may want general powers to do certain things or regulate certain activities which it could not otherwise do. or a body may need compulsorily to purchase land to undertake some development. Such Bills begin as a Petition to Parliament. The Bills are considered principally by Committees. Petitioners against the Bills may put their case before a Select Committee. Where no petitions are presented the Chairman of Committee scrutinises the Bills. Except in the case of contentious Bills no debate takes place on the floor of the House. Approximately equal number of Bills are introduced into the two Houses, and the role of the House of Lords in scrutinising them is as great as that of the House of Commons. The provisions of the Parliament Acts do not apply to Private Bills.

(*viii*) *The scrutiny of proposals for community legislation :* Since the United Kingdom's accession to the European Communities in 1973, the United Kingdom has been subject to the provisions of Community legislation, much of it of direct application. Each House of Parliament has set up a committee to scrutinise proposals for European legislation, and to report on them to the House. The Government is thus enabled to take account of the views of the two Houses when negotiations are taking place on the proposals.

In the House of Lords the European Communities Committee has a full-time Chairman. Seven specialist sub-committees look at proposals in different fields, and submit draft Reports to the main Committee. Evidence is heard from civil servants and organisations affected by the proposals. Over 70 members of the House are involved in the work of the Committee and its sub-committees. In the 1975-76 session about 3% of the time of the House was devoted to debating their Reports.

Conclusion : The comparative absence of pressure of business in the early part of the session, before major and usually controversial Government Bills arrive from the House of Commons, allows the House of Lords to devote more time than the House of Commons to debating matters of general public interest, to debating reports from its Select Committees on important proposals for legislation made by the European Communities Commissions; and also to consider Bills introduced by private members on a wide range of subjects. In this way the House of Lords is able to compiement the work of the House of Commons where the greater pressure of business prevents the consideration of less urgent but nonetheless important subjects.

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The Supreme Soviet of the U.S.S.R. and its Standing Commissions

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THE SUPREME SOVIET

The Supreme Soviet of the U.S.S.R. is the "highest organ of State Power" in that country. It consists of the two Chambers—Soviet of the Union and the Soviet of Nationalities. The Supreme Soviet is elected for a term of four years. The Deputies of both the Houses are elected on the basis of universal, equal and direct suffrage by secret ballot. A citizen who has attained the age of 18 years is entitled to vote but in order to be elected as a Deputy of either House, he must at least have reached the age of 23 years. Each Member of the Soviet of the Union represents an electoral region consisting of 300,000 people The Soviet of Nationalities, on the other hand, represents more than 105 different nationalities in the Soviet Union. Deputies of this Chamber are elected by the citizens voting on the basis of :

(*a*) 32 Deputies from each Union Republic,
(*b*) 11 Deputies from each Autonomous Republic,
(*c*) 5 Deputies from each Autonomous Region,
(*d*) 1 Deputy from each National Area.

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In this manner, the common interests of the entire population irrespective of nationality and place of residence, are represented by the Soviet of the Union and the specific interests of the Union and the Autonomous Republics, Autonomous Regions and the National Areas are represented by the Soviet of Nationalities.

The last general elections were held in June 1974 when 1517 Deputies were elected—767 to the Soviet of the Union and 750 to the Soviet of Nationalities. It may be interesting to note that besides technicians and experts in various fields, a little more than 50% of the Deputies of the Supreme Soviet are farmers and industrial workers, and 31% are women.

The Supreme Soviet is convened twice a year by the Presidium of the Supreme Soviet (which is a body elected by, and accountable to, the Supreme Soviet) and it meets for two to three days at a time. The first session is generally held at the end of April or beginning of May and the second in November/December. Extra-ordinary session of the Supreme Soviet can be convened by the Presidium at its discretion or at the request of one of the Union Republics. Sessions of both the Chambers begin and terminate simultaneously. During the inter-session period, parliamentary work is carried on by the Standing Committees (or Standing Commissions as they are commonly known) of each Chamber.

At its first meeting after the general elections, each Chamber elects its Chairman and four Vice-Chairmen and 14 Standing Commissions. In all, therefore, there are 28 Standing Commissions of both the Chambers About 1,000 Deputies are members of these 28 Commissions. Both the Chambers meet simultaneously (one Chamber in the morning and the other in the afternoon. in the same Hall) and enjoy equal rights in all respects and equal powers to initiate legislation. Neither Chamber has any advantage over the other and the decisions of both Chambers have the same force. The legislative power of the U.S.S R. is exercised exclusively by the Supreme Soviet and a law is deemed to be enacted when it is passed by both the Chambers by a simple majority vote in each. Each Chamber of the Supreme Soviet generally considers the State Budget and reports by the Ministries on the implementation of the budget, Five Year Plans, Social and Cultural Developments, International Relations etc. and matters placed before it by its Standing Commissions or the Presidium. Plan projects are also considered at the joint sittings of the two Chambers. During a session of the Supreme Soviet, questions can be asked and answers given and discussed, laws are passed and decisions taken both at joint and separate sittings of the Chambers. Generally, discussions are held separately in each Chamber while decisions are adopted at joint sittings. Such joint sittings are presided over alternately by the Chairmen of the two Chambers.

In the event of disagreement between the two Chambers, the question at issue is referred for settlement to a Commission consisting of equal number of Deputies from each Chamber. If the Commission fails to arrive at an agreement or if its decision fails to satisfy one of the Chambers, the issue is considered for a second time by both the Chambers. Even after this if the two Chambers do not agree, the Presidium dissolves both the Chambers and orders fresh elections. Thus neither

Chamber can impose its will on the other and disturb the equality. However, up till now there has not been a single instance of a deadlock between the two Chambers resulting in their dissolution.

The Supreme Soviet being the highest representative organ embodying the sovereignty of the people, its jurisdiction is co-extensive with the jurisdiction of the U.S.S.R., extending to all the basic issues of the country's internal life and its external relations. The Supreme Soviet is the only body which can amend the Constitution of the country in accordance with a decision adopted by a majority of not less than two-thirds of the votes in each Chamber. The powers of the Union are also exercised by other organs like Presidium and the Council of Ministers which are accountable to the Supreme Soviet.

By virtue of its status and composition the Supreme Soviet does not meet in continuous session and therefore it cannot deal with questions which arise daily in regard to international relations and legislative, economic and cultural developments in the country. It is the Presidium as an organic part of the Supreme Soviet which is called upon to deal with such questions and ensure continuity in the exercise of state directives. In short, it functions as the collective head of the State. The Presidium is elected at their first joint session by the two Chambers from among the Deputies of the two Chambers. The Presidum consists of the Presidium President, fifteen Vice-Presidents (one from each Union Republic), twenty Presidium Members and one Secretary. The Presidium is accountable to the Supreme Soviet in all its activities and is empowered to exercise all the powers of the Supreme Soviet when it is not in session. Its decisions, decrees and resolutions are applicable throughout the length and breadth of the country and are subject to ratification by the Supreme Soviet. In order to ensure continuity in the exercise of supreme power the Constitution of the U.S.S.R. provides that the Presidium shall retain its powers until the new Supreme Soviet forms a new Presidium.

The Supreme Soviet at a joint sitting also elects the Council of Ministers which is the highest executive and administrative organ of State power in the U.S.S.R. The Council of Ministers is responsible and accountable ultimately to the Supreme Soviet and to the Presidium during inter-session period. The Supreme Court of the U.S.S.R.—the highest judicial organ of the State, is also elected by the Supreme Soviet for a period of five years. The Procurator-General of the U.S.S R. who is entrusted with the supervisory power to ensure the strict observance of the law by all the Ministries and Departments of the Government and institutions subordinate to them and also by officials and other citizens within the country, is appointed by the Supreme Soviet for a term of five years.

STANDING COMMISSIONS

The Standing Commissions of the Soviet of the Union and the Soviet of Nationalities play an effective role in the activities of the Supreme Soviet which meets, as

has been stated earlier, twice a year only and that too for short sessions. Article 1 of the Statute of the Standing Commissions of the Soviet of the Union and the Soviet of Nationalities (which is the main document laying down the rules for the working of these Commissions) describes the Standing Commissions as the auxiliary organs of the Chambers formed for preliminary considerations and for preparation of the questions pertaining to the authority of, and placing these questions before, the Supreme Soviet for its decision and also for giving active assistance for implementing the decisions of the Supreme Soviet.

Article 2 of the Statute of the Standing Commissions prescribes the main tasks of the Commissions as under :

(*a*) Working out the proposals (in the shape of resolutions) for consideration by the corresponding Chamber or by the Presidium;
(*b*) Preparation of decisions on bills and other questions submitted to the Supreme Soviet by the Government and other State and public organisations as well as by individual Deputies;
(*c*) Drafting of the bills on its own initiative or on instructions from the concerned Chamber or the Presidium;
(*d*) Assistance to the state bodies and organisations, as well as to the Deputies of the Supreme Soviet in their work on implementing the decision of the Supreme Soviet and the Presidium;
(*e*) Control over the activities of the Ministries and Departments of the U.S.S.R. other All-Union organisations, as well as of Republic and local state bodies and organisations for carrying in practice the Constitution of the U.S.S.R., laws of the U.S.S.R. and other decisions taken by the Supreme Soviet and the Presidium.

The Standing Commissions in executing the tasks assigned to them are expected to exert all their activities to promote the uninterrupted and continuous working of the Supreme Soviet as the highest representative organ of the State. These Commissions are therefore permanently functioning auxiliary and preparatory organs of the Chambers.

The Standing Commissions are formed usually at the first session of each Chamber of the Supreme Soviet and operate for the whole life-span of the Supreme Soviet *i.e.* for a period of 4 years. Their members are elected by the respective Chambers from among the Deputies of that Chamber. The process of selecting Deputies to man these Commissions is interesting. This is done at the instance and advice of a body known as the Council of Elders which consists of senior members of the previous Presidium. This Council, while making its recommendations, takes into cacount the expertise, knowledge and interest of a Deputy on the subject dealt with by a particular Commission, regional representation, position in the Party and so on. In accordance with the Statute each Chamber must have the following Commissions, namely : Credentials Commission, Commission for Legislative Proposals, Commission for Planning and Budget, Commission for Foreign Affairs and

Commission for Youth Affairs. Besides these Commissions, each Chamber forms a number of other Commissions for dealing with various aspects of State Administration. In every such case the size of the Commission and subject to be dealt by it, is determined by the concerned Chamber.

At present each Chamber has 14 Standing Commissions, namely : Credentials Commission; Commission for Legislative Proposals, Commission for Foreign Affairs, Commission for Youth Affairs; Commission for Planning and Budget; Commission for Industry; Commission for Transport and Communications; Commission for the Construction and Building Materials Industry; Commission for Agriculture; Commission for Consumer Goods; Commission for Public Health and Social Welfare; Commission for Public Education, Science and Culture; Commission for Trade and General Services and Municipal Economy and Commission for Nature Conservation.

There are generally about 35 Deputies in each Commission except in the Commission for Planning and Budget which has about 45 members. Every Deputy is not necessarily a member of a Standing Commission. Out of 1,517 Deputies (767 belonging to the Soviet of the Union and 750 belonging to the Soviet of Nationalities), about one thousand Deputies have been elected to the 28 Standing Commissions of the two Chambers of the Supreme Soviet. Among the members of these Commissions are heads of party and Government organs, industrial executives, workers, collective farm chairmen and rank-and-file collective farmers, trade union and Young Communist League officials, writers and scientists. Members of the Presidium and the Council of Ministers cannot be elected to the Standing Commissions. The Procurator-General cannot also be a member of any Standing Commission. Generally, a Deputy can be a member of one Commission Members of the Standing Commissions and its Chairmen are elected by the respective Chambers but the Deputy Chairman and Secretary of the Commission are elected by the Commission itself. While the Chairman of a Commission organises day-to-day work of the Standing Commission and signs its reports and decisions and is also responsible for informing the Deputies about the carrying out of the Commission's recommendation, the Secretary looks after the work of preparing the minutes of the meetings and drafting its reports. Special personnel in the shape of experts are also attached to a Commission in order to help it to come to conclusions and draft the report accordingly. The Standing Commissions are responsible to the Chamber which has elected them. The Chairmen of the two Chambers help in organising the work of the Standing Commissions of their respective Chamber. The meetings of the Commission are called by the Chairman of the Commission according to the need and may be held during the session as well during the inter-session periods of the Supreme Soviet. The Commissions sit for about 20 to 25 days in a year, *e.g.* the Planning-Budget Commission, one of the most important Commission sat for about 28 days last year. In the meetings of the Commission, a Deputy even if he is not a member of the Commission, can participate in its deliberations. The Commissions have power to invite representatives of the State Organ, public organisations, specialists, scientists etc., who when called can take part in the proceedings. The Commissions have also the power to call for papers. Confidential matters are reported to the Commissions in confidence or at their secret meetings (as a rule the Commissions meet in public where representatives of Press, Radio and Television are invited) and generally speaking, papers required by a Commission are not refused. However, defence matters especially its details are beyond the purview of these Commissions. These Commissions have powers to appoint sub-Commissions or working groups to consider some specific questions co-opting representatives of the corresponding Ministries, Departments, other State Bodies, public organisations, scientific institutions, specialists and scientists. The quorum to constitute a meeting of the Commission is three-fourth of the members of the Commission. All questions at any meeting of the Commission are determined by a simple majority of votes of the members present in the meeting.

A Standing Commission can ask for the opinion of any other Standing Commission on the issues pending before it. Similarly if a Standing Commission feels the need of expressing its opinion on an issue pending before another Standing Commission, it has a right to do so by putting forward its proposals in the Chamber or in the Presidium. When a particular subject falls within the purview of more than one Standing Commission, then the Commission which deals with the subject-matter primarily takes the help of other Standing Commissions. In such cases the Chairmen of these Commissions meet and appoint two or three members to be the leading members to organise the work and allot subjects to the various Commissions and the report when ready is signed by all the members of the Commissions that took part in preparing the proposals, *e.g.* legislation on 'forest utilisation' was considered by two Commissions—one on Industries and the other on Nature Conservation. The two Commissions sat together and drafted the proposals. Similarly 12 Standing Commissions formed a joint sub-Commission to frame a draft Bill on "Mineral Resources".

In urgent cases, the Standing Commission of one Chamber coordinates its work with the similar Commission of the other Chamber and they combine efforts for carrying out the tasks laid down for them. It is common for similar Standing Commission of the two Chambers to sit jointly to thrash out the issues and come to their conclusions jointly. For example, the Planning and Budget Commissions of the two Chambers not only sat jointly but took the help from 22 other Commissions of both the Chambers before they submitted their proposals to the Supreme Soviet. The Standing Commissions of the Soviet of the Union and Soviet of Nationalities during consideration of issues related to their authority have equal rights, including the right of legislative initiation and equal duties. At the joint sittings of the Commissions of the two Chambers, the Chairman of each Commission chairs the meeting alternately. In view of these provisions in the Statute and the practices evolved, there has been no case in which conflicting reports have been given by the two Standing Commissions to their respective Chambers.

The Standing Commissions submit their reports to their respective Chambers

when they meet and during inter-session period the reports are sent to the Presidium. The concerned Chamber has the power to accept the proposals of its Standing Commission or reject them. A Standing Commission can participate as such, in the meetings of the concerned Chamber or in the meetings of the Supreme Soviet in case of a joint Commission when its report is under consideration and can for that purpose appoint its spokesman.

During the period of preparation for the session of the Supreme Soviet and during inter-session periods, the Presidium coordinates the activities of the Standing Commissions of both the Chambers. This power is of special importance in the case of questions that concern two or more Commissions. The Presidium, whenever necessary, acquaints several Commissions with the Bills introduced for discussion, in order that the opinions of these Commissions are taken into consideration during the final consideration of the Bills. Every year the Presidium examines the plan of work of all the Standing Commissions. A Standing Commission can request the Presidium to frame a law on a subject dealt by it. For example, the Commission for Nature Conservation recently recommended to the Presidium to frame a law on certain aspect of ecology. The Presidium sent the recommendation to the Council of Ministers for preparing a draft and after the former had approved it, it was sent to the Commission for confirmation. In some other cases, the Presidium can ask the Commission to prepare a draft Bill on a subject which is under its purview. In case of urgency and when the Supreme Soviet is not in session, the Presidium can make a decree having the force of law on the basis of the reports of the Standing Commissions concerned. A Commission when it introduces its proposals in the shape of a Bill or otherwise which are of national importance either to the Chamber concerned or to the Presidium, may require that such proposals be given sufficient publicity to generate public discussion and for eliciting public opinion. Such discussions and opinions are considered by the Commission and results thereof are presented to the Chamber.

The recommendations of a Standing Commission on the working of the Ministries, Departments and other organisations of the Union Government as well as of the Republics and local State Organs and organisations are sent to these State Organs and organisations and are communicated to the Presidium and the Council of Ministers. These State Organs and organisations are duty-bound to consider these recommendations and submit "action taken" reports within a period of two months of the receipt of these recommendations.

There are no Financial Committees, as we have in India, but besides the concerned Commissions of the two Chambers, the Ministry of Finance, a Commission known as Peoples' Control Commission, and the State Bank keep check on Governmental expenditures. Besides these Standing Commissions, the Supreme Soviet has power to appoint *ad hoc* Commissions for a specified period and for specific tasks. For example, *ad hoc* Commissions were appointed for drafting specific laws. The Supreme Soviet, when it so chooses, can also appoint Commissions of Inquiry and audit on any matter. The Constitution of the U.S.S.R. provides that it

shall be the duty of all institutions and officials to comply with the demands of these Commissions and to submit to them all the necessary materials and documents.

We may now turn to the working of some of the important Commissions :

Credentials Commissions : The Credentials Commissions set up under Article 50 of the Constitution of the U.S.S.R. perform largely routine functions. They verify the credentials of the Deputies of the respective Chambers at the first session of the Supreme Soviet. The Chairmen of these Commissions present fairly full reports on the composition of their Chambers after each general election, and twice a year they present a number of reports on bye-elections which have occurred since the previous session.[1] On the strength of the Credentials Commissions' report the Chambers decide whether to recognise the credentials of the Deputies or to declare their elections void. If during the session of the Supreme Soviet, elections are held in certain electoral districts to replace Deputies who have been recalled or who have died, the Chambers decide on the basis of the reports from the Credentials Commissions whether to accept the credentials of the new Deputies. The Commissions also submit to the Chambers data on the composition of the Deputies with regard to their social status, party membership, nationality, occupation, educational level, sex and age.[2] The Commission is also entrusted with the duty to submit periodically reports on the prosecution, arrest or recall of Deputies.

Planning and Budget Commissions : The most important Commissions, the Planning and Budget Commissions which were introduced in 1966 have got elaborate functions as defined in Article 11 of the Statute. These Commissions examine the draft (departmental) Budget two to three months before the Supreme Soviet session at which the budget is to be presented. The report given by the Finance Minister on the draft budget is examined in detail by various sub-commissions.[3] These Commissions also regularly examine reports of the Ministries and Departments on the implementation of the State plan and budget and ensure that revenue and expenditure are in accordance with the budget. These investigations form the basis of the modifications to the budget which are presented by the planning and Budget Commissions during the budget-plan debate. It is also the task of the Commissions to work out drafts of laws and other proposals dealing with the economic planning, budgetary and financial questions to be considered by the corresponding Chamber and the Presidium and to prepare resolutions on the questions submitted to them for preliminary consideration. It may also be relevant to mention here that the Deputies who are not members of the Planning and Budget Commissions, members of the Council of Ministers and a wide circle of advisers take part in the work of these Commissions and their sub-commissions.

The reports of the Planning and Budget Commissions contain evaluation of

1. L. G. Churchward, *Contemporary Soviet Government*, p. 127.
2. Kutafin and Shafir, *The Soviet Parliament : How to work*, pp. 39-40; Art. 50 of the Soviet Constitution.
3. Churchward, *op. cit.*, pp. 127-28.

the plan and budget drafts and also critical remarks on the work of Ministries, Department and other planning and finance organs of the State.[4]

Besides these Commissions, the Chambers appoint other Commissions also to make studies in depth and submit concrete proposals on the various branches of economy of the country as a whole. These other Commissions prepare draft bills pertaining to their particular sphere of activity and are also empowered to supervise implementation of laws and resolutions on economic, social and cultural development, adopted by the Supreme Soviet and the Presidium.

Standing Commissions on Foreign Affairs : As laid down in the Statute, the Standing Commissions on Foreign Affairs consider vital international issues, examine material on foreign affairs, make recommendations on draft treaties, agreements and conventions submitted for ratification of the Supreme Soviet. They examine in detail for placing before the Supreme Soviet the issues settled by the latter on the development of political, economic, scientific, cultural and other relations of U.S.S.R. with foreign countries and International Organisations, and draft resolutions on foreign affairs. They also have the right of initiative in drawing up and submitting for consideration to the Supreme Soviet, bills and other legislative acts on the country's foreign policy.[5] They also receive reports from the Ministries and Departments in-charge of political, economic, scientific, cultural and other relations with foreign countries, from the Ambassadors of the U.S.S.R , as well as from the representatives of the U.S.S.R. on International Organisations, on the issues concerning their activities.

It may be of interest to note that the Commissions have to their credit the preparation of such key documents as the drafts of the resolutions of the Supreme Soviet on the ending of nuclear tests by the Soviet Union (1958), the appeal of the Supreme Soviet to Parliaments and Governments of all countries (1959) calling for the achievement of general and complete disarmament, etc.

Commissions on Youth Affairs : The Commissions on Youth Affairs were set up by the two Chambers in December 1968. Article 12a of the Statute makes detailed provisions as to the functions of this Commission which *inter alia* include the preparation of bills for consideration by the Chamber and by the Presidium on issues concerning the youth with regard to their upbringing, education, labour, mode of life, recreation, health, etc. and their participation in national, economic and social-cultural reconstruction. The formation of these Commissions has given the Supreme Soviet an opportunity for dealing with youth questions especially with regard to education and upbringing of the younger generation. The Commissions are also responsible for examining the bills and other proposals relating to youth and in this task they take care to see that the young people are drawn more closely for running the administration of the State and also for keeping a check on the observance of laws safeguarding the rights and interests of youth. Whenever a

4. Kutafin and Shafir, *op. cit.*, pp. 34-35.
5. *Ibid.*, p. 35.

statutory measure is put forward to the Supreme Soviet relating to the education, vocational training, work, leisure facilities or health of the young people, such a measure is subjected to a thorough discussion by the two Commissions before they make their comments to the Supreme Soviet or the Presidium. It may also be mentioned that the work of the members of these Commissions is not confined only to attending its sittings but also extend to do a great deal of day-to-day work in the localities, in their constituencies and in their permanent places of work.[6]

Commission for Legislative Proposals : As provided in article 10 of the Statute, the Commissions for Legislative Proposals of the Soviet of the Union and the Soviet of Nationalities carry on heavy and diverse work in drafting the country's new legislative acts and introducing changes in the laws in force. They undertake preliminary discussions on bills submitted for approval to the Supreme Soviet and prepare resolutions to this effect. They also submit to the Supreme Soviet or the Presidium draft bills and decrees on different subjects on their own initiative.

The Presidium of the Supreme Soviet can also charge the Commissions with the elaboration of a new bill. In drawing up resolutions on bills submitted to the Supreme Soviet and drafting bills, the Commissions get great help from the representatives of mass organisations, scientists, specialists and experts from local organisations. The work relating to drafting of laws begins with the Commissions making a thorough study of existing legislation on the subject under consideration, the practical experience of State and economic organs and public organisations in the matter.

Interested Governmental agencies are requested to express their opinion regarding the expediency and the main direction of the drafting of the bill and to provide necessary material for the consideration of the Commission. When a clear picture of the substance of the bill emerges in the Commission, a general discussion of the main issues contained therein is held. A working group is formed which is charged with preparing reference material and supplying necessary arguments in support of the bill.

The initial draft of the bill is usually forwarded for reference to the Union Republics and the appropriate Ministries, Departments and other Governmental agencies. In addition, members of the Commission themselves and specialists from the working groups go to the Republics to organise discussions on the draft bill and collect necessary material from the Republics and other local organs and also from public organisations. They write articles on the bill for the Press and give talks on the radio and T.V. Copies of the bill are also sent to leading universities, institutes and research organisations. There is also a close contact with the Supreme Court of the U.S.S.R. and the office of the Procurator-General. The remarks and amendments that are received are forwarded to the sub-commissions. In important cases the Commission itself organises, discussions in the Press on the bill drafted for the Supreme Soviet and receives summarised data about readers' letters from magazines and newspapers. The Commission sometimes submits a bill to the Presi-

6. *Ibid.*, pp. 37-39.

dium with the proposal that it may be published in the Press for wide public discussion. Thousands of local workers, office employees, farmers, students and other sections of the population take part in the discussions. The remarks and suggestions put forward by various persons and agencies are summarised by the sub-commissions and are considered before the bill is finally drafted. It will thus be observed that these Commissions perform their work in close coordination with the members of the public and wide publicity is given to the same. This procedure of actively associating all shades of opinion in the country was followed in respect of draft legislation on the health services, water resources, public education and mineral wealth as also on the status of the Deputies of the Supreme Soviet.

It may be interesting to mention that there was a good public response to some of the draft legislations. For instance, when the Pension Laws were under discussion, 12,000 comments, amendments and alternative proposals were received and considered. Fifteen thousand people expressed their opinion on the draft legislation on Marriage and the Family. Thousands of letters poured in during 1960-61 when the drafts of Civil Legislation and the Civil Legal Procedure were discussed. Over 4,000 proposals were submitted on the draft of the Code of Laws on Marriage and Family and 3,000 on legislation on Education. All these were thoroughly examined and many of them were incorporated and reflected in the law ultimately passed.[7]

After the nation-wide discussion is over, the revised bill is examined at plenary meetings of the Commission, and after approval, is submitted to the Presidium for inclusion in the agenda of the next session of the Supreme Soviet.

It may be pointed out that the other Commissions can also prepare draft bills on the subjects dealt with by them, but in such cases the Commission on Legislative Proposals is always invited to participate in the discussions before a final decision is taken.

These Commissions have exercised a salutary check on the Soviet administration and have ensured their accountability to the Supreme Soviet as also to the public in the following manner :

(*a*) when working out the drafts and resolutions, a Standing Commission has a right to summon to its sitting a Minister or other representative of the Government and seek explanations, clarifications etc. on any question of interest to it;

(*b*) a Commission can demand of any State and public organ and any official the necessary documents, decisions, reports and other materials, pertaining to the questions under study by the Commission; and

(*c*) the recommendations forwarded by a Commission to the Ministries and Departments are required to be examined by the latter, which are to report back to the Commission within two months as to the results of the

7. *Ibid*, p. 32; Vladimir Vassilyev, *U.S.S.R. Supreme Soviet*, p. 29.

examinations of the recommendations and the various steps taken thereon.[8]

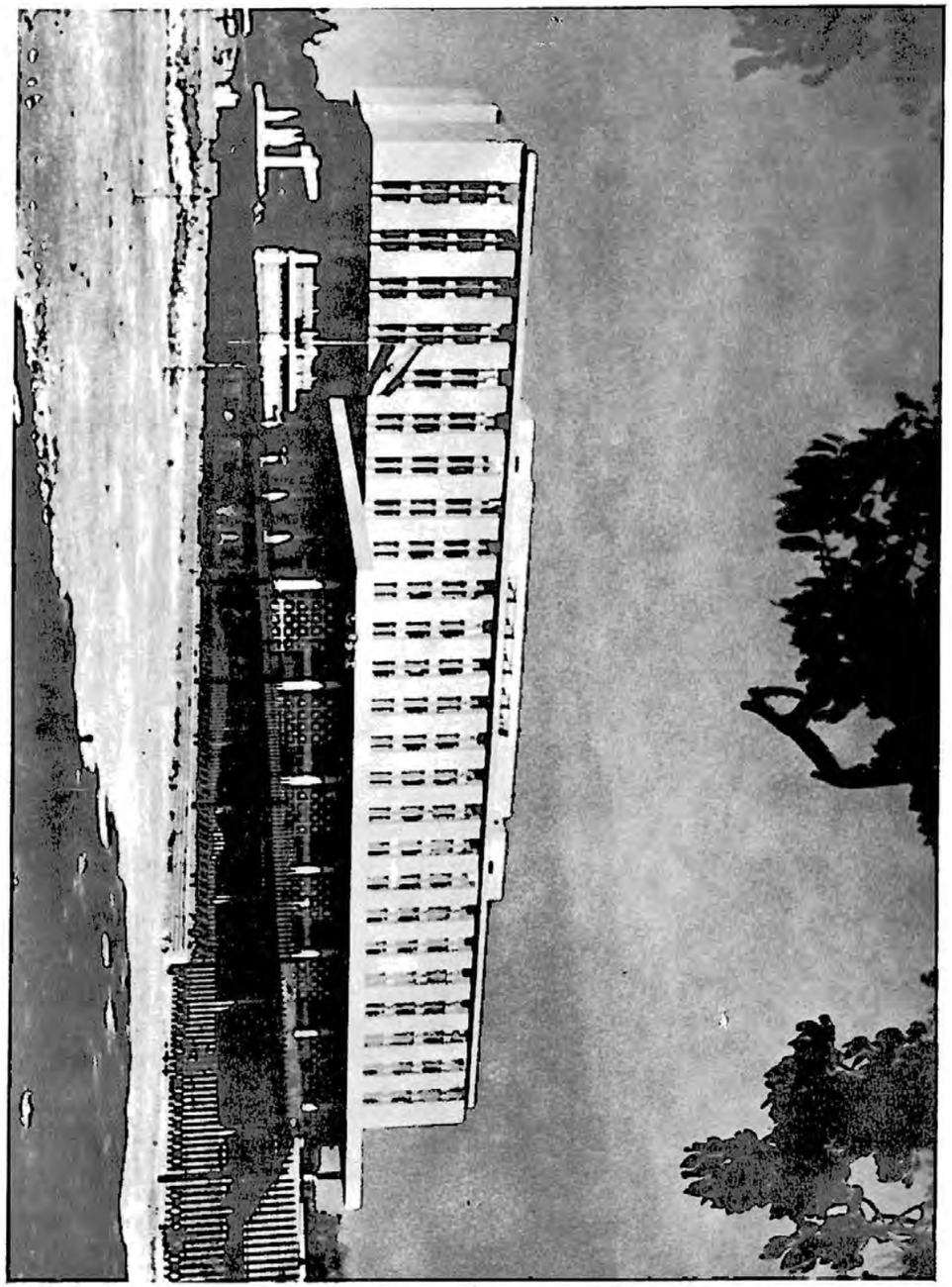
Thus it is quite clear that the Supreme Soviet exercises its supervision over the executive organs through its appropriate Standing Commissions which ensure that the Constitution and laws of the U.S.S.R. are observed and the decisions of the Supreme Soviet and its Presidium carried out by the Ministries, Departments and other State organs. These Commissions also provide adequate opportunities for the Deputies to take more active interest in the affairs of the State and more initiative in drafting legislation. The importance of the Standing Commissions in the Soviet Union has been clearly brought out by the report of the Central Committee to the 24th Congress of the C P.S.U. in the following words :

"the larger number of Standing Commissions and the more efficient organisations of their activities are enabling the Deputies to display more initiative, delve deeper into the work of the executive bodies and participate more actively in drafting laws."[9]

January 29, 1977

8. Vassilyev, *op. cit.*, p. 29.
9. Quoted in Kutafin and Shafir, *op. cit.*, p. 28.

A general view of the Parliament House building.



A general view of the Parliament House Annexe building.

Part Two

The Role and Relevance of Second Chambers

16

The Concept and Relevance of Second Chambers

JAFAR SHARIF-EMAMI*

The constitution of a second chamber of Parliament has generally been recognised of utmost importance in the running of a nation. Indeed the cost of neglecting such an institution would not only prove detrimental to the existing generation but for posterity as well.

The existence of an Upper House in a parliamentary system of government is an evolution accomplished over centuries of history. It is no new idea that is yet to stand the test of time, nor is it one which needs to be proved afresh. A challenge to such an institution would amount to annulling the parliamentary system itself and would indeed contribute to the extinction of a useful form of government.

The faith in the second chamber of Parliament stems from an objective view of the human nature itself. To put it in simple terms, the progress of humanity during all major epochs has depended on the vigour, drive and dynamism of red-blooded youth which is, and it is equally important, reined in by the temperance of the matured and the experienced.

Humanity could not have been what it is today without the contribution of the sages, whether past or present, who are essentially thinkers and have a vast fund

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of experience that lays the foundations necessary for their thoughts to have a lasting value to mankind. The sage, or the thinker, might be a scientist, a litterateur, a religious leader or an eminent person in any walk of life.

Well, no amount of thought was ever successful without the power to implement it. The gap between thought and action must be filled. No achievement has ever been worthwhile if this gap is not bridged. This is where the Lower House comes in.

I crave the indulgence of the readers in stretching this analogy to think of the second chamber as the power of experience of the first. The second chamber, logically viewed, is an extension of the way of life of individual—a way found ideal over the millenia.

It would be a catastrophe if this role of the Upper House is always equated with conservatism. It is often said that the Upper House, in some countries at least, is the symbol of all that is traditional and, hence, conservative and a force resisting change

It is an undeniable fact that the Upper House does tend to be cautious and meticulous in its deliberations. This is as it should be. If that is what is branded as conservatism, so be it, for it is a cliche, proverbial that tradition has to be blended with change in a modern era. The conflict between the new and the old, between experiment and experience and between the unknown and the tried, forms the very essence of life. Resistance burnishes gold, as it does a society.

It is possible that during a particular phase of history and, maybe, in a particular defective system, the Upper House may fail to fulfil its duties to the satisfaction of the majority—not that the majority view is always right. It is to act as a corrective to such majority opinions that the second chamber aims at. It is quite possible that failing in this, the Upper House might disintegrate into a moribund collection of old and withered gentlemen.

There must be something very basically wrong with the whole society if it permits such a House to function at all. It reflects upon the ailment of the whole nation if the Upper House is ineffective, for, in a growing society the second chamber pulls its weight mightily. It is not the institution which is defective but the practice in such an institution.

Taking a dispassionate view, I personally like when the second chamber stands firmly behind what it considers to be right. For, it is proof that it is facing the challenge before it bravely. It is not expected of the second chamber to go along with the popular swing, blind to the future. On the contrary, it is expected of the second chamber to disregard the immediate repercussions and to hold steadfastly to what is the ultimate good of the nation. It is history which is to judge its conduct and not the multitude of its opponents.

When mature human societies chose the parliamentary system of government, with all its variations, they chose to check popular opinion with the wisdom of their specialists. This is a concept, which in my opinion, can stand repetition in this age and day.

In a country with a federal system, the Upper House of Parliament even becomes a greater necessity. A federal system constantly suffers strains against many

stresses and, from time to time, is under strong pressures. History is witness to many events when momentary pressures threatened to disrupt the system altogether.

There are examples where trivial and transitory events have destroyed a federation. This is true even for days when the word "federal" was unknown. It is the concept I am talking of.

The Upper House takes a lofty view when the pressures are at their height and the body politic is cracking at every seam. It acts as the cement, faces the crush of massive calumny and rises above parochial pulls.

Even when times are not as testing, every bill and every resolution in a federal system carries the shadows of narrow and petty considerations. Thus, at every turn, the Upper House has to exercise caution and care.

Buffeted by theories and actions from abroad, torn by dissensions from within and stumbling along with determination, the developing countries feel the need for mature guidance at every breath along the way.

It is, indeed, very hard for me to conceive of a state of affairs where democracy in a developing country can succeed without the services of a second chamber, for, the uproar for immediate results and miracles is deafening in developing countries. The cry for quick justice is equally raucous. Never did humanity need caution as it does in such a stage in history.

It is rather painful to contemplate a future where the wild energy of youth and ambition decides to tear itself away from the reins of a second chamber. It is possible for that powerful momentum to sweep away an institution that relies on caution and consideration. There are myriad examples that whenever caution was thrown to winds, the democratic system evolved through parliamentary institution was itself destroyed.

In a country like India, and for that matter my own country, Iran, tradition and style of life naturally contribute to the strengthening of the second chamber. We are taught from our earliest childhood to respect our elders. As I write this, I stumble upon the journalistic jargon of referring to the members of the Upper House as "elders". Indeed, it is as simple as that.

Nations like India and Iran have many similarities dating back to countless centuries. We have a great heritage and it is our duty to be among those who show the way to a bewildered world. Let it not be said of us that we doubted the accumulated wisdom. The concept of a second chamber, evolved in the West, suits our own way of thinking admirably. It is because of this, dovetailing of the new idea—new by our standards—that makes us feel so strongly about it.

May I take this opportunity to mention the great role played by the Rajya Sabha in the modern history of India ? It is no place to recite the influence of this second chamber in the moulding of a New India. Suffice it to be said that if today India is among the most respected nations of the world, in no small measure it owes deeply to the momentum generated by institutions like the Rajya Sabha.

December 26, 1976

17

The Second Chamber : Its Place in Parliamentary Democracy

K. K. SHAH*

From the time the Indian intellectuals thought of a constitution for their country, they invariably opted for parliamentary democracy based on a bicameral legislature. Students of constitutional history know that in 1889 the Indian National Congress drew up the Home Rule Scheme, the aim of which was to broadbase the representative institutions in the country. Historically, it is an important document partly because it was drafted under the presidentship of Sir William Wedderburn, a great British friend of India and also because the Congress session of that year was rendered memorable by the presence of the famous British Member of Parliament, Charles Bradlaugh, who took active interest in India's political future

Bradlaugh had prepared a draft Bill "embodying the views of the Congress as so far expressed" and intended to introduce it in the British Parliament after securing Indian assent to it. A skeleton constitutional scheme, providing for the creation of representative institutions in the country, was accordingly drawn up at the Congress session. According to the scheme, both the Central and provincial

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legislatures were to consist of members not less than one-half of whom were to be elected. All elections were to be by ballot.

Another, but far more significant, step towards constitution-making by Indians was taken in 1896 when a comprehensive document known as the Constitution of India Bill was prepared. Its authorship is in doubt; it is presumed that the proposed scheme was inspired by Lokmanya Tilak and Dr. Annie Besant that gifted Irish woman who had made the Indian cause her own, the Scheme was acclaimed as the Home Rule Constitution of India. It envisaged a bicameral legislature called the Parliament of India whose members were to be the representatives of the "Indian Nation". It was laid down that all the "supreme legislative, judicial and executive powers" should be vested in the national legislature. The executive functions of Parliament were to be exercised by a Cabinet of Ministers led by the Prime Minister.

The First World War, 1914-18, gave a further stimulus to Indian thinkers on the country's future constitutional set-up. In 1916, nineteen members of the Imperial Legislative Council, including such well-known personalities as Sir Tej Bahadur Sapru, M. A. Jinnah, Dinshaw E. Wacha, Bhupendranath Basu, Pandit Madan Mohan Malaviya, the Rt. Hon. V. S. Srinivasa Sastri and Sir Ibrahim Rahimtoola, drew up a memorandum in which they indicated the lines on which the post-war reforms should be formulated. The memorandum demanded that half the number of members of the Executive Councils, Provincial as well as Central, should be Indians. It was also urged that all the legislatures in the country should have a "substantive majority" of elected representatives. The famous Congress-League Scheme of December 1916 was founded on the same principle, namely, that Indians should have a bigger say in the government of their country.

The demand for legislatures that could function as the governing councils was given a further impetus as a result of the famous announcement of August 20, 1917 by Edwin Montagu, Secretary of State for India, on the country's constitutional future. Montagu stated that the policy of the British Government was "that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible Government in India as an integral part of the Empire". As early as 1919, a considerable section of enlightened opinion in India demanded that the responsibility for framing the constitution for the country should devolve on Indians themselves. Mrs. Besant had made it clear to the Joint Parliamentary Committee that any constitutional instrument prepared at Westminster would be unacceptable to India.

As a corollary to this stand, leading Indians came together and framed the Commonwealth of India Bill, 1925. The document declared boldly that India "shall be placed on an equal footing with the self-governing Dominions, sharing their responsibilities and their privileges." Like the earlier unofficial schemes, it provided for parliamentary democracy with an executive based on the Cabinet system. In parts, the Bill reads thus : "There shall be a Parliament which shall consist of the

Viceroy, as the King's representative, a Senate and a Legislative Assembly. The division of powers between the Commonwealth Parliament and the Provincial Legislatures is more or less as at present but all residual powers shall be vested in the Parliament."

Even more comprehensive and authoritative was the scheme drawn up by a committee of experts in response to the mandate from an All Parties Conference. With Pandit Motilal Nehru as Chairman, the Committee, which reported in 1928, consisted of Sir Tej Bahadur Sapru, Subhas Chandra Bose, M. R. Jayakar, Sir Ali Imam, G. R. Pradhan, Shuaib Qureshi, N. M. Joshi, M. S. Aney and Sardar Mangal Singh. Known as the Swaraj Constitution, the Nehru Report made detailed provisions for the government of India. The country, which was asked to be elevated to the status of a Dominion, was to be called the Commonwealth of India. This nomenclature was considered appropriate due to the presence of the Princely States which were proposed to be retained in the national polity. The Constitution envisaged a two-Chamber Parliament whose Lower House was designated as the House of Representatives while the Upper House was called the Senate. The Senate was to consist of 200 members elected by the Provincial Councils and the strength of the House of Representatives was put at 500. The constitution-makers, however, held that the provincial legislatures should be unicameral. They favoured adult franchise.

Thus, from the time Indians began to ask for Home Rule, there was near-unanimity among their leaders that the parliamentary set-up in the country should be based on a bicameral legislature, especially at the Centre. They were profoundly influenced by the British constitutional theory and practice. In Britain, despite its many shortcomings, the House of Lords, the Second Chamber of that country, was regarded as an integral part of British Parliament. Apart from the fact that Britain served as an example to Indians, especially in the matter of political thinking, the politicians of those days were not prepared to ignore tradition and convention. They noted that many democratically-governed countries had two-chamber legislatures and knew that most of the political thinkers of the nineteenth century favoured such institutions. Did not Sir Henry Maine, a noted authority, say : "Almost any second chamber is better than none ?"

It would, however, be wrong to conclude from this discussion that all leading Indians were unequivocally committed to a two-chamber system. Mahatma Gandhi, for instance, held that a second chamber for a country like India was a costly superfluity. "I am," declared Mahatmaji "certainly not enamoured of and I do not swear by two Houses of Legislature. I have no fear of a popular Legislature running away with itself and hastily passing some laws of which afterwards it will have to repent. I would not like to give a bad name to, and then hang, the popular Legislature. I think that a popular Legislature can take care of itself; and since, I am now thinking of the poorest country in the world, the less expenses we have to bear the better it is for us." He urged that the "method" of one-chamber legislature should be tried, and added : "Make it as perfect as human ingenuity can, by all means, but be satisfied with only one Chamber." Jinnah was also of the opinion

that India should have only a unicameral legislature. Both these leaders expressed their views on the subject while speaking at the Second Indian Round Table Conference, held in London from September 7 to December 1, 1931.

The Federal Structure Committee, set up by the Round Table Conference, did not accept this point of view. In its third Report, the Committee envisaged a legislature with two chambers and discussed the relations between them. It urged that neither chamber of the Federal Legislature should be placed in a position of legal subordination to the other. "It would be," declared the authors of the document, "a misconception of the aims which we have in view to regard either Chamber as a drag or impediment on the activities of the other In our view, the two Chambers will be complementary to each other, each representing somewhat different, but, we hope, not antagonistic, aspects of the Federation as a whole. Absolute equality between the two Chambers of a bicameral legislature is no doubt unattainable, and, if it were attainable, might well result in perpetual deadlock, and there is no less doubt that the provisions of the Constitution notwithstanding, the evolution of political development will inevitably result, in the course of time, in placing the centre of gravity in one Chamber." Most Indian delegates recognised the validity of this argument but urged that the right of initiating Money Bills should vest in the Lower House alone.

The Government of India Act, 1935, the last constitutional instrument given to this country by Britain before her withdrawal, provided for a federal legislature having two Houses. The Upper House was called the Council of States which was to consist of 156 representatives of British India and not more than 104 representatives of the Princely States. The lower chamber was named the House of Assembly and was also called the Federal Assembly. It was to consist of 250 representatives of British India and not more than 125 representatives of the Princely States. The Council of States was to be a permanent body and not subject to dissolution, but nearly one-third of its members were required to retire in every third year in accordance with the prescribed procedure. The life of the Federal Assembly was for five years but it could be dissolved before that period. Except in the case of Financial Bills, a Bill could be introduced in either chamber. No Bill could be deemed to have been passed unless it had been agreed to by both the Houses.

India was still under British Rule when the Constituent Assembly met for the first time on December 9, 1946. It was too early at that time to envisage a peaceful dissolution of Princely States whose continued existence had been accepted even by forward-looking Indian politicians as an inculcatable fact of India's national life. Besides, most of the leading constitution-makers had both by their study and conviction come to regard the Westminster system as best suited to the government of their country. They certainly did not hesitate to draw liberally from the constitutional instruments of other countries such as the United States of America, Canada, Ireland and Australia which furnish the best examples of both the unitary and federal forms of government. Nevertheless, owing to India's long association with Britain, the thinking of the chief architects of the country's Constitution was

largely conditioned by the British system. It is small wonder, therefore, that the Central legislature of free India consists of two Chambers.

The question whether the national legislature should be unicameral or bicameral was discussed in the Constituent Assembly, but the weight of opinion was in favour of the latter. The relative powers of the two Houses were also determined after studying in this connection the constitutional instruments of countries like Britain, Canada, Australia, South Africa, the United States and Switzerland. In Britain, after the democratisation of the House of Commons from 1832, a battle royal was fought to clip the powers of the House of Lords consisting predominantly of hereditary peers. They were there in the second chamber because, as a reforming peer once remarked, "they gave themselves the trouble to be born." The rejection by them of Lloyd George's Budget led to a severe curtailment of the powers of the House of Lords in 1911 and to the proposal to change its composition. Further cuts were made in its powers in 1949 so that it can delay a "Money Bill" and any other Public Bill only for a short period luckily. Forward-looking peers realised that it was not in accordance with the democratic principle that a second chamber should act as interpreter of public opinion.

There was a time when in the U.K. the second chamber was very powerful. The House of Lords had the power to veto any legislation it did not approve of. It was an undesirable situation, but it was there for centuries. For the House of Commons to obtain predominance over the House of Lords actually took centuries of struggle. How finally it succeeded is an extremely interesting history.

It all started with the appointment of Lloyd George as the Chancellor of the Exchequer by Prime Minister Asquith in 1908. Lloyd George was bent upon doing something substantial for the poor and the under-privileged among his countrymen. This meant direct head-on clash with the rich and the over-privileged class headed by their Lordships in the House of Lords. But Lloyd George was not a fighter of less calibre. He was courageous, tenacious, cunning and hellbent upon following his course of action. He had the complete support of Asquith. He toured Germany, Austria and Belgium to study the social legislation there. On his return, he started preparing his first budget which has gone down in history as "The People's Budget".

On April 29, 1909, when Lloyd George introduced this historic Budget in the Commons, Royston Pike rightly called it "The Birthday of the Welfare State". Chancellor Lloyd George spoke for four long hours. He wanted money to introduce social reforms and he proposed to do so by increasing income-tax, death duties and taxes on liquor and tobacco and by introducing super-tax. For the privileged classes, this was bad enough. But what infuriated them was a series of taxes on land and mineral rights. They rose to a man to protest and defeat the Bill. But Lloyd George was ready for it. He had taken the whole thing on war footing. To quote his own words :

> "This is a war Budget. It is for raising money to wage implacable war against poverty and squalidness. I cannot help believing that before this generation has passed away, we shall have advanced a great step towards that good time, when poverty, and the wretchedness and degradation which always follow in its camp, will be as remote to the people of this country as the wolves which once infested our forests."

After seventy-two days of intense debating, the Commons passed the third reading on November 4, 1909 by 379 votes to 149 and sent it to the House of Lords which, on November 30, rejected it. Asquith and Lloyd George took the issue to the people. Public meetings were held. At one such meeting Lloyd George asked :

> "Who is going to rule the country ? The King and the Peers ? Or the King and the People ?"

(King Edward VII did not like this and he even protested to Asquith.)

Following the rejection of the Bill by the Lords, Asquith dissolved the Parliament and held fresh General Elections in January 1910 in which the Liberals won, but with a much reduced majority. But that did not cool down either Lloyd George or Asquith's burning desire to put the House of Lords in its proper place. After all, by rejecting the Finance Bill of its Chancellor, the Lords had gone too far. The last time they did so was more than two centuries ago—in 1688. Prime Minister Asquith described the Lords' action as "a breach of the Constitution and an usurpation of the rights of the House of Commons."

He promptly introduced the historic Parliament Bill, which sought to deprive the House of Lords of their power to reject "Money Bills". The Bill did not stop at that. It also provided that if the other (non-money) Bills were passed by the Commons in three sessions spread over three years, they would automatically receive Royal Assent even if the House of Lords rejected them. This historic Bill too was rejected by the Lords and Asquith in December of the same year (1910) once again went before the people by holding fresh General Elections which gave the Liberals only one additional seat.

The Parliament Bill was reintroduced. Asquith was determined to push through this momentous reform and was also keen to teach the Lords a lesson they would never forget. He was right in his thinking, for the Lords had abused their parliamentary privileges.

Fortunately for Asquith and fortunately for British democracy, King George V had by then become the King. Asquith threw a bombshell by telling the nation that he had obtained the consent of the King for the Bill for creation, if necessary, of a sufficient number of new peers to get the Bill passed in the Second Chamber.

The Lords and the Conservative opposition got furious. This masterly move was too much for them. But Asquith had clean bowled them, and they knew it. When on July 24, 1911 Asquith rose in the House of Commons to move that the Lords' amendments be rejected, the opposition members hooted him and did not

allow him to speak. The speech nonetheless was reported fully in the Press next day and received widespread acclaim.

Asquith promptly resubmitted the Parliament Bill to the House of Lords. The Lords knew that the Prime Minister had clinched the issue. They were after all wise and realised that any further opposition would be the last straw. On August 10, 1911 they passed the Bill by 131 votes to 114. What started with Lloyd George's efforts to bring in the Welfare State in the country ended with Asquith achieving a great Constitutional Revolution. In the parliamentary process, the lines were clearly drawn between the two Houses and from then on, the House of Lords more or less has functioned as the Second Chamber so as to become a valuable asset in a democracy.

So, the old slogan, namely that the House of Lords can neither be ended nor mended is no longer heard. A good deal of valuable parliamentary work was done in the Upper House whose first generation peers as experienced administrators had held important positions in Her Majesty's Government. It is the considered opinion of constitutional experts that the discussions in the Lords are often at a higher level than in the Commons because nobody in the Lords is much interested in making debating points. In the Commons, the members are under various pressures so that debates in it are often influenced by party and partisan considerations. Besides, they are adept at talking generalities and not getting down to details. According to one authority, about half the committee work of Parliament is done by the Lords. "The result is," he says, "that the old debate over the principles of a Second Chamber has almost disappeared." Towards the end of 1976, there was, however, a recrudescence of trouble with the Lords following the Labour Party's decision to promote the nationalisation of several important private undertakings.

In other countries too, where the bicameral system prevails, the Second Chamber is doing good work although the range of its responsibilities differs from country to country. In Canada and Australia, for example, the powers of the Lower and Upper Chambers are identical except that Money Bills must originate in the Lower House. In South Africa, the Senate is clothed with limited powers and is essentially a "House of Review". In Switzerland, the two Houses enjoy coordinate powers while in Ireland the Upper House has a suspensory veto in respect of Bills other than Money Bills or urgent Bills. In contrast, the Upper House of the United States has all the powers of the Lower House and a few more.

All these facts must have influenced the decision of the founding fathers of the Indian Constitution to give the country a bicameral legislature at the Centre. The powers of legislation granted to the House of the People and the Council of States, which are better known as the Lok Sabha and the Rajya Sabha respectively, are almost similar except that all Money Bills are to be introduced only in the Lok Sabha which is the popularly elected Lower House. The members of the Rajya Sabha are the representatives of the States. Twelve members of this House are nominated by the President of the Union so that men of talent, who may not choose to court the electorate, may find their place in Parliament and thus give the nation

the benefit of their wisdom and experience. The life of the Lok Sabha, which until the passing of the Constitution (Forty-second Amendment) Act, 1976, was for five years, has been increased to six years. Like the Council of State under the Act of 1935, the Rajya Sabha is not subject to dissolution, but as many as one-third of its members have to retire on the expiration of every second year.

It may be asked : "Why have Rajya Sabha, when the real power for, and responsibility of, legislation rests with the Lok Sabha democratically elected on universal adult suffrage ?" Why maintain this 'costly superfluity', 'white elephant'? It can only delay vital legislations—if it wants to. So at best, it has only a nuisance value. Granted that the members can bring to bear a detached outlook eloquently put forward their points of view after deep study and based on high scholarship, even offer a studied analysis of an intricate problem. But then, in a democracy, this role is and should be effectively played by the *vox populi*. The people participate in the discussions that precede any important policy decision. They do it through newspapers, through public platforms, by contacting their elected representatives and in several other ways. So what is so special about the members of the Rajya Sabha, it may be posed. The Rajya Sabha members are not even directly elected like the members belonging to the Lok Sabha. Discussing the functions of the Canadian Second Chambers, Clokie wrote : "Its primary use is to provide a dignified seclusion for retired politicians, who have deserved well of the party leader." Can't this be said of our Rajya Sabha too—if one wants to become uncharitable ?

These and similar other questions are, from time to time, asked in our country as also in other democracies round the globe. The Second Chamber has always been a subject of controversy everywhere. Doubts are raised and endless arguments are advanced. But with cool and mature thinking, the importance of the second chamber in a democracy can be fully realised.

If we require one single proof of this, we have only just to study and appreciate the brilliant record of the Rajya Sabha for the past twenty-five years of its existence. I do admit there were occasions when its sublime serenity was marred by unseemly incidents and undignified attitudes. Thanks to the galaxy of distinguished Chairmen of Rajya Sabha and accommodating Prime Ministers and a large number of sober members, no damage was done. As a leader of Rajya Sabha for some years, I can vouchsafe that Prime Minister Indira Gandhi not only overlooked these ugly incidents but turned them to occasions for educating the masses. Time and again, this Upper Chamber has shown great maturity and profound wisdom while grappling with the herculean problems of our nation in spite of occasional lapses on the part of some members. They are there on the records, which have become a part of Free India's history, for any one who cares to see. I need not therefore dwell on it.

Important legislations, which affect the economic, social and political life of all our countrymen, can never be taken too seriously. Every bit of legislation generates far-reaching consequences. It requires deep study, penetrating insight, tremendous foresight, great expertise and clean vision. *Ad hoc* approach, cavalier fashion, hapha-

zard way, playing to the gallery etc., have no place in it. It cannot be based purely on political considerations.

But this does not always happen. The elected representatives of the people in the Lok Sabha definitely have the good of the nation at heart. But sometimes they cannot help being swayed by other considerations, like party-politics, groupism within a party and their popularity with their constituents. It is during such times that the Rajya Sabha plays a vital role. The members of the Rajya Sabha are relatively free from such considerations. They have more time at their disposal. They can bring more amount of objectivity to their task. They can summon cooler and more matured thinking. As Dr. K. M. Munshi put it, "Controversial questions are discussed in the Rajya Sabha in a well-informed and objective manner, comparatively free from the passion which generally sways the House of the People."

The formation of the Rajya Sabha is better than that of the House of Lords in the U.K. where many of the members are hereditary peers. Many more are life peers, whereas a Rajya Sabha member's term is for six years only. When Clement Atlee was the Prime Minister, the majority of the House of Lords' members belonged to the opposition party. Yet, their contribution was so significant that the Atlee Government accepted as many as 230 amendments to the Bill nationalising transport. This happened because the Labour majority in the Parliament was committed to the policy of nationalisation and as such, its pitfalls and drawbacks did not easily register on their minds. The Lords brought to bear upon this legislation dispassionate thinking, deep study and the practical aspect as distinct from the ideological aspect. The same Atlee Government accepted as many as 360 amendments to its Bill controlling the limited liability of Companies.

As Jennings wrote : "Because the fate of the Government does not depend on its (House of Lords) votes and because of the preponderance of one party, the House of Lords can debate in a less obviously partisan manner the principles of foreign and imperial policy on socio-economic problems. And because the peers have no constituents to placate, no meetings to address, often, no speeches to make, they can devote more time to the less spectacular but often useful technical functions of legislative controls."

We must also realise that India is not a totally unitary State. It has a distinct federal character and the Rajya Sabha is an essential feature of it. Elections to the Rajya Sabha by the members of the State Assemblies is clearly intended to give a clear federal character to this House. One of its major responsibilities is to protect the rights of the States. For instance, a special majority of two-third of this House is necessary to enable the two Houses of Parliament to legislate in matters falling within the exclusive legislative sphere of the States.

Of course, the Second Chamber should remain second. There can be no dispute on this point. Whereas its great value in crystallising a problem, marshalling relevant facts, taking a long-term view and bringing unprejudiced and clear thinking to bear upon proposed legislations should be recognised the final decision should

rest with that House which has its members who have directly been elected by the people. Otherwise the whole procedure becomes undemocratic.

No special pleading is necessary for the continued existence of the Rajya Sabha. The record of its achievements in the legislative and in other domains since its establishment sustains its claim to be regarded as an indispensable part of India's Parliament. It has never come into conflict with the Lok Sabha by claiming to act as a brake on the wheel of advance. Both Houses have championed progressive causes with equal enthusiasm and striven, as the true representative institutions of the Indian people, to realise the pledge embodied in the Preamble to the Constitution. Macaulay described the two political parties of his time in England as the fore and hind legs of a stag. It would be equally apt to describe the two Houses of Indian Parliament in these terms.

In the short history of 25 years, there were occasions when the question of the Second Chamber functioning as impediment to progressive legislation would have become sharper. When the Bill to abolish Privy Purses of Princes was not accepted by the Rajya Sabha, many eye brows were raised but our far-seeing and dynamic Prime Minister, Shrimati Indira Gandhi, handled the situation deftly without permitting controversy about the utility of the Rajya Sabha getting out of hand. No further proof is necessary to justify the wisdom of our Constitution makers in providing a second chamber than the fact that Prime Minister Indira Gandhi while making our Constitution, more in tune with democratic way of living by amending it by the Constitution (42nd Amendment) Act, 1976 did not consider it necessary to touch the Rajya Sabha.

January 10, 1977

18

The Relevance of Second Chambers in Parliamentary Democracy

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It is heartening indeed to know that the Rajya Sabha has attained a high stature in the parliamentary life of our country and in the quarter of a century of its life, the House has impressed the people with a sturdy approach to problems and by the debating skill of its members I have been privileged since 1972 to sit as a member of the House and I may recall here the concept of second chambers in our parliamentary system.

The idea of a second chamber is not new to India. Even in the colonial days, under the Montagu-Chelmsford reforms, the Council of State was in existence as an Upper Chamber to the then Central Legislative Assembly and continued in a more flexible form under the Government of India Act, 1935. The British, though pressed by continued approach for a thorough reformation into the very concepts of parliamentary democracy, did concede the relevance of a second chamber in the Indian polity. It is on record that without a second chamber, the parliamentary system would not efficiently mirror the aims and aspirations of the people at large. The Mother of Parliaments as is well known has two Houses in Westminster, the Upper House being called the House of Lords and the Lower House, the House of

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Commons. The subtlety in these words would not throw any doubts at all; because, the House of Lords composed of noblemen was expected to act as a check and a balance to the statutory laws drawn up by the total will of the popular representatives. The aristocracy of the British Isles wanted to be heard to make democracy meaningful. In the governance of a far-flung empire, they wanted to provide such a second chamber to the Indians as a golden mean for their persistent and challenging demands for *Purna Swaraj*. That is the reason why the British did favour a second chamber in the Indian parliamentary life in the pre-independence era. The struggle to get free from the British clutches, and the historic movement launched by Mahatma Gandhi forced the British colonialists to concede parliamentary concessions in driblets. It was indeed a long and weary path from the Montagu-Chelmsford reforms to the days when Lord Simon headed a Constitutional Reforms Committee and the culmination of the Government of India Act, 1935. Side by side with a relentless non-violent struggle to achieve *Purna Swaraj*, the Indian National Congress entered the arena of parliamentary life and impressed on the British imperialists that the intelligence of the Indians was in no way inferior to that of the British in running the affairs of the country.

THE OLD SECOND CHAMBER

The old Second Chamber called the Council of States continued to function as an Upper House to the Central Legislative Assembly with all the elements of a good parliamentary life. The composition of the Chamber and the spirit of the representative capacity gave the Chamber a shape and form which glittered in the history of parliamentary life of those days. The election to this House was from a limited franchise, which sent men of letters, jurists, educationists and men of the highest calibre. The parliamentary records of those days reflect the debating propensities of the members and the active part they played in indirectly demanding freedom to the Indian people. Great patriots like N. Gopalaswami Ayyangar and others added lustre to the lively debates.

THE SECOND CHAMBER AFTER 1947

When the British left the country, the Indian leaders embarked on the stupendoustask of framing a Constitution for India. The Constituent Assembly gave careful thought to the concept and relevance of the second chambers and framed a picture which projected the desirability to continue the Upper House as was in vogue in the Government of India Act, 1935. By wisdom and sanity of thought, the leading figures who sat in the Constituent Assembly did not falter one step to achieve what was needed for the Indian parliamentary system. When the Indian Constitution was adopted, the founding fathers created articles 79, 80 and 83 to give the people

a Second Chamber called the Council of States better known as the Rajya Sabha It was stipulated that not more than 238 representatives from States should constitute the Rajya Sabha, excluding the twelve to be nominated by the President of India. Under article 83 it was also stipulated that the Council of States (Rajya Sabha) shall not be subjected to dissolution but, as nearly as possible, one-third of the members shall retire every second year. The Vice-President of India was made the *ex-officio* Chairman of the Rajya Sabha, similar to the pattern in U.S.A. The nominated element in the Rajya Sabha had to be drawn from men of letters, science, art and social service. This was the spirit in which the Upper House was created under the constitutional provisions and the House has been functioning effectively since then.

THE ACCEPTED PROCESS

When we take stock of legislative process in India, we get an insight into the operational equilibrium and the dynamics of a constitutional system. Legislation in modern time has undergone a change where the complexions and textures have become different. The sum and substance of modern legislation is to subject all the laws to a measure of absolute scrutiny and to obtain a true impact of public exposition, analysis, opinion and consultation. If one takes a look into the legislative process in India, the sole initiative of any legislation lies in the hands of the Executive and the Legislature analyses the texture and complexion of each piece of legislation and then approves the same.

EXPLORATION OF THE ROLE

After 25 years of legislative process, a time has come to find out the possibility of enlarging the usefulness of the Rajya Sabha in the process of legislation and its supervisory system. The members of the Rajya Sabha are called Elders and in this nomenclature they have been given a place of pride to focus attention on essential possibilities of checks and balances. It is also believed that the Upper House need not occupy the role of a repetitive chamber and go on to re-enact the functions performed by the Lower House. No doubt the Lower House that is the House of the People or the Lok Sabha is the prime forum of India's political ideas, the Upper House was never thought of as a repeat chamber to the Lok Sabha. The Rajya Sabha is the repository of the collective wisdom of the nation's intelligents and as such far superior to aid and advise the legislative process of the other House. The federal principle is the concept of the Second Chamber. The idea behind a bicameral legislature is to act as a revising and reviewing chamber. In other words the second chamber has perforce to apply brakes and corrections to any piece of legislation. But in the day-to-day working of the Rajya Sabha, it is seen

that the House not only functions as a revising chamber but brings forth original legislation and then sends it to the Lower House for approval. The Upper House is complimentary to the Lok Sabha.

From my experience of the last five years, I may at once point out that the mode and method of electing the members under the proportional representation system has to be changed into a new one. I would go so far as to say that the Elders should be elected on a limited franchise direct from the people. This would give an added shape to the representative character as was in vogue prior to Independence. The question hour in the Rajya Sabha may be given up and the time devoted to other specialised business. The very idea of a bicameral system is to function as a check to the plethora of delegated and subordinate legislation. The Rajya Sabha should devote more time to scrutinise in depth and detail the delegated and subordinate legislation and certain other classes of similar business should also be brought before it for careful scrutiny. In the constitutional process of India, certain amount of control on the administration is essential and the supervisory role has to be vested in the Rajya Sabha to strengthen the base of our parliamentary control. Modern exigencies require the alternative process of an Upper Chamber to go in depth and revise all the legislative process, unmindful of the party pressures. The impact of our Elders in looking at every legislative process, with care and caution, controls the exessive zeal of the Executive. In this sphere the role of the Rajya Sabha has to be revised in conformity with the best traditions of the federal system. The very idea of a second chamber is to project a constitutional vista where the combined wisdom of the Nation's Elders comes into play and enables the governance of the country in a spirit of dedicated service. In my view a thorough revision of the structure and pattern of the Second Chamber is necessary, to make the Upper House a citadel of parliamentary system and the shelter of the wise in our society to work steadfastly to achieve the highest and the noblest in parliamentary life. India is not wanting in wise people whose intelligence, integrity and collective maturity of thought are most needed to make the Upper House really a forum for the Elders who constitute the very core of our heritage. I share these thoughts with many of my parliamentary colleagues on the auspicious occasion of the Silver Jubilee of the Rajya Sabha.

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The Concept and the Relevance of Second Chambers in Parliamentary Democracy, Federal Polity and Developing Societies

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Historically, the modern bicameral system has its origin in the beginnings of constitutional government in the 17th century in England and to the later 18th century on the continent of Europe. The English Parliament became bicameral in recognition of the distinction between the nobility and clergy of the one part and the common people of the other. When the British colonies were established in America, the colonial assemblies were likewise bicameral, because there were two interests to be represented—the mother country, by the Governor in Council and the colonists, by their chosen deputies. Upon gaining their independence, the colonists framed for themselves a Constitution embodying the bicameral system.

With the extension of constitutional government throughout the world, most countries set up bicameral legislatures on the English or the United States models, with large first chambers chosen by popular vote and smaller second chambers whose members were elected on a restricted or derivative franchise or contained nominated or hereditary elements or direct representatives of certain interests or geographical divisions of the nation.

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Theoretically, this dualism in the bicameral system is justified as an application of checks and balances, so exercises a supervisory function. Various devices have been adopted for securing an issue from possible deadlock between the two Houses of a Legislature, for example, Joint Sessions and the limitation of the delaying action of an Upper House to a given period.

In a bicameral legislative system, power is shared by two more or less coordinate legislative bodies. The two Houses may or may not be of equal authority. The power of initiating legislation usually belongs to both chambers but may, as in certain countries, be restricted by confining the right of bringing forward financial measures to the Lower House.

This century has been witnessing a reaction against the bicameral system particularly in developed and established governments. Sweden has recently abolished the age-old Upper House and adopted the unicameral system. Unicameral councils or Commissions have come to predominate the cities of the United States and have been credited with marked improvements in the quality of municipal government. During the second decade of this century widespread dissatisfaction with State Legislatures led to numerous proposals for a single-Chamber system. Even in Great Britain, where the modern bicameral system originated, there has recently been occasional dissatisfaction with the continuance of the House of Lords. But tradition dies hard particularly in a country like Great Britain and the bicameral system still remains, by and large, the prevalent practice throughout the world.

Great Britain is the only country which still retains a hereditary Upper House, the House of Lords, though even in this case its hereditary character has been modified by the creation of life peerages. The hereditary element in the Parliaments of Central Europe was swept away by World War I.

In unitary governments based on parliamentary democracy, or in the governments of units forming a federation, the bicameral system is hardly justifiable, unless, of course, the conditions prevailing in any particular country or in one or more units of a federation necessitates and the people concerned desire such a system. The main argument in support of the system to the effect that it avoids hasty or harsh legislation is a weak one. In a parliamentary democracy the members of the Lower House are the direct representatives of the people; and the Lower House has generally in-built procedural safeguards for the avoidance of hasty legislation, e.g., the several Committees of the House and the requirement of the consideration of a Bill by the House at more than one stage. In any event, few legislation can be hasty inasmuch as the law is always behind the times in every country, and if any legislation be hasty, it will, in the long run, be rejected by the people in a parliamentary democracy.

The criticism against the bicameral system does not, however, hold good in respect of federal governments, whether or not such governments are based on parliamentary democracy, and also, perhaps, in respect of some developing countries, irrespective of the question whether the governments of such countries are unitary or of the federal pattern.

A federal government is the government of a federal community. Such a community is characterised by a territorially diversified pattern of foci of attention, objectives, values, interests and beliefs that calls for two levels of government, one to deal with the common, the other with the territorially diverse and differentiated foci of attention. Of course, every federal government is likely to be different from every other, particularly because of the variety of possible origins. But whereas the Lower House of the Legislature of a federal government represents the country as a whole, the Upper House is considered necessary to safeguard the interest of the federating units.

Many developing countries were, until recently, under the yoke of imperialism and some developing countries have been or still are in the grip of feudalism or absolutism or both for far too long. The result is that cultural, linguistic and other differences have been perpetuated in many a developing country. Thus parliamentary democracy in such a country, in order to succeed, has necessarily to create a mechanism whereby these differences can be adequately expressed, not with the object of maintaining these differences but for the purpose of harmonising the different ways of life to promote the unity and integrity of the country. In a parliamentary democracy this can be done only by the bicameral system as the Lower House is composed of members elected by the country as a whole.

Although U.S.A. has opted for the Presidential form of government and not parliamentary democracy, the origin of modern federalism is in the American Constitution. American federalism provided the model. Other countries which later adopted the federal principle in their Constitutions deviated from the model in accordance with the requirements and aspirations of their own peoples. Australia and Canada provide two outstanding examples of working federalism. Their institutional set-up is interesting in terms of the relation of federalism to parliamentarism; for they effectively combine the cabinet system of parliamentary government, on both the federal and the local level, with a functioning federal system. Canadian federalism is reinforced by the powerful sense of local differentiation and autonomy in the French-speaking part of Canada, in both Canada and Australia the continental dimensions of their territory make a territorial distribution of power natural. There are other examples of experimentation with various federal forms of government elsewhere in the Commonwealth.

We, in India, are a developing society. We have also evolved a diversified federal system of our own that provides the basis for solving an extremely complex problem of how to organise an effective parliamentary system of government at the federal as well as at the State levels for our richly differentiated people. Ours is the most complex federal system ever devised. Some would deny its true federal character because of the broad powers granted to the Central Government. But the weight of local traditions—linguistic, religious, cultural—is so great and the need for the integration of the country is so vital that the federal units tend to gain rather than lose in strength. The system is still evolving and the end is not in sight, but it is possible to argue that without the rather unique techniques of federalism we have

adopted, parliamentary democracy or any other form of constitutional government and, above all, the integrity of independent India could not have been achieved.

The main feature of the Upper Houses of four established and well-known federal countries, namely, the United States of America, the Swiss Confederation, the Dominion of Canada and the Commonwealth of Australia, whose Constitutions were very much before the Constituent Assembly which framed our Constitution, may now be compared with the principal feature of our Upper House of Parliament, namely, the Council of States, better known as the Rajya Sabha. The Constitutions of all these four countries, except the United States, embody the principle of parliamentary democracy.

The Legislature of the United States, namely, the Congress, consists of the Senate, the Upper House, and the House of Representatives, the Lower House. The Senate is composed of two Senators for each State and although an amendment of the Constitution may increase this number, the increased representation has to be the same for all the States unless a particular State, which is unlikely, should consent to a lower representation. Formerly, the members of the Senate were required to be elected by the State Legislatures. Now, however, they are elected by the people.

Switzerland is governed by the Constitution of 1948 which is a compromise reflecting the growth of new ideas with an attempt to retain the ancient practices. There is a legislature composed of two Houses, the Upper House being the Council of States and the Lower House the National Council. After the manner of the United States, the Council of States represents the federating units, namely, the Cantons. Each canton appoints two deputies to the Council of States and in divided Cantons each half-Canton elects one deputy to the Council.

The two Houses of the Canadian Parliament are the Senate and the House of Commons. The Upper House, namely, the Senate, consists of a number of members appointed by the Governor-General in the name of the Sovereign. Under the Constitution, Canada is deemed to consist of three main Divisions and each Division is equally represented in the Senate.

The Upper House of the Australian Parliament is the Senate and the Lower House, the House of Representatives. The Senate is composed of different numbers of Senators for different States; but the Original States, that is, the States which were parts of the Commonwealth of Australia at its establishment, have equal representation in the Senate.

The Indian Constitution, unlike the American, Swiss, Canadian and Australian Constitutions, has not followed the principle of equal representation of federal units in the Upper House of the Federal Legislature. This deviation was due mainly to the efforts of the members of the Constituent Assembly to bring about the unity and integrity of India by removing the political division between British Indian and the Princely States and harmonising the differences in language and culture between one Province and another and the differences in the way of life between the majority and minority communities of the country. Due to historical, social and

economic reasons the diverse peoples of India differ greatly from the peoples of the four federal countries with which a comparison is being made. The members of the Constituent Assembly themselves represented these diverse groups in the country. The makers of the Constitution gave us an organic document on November 26, 1949. In spite of our diversities, we in India can and do call ourselves a nation. The present and future generations of India will remain deeply grateful for their vision.

Article 79 of the Constitution providing for the Constitution of Parliament with a bicameral system is the same as article 66 of the Draft Constitution. During the debates in the Constituent Assembly, Shri Lokanath Misra moved an amendment to the draft article to read "There shall be a Parliament for the Union which shall consist of the President and the House of the People." In moving his amendment he stated that "it is now admitted almost on all hands that second chambers are out of date." In support of the draft article Shri M. Ananthasayanam Ayyangar stated as follows :

> "Sir, it is common knowledge that in this country so far as we are concerned, there is so much enthusiasm and if for no other reasons, we must find opportunity for various people to take part in politics. Therefore, it is necessary that we should have another House where the genius of the people may have full play. The second reason is that whatever hasty legislation is passed by the Lower House may be checkmated by the go-slow movement of the Upper House. The third reason is that the Upper House is a permanent body, while the Lower House is not. These are some of the reasons why, constituted as we are at present, it is necessary in the interests of the progress of this country we should have a second House."

Dr. B. R. Ambedkar brushed aside all amendments to the draft article and stated that he did not think that any reply was called for.

The three reasons advanced by Shri Ayyangar in support of an Upper House of Parliament are hardly convincing. Mere political enthusiasm of a large number of people does not justify the creation of more than one legislative body. Regarding the necessity of an Upper House for the avoidance of hasty legislation, Shri Misra's criticism was quite correct. And the creation of a permanent or semi-permanent legislative body goes against the very concept of parliamentary democracy.

Yet, there was complete justification for the adoption of the bicameral system at the Centre. The Indian Constitution has its own federal pattern based on parliamentary democracy. In such a democracy, there is always more than one political party. Each political party attempts to mobilise public opinion in its favour by its own programme in order to achieve governmental power. In a federal government, whatever its pattern of federalism may be, one party may have the majority in the Lower House of the Federal Legislature and so form the government of the country, whereas another party may have the majority in the Lower

House of federal unit and form the government of that unit. The Constituent Assembly wisely rejected proportional representation in direct elections to the Lower Houses of Parliament and the State Legislatures. Proportional representation is not generally conducive to a stable government and in a vast country like India with its large population and several political parties, proportional representation would have been a calamity. At the same time, the makers of the Constitution wisely and democratically emphasised our federal pattern by providing in clause (4) of article 80 for proportional representation of each State in the Rajya Sabha by the elected members of the Legislative Assembly of the State, so that the political parties having their own members in the Legislative Assembly of a State may, through such members, adequately represent themselves in the Rajya Sabha. Thus clause (4) of article 80 provides sufficient justification for the creation and the existence of the Rajya Sabha. This provision of the Constitution enables the federal units to represent themselves in the Rajya Sabha through their own Legislatures by means of proportional representation and so take part in the governmental process at the national level.

There can be no doubt that since its inception the Rajya Sabha has more than justified itself. By and large, its performance in the legislative process and the formulation of policies has been extremely useful in the governance of the country and it has worked in a spirit of cooperation, and not confrontation, with the Lok Sabha. Thus the Rajya Sabha could, perhaps, provide a model for many a developing country with a unitary or federal pattern of government, just as the American bicameral system based on equal representation of the federal units in the Upper House provided a model for the federations of Canada and Australia and the Swiss Confederation.

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The Need and Role of Second Chambers in Parliamentary Democracy

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The necessity for a second chamber in a democracy has been a subject matter of endless discussion in the past. Arguments galore have been advanced for and against the need for Upper Houses almost since the time representative institutions were accepted as instruments of peoples' will in a democracy. So much has been spoken and written on the subject and it will certainly be a futile exercise to recapitulate even in nutshell—the several points of views. Political writers have taken extreme postures; many of them have condemned in outspoken terms the point of view that an Upper Chamber has a role to play in a democratic set-up; some have put up meek defence of its need. The kind of obstinate opposition to the second chamber arises from a misconception of what it ought to be and what role it could play in a true democracy. To those who blindly oppose the existence of a second chamber, and they are many, under any circumstance, we can furnish no answer since we cannot argue with unreceptive and fanatical minds. But to those who criticise the composition or functioning of upper chambers, we may answer.

Before I dwell on the pros and cons of the subject, I may point out that almost all nations that swear by democracy have in fact established second chambers.

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Therefore, to discuss the question at this stage is merely an academic exercise. U.K., U.S.A , Australia, Canada, U.S.S.R., Brazil, Belgium, Afghanistan, Egypt, Burma, Japan, Sri Lanka, South Africa and a number of other countries with diverse concepts of democratic and political institutions have accepted without demur the existence of second chambers. Yet, political commentators are not wanting who denounce the second chamber because, as I said earlier, they are labouring under certain misconceptions.

The foremost impression that lingers in the minds of some people is that a second chamber is a relic of the past, that it is essentially conservative and reactionary in outlook and therefore it would hinder the path of progress. This line of thinking represents a total misreading of the role that a second chamber can play. Such a reasoning would hold good, if the Upper Houses are composed of people representing on a hereditary basis only one class of society as the House of Lords in U.K., or if their members are appointed for life as in Canada. Most of the second chambers in the world assume a different character in the sense that membership of these Houses is mostly elective, with some minor reservations to provide representation to socially acceptable classes of people, say, the scientists or litterateurs or businessmen, who have no opportunity to enter the portals of a law-making or policy-making body at the higher level through the elective processes. To characterise a body filled up by some sort of election—direct or indirect— as representing conservative or vested interest, is to be blind to facts. Then, what would be the answer of such critics to the fact that some Lower Houses in the world today are dominated by conservative elements ? What if people of a country would like to be ruled by conservative no-changers as against the political swash-bucklers, who in the name of this or that dogma, would lead the nation to a path of ruin ? The same people of a mature nation would naturally choose as leaders those who can change with the changing times and who can effect a transformation without hurting the basic concepts and ideals for which the nation stands, at the same time providing a clean and stable administration. Therefore the fact remains that an Upper House alone need not be reactionary or conservative—even the Lower House can be so, depending upon the calibre and type of leadership and the wishes of the nation. It is, therefore, true that the Upper House reflects the national mood to the same extent as the Lower House since the leadership that provides the Government is common to both Houses. For example, the people of Britain have been alternating between the Conservative and Labour Governments. The recent elections in Japan indicate a swing away from the conservatives who held sway for more than two decades. Therefore, whether the majority in a legislature is comprised of this or that thought of political philosophy depends upon the whims of the people at large and the legislature only reflects their aspirations.

In several democratic countries, people get tired of the same political party ruling over the country over a number of years. They vote for a change, not for the sake of a change by itself, but possibly because any political party sitting in seat of power over years at end would entrench itself deeply and

get corrupted in the long run. Therefore, the moods of people are difficult to assess at all times and every political party runs a risk during elections. It would be presumptuous for any party, be it conservative or progressive, to believe that it has the monopoly of representing the people. The complexion of a legislature changes with the changing times and the second chamber alone cannot be accused of representing this or that philosophy.

Another pet criticism of a second chamber is that it is a relic of the past. These critics seem to be obsessed with the composition, the tenure and the role of the House of Lords in England. Try as you may, the fallacious thinking persists. The House of Lords is a unique institution devised by the British and it has no parallel in other nascent democracies, not at least in those which have been released from the tentacles of imperialism in this century. The Upper Houses in those democracies are composed of elected members mostly, though the extent and nature of elections may vary from country to country. The membership is neither perpetual nor for life. In India we have adopted a system of election to the Rajya Sabha suited to our genius. This system has served well and has by and large satisfied all shades of political opinion. The second chambers today are totally different from those of history which were used as instruments to protect and preserve the vested interests of the upper echelons of society, as against the larger interests of the poor and working classes. Such prejudicial notions against the Upper Houses are totally irrelevant today, if we take into account the elective element which necessarily characterises the second chambers in the world today. Even the House of Lords has ceased to be what it was, since it has lost many of its powers as sentinels of power safeguarding the ruling elite of the country.

Any nation which adopts federalism as an element of national polity, considers it desirable to set up a second chamber at the national level to afford protection to the weaker constituents in the country and also to provide a representative character to all the regions constituting the federation. In U.S.A., for example, the Lower House is almost wholly dominated by representatives of the populous States whereas the sparsely populated agricultural States, particularly of the South, find their voices stifled. To render the scales even, every State in the United States, irrespective of population, sends two representatives directly to the Senate. The second chambers in most countries have some such balancing influence and have a definite role to play in the process of law-making or control of the executive. Thus wholesale condemnation of the second chamber arises from ignorance.

It is also not true to say that second chambers may checkmate progressive measures initiated by a dynamic political party in control of a Lower House. Such a proposition is ridiculous since in most countries the powers of the second chamber are clipped. It may delay legislative action for sometime depending upon its constitutional authority to differ with the Lower House. Even this is not possible in the context of the fact that the political authority enjoying the confidence of the Lower House would also have a majority in the Upper House. Of course, there have been rare exceptions particularly in our country. After the 1971 General Elections,

the Congress Party was in a minority in the Rajya Sabha as against the combined strength of the Opposition, but even then no insurmountable deadlock was created so as to bring the administration to a grinding halt. In the Karnataka Legislative Council, for instance, the Opposition was numerically stronger than the Ruling Party from 1972 to 1976. Even so, except for one or two Bills, legislative activity went on smoothly and Government work proceeded apace unhampered.

It may then be argued that second chambers are superfluous at least in the States. Our Constitution provides for representation in the Upper House for certain special interests which would not normally find expression in a chamber filled by representatives directly elected on popular franchise. We are all aware that electioneering in modern times is a costly and complex affair and prudent and diligent citizens, however eminently qualified, shudder to enter into the political arena with a view to entering into legislatures. Till the proclamation of Emergency, politics in our country was viciously contaminated with persons who placed self over service, who jumped criss-cross political fences to suit the convenience of changing times and those who reduced the entire political system to a comic opera. That being so, how could any enlightened citizen, with self-respect, enter into the fray of elections? To those who are in fear of the highly competitive character of politics, election to the Upper Houses provides an answer. Of course, it would be idle to expect the Upper House to shun politics altogether and assume a non-political character, but it would have a role to play only if the political element or content is kept at the minimum, such a minimum as would not expose it to condemnation as a replica or rubber-stamp of the other House. It is true that elections to various constituencies of the Upper House, like the teachers, graduates or local authorities, are mostly fought on political platform but those chosen or elected should endeavour to play down their political bias to an extent as would justify their being euphemistically called as 'House of Elders'. It may be true that the nature and character of the special interests enumerated in the Constitution for election to the Legislative Council deserve some re-looking at the highest level. If political parties also would sponsor to the Upper Houses men with mature ability and wisdom, with experience and dedication, though such persons may not be strongly wedded to a political philosophy, it would mend matters. This argument should only lead us to the conclusion that the principles adopted in filling up second chambers need re-thinking, but the principle of having an Upper House is not bad in itself.

When I was addressing a group of students studying advanced political science, I was asked whether an Upper House would not be a luxury in a poor country. I told them that democratic institutions cost a good deal of money by themselves but compared to the financial output in the budgets, this sector of expenditure is negligible considering the beneficial returns they would secure to the nation. I told them that if the alternative to democracy is dictatorship, then the amounts spent towards maintaining the democratic apparatus would be well-spent, because as Prime Minister Indira Gandhi had rightly said, it is only democracy that can preserve the integrity of the country and provide its people a voice in the administration. Again, compared

to the expenditure incurred on the upkeep of the lower chambers, the cost of running the second chambers is small and should not strain unduly the national coffers. I thought the students were satisfied with the answer.

What I have said above represents certain stray thoughts on the subject. Of course, as the Presiding Officer of an Upper House, I am professionally bound to argue in its defence. Even then, I feel that what I have stated merits consideration.

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The Concept and Relevance of Second Chambers : Parliament and Democracy

VIRENDRA SWARUP*

Any discussion on second chambers presupposes the need and existence of a deliberative body with substantive powers to lay down the policies and laws which shall be supreme in the governance of a country. A parliament either without plenary powers to legislate or to look into the question of implementation of those laws is a pseudo parliament and whether it should consist of one, two or even more chambers would not matter, for the real power in such cases vests in some body or authority other than the parliament and the second or third chambers would be as useless as the first one. Thus a discussion of the need for second chambers can be fruitful in the context of a strong parliament, howsoever it may be composed.

What is Democracy? : It is difficult to define "democracy". According to Carl Becker it is "a kind of conceptual Gladstonian bag which with a little manipulation can be made to accommodate almost any collection of social facts we may wish to carry about in it." Still, certain essential attributes which have been accepted on all hands stand out as parts of democracies, present and the past.

Origin of Democracy : The word "democracy" owes its origin to the Greek words '*demos*' and '*kratia*' meaning respectively 'the people' and 'power' and

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together meaning a government in which the people wield the ultimate power. It is a different matter that the Greek concept of 'the people' was a very narrow one from which the slaves, women, the disabled and those living outside the borders of the city-state were excluded. The result was that only about one-third of the adult population constituted 'the people' in the Greek democracies. Another feature of that democracy was that the people exercised the governmental power directly in periodical meetings which were called the *Ekklesia* (or Ecclesia) or the general assemblies

Representative Democracy : However, with the territorial expansion of the city-states, direct democracy became more and more difficult as the Romans, who started with copying the Greek model, found to their cost. Representative democracy did not replace direct democracy forthwith. A long period of oligarchic, monarchical or aristocratic governments intervened and the places of the *Ekklesias* were taken by a select body of rulers' advisers who had either hereditary, religious or heroic distinctions. These bodies, called the Estates, Parliaments, Cortes, or Diets, were the sole representative bodies whose function was advisory rather than directory. Nor was there any division among their functions or even in the governmental functions which now form an essential element of democracy.

Representation of the People : Gradually the people asserted their right to have a say in the government and the more powerful of them were given a right to choose their representatives who could, along with the former bodies of advisers, also express their opinions about the government of the country in a limited sphere. In course of time these representative bodies asserted and wrested larger and larger powers with the result that they got more powerful as also resentful of sharing power with the earlier bodies in the government of the State Thus, ultimate power of legislation and policy-making with the representatives of the people became an essential part of democracy.

Separation of Powers : But it was realised that concentration of all power in the hands of any one body of persons, howsoever representative it may be of the people, is likely to lead to tyranny and despotism. The actions of the Rump Parliament in England during and after the Civil War, the Estates in France, the Cortes of Spain and the various types of Diets in the Holy Roman and the German Roman Empire proved this amply. The high-handedness of the House of Commons during the reign of George III towards the American colonies made such an impact on the American colonists that they made for themselves a constitution which contains the most rigid, but not quite separable, separation of powers. In its operative sense the doctrine of Separation of Powers means that the legislative, administrative and the judicial functions of the State should be separately performed by functionaries of the State and they should be comparatively, if not wholly, free from the control of each other.

Personal Liberties : Another off-shoot of the fear of concentration of power has made the preservation of the civil liberties of the people as a part of the democratic principle. Equality rather than status, government of laws rather than of men and

respect for human dignity are some of the other attributes of democracy which have been acclaimed from time to time. The Funeral Oration of Pericles, the English Agreement of the People, the French Declaration of the Rights of Man and Citizen, the American Declaration of Independence and Lincoln's Gettysburg Address, which are held to be the historical statements of what democracy is or ought to be, all point to the essentiality of these features.

Parliamentary Democracy : During the past there have been many forms of democracies with many variations of division of powers or functions among the organs of the State. But one oldest form of democracy is what is labelled as parliamentary type, the essential feature of which is a Parliament supreme in the field of law and policy-making, including finance, to which the executive is responsible for all its actions. It, therefore, has the power to make any law and dismiss the political executive if it does not enjoy its confidence. Under this system the political executive consists of the members of the Parliament and is required to answer for its actions before it. A modified form of this system is one in which Parliament, instead of being unfettered in its law-making powers, is subject to certain restrictions placed on such power by the supreme law of the land, the Constitution. But the principle is the same, namely, that of a political executive which is a part of the Parliament—Bagehot called the Cabinet as a Committee of Parliament—and holds office during its confidence. But it may be noted that the principle of separation of powers has its role even in this system, for the political executive has the power to dismiss or dissolve the Parliament and ask it to seek a fresh mandate from the people.

From the point of view of the relevance of second chambers in parliamentary democracy, the most important aspect of it is that in such a polity the responsibility of the Parliament for the achievements and failures of the government is complete. Where powers are divided between Parliament and a directly elected executive not responsible to the representative body, as in U.S.A. and France, the Parliament can take shelter behind the fact that either laws passed by it were vetoed by the Chief Executive or not implemented in the way they were meant to be implemented and the Parliament was helpless. But in a parliamentary democracy where the making as also the execution of laws and policies is directly under the control of the Parliament, such a plea cannot be taken. Therefore, the Parliament has to be not only efficient but also vigilant and has to keep a constant eye on the minutest details of legislation as well as administration.

Composition of Representative Bodies : A widest based representative body which could reflect the views and aspirations of the people in general has in modern times become a must for any kind of democracy. But there are many different opinions about the size, the term of office, the method to be followed in choosing its members, the categories of persons who should be entitled to have a say in composing it and the like. For instance, it would be difficult to find agreement about the ideal size of such a body. A membership of 500 may be considered by some as too large for a real deliberative body while others may think it to be too

small in relation to the total population of a country on the ground that a member cannot effectively represent more than an optimum number of qualified voters. The same is true about the electoral system according to which such a body is elected. There are more than a dozen such systems prevalent in democracies of the world and each one is claimed to be the most appropriate by its followers, if not from the point of view of its efficacy in giving better representation to the people, at least from the point of view of its aptness in a given political environment. On the question of its term of office also there are various views. In U.S.A. the term is generally two years for the federal and the State popular chambers. Terms of 4 or 5 years are general. A connected question is whether such bodies should in all cases run for their full term or should be liable to be dissolved at the will of themselves, wholly or partly, or at the will of some other organs of the State. With all these controversies about the first chambers it is difficult to say that they are either fully representative of the people or ideal instruments for expressing the will or the consent of the people Still as such chambers are the first essential of a democracy, they are taken for granted as representing the people.

Text book controversy : But a real controversy exists about the Parliament as to whether it should consist of only a representative body, howsoever, composed, or it should consist of another chamber and if there should be such a chamber, what should be its composition, functions and powers. An extreme negative view was expressed by Abbe Seiyes who thought that if the second chamber agreed with the first, it was useless and, if it disagreed, it was mischievous. Benjamin Franklin compared a two-chamber Parliament with a two headed snake which died of thirst while going in quest of water because when it got entangled in a twig the two heads pulled in opposite directions and it could not go round the twig. Other stock arguments against second chambers are that they obstruct or delay legislation, are costly appendages, represent vested interests or reactionary elements and are irrelevant in modern democracies in which the sole power should rest with the representatives of the people. On the other hand, those in favour of second chambers say that they revise the decisions of the representative body, provide expert opinion on technical points, share the burdens of the representative body, save their time by concurrently deliberating over the affairs of the State and enable the Parliament to devote time for the consideration of matters for which the representative body has no time to devote. Riker gives some new arguments for and against second chambers. In their favour he says that while oratory or sentimental upsurge may sway one chamber it cannot do so in the second one. Again, he says, that large representative bodies develop the psychology of the mob and are mostly carried away by the machinations and manipulations of a few seasoned campaigners. This is difficult to do in smaller and really deliberative bodies which have ample time to consider the pros and cons of every step. Against the second chambers he says that it divides responsibility between two bodies enabling each to put the blame of defective legislation on the other.

It may, however, be remembered that all these arguments are general and

abstract without any reference to the composition, powers and procedures of second chambers of which there is a large variety in existence.

Historical Tradition : One way of looking at the relevance of second chambers in democracies may be to ascertain whether during the course of development of democracy, second chambers have been incompatible with it. If not, why, in theory, it should be so today.

Starting from the times when the word democracy and a system in accordance with it came into existence, we find that in the Greek city-states the *Ekklesia* had a body of experienced and elderly people, called the Boule, to revise and also to modify its decisions. In course of time as the interest of the eligible citizens waned in the affairs of the states, the Boule became more and more energetic. In the same way during the Roman times, who copied the Greek city assemblies, the Senate, which was composed of the elderly and experienced citizens, became the more powerful body and is now considered the wisest decision-making and law-giving body that ever existed. During the middle ages, the only law-making bodies that existed were composed of people with property which was considered as giving them a stake in the good government of the country or of people who had earned distinction in various fields of life. Their role in keeping in check the despotic powers of the rulers is well known. For instance, it was the hereditary Parliament which had forced King John to sign the Magna Carta at Runnymede in 1215 and forced Henry III and Edward I later to confirm it in its original form. Again, in England the Parliament was single-chambered only during the short period of 11 years from 1649-1660. What this Parliament did and what fate it met need not concern us. But what is more relevant is that when in 1656 a new single-chambered Parliament met after fresh elections, in its petition to Cromwell it requested him to become the King of England and constitute a new second chamber The first request was turned down by Cromwell and the second chamber could not be constituted as the House continued endlessly to discuss its composition.

In France it was not till the French Revolution that any progress towards democracy was made, for the French States-General had not been called for about 150 years before it. But out of the 18 Constitutions that France has made since 1791 only four did not provide for a second chamber. Of these, the Constitution of 1791 operated only for one year, that of 1792 could not be brought into operation, that of 1793, which substituted for the one chamber legislature a Committee of Safety, called the Terror, lasted only for two years and that of 1848 only for three years. Thus out of about 18 years of French democracy (assuming that all these Constitutions were democratic and were based on the principle of equality, liberty and fraternity) it has been without a second chamber only for about 6 years.

To take just one more example of Germany, which till 1847 had passed through a very unstable period of territorial as well as political changes, the first attempt there to unite Germany into a constitutionally stable State was made on March 31, 1848, when a Preliminary Parliament or *Vorparlament* consisting of all the Deputies from the various regional Diets, was convened in Frankfurt. It ordered

a general election by direct suffrage to form a National Assembly to frame a Constitution. Before this period there used to be a Bundestag or a Federal Diet consisting of the various princes who had joined the various confederations or their representatives. Article XIII of the Constitution of the latest of these confederations had expressly provided that "The whole of State power must remain concentrated in the hands of the monarch whose sovereignty cannot be infringed upon by a Constitution." However, the National Assembly of 1848 recommended a Constitution providing for a Regent (Reichsverweser) to be elected by the Lower House of the proposed Parliament (Reichstag) which was to consist of the Lower House, called the House of Representatives and a Senate, called the House of States. This Constitution could not remain in operation for long due to internal disturbances and the revolt of the army against democracy. But the next Constitution of the North German Confederation of 1867, of the German Reich of 1871, of the Weimar Republic of 1919 and that of Bonn of 1949 have all had bicameral legislatures.

It may also be noted in passing that on December 15, 1976, Spain has also by a 94% vote approved in a Referendum a new Constitution for the country based on a bicameral legislature. This is significant in view of the fact that the country is going to have a democratic constitution after about 40 years of dictatorship and this proposal has been mooted and accepted after a careful examination of the constitutions of all modern democracies.

FEDERALISM AND SECOND CHAMBERS

Meantime a new system of government, called Federal, had been developed in which there was a vertical division of powers among the national and various regional governments. There had been loose confederations of States of various kinds even in the Greek times for specific purposes and were called by different names of leagues, compacts and the like. Even in the unitary States, local governments existed with almost autonomous powers of administration, taxation and rule-making. But these two varieties of political arrangements were in principle very different as in the former types the national governments had no plenary powers of making laws for the whole nation and in the latter the local governments had no such powers for local purposes but were subject to either charters granted by the kings or laws made by the national legislatures. The federal types of governments, on the other hand, consist of national and regional governments with a division between them of governmental powers with or without express or implied concurrent powers in certain fields.

These kinds of governments generally came into existence for purposes of unifying certain hitherto regional governments to form a strong unit for purposes of withstanding external aggression and regulating economic and other activities of the

federating units. Later on such an arrangement was resorted to distribute governmental powers among regions for better management of regional affairs.

The need for having second chambers arose to meet a specific problem before such federating units. As the various regional governments were not equal in population or economic resources or development or, as in Canada, consisted of majorities of different nationalities, the weaker of them wanted some sort of safeguard against the larger States in the national legislature dominating the smaller or weaker States to their advantage. This problem arose pointedly when it was proposed to form a stronger union in the present U.S.A. in place of the weak confederation that had been created earlier. For instance, at the Philadelphia Convention the Virginia plan provided for representation in the proposed legislature according to population and the New Jersey plan stood for equal representation of the States. So much was the tenacity of the larger and smaller States on this point that at a stage the Convention was on the verge of failure. It was the genius of Sherman who saved it by suggesting a bicameral federal legislature in which the Lower House was to have representation according to numbers and the Upper House equal representation of all the States. This compromise was later followed by Canada, Switzerland and Australia when they agreed to a federal arrangement. The second chamber, therefore, was entrusted with a new function of protecting the interests of the smaller federating units and for that purpose was given concurrent powers with the first chamber, except the powers of initiation of certain kinds of legislation. In U.S.A. only revenue measures cannot be initiated in the second chamber while in Canada and Australia no financial measure can start in them. But apart from that, the second chamber had equal powers with the first.

It may be noted here that the federal structure in India had come about not as an agreement among the constituting units but as a convenient mode of government in which the national government devolved certain powers on regional governments for the facility of regional administration. One similar but rather the weakest type of federal formation is under consideration in U.K. where separate legislatures consisting of one House only are proposed to be set-up for Scotland and Wales. It is due to this reverse process of federalism that the second chamber in India has neither equal representation of the States nor as large powers as the second chambers in federations which were formed by the process of independent colonies or governments agreeing to surrender some of their powers to a new composite government.

REGIONAL SECOND CHAMBERS

But the presence of a strong second chamber in the federal legislatures did not dispense with the need for second chambers because of the decrease of the functions of governments in the States, except in Canada. In U.S.A. even those States which had started with unicameral legislatures when they framed their constitutions after

Independence, went for bicameralism. For instance, the State of Georgia did so in 1789, Pennsylvania in 1790 and Vermont in 1836. But during the thirties of this century a wave overtook the States against second chambers and in about half the number of States attempts were made to abolish second chambers by amending their constitutions. But the attempt did not succeed except in Nebraska where the second chamber was abolished in 1934.

In Canada, as has been pointed out above, it was thought that after the formation of a Federation in 1867 there was not enough work for two Houses in the provinces where almost all the second chambers had been nominated ones. Attempts in some provinces were made for substituting a second chamber on some other pattern but because of disagreement on composition it could not be done. However, Quebec retained its second chamber till 1968 and the Prince Edward Island fused the two chambers into one by electing part of it on universal and part of it on restricted franchise.

In Australia, on the other hand, 5 out of 7 States and Territories have second chambers. The one in Queensland was abolished as late as 1922 as it is a very sparsely populated State and it was thought that enough persons of the requisite calibre were not available to man the two chambers.

In Switzerland all the Cantons (including half-Cantons) have unicameral legislatures.

Special Needs in Specific Contexts : Though second chambers have been relevant in most democracies for different reasons, there is larger need for them in particular contexts. Of course, Sir Henry Maine was of the view that any kind of a second chamber is better than none. However, one may find oneself more in agreement with the views of Bagehot who said that if they could have an ideal House of Commons (in U.K.) there would be no need of a second chambers, though even in that case a second chamber would be extremely useful, if not entirely necessary.

The philosophy behind this view of Bagehot is clear. As long as an ideal (meaning thoroughly competent and representative body) first chamber is not possible, a second chamber is a necessity. Even if an ideal first chamber is possible, a second chamber would be extremely useful. As such, in new democracies with underdeveloped economy, lack of literacy and political maturity and a number of problems of governmental regulation and control of human activities arising all at a time, a second chamber would be necessary not only because an ideal first chamber cannot be established in such conditions but also because very careful social engineering has to be done to develop the country in the right direction and at the minimum loss of time. In such societies experience in framing policies, legislating carefully and administering laws impartially and efficiently is lacking. The general political calibre of the electorate is low and a large number of citizens lack as much interest in the affairs of the State as is necessary in a democracy. In modern times the State has to touch, if not effectively control or regulate, all aspects of human activities. In some fields it has to operate, either along with or to the exclusion of the private citizens, industry and commerce. In a democracy all this has to

be done through carefully considered laws, for rule of law rather than of men, is an essential part of democracy. Any slip in the making of laws or any indifference in their proper administration can either upset the progress of the country or mean unnecessary hardship on the people. Therefore the whole governmental activity requires constant vigilance by the legislature, a task which two chambers can perform better than one if there is some kind of coordination between them and there is the least possible friction or overlapping.

It might be noted here that the work of second chambers does not consist in only considering legislation or amending it. As in the case of first chambers, the second chambers do much more work in Committees, in the House by suggesting improvements in laws in general debates or bringing to the notice of the administration shortcomings in the implementation of laws or policies or even by bringing to its notice the genuine grievances of the people.

Specific Problems : Hitherto the discussion has been confined to second chambers in general without any reference to their composition, powers and functions. In modern democracies there is not much controversy about the composition of the first chambers except for the system of election through which and the term for which they should be elected. Minor questions that are disputed are their ideal sizes, their liability to be dismissed at the will of some external authority and the like. But all are agreed that they should be elected by popular vote. Similarly there is agreement that they should have all the powers that a legislative body is entitled to in a democracy. But there is a lot of controversy about the composition, powers and functions of second chambers. It is because of this controversy that no agreed solution has been found for the reform of the House of Lords in U.K. or of the Senate in Canada. After the abolition of the nominated second chamber in New Zealand a committee was forthwith appointed to suggest the composition and powers of a second chamber to replace it. But due to divergence of opinion on the points, it could not be replaced. There is also no uniform principle running in the composition of the world's second chambers, past or present, which could be applied in evolving an ideal second chamber. We have a House of Lords with almost wholly hereditary members with a sprinkling of nominated ones without any limits on its size and a Senate in Canada which is wholly nominated. In between come second chambers partly elected and partly nominated with different kinds of franchise. In Norway the first chamber splits itself into two chambers for purposes of legislation but sits as one unit for other purposes. On the other extreme is the Senate of the United States which is directly elected (since 1913 before which it used to be elected by the State legislatures). The same difference exists between the powers of the various second chambers. If the details of the composition and functions and powers of the second chambers in modern democracies are arrayed, they provide a bewildering variety without anything in common.

Rational Approach : The reasons for the present wide differences in the composition and functions of second chambers are many, political, traditional and also ideological. The lack of any principle which correlates the functions of second

chambers with their compositions shows that even today there is no clear thinking about what should be the functions of second chambers in a given set of political and legal environment and what would be their ideal composition to enable them to perform those functions best. For this purpose it might appear to be the best approach first to consider the legitimate functions of a legislature in modern times. In parliamentary democracies in particular the functions and responsibilities of modern legislatures have increased many times over. There are fields in which the legislatures hardly perform their functions. For instance, in a parliamentary democracy it is the responsibility of the legislature to see that the laws made by them operate in the field in the same spirit in which they have been passed. They should bring about the desired change in the minimum of time. In actual practice one finds that there is no time with the legislatures to bother about the actual implementation of laws passed by them and many laws remain dead letters or, worse still, are implemented in a way as to bring about results different from those contemplated by the legislatures. This is only one instance.

If, therefore, a unicameral legislature cannot perform all the functions of a democratic legislature or cannot, because of the process through which it is composed, contain within it teams of talented persons who can discharge its multifarious duties reasonably efficiently, then a second chamber to supplement the efforts of the first chamber becomes necessary. Once it is found out what functions can be performed by a second chamber, either along with the first chamber or exclusively, to supplement the work of the legislature as a whole, it would become easier to determine what the strength or the composition of it should be. A second chamber has to be more functional rather than based on any merely ideological principles. A second chamber in a democratic polity has to justify its existence like other institutions and to enable it to do so it has to be allotted definite functions and given a composition which would enable it to discharge them with speed and efficiency.

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The Concept and Relevance of Second Chambers in Parliamentary Democracy

DEVENDRA PRATAP SINGH*

The term 'second chamber' has not been strictly defined anywhere. The expressions, 'first' and 'second' chambers are not used by all the countries in the same way, and there is scope for misunderstanding while talking about the 'second chambers'. In Britain, Canada, France and Italy, the popularly elected Houses are called the 'first' chambers and the other Houses are called the 'second' chambers. In the United States and Australia, where both the Houses are popularly elected, the House of Representatives, constituted in proportion to the population, is called the 'first' chamber and the Senate, wherein each State has equal representation regardless of its population, is called the 'second' chamber. But in some countries, like the Netherlands and Sweden, the popularly elected Houses are called the 'second' chambers, whereas the indirectly elected Houses are called the 'first' chambers.

Most of the modern legislatures of the world today have two chambers. Even the revolutionary States, like U.S.S.R., have a bicameral legislature, the Supreme Soviet being composed of a Soviet of the Union and a Soviet of Nationalities. The legislature in Norway, the 'Storting', which is elected as one body, breaks itself up

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into two parts, a 'Lagting' selected by the whole 'Storting', and an 'Odelsting' consisting of the remaining members of the 'Storting'.

The problem of the number of chambers making up a Parliament is not merely a matter of professional dispute; it actually represents the translation of basic political likes and dislikes into seemingly ordinary everyday terms. Parliament, in its broadest sense, is a collective part of the government of a country, consisting as a rule, of a large number of elected members and representing the interests of an entire population both in the Legislature and the Executive.

The Parliaments of federal states are two-tier in structure. On one side there is the nation as a complete entity; on the other are the member-states of the federation, enjoying greater or lesser degree of autonomy. This two-tier structure inevitably implies division of Parliament into two chambers, one chamber emanating from the people as a whole, and the other chamber being made up of delegates representing each of the member-states. The choice of the bicameral system is not necessarily dictated by the basic principles of State's structure. Often, it is the outcome of other equally important factors, especially in non-federal States which have opted for the system. Over a long period of time, the bicameral system has developed new and varied facets as a result of theoretical and practical rationalisation. The earliest example of the bicameral system is to be found in England, where it had its roots in a desire on the part of the King's vassals, the Lords Spiritual and Temporal, to preserve a form of representation distinct from that of the common folk.

Abbe Sieyes, the great constitutionalist of Revolutionary France, said, 'If a second chamber dissents from the first, it is mischievous; if it agrees, it is superfluous.' In spite of this, however, the adoption of a second chamber has been considered advantageous by most of the world's legislatures, not because of any theoretical arguments that can be adduced in its favour, but because its value has been recognised by long experience of the methods of parliamentary government. The experiments in France with single chamber Constitutions of 1791 and 1793 failed miserably, till, in 1795, a bicameral legislature with a Council of Ancients as a second chamber was established. After some other experiments again, the Constitution of 1814 established a bicameral legislature which became unicameral in 1848 and again bicameral in 1870, and since then bicameralism has stayed in France. The march of history has thus disowned the theory of Abbe Sieyes.

John Stuart Mill had another reason for preferring bicameral legislatures. He wrote :

> "A majority in a single assembly . . . easily becomes despotic and overweening, if released from the necessity of considering whether its acts will be concurred in by another constituted authority. The same reason which induced the Romans to have two consuls makes it desirable that there should be two chambers; that neither of them may be exposed to the corrupting influence of undivided power, even for the space of a single year."

The oldest second chamber known to history is the Roman Senate which was said to be the most consistently prudent and sagacious body that ever administered public affairs. The Roman Senate at that time was responsible not only for the expansion of the Roman Empire but also for giving to the world the Roman Law, the principles of which are even today operative as civil law in most of the continental and Latin American countries. The next and the largest second chamber in the world to come into existence was the House of Lords, the Upper House of the British Parliament. It developed into a second chamber when the knights and burgesses, who were called to assemble for parleys with the king, started conferring separately in the Painted Chamber in the first half of the 14th century. The House of Lords was the lineal descendant of the Great Council or King's Council of the Norman and Plantagenet Kings. The Lords became separated from the Commons in Parliament in the reign of Edward III and the Upper House became a definite body, although it was not called the House of Lords until the 16th century. Since 1876, life peerages began to be conferred by the King on Lords of Appeal in Ordinary and since the Life Peerages Act of 1958, life peerages for seats in the House of Lords have been conferred not only on men but also on women. At the end of 1966 there were nearly 1,000 persons with a claim to membership of the House of Lords, although only a minority of them are politically active and regularly exercise their rights to sit and vote. The House of Lords was originally the more powerful of the two Houses, but today it is a Second Chamber very much subordinate to the popular House. In 1860, the House of Commons passed a resolution to the effect that the Lords ought not to impose or amend any legislation which imposed a charge on the people, or interfere in the administration or application of money raised by such a charge. After the rejection of the Finance Bill by the House of Lords in 1909, the Parliament Act, 1911, was enacted which drastically curtailed the powers of the House of Lords. Under its provisions, the Lords could do no more than prevent a Bill from passing for three sessions, or two years approximately and they could hold up a Money Bill for only about a month. This Act was an important constitutional innovation for it introduced a new element of statutory definition of the relationships between the two Houses. The House of Lords, through its resistance, necessitated the passage of second Parliament Act in 1949. This Act provided that any Bill passed by the House of Commons but rejected by the House of Lords can become law after one year (instead of two years), as in the case of Money Bill after one month. Thus, the result was that the powers of the Lords were further crippled.

The judicial functions of the House of Lords as the highest Court of Appeal are peculiar to it. The House of Commons left the judicial proceedings of Parliament to the House of Lords when they broke away early in the 14th century, but during the 15th and 16th centuries they did very little judicial work. In 1677, the House of Lords was conceded the right to hear appeals in equity from the Court of Chancery, and thus the House gathered within its appellate jurisdiction the last court to evade the direct supervision of Parliament.

In India, the first bicameral legislature was established under the Government of India Act, 1919, as the National Assembly for India. The then Government in India was not based on federal principles but on the basis of devolution of authority from the Centre, and as such no federal role was assigned to the Government The Government of India Act, 1935 sought to establish an Indian Federation and to grant self-government to the Provinces. Due to the advent of war in 1939, only the second of these was carried into effect, and the Central Government remained as constituted under the Government of India Act, 1919. In 1946, a Constituent Assembly was set up which took up the task of drafting a Constitution for India and it appointed two Committees for the purpose, the Union Constitution Committee and the Provincial Constitution Committee. The Report of the Union Constitution Committee was presented to the Constituent Assembly on July 21, 1947, and was considered by it on July 28, 1947. Several members expressed their opinion against having a second chamber. Replying to this criticism, Shri Gopalaswami Ayyangar pointed out that the need for second chambers had been felt practically all over the world wherever there were federations. Justifying the need for the proposed second chamber of the Parliament, he observed :

> "After all, the question for us to consider is whether it (Second Chamber) performs any useful function. The most that we expect the Second Chamber to do is perhaps to hold dignified debates on important issues and to delay legislation which might be the outcome of passions of the moment until the passions have subsided and calm consideration could be bestowed on the measures which will be before the Legislature, and we shall take care to provide in the Constitution that whenever on any important matter, particularly matters relating to finance, there is conflict between the House of the People and the Council of States, it is the view of the House of the People that shall prevail. Therefore, what we really achieve by the existence of this Second Chamber is only an instrument by which we delay action which might be hastily conceived, and we also give an opportunity, perhaps to seasoned people who may not be in the thickest of the political fray, but who might be willing to participate in the debate with an amount of learning importance which we do not ordinarily associate with a House of the People. That is all that is proposed in regard to this Second Chamber. I think, on the whole, the balance of consideration is in favour of having such a Chamber and taking care to see that it does not prove a clog either to legislation or administration."

Later on, Shri M. Ananthasayanam Ayyangar sought to justify the need for the proposed Second Chamber in more or less similar terms.

As provided in the Constitution of India, the Parliament of India consists of two chambers, the Lok Sabha and the Rajya Sabha, and the powers of the two Houses in legislative and financial matters have been defined in the Constitution. Except in certain financial matters, both the Houses enjoy equal status and powers.

Since Rajya Sabha represents the States, it enjoys certain special powers which it does not share with the Lok Sabha.

The Legislatures in parliamentary type of democracy, unlike those in the presidential type are the sole repositories of power to make laws and supervise the rule-making and administrative activities of the Executive. All these functions are difficult to be performed by the popular chambers single-handed. In order to ensure the effective implementation of the socio-economic policies of the Government to the utmost good of the public, second chambers are essential to share the responsibilities of the popular chambers.

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"Neither Mischievous Nor Superfluous"

APURBA LAL MAJUMDAR*

INTRODUCTION

Almost all modern legislatures have two chambers. Laurence Sterne wrote, "The ancient Goths of Germany had all of them a wise custom of debating everything of importance to their state, twice, that is, once drunk, and once sober : Drunk—that their Councils might not want vigour; and sober—that they might not want discretion." George Washington emphasised the necessity of a second chamber by his famous illustration of pouring a cup of hot liquid into a saucer and allowing it to cool. A prototype of what we call the second chamber in a modern legislature may be traced in the history of the ancient Roman Republic. The Roman Senate was described as "the most consistently prudent and sagacious body that ever administered public affairs." It is contended by political historians that the British House of Lords, one of the unique institutions in the history of Parliament, is in the law of the Constitution, the residuary legatee of the Curia Regis, the King's Court founded by William the Conquerer. This institution set up by William the Conquerer

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was again partly based on the old Saxon Witenagemot, the Meeting of Wise Men which existed in the seventh century A.D.

The eighteenth century Europe witnessed one of the greatest landmarks in the political history of the world—the emergence of the constitutional governments. As the constitutional government came into being as a guarantee of popular liberty, the two most important models were (*i*) Republicanism owing its origin to the Classical Roman Republic; and (*ii*) Constitutional Monarchy, exemplified in contemporary England. Although these constitutional models were different in their structural form, they had one thing in common—a second chamber The political philosophers of the nineteenth century strongly propounded the theory of a second chamber. The Commonwealth countries—the dominion of Canada, the Australian States and New Zealand which framed their constitutions about the middle of the nineteenth century almost religiously followed the organs of constitutional Government of England. The twentieth century saw the rise of modern constitutions, particularly of the Australian Commonwealth. South Africa and India developed on the traditions of Western Europe and U.S.A. The constitutions of this century have accepted the institution of the second chamber as an essential and inextricable organ for their working. The force of history thus appears to have brushed aside the dictates of Abbe Sieyes, the illustrious drafter of Constitutions of Revolutionary France, who discarded the question of the second chamber with a somewhat piquant epigram, "If a second chamber dissents from the first, it is mischievous; if it agrees, it is superfluous."

DEVELOPMENT OF THEORETICAL VIEWS ABOUT THE VALUE AND UTILITY OF A SECOND CHAMBER

The question of bicameralism, as John Stuart Mill wrote, "has been regarded as a sort of touchstone which distinguishes the partisans of limited from those of uncontrolled democracy." He further observed that "a majority in a single assembly, when it has assumed a permanent character—when composed of the same persons habitually acting together and always assured of victory in their own house—easily becomes despotic and over-weening if released from the necessity of considering whether its acts will be concurred in by another constituted authority." Henry Sidgwick, supporting bicameralism, wrote, "the main end for which a Senate is constructed is that all legislative measures may receive a second consideration by a body different in character from the primary representative assembly and if possible, superior or supplementary in intellectual qualifications." In Maine's view, "Almost any sort of second chamber is better than none."

The value and utility of a second chamber have been discussed threadbare in their various facets by many a theoretician on constitutional law. A summing up of these views is attempted below :

(*a*) The second chamber by virtue of its composition has a capacity to pronounce a prudent and balanced judgement by relatively cool deliberations as against

the decisions of a temporary majority in the popular Lower House in a rather obstreperous environment and thus serves a very useful purpose in the working of a constitutional government. The members of the Lower House are generally elected representatives of the people from their respective constituencies and they are quite naturally emotionally involved with the policies of the government. The opposition in the Lower House sometimes opposes a move of the government in any particular sphere of its activities just for the sake of opposition while the ruling party in the Lower House often tries to get the party dictates, which may turn out to be "despotic and over-weening" passed through the legislature. In such a situation no dispassionate discussion or debate is possible. The second chamber which is also called the Upper House takes upon itself the duty to raise the voice of reason above all other considerations. The members of the Upper House are expected to be dispassionate in their deliberations on the move of the Lower House, the qualities needed in such a body being mature judgement, insight into political and social questions and some aloofness from party motives. They might sometimes discuss political questions but they would discuss them from an independent and detached standpoint, unmoved by party passions or party spirit. The members of such a House, who may be drawn from different walks of life and may have special knowledge in the fields of art, literature, history, law, economics, science, etc., generally feel reluctant to contest an election and yet their representation in the legislative body is undoubtedly important in the greater interests of a nation. The Bryce Conference has rightly observed, "the second chamber should aim at ascertaining the mind and views of the nation as a whole and should recognise its full responsibility to the people, not setting itself to oppose the people's will but only to comprehend and give effect to that will when adequately expressed."

(*b*) The Bills are passed by the Lower House sometimes hastily and inexact expressions or language used in the clauses of a Bill passed by a Lower House may subject it to a challenge in a court of law and vitiate the purpose for which it is enacted. The second chamber provides an opportunity to the government to give a second thought on the Bill and here there is a scope for improvement of the Bills in both form and content. A second chamber aptly called 'a revising and leisured legislature' is thus extremely useful for the purpose of improvement in the general quality of the Bills passed by the popularly elected Lower House. The delaying power of the second chamber should not be viewed as a mischievous power. The function of the second chamber, as the Bryce Conference has truly observed, is to "interpose so much delay (and no more) in the passing of a Bill into law as may be needed to enable the opinion of the nation to be adequately expressed upon it." It thus serves as an effective check on hastily drafted and ill-conceived legislation.

(*c*) The second chamber is again a powerful body to carry on the functions of 'checks and balances' in the legislative machine so essential in the working of a constitutional government. The second chamber may rightly be called a 'Watchdog of the Constitution'.

(*d*) In a federal constitution the second chamber has an important function in protecting the interests of the component states. The second chamber in a federal constitution is not just the duplicate of the Lower House In fact, in all the countries where a federal constitution is working there is some system of adequate representation of individual states in the second chamber.

I have outlined above the views of noted authorities on constitutional history about the value and utility of the second chamber under the two great systems of representative government, namely, the Cabinet system and the Presidential system. These views clearly indicate that the second chamber is neither 'mischievous' nor 'superfluous' but it has a designated and useful role to play in the working of the government.

POWERS OF THE SECOND CHAMBER VIS-A-VIS THE POPULAR HOUSE

The crucial point which has intrigued the minds of authors of Constitutional Law is that if a second chamber is not to be powerless, how much power should it have ? The matter has been hotly debated and it has been argued that it would be quite nonsensical to have a second chamber if it claims equal authority with the first. In other words, it would be useless to make the second chamber a replica of the first. This argument is particularly true in the case of a Cabinet system of government where the Executive bases itself on the popular House *i.e.*, the Lower House. The Cabinet system encourages the supremacy or at least the superiority of one chamber or the other and the constitution of such a system demands that it must be responsible to one chamber and it cannot be responsible to two. The practice obtaining in U.K. perhaps demonstrates an extreme position. The House of Lords can do nothing in the matter of passing any Bill including a Money Bill except making delay for a limited period and the consent of the House of Lords is only required for extension of life of the Parliament.

The Parliament Act of 1911 first curbed the powers of the House of Lords in a big way. The objects of the Act were : (*i*) to prevent the Lords from "stopping supplies" and so having the Government at mercy at any time they so desire; and (*ii*) to enable the Government within the limits of a single House to carry through the programmes on which it has been elected. Amendments passed by the Lords are now considered by the Commons and if disagreed with, the Lords are asked to reconsider. If they insist on their amendments and the Commons refuse to accept them, the Bill falls but it may be reintroduced in the following session and if re-enacted in the same form by the Commons, becomes law under the Parliament Act of 1949, even if the Lords' objections continue.

In several other countries, for example—India, provision for joint sittings of the Houses has been made when any deadlock arises in the matter of passing of Bills except Money Bills and the opinion of the Upper House cannot be brushed aside simply because the Lower House does not approve of it.

In the Presidential system of government, as for example in the United States of America, both the Houses are elected upon the same franchise and each can justi-

fiably claim that it is in some sense responsible to the people. The Executive in the Presidential system of government is not normally responsible to the Legislature and its term of office is independent of the party position in the legislative bodies. The Senate of U.S.A. is, in fact a unique example of a second chamber being more powerful than the first. The U.S. Senate has even powers of an executive character as for example the power to approve treaties and appointment of federal officers which is not enjoyed by any other second chamber in the world. It is generally regarded as the strongest second chamber ever constituted. In the Swiss system, the two chambers have equal or at least comparable power and authority. In Sweden, Holland, Belgium and Italy no law can be passed without the consent of the Upper House. If the opinions of the two Houses differ, the Bill is dead.

The Netherlands "First" chamber which is the Upper House may not amend or initiate any piece of legislation but it has the power to reject it. This is perhaps a unique example where a second chamber is denied minor functions but granted a major power under the Constitution.

When a second chamber cannot do anything more than delay any measure sought to be adopted by the government, its function becomes that of giving an opportunity to the government or the Lower House for re-consideration of the terms of the measure in a wider and more comprehensive perspective. The second chamber may attempt to effect modifications to a Bill in order to improve its quality. But even if the Upper House fails to modify any measure of the government, it at least succeeds in drawing the attention of the public to the government measures. It is well known what role the public opinion plays in a democratic system. The second chamber may thus indirectly influence the policy of the government when it fails to secure its objective in the legislative body itself.

COMPOSITION OF SECOND CHAMBER IN SOME MAJOR CONSTITUTIONS

The composition and main features of the second chamber in some major constitutions of the world are briefly described below :

The British House of Lords is a hereditary chamber. The Lords Spiritual and Temporal sit together and jointly constitute the House of Lords. The Spiritual Lords are the Archbishops and Bishops of the Churches of England having seats in Parliament by ancient usage and by statute. The Temporal Lords are divided into Dukes, Marquesses, Earls, Viscounts and Barons whose titles are of different degrees of antiquity and honour. The votes of the Spiritual and Temporal Lords are intermixed and the joint majority determines every question but they sit apart on separate benches in the House.

There are second chambers which consist of nominated members only, *e.g.* the Canadian Senate, the members of which are nominated for life by the Governor-General of Canada. There are also second chambers, the members of which are partly elected and partly nominated, *e.g.* the Second Chambers of Eire and the Union of South Africa. The second chambers in some countries comprise entirely

elected members, *e.g.* the Senates of U.S.A. and Australia and the second chamber of Japan.

The Senate of the United States of America and the Australian Senate are based on the principle of equal representation for the component States. This has been done to protect the interest of the individual States in the federal structure of the government.

The Swiss Federal Assembly is bicameral with a National Council elected proportionately and the Council of State equally representative of each of the cantons much on the lines of the two Houses of the American Congress. The Swiss Executive is elected by these two Houses in a joint session and holds office for a fixed term. Each of the Houses has an important say in legislation and each of the Chambers has almost equal or comparable power.

The Swedish used to have four Chambers in their legislature but now they have two Chambers only. These two Chambers have equal power. Every Bill introduced goes to a Joint Committee of the two Houses in which each House is equally represented despite a difference in the size of the Houses. After the Joint Committee submits its report, it is considered in both Houses simultaneously as far as possible. The members of the Lower House are directly elected whereas the members of the Upper House are chosen by Provincial Councils for eight years with one-eighth retiring each year. Despite this difference in the method of election of members of the two chambers, the Upper House and the Lower House are more or less treated as equal and the Swedish Cabinet is responsible to the two Chambers jointly and not to each Chamber individually.

Norway has an interesting Second Chamber called "Legting". The members of the Norwegean Parliament called "Storting" are elected by universal adult suffrage in accordance with the system of proportional representation. They divide the single Chamber, after it is elected, into two Chambers, each representative of the parties in the "Storting". In fact, the Norwegean Parliament elects from its own members 1/4th to form the Second Chamber and the rest of the members form the First Chamber called "Odel Sting". The Second Chamber only revises the Bills and the joint session of the two Chambers is convened whenever any deadlock arises as regards the passing of a Bill. It has been debated whether the Norwegean Parliament can strictly be called bicameral but the rudiments of second chamber are definitely there.

The need for a second chamber has also been recognised in the Communist countries. The Constitution of U.S.S.R. provides for a bicameral legislature, the Supreme Soviet being composed of a Soviet of the Union and the Soviet of Nationalities.

THE INDIAN PARLIAMENTARY SYSTEM AND THE RAJYA SABHA

I shall not go into the constitutional position, composition, etc. of the second chamber *i.e.* Rajya Sabha in the Indian Parliamentary Democracy for they are well known.* All I would say in this regard is that the Constitution of India has a federal bias. The founding fathers of the Constitution of India accordingly conceived the idea of the Second Chamber as a House partly elected and partly nominated. With the election of representatives from each State, the Rajya Sabha has been given a federal character. As the provisions of the Indian Constitution stand, there is a probability that the ruling party in the Lok Sabha may be in a minority in the Rajya Sabha. In the Constitution there is also a provision for joint session of the two Houses to resolve any deadlock in the passage of a Bill.

The powers of the Rajya Sabha, however, do not resemble those of the U.S. Senate. The Rajya Sabha is less powerful than the American Senate. The Constitution of India does not provide for equal representation of the component States in the Second Chamber as in the case of the Senates of U.S.A. and the Commonwealth of Australia.

The Indian Constitution, having envisaged a parliamentary system of government, has prevented the Second Chamber from taking a decisive role in the matter of financial Bills. The Council of Ministers is collectively responsible to the House of the People or the Lower House and not to the Second Chamber. The founding fathers of the Constitution of India realised that the cabinet must be responsible to one House only and that House should be the Lower House, namely, the House directly elected by the people. The Second Chamber in the Indian Constitution has not accordingly been given equal powers with the Lower House. The Money Bills cannot be introduced in the Rajya Sabha and the Rajya Sabha can do nothing more than delay the passing of the Bill for a limited period. Nevertheless, any Bill other than a Money Bill or financial Bill may be introduced in the Rajya Sabha. The Indian Parliament cannot legislate with respect to a matter in the State List in the national interest unless the Rajya Sabha has supported it by a resolution of not less than the 2/3rd of the members present and voting. In the matter of Central intervention in States in the field of State legislation, the Constitution of India has assigned a special position to the Rajya Sabha. The Rajya Sabha has also a distinctive role in the matter of amendment of the Constitution and without its consent (consent of not less than 2/3rd of the members present and voting) no amendment of the Constitution is possible. The Second Chamber of the Indian Parliament thus provides a strong safeguard against any arbitrary amendment of the Constitution by the popular Chamber.

The institution of the Second Chamber of India is a developing institution and its growth and success largely depend on healthy conventions it is able to build up,

*See articles 79, 80 and 83 of the Constitution of India.

The Rajya Sabha is going to have its hundredth session and over the past 25 years, it has acted as an effective legislative body. The true role of the Second Chamber is not to obstruct, control, compete with or merely stand out of the way of the other elements in Parliament—the Lower House and the Council of Ministers. The Rajya Sabha has a glorious past, short as it is. It has discharged its functions strictly in the sphere allotted to it under the Constitution and has maintained more or less harmonious relationship with the Lower House. There have been instances of occasional turmoil in the Rajya Sabha but the dignity of the House has never been violated. In the course of a statement in the Rajya Sabha, the first Indian Prime Minister Jawaharlal Nehru remarked, "the two Houses together are the Parliament of India. The successful working of our Constitution, as of any democratic structure, demands the closest cooperation between the two Houses. They are, in fact, parts of the same structure and any lack of that spirit of cooperation and accommodation would lead to difficulties and come in the way of the proper functioning of our Constitution." The Rajya Sabha has so far lived up to the ideals of the Second Chamber set forth by the founding fathers of the Constitution of India.

THE SECOND CHAMBER AND THE NEW DEMOCRATIC CHALLENGE

Democracy has confronted not a few crucial tests in the course of its tortuous journey since the middle of the seventeenth century. It has met the massive challenges of the age—depression, totalitarianism and war. But, through scores of trials, tribulations and experiments it has come to stay. It has emerged as the most ideal political system that human society can think of and has proved a resilient, resourceful and stable form of government in the present century. A government is not democratic simply because it is voted into power by the majority. Democracy has its own institutions. A government is democratic if it only fosters those institutions. The second chamber has grown to be an essential institution of democracy. Some authors on constitutional law maintain that the growth of executive power as a result of the demands of the changing times and the persistence of international tension are responsible for what has been called the 'decline of legislatures'. It is true that with day-to-day extension of governmental activities over a wide field, the legislature hardly finds time to deal effectively with the mass of rules which are made by the executive under delegated powers. But this should not be regarded as the erosion of powers and authority of the legislatures. The second chamber is no more a 'leisured legislature' and its duties and responsibilities have greatly increased over the past few decades. It has to act in a wider field and assert itself in the shaping of policies of the government and in making a government behave. Democracy is an inalienable part of the evolutionary process of human history and the second chamber has the sacred duty to guide democracy in the desirable evolutionary direction by upholding its noble institutions.

December 14, 1976

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The Concept and Relevance of Second Chambers in a Parliamentary Democracy

MIR MUSHTAQ AHMAD*

The Constitution of India under article 79, *inter alia*, lays down that the Union Parliament shall consist of two Houses to be known respectively as the Council of States and the House of the People. India, thus follows the pattern of the United Kingdom where the British Parliament consists of the House of Commons and the House of Lords and the Congress of the United States of America consisting of the Senate and the House of Representatives. Similar is the case with Australia and Canada. However, the Council of States in India differs in content and principle from the second chambers in all these countries. The Rajya Sabha resembles the American Senate in so far as it is a continuing body and certain percentage of its members retire after a fixed term but it differs from it inasmuch as its members are not elected directly by the people in the States. There is no equality of representation of the constituent States in the Rajya Sabha and it is thus not based on the federal principle on which the American Senate is composed. It differs from the Australian Senate in several respects. The Rajya Sabha is a continuing body and is not subject to dissolution while the Australian Senate can be dissolved to resolve a deadlock between the two Houses. There is parity of representation available to each State in Australia

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and the members are also directly elected. The only common element between the Canadian Senate and the Rajya Sabha is that in both of these the constituent units do not have uniform representation and they are not subject to dissolution. As regards the House of Lords, it consists mostly of hereditary peers, created by the Crown and there is no elective or popular element involved in it. Due to this factor, the House of Lords is regarded as an anomalous institution in the modern democratic era, and efforts have been made time and again to rationalise and reform its structure and to give it a democratic character.

The Rajya Sabha is composed on an entirely different principle and represents heterogeneous elements consisting of not more than 238 members elected by the various constituent units of the Union and 12 nominated by the President for their special knowledge or practical experience in respect of literature, art, science and social service. The concept of this institution was devised with a view to assign to it the function of reflecting the varied interests or views of the various federating States and of protecting their interests against improper or injurious federal measures. It was also envisaged as a forum to which seasoned and experienced politicians and eminent and renowned public figures might be inducted without their undergoing the rigours of a general election which is inevitable for finding a seat in the Lok Sabha, so that the country is benefited of the experience, talent, mature judgement and wisdom of these persons in solving the problems of the country.

With the passage of time, however, lot of criticism has been echoed against the existence of the second chamber in a parliamentary democracy like India. It is said that the principle postulated by the Constitution-makers in their wisdom to retain the second chamber has lost its sanctity and efficacy. Its members cannot be said to represent the people of the States because they are not chosen by the people directly and they have no representative character of the units either as they are mostly elected on political ideologies. It is less competent and more partisan than the Lower House. The powers given to it are less effective. With regard to Money Bills it has practically no control. In experience, however, it has been observed that the Rajya Sabha, even though formulated to act as a champion of local interests, has failed to fulfil its task, as its members vote not at the dictates of the States concerned but according to their own views and party affiliations. They are not subject to any direct control of the States they seek to represent. It also sometimes enables the various political parties to send their second-rate or defeated party leaders who may be considered indispensable by them to represent their interests in Parliament.

The value of the second chamber lies in the talent, experience and knowledge which it can harness to the service of the country. Being a forum of sophisticated people, the Rajya Sabha holds dignified debates and acts as a revising chamber over the Lok Sabha which, being a popular chamber, may sometimes be swayed to act hastily under pressure of public opinion. The existence of two chambers affords an opportunity to discuss all governmental proposals and measures twice and to avoid precipitate action. This set-up also helps in improving upon the Bills passed by either chamber. The Rajya Sabha has primarily been assigned the role of protecting

the interests of the States keeping in view the federal character of our country. However, with the emergence of national consciousness and national political parties and contrary to the expectations of the Constitution-framers the second chamber has lost much of its assigned role of acting as the protector and saviour of the rights of the federating units and it now functions as a national institution reflecting the urges and aspirations of the masses. It is, therefore, bound to play a very useful and significant role in the national politics, in the years to come.

January 6, 1977

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Second Chambers in Parliamentary Democracy

M. CHALAPATHI RAU*

Political science and constitutional law are familiar with what Abbe Sieyes, a prolific inventor of paper constitutions, said about bicameralism : "If a Second Chamber dissents from the first, it is mischievous; if it agrees, it is superfluous." The long line of those who have agreed with him includes Turgot and Condorcet in France and Samuel Adams and Tom Paine in the United States. At the time of the American Revolution, Pennsylvania had a unicameral legislature, while other American colonies had two chambers. This fact more than any theory probably influenced Benjamin Franklin to declare : "A legislative body divided into two branches is like a carriage drawn by one horse in front and one behind pulling in opposite directions." The frequent deadlocks between the two Houses of the U.S. Congress and of the state legislatures, leading to delays and frustration, has the argument for a single chamber throughout the centuries. In parliamentary government also, where the primary function of Parliament is not law-making as much as control of the Executive, opinion in favour of single chambers has acquired further support. In spite of this trend, bicameralism has largely stayed, particularly with

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written constitutions or federal constitutions. The principle of checks and balances operates powerfully in both these types. This is apparent from the ancient example of the House of Lords to the comparatively recent Rajya Sabha which has remained intact in spite of the Constitution (Forty-second Amendment) Act, 1976.

The bicameral system arose from the stratified social order of the later Middle Ages, when the nobles, clergy and townsmen constituted politically independent "estates". They met as independent estates in a single "states-general". They contributed to the revenues of the king; they did not represent the nation. These historical antecedents gave birth to modern parliaments and legislatures. It was largely by accident that the several orders sat in two Houses in England. The English Parliament did not change its character. It was subservient to the Tudors, and they honoured or bullied it. The Stuarts ignored or defied it and it fought them. Modern constitutional government developed in England much after the Civil War, even years after the Glorious Revolution of 1688, accidentally because Hanoverian Kings, unfamiliar with English, left government to the Council of Ministers from which the cabinet system developed under Walpole. The three estates in France met separately and at regular intervals until 1614 and did not meet again until 1789, precipitating the French Revolution. Four separate estates met in Sweden until 1866. French revolutionary ideas and the British example helped to establish constitutionalism with the bicameral system in the rest of Europe only from the late eighteenth century.

Montesquieu's name is closely connected with the doctrine of checks and balances. Two chambers, it was argued, secured deliberation, forced reconsideration, and allowed the judgement of the representatives of the masses to be balanced with the wealthy and aristocratic elements in society. The story of Washington pouring hot tea from his cup into the saucer to cool, illustrating the value of the Senate as a body moderating the impulsive tendencies inherent in the House of Representatives, may be apocryphal but was a good illustration of the argument. The government would be stable, if it rested upon a tripod, not on two legs. The argument is reinforced under federalism in the United States Senate, in which the states are equally represented, with state autonomy, state equality and state rights entrenched the House of Representatives embodying the principle of popular sovereignty and numerical majority. This pattern is generally followed with or without parliamentary democracy, though the argument in favour of unicameralism continues to be advanced. The anomalies and archaisms of the House of Lords are again under debate, as they have been periodically. It had to be shorn of financial power and then of other powers. Even then as a largely Tory House obstructing a Labour majority in the House of Commons, it has raised again the question whether it can be mended or should be ended. If it is to be a useful second chamber, it has to shed its Tory character and its heirarchy of peers, hereditary or nominated. To many, life peers can be anomalous and purposeless. Bicameralism might remain in form, while unicameralism prevails.

The U.S. Senate is the most powerful example of bicameralism at work. It can be said to be the only second chamber in the world that has held its own and more than held its own with the popular House. It is the only branch of the U.S. Government which never dies. Presidents come and go, the House of Representatives is elected every two years, the Senate remains. After direct elections were introduced by the Seventeenth Amendment of 1913, Senators are more respected and feared. Under indirect elections, they looked like ambassadors of the Senate, now they are powerful, people's representatives. The results of the Seventeenth Amendment have neither justified hopes nor fears. The problem of money power in politics has not been abolished by the Amendment but the entrance fee to the Senate has been reduced so that it is not a multi-millionaires' club. The Senate has been known as the freest deliberative body in the world and there is no effective control over Senatorial eloquence or obstinacy, and Senator after Senator stuck to his post of duty in the fall of Nixon. Evils like the Senatorial filibuster are known, but in the Watergate case the Senate has proved its usefulness and enhanced its prestige. It is possible to say much against the inquisitive nature of the Senatorial investigation and its obstructive role in foreign affairs, as against the way it frustrated and killed Woodrow Wilson. The Senate probably is almost a conservative body in the United States, as it seemed to Bryce, and with all its faults, it lives up to the reputation of the Senate of Rome, and in the American system it has had an invaluable role.

The arguments for and against bicameralism were familiar to members of the Constituent Assembly, when the Constitution was drawn up. Under the Government of India Act, 1919 the Central Legislature had two chambers, but the Council of State as the Upper House was called was never to have a federal role in the sense of providing for equal representation of the various Provinces and States in the country. The Nehru Report recommended that the Upper House was meant to provide for reconsideration of legislation in a somewhat cooler atmosphere than that provided in the Lower House, particularly because of communal feelings. The example of the U.S. Senate did not appeal in view of the great difference in size and population of the Indian Provinces. There could not be equal representation regarded as an essential element of federal constitutions, they were the exceptions rather than the rule in the constituent units of federations, other than those of the United States of America and Australia. The arguments in favour of second chambers, as brought out by B. N. Rau's Precedents, were tradition, the desire of propertied and other interests to protect themselves from the majority, the representation of the constituent units in the Upper House. At the Round Table Conference, the Federal Structure Sub-Committee doubted if equal representation would commend itself to general public opinion. The 1935 Act followed this line.

B. N. Rau, in compiling his Precedents, dealt extensively with second chambers, pointing out that they were to have a body to impose checks on hasty legislation, and to give representation for interests difficult to include in Lower Houses. The arguments against second chambers were that they were undemocratic and needlessly slowed down the democratic processes. The Union Constitution Committee

was in favour of an Upper House elected by members of the Lower Houses of Provincial Legislatures. The Committee rejected equal representation, probably following the Nehru Report and the Round Table Conference. The Provincial Constitution Committee was divided on second chambers in the Provinces. The representatives from the Provinces were left free ultimately to decide on whether there should be a second chamber in a Province, but the Committee laid down what the constitution of a second chamber should be, if there were to be one. There were no extensive recommendations on the powers of the Upper House. It was generally agreed that the Lower House should have exclusive powers over Money Bills, the power of the Council of States, later to be known as the Rajya Sabha, being limited to suggesting amendments to them, which the Lower House was under no obligation to accept; the powers of the two Houses in other respects were much the same.

There was an interesting debate on the question in the Constituent Assembly. The central point was the role of second chambers in modern democracies, not the role of Upper Houses in federal structures. Shri Gopalaswami Ayyangar summed up the mood of the Assembly by saying that "the need for a second chamber has been felt practically all over the world wherever there are federations of any importance." His argument did not rest on the familiar ground of federations and did not talk of equal representation. The most that Shri Ayyangar expected a second chamber to do was perhaps to hold dignified debate on important issues and to delay legislation which might be the outcome of the passions of the moment. The case of the Provinces was viewed differently from that of the Centre; some members, while admitting that an Upper House in New Delhi was acceptable, said that second Houses were unnecessary or pernicious and vicious in the Provinces. To others, modern legislation was slow and there could be easier and cheaper ways of providing a check or a brake on hasty legislation. Further debates have not led to new ideas. Most Provinces voted for second chambers, and most States have retained them. The device of joint sittings has not modified the general pattern.

Apart from the composition and powers of Upper Houses, they have gained in authority and even acquired a popular quality by the quality of the contributions made by their members. Debates in the Upper House are more senatorial and lordly, though they have come to contain many young legislators. At times, the Rajya Sabha and other Upper Houses have made a good contribution to the democratic process. Nobody now doubts the usefulness of the Rajya Sabha; the doubts entertained earlier about second chambers in the States have been disappearing. There is no fear of oligarchies being established in parliamentary democracy, with modern parliaments enjoying great privileges and exercising great power, and second chambers enjoying a share of it. Second chambers, though indirectly elected, have come to represent the general will and there is no talk of functional representation or economic or vocational councils. As mere revising bodies even second chambers have acquired great respectability.

January 7, 1977

Part Three

Presiding Officers—Their Powers and Functions

26

Presiding Officer

(with special reference to the Upper House)

G. S. PATHAK*

At one time some political thinkers doubted the wisdom of the bicameral system of legislature. But later opinion based on mature experience weighed heavily in favour of the system. In this connection, Laski observed : ". . . . It is almost a dogma of political science that it (the legislature) ought to consist of two chambers. Single chamber Government, it is assumed, is the apotheosis of democratic rashness. We need a brake on the wheel. . . .A second Chamber provides exactly this safeguard; and it is regarded as noteworthy that practically every State of importance in the modern world has adopted the two-Chamber system." The efficacy of the second chamber, however, depends on the form it takes and the method of its election.

The case for a bicameral legislature is much stronger where there is a federal Constitution. History records a virtual consensus among political scientists that in a federal Constitution the bicameral system is a necessity in order to give representation to the units of the federation. Pointed reference was made to this need in the Constituent Assembly when this system was adopted in India. It was observed there that "the need has been felt (for a second Chamber) practically over all the world

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wherever there are federations of importance." The different modes of election for the two Houses and the consequent differences in the composition of their membership lent a certain importance to the second chamber. Moreover, the Rajya Sabha has certain special powers not possessed by the Lok Sabha. For example, article 249 of the Constitution provides for temporary Union legislation with respect to a State subject, if the Rajya Sabha passes a resolution with the requisite majority that it was necessary or expedient in the national interest that Parliament should make laws with respect to that subject. Similarly, Parliament can make laws providing for the creation of an All India Service if the Rajya Sabha passes a resolution to that effect (Article 312). In both these matters the resolutions of the Rajya Sabha may be deemed to signify the assent of the State affected by such laws.

It is true that sometimes delay is caused by a Bill coming through the legislative process in the two Houses. But the loss in time is compensated by other advantages of an enduring nature. Take, for example, the case of the Bill for the abolition of Privy Purses of Rulers. After the Bill was passed by the Lok Sabha, it was defeated in the Rajya Sabha as it failed to obtain the majority as required by article 368. When after some time it was re-introduced and came up again in the Rajya Sabha, after having been passed by the Lok Sabha, it was passed by the Rajya Sabha also with practical unanimity. In the interval, the democratic process had educated the voters and a national consensus had been achieved. A law of such importance and of wide-reaching consequences passed on the basis of national conviction and practical unanimity certainly possesses a higher moral and political value than if passed by a narrow majority.

The primary function of our legislatures is to make laws. The legislatures are the instruments of social transformation. Laws are required to demolish long-standing barriers between man and man and to ensure equality among the peoples of the country, securing justice, political, social and economic. Apart from these most important functions, there are other functions belonging to the legislatures. There is what may be described as "the expressive function". The legislature is a place where the thinking and the feelings of the people on matters coming up before it are freely expressed. In this sense, the legislature reflects the mind of the people. There is then "the informing function". Through questions and debates the people are able to know how the government is functioning, what are the grievances of the citizens and how we stand in relation to other nations in the international world. Last but not the least is "the teaching function". There are many things said in the legislature which the people in general do not know. Debates and the answers to the questions during Question Hour possess an educative value whose importance cannot be over-estimated. I remember Prime Minister Jawaharlal Nehru describing the Anti-Dowry Bill as possessing an educative value for the people. In the above observations, I have preferred to adopt the nomenclature given by Bagehot.

It is in the above context that the position and the role of the Presiding Officers of legislatures have to be considered. The constitutional position of the Chairman of the Rajya Sabha may first be examined. While basically following the British parliamentary system, the Constitution-makers borrowed from the American system the method of selection of the Presiding Officer of the Rajya Sabha. Chapter I of Part V of the Constitution deals with the Executive of the Union while Chapter II deals with Legislature, *i.e.*, Parliament. Article 63 which falls in Chapter I lays down : "There shall be a Vice-President of India." Article 64 prescribes that "the Vice-President shall be *ex-officio* Chairman of the Council of States. . ." In certain contingencies the Vice-President can act as President or discharge the functions of the President. In such cases, he is enjoined not to perform the duties of the Chairman. By virtue of the office of the Vice-President the holder of the office becomes automatically the Chairman of the Rajya Sabha. He has thus a dual capacity and occupies two distinct and separate offices.

In Chapter II, under the heading "Officers of Parliament", it is repeated in article 89 that "The Vice-President of India shall be *ex-officio* Chairman of the Council of States." Under article 97, the salaries and allowances of the Chairman may be fixed by Parliament by law. As Vice-President, the holder of the office is a part of the Executive and as Chairman, he is part of the Legislature. The word "Executive" has a very wide and comprehensive connotation. It is well-established, both in India and England, that executive functions are all the functions of the Government other than those of legislative and judicial character. The Vice-President can, by delegation, perform all the executive functions of the President (except such as are specifically assigned to the latter by the Constitution) even when the Vice-President is not acting as or discharging the functions of the President as prescribed by the Constitution. The Vice-President, on a number of occasions, has to perform certain functions when the President cannot exercise them, for example, giving colours to regiments or acting on ceremonial occasions. It must be observed that the Vice-President is constitutionally restrained from speaking or otherwise acting inconsistently with the Government policies. Like the President, the Vice-President is a part of the Executive. For this he has to keep himself informed of Government policies both in regard to internal and external affairs. Some of the matters and policies from their very nature will be of a confidential character.

As the Presiding Officer of the Rajya Sabha, he is to act as the servant of the House and ensure that the proceedings of the House are conducted in accordance with the relevant constitutional provisions, rules and practice, and discipline is maintained in the House. He is the custodian and guardian of the rights and privileges of the House and its members.

In the democratic system which we have adopted, the existence of at least two parties must be a normal feature. The Opposition thus is a necessary condition of parliamentary life. Contest between Government and the Opposition is the inevitable result. Points of Order are matters of frequent occurrence and the Chairman is required to give rulings on those points. In order to be able to give such rulings and to decide disputed points raised in the course of the contest, the Chairman has to interpret the Constitution, statutes, the rules and practice and to declare what

the law of Parliament is. The decisions given by the Presiding Officer are binding upon the House and cannot be challenged. They are also followed by his successors-in-office. In course of time these decisions become precedents and rules of practice.

It is manifest that the function which the Presiding Officer exercises is of a judicial character. Thus, the Presiding Officer performs a judicial role in the discharge of his duties. In order that he may be able to perform this function he is invested with high authority and prestige. Indeed he represents the dignity and majesty of the House. In this respect, his office being a judicial office, impartiality and independence are its essential attributes. Without these attributes, the Presiding Officer cannot inspire the confidence which gives an aura of authority to the office. Prime Minister Jawaharlal Nehru had occasion once to refer to the role of the Presiding Officer. He observed : ". . . .The Speaker has to abstain from active participation in all controversial topics or politics. The essence of the matter is that a Speaker has to place himself in the position of a Judge. He is not to become a partisan so as to avoid unconscious bias for or against a particular view and thus inspire confidence in all sections of the House about his integrity and impartiality."

This fusion of the executive role as Vice-President and the judicial role as Chairman is not an anomaly. Such cases are not unknown in constitutional practice. In the United Kingdom the Lord Chancellor presides over the House of Lords sitting both in its legislative and judicial capacities. He presides over the Judicial Committee of the Privy Council too. He is a member of the Cabinet also. He is directly concerned with the judicial administration.

But such situations cast an enormous burden on the holder of the two Offices. He has to keep the responsibilities of the two Offices distinct and separate. The Chairman cannot allow his mind to be influenced by the knowledge acquired in his capacity as Vice-President. While performing his duties as Vice-President, he cannot do anything which may impair his obligations as Chairman. The judicial role that he has to perform in the House is attended with implications of a vital character. It is an axiom as old as law that justice should not only be done but should also appear to be done. The Chairman has to forget that before he assumed the office he belonged to a political party or was supported by it in his election as Vice-President. He has to completely divest himself of his political character. As Chairman his decisions must not have any political bias and for his impartiality and independence he has to enjoy the confidence of all the political parties, not only of one. It would not be correct on his part to attend the meetings of any political party or in any way to be associated with politics. One receives many requests to preside over functions in honour of dignitaries of political parties where *Abhinandan Granths* are presented to them. Invariably, in my capacity as the Chairman, I declined such requests. I asked those who made the request whether they would not take objection to my presiding over such functions held in honour of leaders of the other political parties. Often, I got a mute answer. Of course, there should be no harm if the person honoured is so eminent or the occasion is so important that the members of all the parties join in the function. India's victory in the war

with Pakistan was an occasion where the Prime Minister was felicitated by the nation and by all members of Parliament. Participation in that function was not only correct but obligatory. She was honoured as a national hero, not as leader of a party. It must be observed, however, these are matters which are a fit subject for the development of conventions.

Another corollary from the judicial character of the Presiding Officer's role is that he must not accept a position which may derogate from the dignity of his office. I may illustrate this point by an example. Under the Press Council Act of 1965, a nominating committee consisting of the Chairman of the Rajya Sabha, the Speaker of the Lok Sabha and the Chief Justice of India, was designated. Unanimously, the members of this committee made certain decisions and submitted them to the Government as required by the aforesaid Act. There was hostile criticism in certain newspapers about the working of the nominating committee. We felt that in accepting the membership of this committee we had exposed our respective offices to the danger of being involved in political controversy or even being drawn into the law courts. We had no alternative but to dissociate ourselves from the nominating committee thereafter.

It may be remembered that quite often breach of privilege motions are made in Parliament against newspapers and the Presiding Officers have to pass orders on such complaints. I examined the precedents and I discovered that on an earlier occasion Dr. Zakir Husain, one of my predecessors, had refused to accept the membership of such a committee. It follows that if by doing any act, there was the possibility of the office of the Chairman being involved or his conduct being discussed in Parliament or any embarrassment being caused in the discharge of his duties, the Chairman should avoid such a situation. For a Chairman the dignity and effectiveness of his office is supreme and other acts of public service are a subordinate consideration.

The Chairman has to perform certain functions outside the House also. If the President is not a Hindi-knowing President he reads his Address to both the Houses assembled together, in English. After he has finished, the Chairman reads the entire Address in Hindi. When foreign dignitaries address members of Parliament in the Central Hall of the Parliament House, both the Chairman and the Speaker are present. The Chairman welcomes the dignitary and invites him to speak and after his address to the members of Parliament, the Speaker thanks him. At the function where the Prime Minister was honoured by both the Houses after India's victory against Pakistan, the Chairman presided.

Invitations to the Presiding Officers of both the Houses of legislature in foreign countries are sent under the signatures of both the Chairman and the Speaker. But when such invitations are received from foreign countries, it is only the Speaker who visits the foreign countries in response to such invitations. He leads the parliamentary delegations. The Chairman never visits foreign countries in his capacity as Chairman. Of course, as Vice-President he has to go abroad on good-will missions.

I am expected in this article to give "the background and the achievements" also. The first two Chairmen, Dr. Radhakrishnan and Dr. Zakir Husain, were educationists of international repute. None of them had a political career or association with any political party. The third Chairman, Shri Giri was a lawyer, a trade union leader and had a long political career. As regards myself, although I belonged to the Congress Party, addressed meetings in election campaigns and was elected to the Rajya Sabha twice, I was never in real active politics. I had spent about 47 years in the legal profession and was also a High Court Judge for a short period before I was appointed Law Minister in the Union Cabinet. Thereafter I became Governor but before I could complete my term of office, I was elected Vice-President. In these circumstances, it could be said that before I assumed office of the Chairman I had some knowledge of what the judicial role of a Presiding Officer meant. Giving rulings on Points of Order did not present any difficulty. However, the difficult and testing time came when I had to give my decision on the question whether the Privy Purse (Abolition) Bill obtained the requisite majority in the Rajya Sabha when it first came before it. This involved essentially an interpretation of article 368 of the Constitution. I had to compare it with other provisions of the Constitution and the Representation of the People Act and give my decision without reserving it. About my achievements, if any, I cannot speak myself. All that I can say is that to the best of my recollection, I was present at all the sessions of the Rajya Sabha except when I was called to duty in my capacity as Vice-President and during the last few days before vacating the office. I endeavoured to follow the Constitution and the rules and practice of the House to the best of my ability.

Keeping a calm composure even in the midst of most trying circumstances is an asset of inestimable value for the judicial role. Not allowing your mind to be disturbed is not only a practical necessity but also an act of self-preservation. The members want impartiality and they recognise impartiality. It is said that the authority of the Presiding Officer is higher than his powers. But this is possible only because the members are always ready and willing to support and enhance the dignity of the office. The Presiding Officer has always to keep his hand on the pulse of the House, as it were, and before acting he has to weigh and judge how far he can go. The self-imposition of restraint on the exercise of powers is both wise and expedient. The Presiding Officer has to keep note of the varying moods of the House and if he does so, he can achieve what he wants and what he thinks is right. At some moments the debate reaches high intellectual and oratorical level. At other moments, high tempers prevail but are soon followed by hilarity.

I can claim with a certain amount of pride that my relations with the members of the House were most friendly. Cooperation from the Government was also always forthcoming. Even where decisions were adverse to them, I found their obedience implicit. Indeed the Government have a direct interest in the preservation of democracy and in the strengthening of the great institution of Parliament. Apart from the cooperation from the Government and the members, the assistance that

the Presiding Officers receives from the Secretary-General and his colleagues contributes in no small measure to what he is able to achieve during his term of office. In Parliament the Secretariat has an important role to play. I acknowledge the unstinted assistance given to me by Shri B. N. Banerjee and Shri S. S. Bhalerao.

Presiding over a House of Parliament is a rare opportunity. If the Presiding Officer is able to keep up its traditions, if he upholds the Constitution and the parliamentary laws without fear or favour, if he maintains the standard of impartiality and independence which are the essential and indispensable attributes of the office of the Presiding Officer and if he works in the true spirit with faith and devotion, he has succeeded in instilling in the hearts and minds of the people the high value and significance and the beauty and magnificence of this institution. In this way the edifice built so assiduously by those who established its traditions will become a tower of strength for the nation.

January 19, 1977

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Some Aspects of the Role of Presiding Officer

SYED RAHMAT ALI*

"The Speaker represents the House, he represents the dignity of the House the freedom of the House and because the House represents the nation, in a particular way, the Speaker becomes the symbol of the nation's freedom and liberty."

—JAWAHARLAL NEHRU

The importance of legislature in a parliamentary democracy, by the law making role it plays, the financial control it exercises and the critical functions it performs, is quite obvious. It is not merely a hall of democracy but also the nerve centre of a parliamentary democracy which symbolises the aims and aspirations, wishes and desires and urges and feelings of the people. The key figure of the legislature is the Presiding Officer with whatever designation he may be called—whether he is designated as Speaker in the case of Legislative Assembly, or Chairman so far as Legislative Council is concerned. He was called Prolocutor in far-off days in the House of Commons in U.K. and President in the Legislative Councils during the British rule in India.

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The British rule in India with all its unpleasant features had at least one commendable aspect. It had brought into existence parliamentary bodies of a kind which though had little power and less authority, at least served to create parliamentary traditions in the country. This can particularly be said of the legislatures that emerged under the Minto-Morley Reforms, Montford Scheme and the Government of India Act of 1935 which provided limited autonomy to the provinces for a brief period and its scheme for the Centre did not come into force at all due to the outbreak of the Second World War. It can perhaps be said that the stature of the Indian leaders who functioned in those bodies was as high as the powers of those bodies were low. The gallant fight put up in those bodies by eminent parliamentarians like Bhulabhai Desai, S. Satyamurthy, G. K. Gokhale, C. R. Reddy, G. B. Pant and other eminent leaders is still fresh in the minds of the people of India. Though the main objective of the Indian National Congress, the mouth-piece of the Indian freedom struggle was to work the reforms to wreck them, it spared some of its most eminent stalwarts for parliamentary activity and many of them gave a marvellous account of themselves not only as members but also as presiding officers. The foremost among them was Vithalbhai Patel whose performance as President of the Central Assembly was as marvellous as that of his illustrious brother, Sardar Vallabhbhai Patel, in the integration of our nation. Though he was elected by a majority of only two votes, he abundantly proved the mettle of which he was made by insisting upon the creation of a legislature secretariat which was not 'subordinate to any outside authority'. When the second Public Safety Bill came before the House, he insisted that as the Meerut Conspiracy Case was pending before a court and as no discussion on the Bill was possible without making a reference to the case, the Government should either drop the Bill and proceed with the case or drop the case and proceed with the Bill. Such were the marvellous achievements of Vithalbhai Patel. India was equally fortunate in having in the presiding officer's chair on the eve of the dawn of freedom and also in the years immediately following the advent of freedom an eminent Presiding Officer in G. V. Mavalankar who laid a solid foundation for healthy parliamentary practices.

In the provinces also we had some eminent stalwarts like Shri Bulusu Samba Murthy who, in spite of his deep attachment and unflinching loyalty to the Congress organisation, almost underwent a metamorphosis after his election as Speaker of the Madras Legislative Assembly and emerged as an embodiment of impartiality whom members of all sections of the House held in high esteem. He was perhaps the only Speaker in the whole country who occupied the Chair with Gandhian attire consisting of a loin cloth and upper cloth. Shri J. Siva Shanmugam Pillai* who succeeded him in 1946 also brought lustre to his office by his vast erudition and strict impartiality. Many a time the view was expressed by competent personalities that a compilation of his rulings in book form would have been a

*Shri J. Siva Shanmugam Pillai was a member of the Rajya Sabha from 1962 to 1968.

valuable addition to the literature on parliamentary procedure. He held that office till 1955.

The list of names mentioned here is only illustrative and indicative but not exhaustive because there were also other memorable personalities. India was, therefore, fortunate in having a healthy parliamentary tradition even by the time the country became free in 1947. The eminent personalities who presided over the parliamentary bodies in subsequent years enriched those traditions by their tireless striving insight and devotion. The proceedings of the legislatures went on peacefully for several years after the dawn of freedom. But this was followed by a period which can be described as a 'dark age' in our parliamentary history. Unnecessary walkouts, impatient exchanges, vulgar mudslingings, disorderly scenes, noisy uproars, at times even use of *gherao* against the presiding officer became order of the day. Heat was substituted for light in the conduct of debates. This had created a disconcerting situation to all lovers of parliamentary democracy in general and presiding officers in particular. But it has fortunately proved to be a short-lived and passing phase and normalcy seems to have come back to the Indian legislatures.

The responsibility of the presiding officer of a legislature is immense. He is the mouth-piece of its views and spokesman of its ideals and that exactly was the reason why the presiding officer of the U.K. House of Commons is designated as Mr. Speaker. This idea was most clearly expressed by Speaker Lenthal when he stated : "The Speaker of the House of Commons has neither the eyes to see nor ears to hear nor the tongue to speak but as the House was pleased to direct." His responsibilities are many which range from maintaining order in the House to providing of amenities to members, from deciding admissibility of notices of questions etc. to the controlling of parliamentary committees and he is the champion of the dignity of the House. All this involves heavy responsibility. That was why Sir P. Rajagopalachari, first President of the Madras Legislative Council under Montford Reforms observed at the time of vacating his office :

> "I have in the past held several offices both in this Presidency and elsewhere—some of them high offices but in none of them have been conscious of such a heavy sense of responsibility as in the one I shall soon vacate."

One of the most essential qualities expected of an occupant of this office is impartiality. Though a presiding officer prior to his election, is a person belonging to a political party who was deeply involved in its affairs, he becomes a non-party personality immediately after his election. This idea was most tellingly put by several Speakers of the House of Commons (U.K.), the traditions of which the Indian legislatures are still following. Mr. Clifton Brown observed :

> "I am not a government man nor the opposition's man but a House of Commons man."

The same sentiment was voiced in India by President Vithalbhai Patel when he said :

> "From this moment I cease to be party man, I belong to no party, I belong to all parties."

This belief was also shared in more recent times by Speaker Mavalankar when he said :

> "The essence of the matter is that a Speaker has to place himself in the position of a judge . . . and thus inspire confidence in all sections of the House about his integrity and impartiality."

This noble tradition has been tenaciously kept up by his successors of whom a special mention should be made of Shri N. Sanjiva Reddy, who resigned even his party membership on principle on his election as a Speaker of the Lok Sabha in 1967 and whose term of office is remembered with profound respect.

If on one hand impartiality is expected from a presiding officer, it is equally imperative on the part of members of the legislatures and even the public outside to see that nothing is said or done that is likely to impair his honour, jeopardise his dignity, or tarnish the sanctity of his office. His decisions should not be questioned and his orders should be carried out most implicitly by all sections in the House. What is more even the opportunity provided by the Constitution to move a motion of No-confidence against the presiding officer should be availed of most sparingly if at all. In the wise words of Prime Minister Jawaharlal Nehru :

> "We are concerned with our honour; we are concerned with the honour of our Parliament; we are concerned with the honour of the person who holds up the dignity and prestige of this Parliament. I do not say that it is not possible at all to raise a motion against the Speaker. Of course the Constitution has provided it. The point is not the legal right but the propriety, the desirability of doing it."

Orderly conduct of proceedings of a legislature for which all parties and members should extend their cooperation to the Presiding Officer is not at all a party issue. Though parties may have mutually conflicting ideals, ideologies and slogans, they should all be firmly keen on having orderly and peaceful proceedings in the House. This is essential for several reasons. Disorderly proceedings and frequent uproars in the legislatures tarnish the very image of the nation. Secondly, legislatures are intended for law-making, and law-making is intended to ensure order and avert anarchy in society. If legislature in which the laws of the nation are made, becomes a place of disorderly scenes and pandemonium, it is bound to have an unhealthy effect on the common man's respect for law. Last but not the

least, legislatures are hard pressed for time. The intending participants are many and the time available is limited. The time spent in ugly exchanges, and noisy demonstrations can be put to a better use, if they are avoided. If members extend cooperation to the Presiding Officer it will, on the one hand enhance the prestige of his office and on the other hand be a source of great benefit to the members of the legislature themselves and in the ultimate analysis to democracy which by common consent is the noblest form of government evolved by mankind.

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The Role of Presiding Officers in the Evolution of Parliamentary Democracy in India, their Status and Mutual Relationship*

SHIVNATH SINGH KHUSHWAHA**

From 1851 to 1925 the functions of legislative institutions in India were controlled mainly by the sovereign powers of the Executive because of which the tradition of the country to give popular representation in this field could not get any recognition. There are historical reasons behind this, the main reason being foreign domination. The British Government did not want to give those facilities and rights to people's representatives in India which they enjoyed in their parliamentary life for fear that granting of such rights would naturally lead to increasing interference in their administrative policies and they would not be able to run, with what they named as efficient administration, an administration suited to their policies and motives. Between 1854 and 1920 the sole function of the Councils then existing was to advise the administration. These Councils did not have any right to make any alterations or additions—let alone radical changes—in the existing laws. The

*Original article received in Hindi.

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concept of the Constitution of India has been evolved solely on the basis of the Government of India Act of 1935. It has, while stressing the primacy of the dignity and honour, freedom of expression and equality of individual, embodied all the essential and healthy traditions of the British Parliament evolved over a period of 600 years.

The parliamentary systems in India and U.K. differ only in this respect that whereas the Indian Parliament is responsible to the people through the medium of the Constitution, in U.K. the sovereignty emanates from the Throne. Accordingly, by adopting certain basic concepts from the traditions of Canada and Britain, the functions of the President, Prime Minister and Parliament were sought to be co-ordinated in our Constitution.

As far as the role, rights, duties and jurisdiction of the presiding officers is concerned, the concept in this regard is based in its entirety, on the parliamentary practices and traditions prevalent in the United Kingdom. The office of the presiding officer is regarded as a very dignified, honourable and powerful office and it is imperative for its incumbent to act in an unbiased manner. After his election as the presiding officer, it is expected of him to remain impervious to the allurements of any Executive Office. Though in England the Speaker was regarded as a servant of the Crown in the earlier times and used to express the wishes of the people in a very restrained and courteous manner before the Head of the State but with the passage of time, the Speaker gradually emerged as a symbol of an absolutely independent and fearless institution which reflected the aspirations of the people. It is this latter concept of the Speaker's office which has been enshrined in the Constitution of India. While conducting the proceedings of the House on the basis of rational, unambiguous and healthy parliamentary traditions the Speaker has also to ensure that the members express themselves in a restrained and purposeful manner and do not bring issues which are extraneous to the subject under discussion. He has also to ensure that every member of the House gets proper opportunity for expressing his views, the trend of the discussion remains interesting and forceful and it does not become dull and tedious. In the galaxy of distinguished Speakers of the Indian Parliament, the name of President Vithalbhai Patel cannot be forgotten. With his free and fearless style of thinking he made tireless efforts to raise the standard of debates in the Indian Parliament, to make them objective and free from party parochialism and displayed unique skill in winning the confidence of every member of the House. Following the traditions of the British parliamentary system he kept the office of the Speaker above narrow party loyalties and gave it an all-party character and recognition. He contested election as an independent and was re elected but contrary to this tradition, his successors Shri Mavlankar, Shri Anantasayanam Ayyangar, Sardar Hukam Singh and Shri G. S. Dhillon, though they did not take part in the party activities, they did not also sever their links with their party. In the context of Indian parliamentary system, it becomes necessary to give some thought to this aspect as the convention of not setting up any candidate against the Speaker by any party could not be established despite

various efforts made in this regard. For the last several years discussions have been held in the Conferences of Presiding Officers on evolving a procedure to establish a convention in this regard but these discussions did not bear any fruit on account of petty party considerations and personal ambitions. In Uttar Pradesh, Prof. Vasudev Singh gave a call to all parties before the elections for establishing such a convention but due to lack of unanimity among parties in this regard he had to take the decision to contest the election as a Congress candidate. It is because of such reasons that in India unlike England, the Presiding Officers have not been able to develop that unbiased and impartial attitude as is expected of them. There have been occasions when Speakers have preferred to accept ministerships and besides Speakers and Deputy Speakers of legislative assemblies who did so, even Shri G. S. Dhillon, who was the Speaker of the Lok Sabha, joined the Union Cabinet. As far as the question of according honour and respect to Speakers is concerned, the Speakers in the Lok Sabha elected after Shri Mavlankar and Shri Ayyangar, and the Speakers in the State Legislative Assemblies came in for criticism for partisan attitude and behaviour. There have been many reasons for this. Because of the ignorance of members in regard to rules governing conduct of business of the House, their irrepressible eagerness to say something and lack of opportunity to put forward their points of view, on several occasions their conduct had become so unbridled and wild that it became impossible to conduct the proceedings of the House and it had to be adjourned. But if one goes deep into the causes of such incidents, one will find that some members, in their desire to get publicity in the press and to become conspicuous in the House itself by creating a peculiar situation there with their conduct and behaviour, gave birth to this unhealthy trend. The Speakers and Deputy Speakers also did not, in their application of the rules of procedure, act in the manner as was expected of them. This gave rise, on the one hand, to a feeling of distraction and indifference towards the office of the Speaker, and on the other, a situation under which the Presiding Officers had to put their heads together to devise such ways and means and to establish such conventions and practices which could regulate and restrain the conduct of members.

Institutions like the Institute of Parliamentary Studies and Commonwealth Parliamentary Associations came into being through which members were provided guidance and encouragement to uphold the parliamentary conventions and practices and the dignity of the House. Annual Conferences of the Presiding Officers were held and serious thought was given to the question as to how the trend of proceedings in the Legislative Assemblies and Legislative Councils and both Houses of Parliament could be made healthier. The elected members became resigned to the idea that they could not challenge those who were responsible for this sorry state of affairs. In the case of majority of members since no qualification was prescribed for election, the result was that such persons, who could easily articulate the aspirations of the people began to come to the forefront. They were already aware of their limitations and they did not have any capacity to become conversant with

the rules and procedures of the House. Consequently the standard of the discussions in the House went on declining. The tendency to drift away from the subject under discussion and to say whatever one pleased, received more and more impetus and was responsible for lowering the dignity of the House and making the debates pointless, hollow, disgusting and purposeless. The main reason behind the unrestrained behaviour of the members was their incapacity to throw light on the complexities of the subject under discussion, to express their views or to make the discussion interesting and purposeful.

The liberal provisions relating to the Adjournment Motions, Questions and Answers and Zero Hour were also responsible for members' unbecoming behaviour. In spite of all these circumstances, while some Presiding Officers did show distinctive qualities in creating proper climate for expression of views in the House by their wit and discreet observations, there were also some who expressed their anger and frustration by losing self-restraint and patience—a behaviour not expected of a Presiding Officer. It is expected of the Presiding Officers that, acting in a dispassionate manner with disciplined behaviour, intelligence and discretion they will keep the House in good humour and not allow the interest in the House to flag and by their humility and alertness not give any occasion to any member to bring in matters not connected with the topic under discussion. This is indicative of their knowledge of parliamentary traditions and the depth of their understanding. They should not arouse or let anybody to arouse the feelings of the House by getting involved in party matters. They should not only be patient in their dealings with the members or win their confidence by giving proper rulings but should also earn their affection and esteem. For this it is essential for the Presiding Officers to have intimate knowledge of the calibre and habits of individual members. To achieve this object it is necessary for him to get in touch with more and more members outside the House to understand their interests, desires and ambitions and accord them, subject to the rules of the House, their due share of importance by providing such of them, as are impatient to speak, opportunity on such occasions as may be suited to their temperament in order to give the desired direction to the tempo of discussion in keeping with the dignity of the House. This demands alertness and care. As a matter of fact the Presiding Officer has particularly to develop within himself a capacity to listen to others patiently and to decide as to the subject on which a discussion is to be allowed further. While he is in the Chair, the Presiding Officer's task is very difficult requiring alertness on his part to the greatest measure and the biggest role he has to play is to get over this difficulty. The Presiding Officer wins the respect and esteem of the House only when all sections of the House—whether they are treasury benches or a minority group in the House—are convinced that his rulings are rational and logical and are based on sound principles and traditions and in him there exists an ideal combination of discerning judgement and presence of mind. To get enlightenment as to the magnitude of these duties, the Presiding Officer has not only to study, in minutest detail, the proceedings of Parliaments

throughout the world but also to get acquainted with the subject or legislation which is to be taken up for discussion or consideration in the House.

Often it has been seen that members do not study the background literature relating to the business to be taken up in the House, sent to them. As a result of this, apart from voicing the problems of their constituencies, they do not find themselves equipped to put forward any effective suggestions or amendments, which may be in the wider public interest and in these circumstances, the Presiding Officer, even if he wants to, cannot raise the standard of discussion or lay stress on any improvement in the draft legislation which he considers desirable as he is bound by the limitations of his office which prevent him from saying anything on his own behalf. By taking the House into confidence and by studying the mood of the House, the Presiding Officer has to take a decision whether a particular motion should be admitted or not. He has to study carefully the views of all sections of the House in making the dividing line between admissibility and non-admissibility of a motion clearer and basing his ruling in this regard in consonance with the aspirations of the people.

The coordination between the Speaker and the members as also the ambit of their mutual relations is inter-dependent. Mostly, the Speaker is elected unanimously or by a majority in the House, as the circumstances may permit but in his conduct of the proceedings of the House, he has to keep in view the feelings of the entire House. He cannot mould his conduct according to the dictates of the majority; on the contrary, his function is to give protection to members who are in minority or are opposed to the majority. The Speaker is not directly responsible for the implementation of the decisions taken by the House but he can, through the various committees, review the action taken by the Executive and thus he plays an effective role in maintaining the supremacy of the Legislature over the Executive.

The Presiding Officers have to face yet another problem. Since he has to devote himself entirely to the prompt and efficient discharge of his duties and he has to dissociate himself with all day-to-day political activities, he is not in a position to maintain direct link with the people in his constituency. This results in gradual decline of his influence over his electors. The limitations of his office prevent him from projecting the views and aspirations of his constituents in the House or anywhere else and he is thus left without any means whereby he could remain in contact with them. Since he has to devote most of his time in winning over the confidence of members and in studying rules, sub-rules etc. for the conduct of business of the House, he is not in a position either to cultivate the patronage, necessary for getting elected to the legislature, or to generate any other kind of public support for himself. We shall have to evolve some procedure whereby the Presiding Officers could get rid of such problems.

As regards the problems of behaviour and conduct of, and self-restraint by, members in the House, the same can be solved by prescribing minimum qualifications for membership. Apart from this, the members may be imparted training by the Commonwealth Parliamentary Association or Bureau of Parliamentary and Constitutional Studies or only those persons should be fielded

as candidates in the elections who are interested in this sort of discipline and who have a good record of unrestrained working among the people so that they may be in a position to project the aspirations of the masses. It is only because of non-prescribing of qualifications for the members that there has been considerable stress on the need of having bicameral parliamentary system so that the business transacted in the Lower House could again be put up for consideration by the Upper House to ensure that nothing, which may not be appropriate, forms part of that business as finally adopted by the Legislature. It is for this reason that the Upper Houses have been vested with the right of discussion on the Bills passed by the Lok Sabha and Legislative Assemblies. In the bicameral system the Lower House is a more effective medium for giving expression to the aspirations of the people and, therefore, in order to provide a sound basis for the decisions taken by the Lower House, the President and the Governors have been empowered to nominate to the Upper Houses persons having special knowledge in particular fields who could express their views freely and frankly on the draft legislation. No provision has been made for dissolution of the Upper Houses so that a continuity and co-ordination in the views and procedures of discussion is maintained. That is why the Vice-President of India has also been made the *ex-officio* Chairman of the Rajya Sabha so that highest importance could be given in the administration to the views expressed by the Upper House of Parliament.

So far as the mutual relationship between the Speaker and the Deputy Speaker is concerned, it has not been clearly defined in the Constitution. The existing provision is that in the absence of the Speaker, the Deputy Speaker shall conduct the proceedings of the House and in the absence of both of them a member of the Panel of Chairmen shall conduct its proceedings. It was the absence of a precise and clear definition in this regard that gave rise to a constitutional deadlock once, when the Speaker of the Punjab Legislative Assembly declined to certify the Finance Bill and the Deputy Speaker certified it as such. The Speaker and the Deputy Speaker are both elected only when the House has confidence in them. In our country some legislatures have made a convention that a nominee of the ruling party or the majority party should be elected as the Speaker and a person, who is the unanimous choice of the Opposition, should be elected as the Deputy Speaker. This convention was sought to be introduced in other legislatures also and the present Deputy Chairman of the Rajya Sabba, Shri Godey Murahari was the nominee of the Opposition. Thus the Speaker and the Deputy Speaker enjoy the confidence of the entire House irrespective of their being the nominees of the ruling party or the Opposition. It has, therefore, become necessary that the mutual relationship between them should be clearly defined; for having been so elected they occupy a constitutional position. They are not subordinate or senior to each other and, therefore, it is also necessary that their status and perquisites should be clearly defined. There is need to bring about uniformity in the salary, allowances and pensionary benefits of the Speaker and the Deputy Speaker.

We thus find that the Presiding Officers have played a very effective and significant role in the democratic set-up of India and they had to face many difficulties. It should, however, be noted that whatever parliamentary conventions we have established have evolved in a period of about thirty years only and on the basis of the experience gained, we have come to the conclusion that persons who have necessary literary background and taste should alone be allowed to participate in elections for membership of legislatures and only those who have the necessary aptitude for, and knowledge of, legislative work are put up as candidates. If the party which fields candidates for election sees to it that besides their political activities, gaining of expert knowledge in various aspects of legislative procedures is made compulsory for its members it would help to raise the standards of discussion in the House and members' contribution, based on their experience of social expectations, in shaping the laws effectively, would be available; otherwise, the legislature will only be performing the ritual of passing the Bills as prepared by the Executive and the aspirations of the people will not be reflected therein and the Presiding Officers will not be able to do anything, for it is at this point that the limitations of their office operate.

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The Office of the Vice-President of India

S. S. BHALERAO*

The Constituent Assembly was committed to framing a democratic constitution for India, and its members felt that this democracy should be expressed in the institution of direct, responsible Government. In the Western democracies to which the Assembly turned its attention, there had grown up three major types of Executives : The British Cabinet Government, the Presidential system in U.S.A. and the Collegiate Executive in Switzerland. The question before the Constituent Assembly was — which one of them or some workable combination of them, they should adopt.

Even though we in India were familiar with the British Cabinet system of responsible Government, the need for an effective and strong Executive suited to the conditions existing in the country was recognised by all. The Assembly members, drawing on the experience of the great federations like U.S.A., Canada, Switzerland and Australia, "pursued the policy of pick and choose to see what would suit them best, what would suit the genius of the nation best" (Constituent Assembly Debates XI, p. 654). After a long discussion the Constituent Assembly finally adopted the

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British Cabinet system with certain modifications. Shri K. M. Munshi, who supported it, stated in the Constituent Assembly :

> "The strongest Government and the most elastic executive have been found to be in England and that is because the executive powers vest in the Cabinet supported by a majority in the Lower House which has financial powers under the Constitution. As a result, it is the rule of the majority in the legislature; for it supports its leaders in the Cabinet, which advises the head of the State, namely, the King. The King is thus placed above party. He is made really the symbol of the impartial dignity of the Constitution. The Government in England is found strong and elastic under all circumstances . . . We must not forget a very important fact that, during the last hundred years, Indian public life has largely drawn upon the traditions of British constitutional law. Most of us have looked up to the British model as the best. For the last thirty or forty years, some kind of responsibility has been introduced in the governance of this country. Our constitutional traditions have become parliamentary and we have now all our provinces functioning more or less on the British model. Today, the Dominion Government of India is functioning as a full-fledged Parliamentary Government. After this experience, why should we go back upon the tradition that has been built for over a hundred years and try a novel experiment . . .?" (C.A.D. VII, p. 984.)

According to Shri Alladi Krishnaswami Aiyar :

> "There are obvious difficulties in the way of working the Presidential system. Unless there is some kind of close union between the Legislature and the Executive, it is sure to result in a spoils system. Parliament may take one line of action and the Executive may take another line of action. An infant democracy cannot afford, under modern conditions, to take the risk of a perpetual cleavage, feud or conflict or threatened conflict between the Legislature and the Executive. The object of the present constitutional structure is to prevent a conflict between the Executive and the Legislature and to promote harmony between the different parts of the governmental system . . . After weighing the pros and cons of the Parliamentary Executives as they obtain in Great Britain, in the Dominions and in some of the Continental Constitutions, and the Presidential type of government as it obtains in the United States of America, the Indian Constitution has adopted the institution of Parliamentary Executive." (C.A.D. VII, pp. 985-6.)

So the Constitution of India has provided for a President indirectly elected for a term of 5 years, who is a constitutional head of the country in the manner of the King in England. He can be removed by impeachment proceedings brought against him by the Parliament. The Vice-President who is also indirectly elected serves as head of the State in the event of President's incapacity or death; he is also the

Chairman of the Upper House of Parliament. As in England we have a Council of Ministers, headed by the Prime Minister, collectively responsible to the Lower House, to aid and advise the head of the State. The President is the nominal head of the Executive, the Prime Minister with his Cabinet the real head. The relation between the President and the Council of Ministers has been put beyond doubt by the amendment made to article 74(1) of the Constitution by the Constitution (Forty-second Amendment) Act, 1976, which now provides that the President in the exercise of his functions "shall" act in accordance with the advice of the Council of Ministers.

ORIGIN

We will now examine the origin of the office of the Vice-President in our Constitution. Shri B. N. Rau, the Constitutional Adviser to the Constituent Assembly did not provide for the office of Vice-President in the memorandum (on 30-5-1947) which he had prepared for the consideration of the Committee set up pursuant to a resolution passed by the Constituent Assembly on April 30, 1947, to report on the main principles of the Union Constitution. I would quote therefrom *in extenso* the relevant draft clause and "Note" attached thereto :

"6 (1) In the event of the absence of the President or on his death, resignation, removal from office or incapacity or failure to discharge his functions, his functions shall be discharged by a Commission consisting of :

(*i*) The Chief Justice of the Supreme Court;

(*ii*) The Chairman of the Senate; and

(*iii*) The Speaker of the House of Representatives.

(2) The Council of State may, by a majority of its members, make such provision as they think fit for the discharge of the functions of the President in any unforeseen contingency."

"[Note : In the U.S.A., there is a Vice-President who is elected in the same way as the President. The Vice-President automatically becomes the President upon the President's death or resignation or removal from office and, meanwhile, he functions *ex-officio* as the President of the Senate. If we were to adopt a similar plan under this Constitution, we should have to say that the two Houses of the Union Parliament sitting together must elect a President and a Vice-President, the Vice-President then becoming the *ex-officio* Chairman of the Senate. This would mean that the Chairman of the Senate is to be elected by the two Houses in joint session, which seems inappropriate. Nor would it be appropriate to adopt the reverse plan and to make the Chairman of the Senate *ex-officio* Vice-President, considering that the Vice-President is the choice of both Houses sitting together. Morever, in an executive of the parliamentary type, there is hardly any room for a Vice-President between the President and the Prime Minister. In these circumstances, the best course would appear to be to copy the Irish plan of having a Commission instead of a Vice-President to discharge the President's functions during a casual vacancy. This is what has been done in the draft.

It will be noticed that there is a reference to the "Council of State" in sub-clause (2). This institution also has been borrowed from the Irish Constitution. It is a kind of Privy Council to aid and advise the President on matters of national importance in the decision of which any party bias has to be avoided. The Council of State consists of the Prime Minister, the Deputy Prime Minister, the Chief Justice of the Union, the Speaker of the House of Representatives, the Chairman of the Senate, the Advocate-General, every ex-President, every ex-Prime Minister, every ex-Chief Justice and a limited number of other persons to be appointed by the President in his absolute discretion. It is a non-party Council of elder statesmen including judges. Such a Council may be found useful in India in such matters as the protection of minorities, the supervision, direction and control of elections and the appointment of judges of the Supreme Court and the High Courts.]" (India's Constitution in the Making by B. N. Rau, pp. 68-69.)

However, the Union Constitution Committee in June 1947, decided in favour of having a Vice-President to be elected by both the Houses of Parliament in joint session on the system of proportional representation by means of the single transferable vote. It also recommended that he should be *ex-officio* President of the Council of States and perform the duties of the President in the event of the latter's absence, or on his death, resignation, removal from office, incapacity or failure to discharge his functions. This latter objective was one of the main reasons given by the said Committee in recommending the creation of the office of the Vice-President. The Committee stated : "During the interval between the occurrence of a vacancy in the office of the President and its filling up by election and when the President is unable to discharge his functions owing to absence, illness or any other cause, his functions will be discharged by the Vice-President." (Report of the Union Constitution Committee, in Reports of Committees, Second Series, 1948, p. 14.) The draft Constitution of February 1948 contained these decisions in articles 52 to 56. These articles were discussed in the Constituent Assembly on December 28 and 29, 1948.

In the Constituent Assembly an amendment was moved by Prof. K. T. Shah that the Vice-President should be elected at the same time and in the same manner as the President. A similar amendment was also moved by Shri Mohammad Tahir (C.A.D. VII, p. 1093). Explaining the reason for the adoption of a different system from that by which the President is elected, Dr. Ambedkar said :

> "The difference is based upon the functions which the two dignitaries are supposed to discharge. The President is the Head of the State and his powers extend both to the administration by the Centre as well as of the States . . . . But when we come to the Vice-President, his normal functions are merely to preside over the Council of States. It is only on a rare occasion, and that too for a temporary period, that he may be called upon to assume the duties of the President. That is the justification for a distinction in the methods of election of these two dignitaries" (C.A.D. VII, pp. 1100-1).

There was considerable discussion regarding the provision concerning the removal of the Vice-President. Prof. K. T. Shah moved an amendment proposing that he could be removed from office only "for reason duly proved, or for any violation of the Constitution duly established or for conviction for any offence constituting a disqualification for election to the office of a President, Vice-President or member of Parliament, or for physical or mental incapacity duly certified, or for bribery and corruption, duly proved." Shri Mahboob Ali Baig wanted to provide that the Vice-President could only be removed by a two-thirds majority of the total membership of the Council of States, agreed to by a similar two-thirds majority of the total membership of the House of the People (C.A.D. VII, p. 1105). Dealing with Prof. Shah's amendment, Dr. Ambedkar did not consider it necessary to specify bribery, corruption, or the other offences as reasons for the removal of the Vice-President. He argued : "Want of confidence is a very large phrase and is big enough to include any grounds such as corruption, bribery, etc."

Replying to Shri Mahboob Ali Baig's amendment requiring a two-thirds majority for the removal of the Vice-President, Dr. Ambedkar pointed out that the position of the Vice-President was really that of the Chairman of the Council of States, and that so far as his functions were concerned, they were similar to those of the Speaker of the House of the People. Consequently the rules which were made applicable to the removal of the Speaker were also made applicable *mutatis mutandis* to the removal of the Vice-President. (C.A.D. VII, p. 1114).

SPECIAL FEATURES OF THE OFFICE

The office of the Vice-President is a unique feature of our Constitution, which has no exact parallel in the constitutions of other democratic countries of the world. There is no such office in other parliamentary systems of Governments as they exist in the Commonwealth countries or in Ireland. The only constitution, among the important democracies of the world, which provides for such an office, is that of the United States of America. But the office of our Vice-President though analogous to, is not identical with, that of the Vice-President in U.S.A. for the obvious reason that in U.S.A. they have the Presidential system of Government and not a Parliamentary one as we have in India.

The justification for such an office lies in the fact that the President, in whom the executive power is vested, may not be available on certain occasions to carry on the functions of that office. Other constitutions have provided for such a contingency in different ways. For instance, the Constitutions of Ireland (Article 14) and Burma (Section 34) provide for a commission to discharge the functions of the President when he is unable to perform his functions or when there is a casual vacancy. This was the pattern originally suggested by Shri B. N. Rau. Similarly, the functions of the President in such a contingency are performed by the President of the Senate in France (Article 7) and by the President of Bundesrat in West Germany (Article 57). However, there is no doubt that the institution of the Vice-President has been taken by us from the U.S. Constitution and has been adjusted to suit our system.

Though there is a striking similarity between the role of the Vice-President of India and his counterpart in U.S.A.—both preside over the Upper Houses and act as Presidents in certain contingencies—there are vital differences between the two offices. In U.S.A. where they have the Presidential system of Government, the President is not just a titular or constitutional head of the State but its real executive with the result that the importance of the Vice-President's office is much more apparent in U.S.A. than in our country. The provision in the American Constitution makes the Vice-President potentially important. According to it, if the President dies in office or the office of the President becomes vacant for any other reason, the Vice-President takes over the President's office, in fact he succeeds to the Presidency—and continues in that capacity for the full length of the unexpired term of his predecessor. Nine Vice-Presidents have so far succeeded to the American Presidency in this way. But under our Constitution in similar circumstances the Vice-President can act as President only for a maximum period of six months because a new President has to be elected within that period [Article 62 (2)]. As the American Vice-President in the contingency stated above is expected to take over the reins of Government in his hand, the Constitution of U.S.A. provides for similar methods of election and removal of the President and the Vice-President. These provisions have vested the office of the Vice-President with the same dignity as that of the President and also with authority when the need arises.

In India the methods of the election as well as removal of the President and Vice-President are different. In law even though the American Vice-President acts as President only when the office of the President becomes vacant, in practice, the Vice-President sits with the President's Cabinet and keeps himself informed of administrative matters (Ogg & Ray, American Govt., 1951, p. 390) so that if and when an occasion arises, he is conversant with all the problems that face the country. In fact he is not only included in the President's cabinet but a good number of diplomatic and executive duties have, of late, been assigned to him. In India because of our Parliamentary system of Government we cannot visualise the President presiding over the cabinet or the Vice-President being a member thereof.

CONSTITUTIONAL PROVISIONS

The office of the Vice-President is provided in Chapter I in Part V of our Constitution dealing with the Union Executive, perhaps because he acts as President in the vacancy caused in the office of the President or during the absence or illness of the President. He is therefore in a way part of the Executive. However he has no executive functions to perform, since he is the *ex-officio* Chairman of the Rajya Sabha.

Article 63 of our Constitution states, 'there shall be a Vice-President of India'; he is made the *ex-officio* Chairman of the Council of States *i.e.* Rajya Sabha and is precluded from holding any other office of profit and from being a member of either House of Parliament [Arts. 64 and 66 (2)]. Under article 65 he acts as President in the vacancy caused by the death, resignation or removal of the President till a new President is elected and assumes office, or when the President is unable to act owing to absence, illness or any other cause. In the former case when a permanent vacancy occurs, the new President has to be elected as soon as possible after, and in no case later than six months from the date of occurrence of the vacancy [Art. 62 (2)]. When the new President enters upon his office, the Vice-President must revert to his office. On the death of President Zakir Husain on May 3, 1969, the then Vice-President V. V. Giri was sworn in to function as the acting President of India. Similarly when President Fakhruddin Ali Ahmad died on February 11, 1977, Vice-President B. D. Jatti was sworn in to function as acting President of India. In the latter case, when a temporary vacancy occurs in the office of the President, the Vice-President discharges the functions of the President until the date on which the President resumes his duties. There have been many occasions when the Vice-President discharged the functions of the President during temporary absence of the President. Vice-President S. Radhakrishnan performed the functions of President Rajendra Prasad from June 20, 1960 to July 5, 1960 when the latter paid a State visit to the Soviet Union as "important State events during the next two weeks" required "formal Presidential assent". On another occasion Dr. Radhakrishnan was sworn in on July 25, 1961 to discharge the functions of President upto December 19, 1961 on the request of President Rajendra Prasad himself, who was advised rest due to his serious illness. Vice-President Zakir Husain performed the functions of the President on two occasions when President Radhakrishnan had to undergo an eye operation in February 1964 and again in March 1965. (Vice-President functioned as President from February 5, 1964 to February 21, 1964 and from March 16, 1965 to April 18, 1965). There is no provision for the Vice-President taking the title of the President during the period when he acts or discharges the functions of the President. He is referred to as the Vice-President acting for, or discharging the functions of, the President. This is clear from a perusal of the Summons issued in February 1977 to the members of the Rajya Sabha which was signed by the Vice-President, Shri B. D. Jatti, as Vice-President acting as President. It may also be noted that not on all occasions when the President was abroad, were such arrangements made. "It appears

that the power to determine when the President is unable to discharge his duties or when he should resume his duties has been understood to belong to the President himself. But if the President is unable to determine that, say, owing to a sudden attack of serious illness, Parliament may determine that under its residuary powers under article 70. (Basu's Commentary on the Constitution of India, 5th edition, 1962, Volume II, p. 394).

When the Vice-President acts as, or discharges the functions of, the President, he has all the powers and immunities of the President and is entitled to the same emoluments as the President (Art. 65); however during this period he cannot perform the duties of the office of the Chairman of the Rajya Sabha and is not entitled to any salary payable to the Chairman of the Rajya Sabha (Art. 64).

The Vice-President is elected in accordance with the system of proportional representation by an electoral college consisting of the members of both the Houses of Parliament. Prior to 1961, the members were required to elect the Vice-President at a joint meeting of both the Houses but when Dr. S. Radhakrishnan was elected Vice-President unopposed in 1957, no such meeting was held. Objections were raised that the election was void because the joint meeting required by the Constitution never took place. In order to remove this difficulty, the provisions requiring the joint meeting was dropped by the Constitution (Eleventh Amendment) Act, 1961. The Vice-President is now elected in accordance with the system of proportional representation by means of the single transferable vote. Just as in the case of the President, this method of voting has been adopted to secure that the Vice-President should be elected by an absolute majority. Detailed provisions regarding the Vice-President's election etc. are contained in the Presidential and Vice-Presidential Elections Act, 1962, and the rules framed thereunder.

No person is eligible for election as Vice-President unless he is a citizen of India, has completed the age of 35 years and is eligible to be elected as a member of the Rajya Sabha or if he holds any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments (Art. 66). Certain offices have been declared not to be treated as 'office of profit' by the Constitution itself *e.g.* President, Vice-President, Governor, Ministers both at the Centre and the States (Arts. 58, 66). It has also been held that the post of a Vice-Chancellor [*Hansa Mehta* vs. *Indu Bhai* E.L.R. 1951-52 (i) p. 171] and that of a teacher of Government aided school [*Krishnappa* vs. *Narayan Singh* E.L.R. 1957-58 (vii) p. 294] are not to be treated as office of profit for this purpose.

The Vice-President holds office for 5 years but can resign by writing under his hand addressed to the President; he can also be removed from office by a resolution (a 14 days' notice of intention to move the resolution is necessary) passed by a majority of all the then members of the Rajya Sabha and agreed to by the Lok Sabha. It may be noted that while it is necessary that this resolution should be passed by a majority of the total membership of the Rajya Sabha, in the case of

the Lok Sabha it would suffice if the majority of those voting agreed to the resolution. However notwithstanding the expiration of his term, he continues in office till his successor assumes office (Art. 67). Provision has also been made in article 68 to fill a vacancy in the office of the Vice-President occurring by reason of his death, resignation or removal or otherwise and the person elected to fill the vacancy is entitled to hold office for the full term of 5 years from the date on which he enters upon his office. There is no bar to a Vice-President's re-election. Dr. Radhakrishnan was Vice-President for a period of full two terms from 1952 to 1962.

Every Vice-President, before entering upon his office, makes and subscribes before the President, or some person appointed in that behalf by him, an oath or affirmation in the following form, namely :

> "I, AB., do swear in the name of God/solemnly affirm, that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter." (Art. 69).

This oath of office differs significantly from that of the President and is similar to that of a member of Parliament.

Article 70 enables Parliament to make provisions as it thinks fit for the discharge of the functions of the President in any contingency not provided for in the Constitution *e.g.* when a vacancy takes place in the office of President and Vice-President simultaneously, owing to removal, death, resignation or otherwise. In exercise of these powers Parliament has passed the President (Discharge of Functions) Act, 1969 which came into force in May 1969 providing *inter alia* that in the event of the occurrence of vacancies in the office of both the President and the Vice-President, the Chief Justice of India, or in his absence, the senior most judge of the Supreme Court of India available shall discharge the functions of President until a newly elected President enters upon his office or a newly elected Vice-President begins to act as President under article 65 of the Constitution, whichever is earlier.

Until recently all doubts and disputes arising out of, or in connection with, the election of the President or the Vice-President were to be enquired into and decided by the Supreme Court of India, whose decision was to be final. Article 71 which deals with this matter has been amended by the Constitution (Forty-second Amendment) Act, 1976, and under the amended provisions such doubts and disputes are to be enquired into and decided by an authority or body constituted by an Act of Parliament. However, if the election of the person as President or Vice-President is declared void under the law passed by Parliament acts done by him in the exercise of his powers and duties on or before the date of such declaration will not be invalidated by reason of that declaration. The President has issued the Presidential and Vice-Presidential Elections (Amendment) Ordinance, 1977 (3 of 1977) in the matter. Article 97 provides *inter alia* that the salary and allowances of the Chairman are to be prescribed by law made by Parliament and till then, are such as are provided in Part C of the Second Schedule. The Vice-President does

not draw any salary as Vice-President; he draws his salary as Chairman of the Rajya Sabha *i.e.* he does not draw a salary for his regular post but draws one for the duties performed by virtue of his office. The salary and allowances of the Vice-President are governed by the Salaries and Allowances of the Officers of the Parliament Act, 1953, which came into force on May 1, 1953 under which the Chairman gets per month a salary of Rs. 2250 and a sumptuary allowance of Rs. 500. He is provided with a furnished residence free of charge and is entitled to free medical facilities for himself and the members of his family. Besides when on official tour, he gets daily and travelling allowances according to the Rules framed under the said Act. The salary and allowances payable to the Vice-President in his capacity as Chairman are charged on the Consolidated Fund of India [Art. 112 (3)]. The Vice-President is also provided with a small secretariat to assist him in the discharge of his functions as Vice-President.

DUTIES AND FUNCTIONS OF THE VICE-PRESIDENT

We will now summarise the constitutional duties and functions of the Vice-President :

(1) Though the office of the Vice-President of India is included in the Constitution in the Part dealing with the Union Executive indicating that he is a part of the Executive, the Vice-President has no executive functions to perform.

(2) He is the *ex-officio* Chairman of the Rajya Sabha—he presides over its meetings, has all the powers of a presiding officer, but has no vote except when there is a tie. He is the guardian of the rights and privileges of the members of the Rajya Sabha, and is paid salary and allowances as the Chairman of the Rajya Sabha.

(3) Besides presiding over the Rajya Sabha, the Vice-President represents it on ceremonial occasions both in India and abroad. When the President addresses both Houses of Parliament assembled together, the Vice-President sits along with the President and the Speaker of the Lok Sabha, in his capacity as the Chairman of the Rajya Sabha. Dr. Radhakrishnan when he was the Vice-President presented a gavel to the Senate of U.S.A. on his visit to that country in 1954 in his capacity as the Chairman of the Rajya Sabha.

Till recently he used to read the Hindi version of the President's Address to both Houses of Parliament assembled together probably in his capacity as the Vice-President; in February 1970, the said version was read by the Secretary to the President. Objection to this course was raised in both the Houses of Parliament. This practice was thereafter discontinued and the Hindi version of the President's Address was read by the Vice-President during 1971-74. In 1975 and 1976 both English and Hindi versions of the President's Address were read by the President himself.

(4) He performs the functions of, and acts as, the President in certain contin-

gencies, namely—on the death of the President; resignation of the President; removal of the President from his office through impeachment or otherwise and finally when the President is unable to discharge his functions owing to absence, illness or any other cause.

(5) Under article 56 of the Constitution the President may, by writing under his hand addressed to the Vice-President, resign his office and it is the duty of the Vice-President to communicate forthwith the resignation of the President to the Speaker of the Lok Sabha.

Besides these duties cast upon him, he performs several other functions :

(*i*) Since the time of the first Vice-President Dr. Radhakrishnan, a practice has grown to send the Vice-President as an ambassador of goodwill and friendship to foreign countries. Dr. Radhakrishnan and Dr. Zakir Husain when they were Vice-Presidents visited a number of countries on goodwill missions. In view of our constitutional system of Government, they never headed a mission going abroad on Governmental business, may be of a political, diplomatic, commercial or cultural nature, but it cannot be denied that these visits generated a favourable atmosphere for us in the countries that these dignitaries visited. Pandit Govind Ballabh Pant acknowledged with gratitude the value of these visits when he addressed Vice-President Radhakrishnan in the Rajya Sabha in the following terms : "You have filled this office with unique distinction. In fact you shed lustre on every office occupied by you—You have carried to all parts of the globe the ennobling message of non-violence, truth, fellowship and friendliness on behalf of this ancient land" (Rajya Sabha Debates Vol. XVII, 1957, cols. 2-3).

(*ii*) Because of the high office of the Vice-President and of the eminence and reputation of the persons holding it, people holding high positions in Government have found it useful to consult him on formulations or implementation of State policies. In this connection Palmer in his book entitled 'Indian Political System' (1961, p. 116) states thus : "India has had a most distinguished Vice-President Dr. Radhakrishnan, one of the world's leading philosophers, who has given prestige and dignity to the office. He has presided over the deliberations of the Indian Council of States with grace and charm, and often with wit. While he has not always observed strict parliamentary procedure, his personal influence and prestige have more than compensated for any departures from normal practices. He has been a disinterested adviser, confidant and friend to Dr. Prasad and Nehru and to others in high position in the Government and in the Indian life generally."

Not being committed to any dogma, and standing apart from the humdrum of everyday political life, the Vice-President's advice in policy matters is bound to be for the benefit of the nation at large. He is not connected with the day-to-day affairs of the State, but by practice he is posted with the decisions of the Cabinet, so that he has with him a complete picture of the affairs of the Union Government. This practice has no legal sanction but has been found to be convenient as the Vice-President might be called upon under article 65 to function as President. This undoubtedly enhances the prestige of the office.

(*iii*) The Vice-President is consulted by persons not only in the highest position in Government but also by other leaders of political parties and eminent persons in their respective walks of life. If one sees the list of visitors at the Vice-President's residence, one finds therein the names of politicians, publicmen, men of letters, scientists, artists, ambassadors and visiting dignitaries. The letters, applications, petitions, representations received by him from persons from all walks of life seeking his personal attention, run into hundreds. Some seek advice from him, others want him to intercede in their behalf with those who matter, still others wait on him or write to him just to show respect to the person who holds such a high office.

(*iv*) He is also called upon to perform temporarily the functions of the President (other than legal or constitutional) when the latter is unable to perform them for some reason or the other. For example, when President Giri had been to Kerala for undergoing medical treatment, Vice-President G. S. Pathak had to deputise for him on many an occasion.

Incidentally the Vice-President is elected, by convention, to the office of the Chancellor of the Delhi University.

CONCLUSION

"The Constitution provides for a Vice-President whose role in the Government is comparatively insignificant," (Constitutional Government in India, M. V. Pylee)—"he has no function of his own and no ceremony about himself. As the dignified part of the Constitution, he is overshadowed by the President and as such cannot be a focus of citizens' interest and attention."

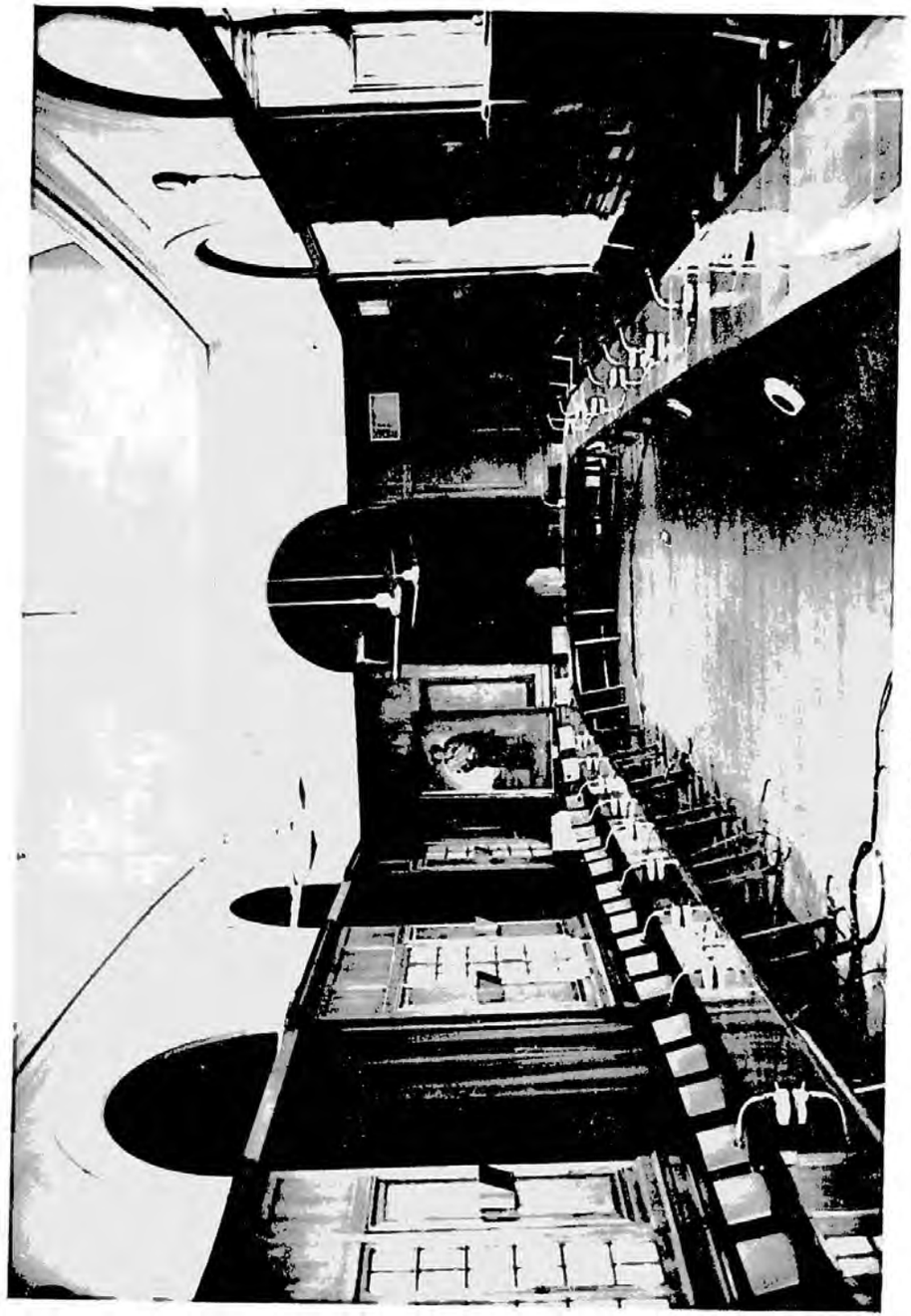
It is true that in the absence of power, an office, such as this, is considered by some as superfluous, even the Vice-President's office in U.S.A. was termed by Benjamin Franklin as "His superfluous Highness" (The Government of U.S.A., Munro, 1954, p. 167).

However, it cannot be denied that the office of the Vice-President has come to occupy a place of respect and honour in our constitutional system. This has come about not because of the constitutional provisions but because of the eminence and reputation of persons holding this office. Dr. Radhakrishnan the first Vice-President was a philosopher and scholar of world repute. Dr. Zakir Husain, the second Vice-President was a scholar and educationist of great eminence. His successor Shri Giri was a recognised labour leader with wide administrative experience. Shri Pathak the fourth Vice-President, besides, being a lawyer of international repute, had adorned the bench at Allahabad High Court and the treasury benches at the Centre. Shri B. D. Jatti, the present Vice-President is an eminent social and political worker. A man of the masses, Shri Jatti had a humble beginning and has risen to the top almost from the grass-roots. Before becoming the Vice-President he served the country in several capacities—both political and administrative—as Chief Minister of one State and Governor of another. It is fortunate for the country that up till

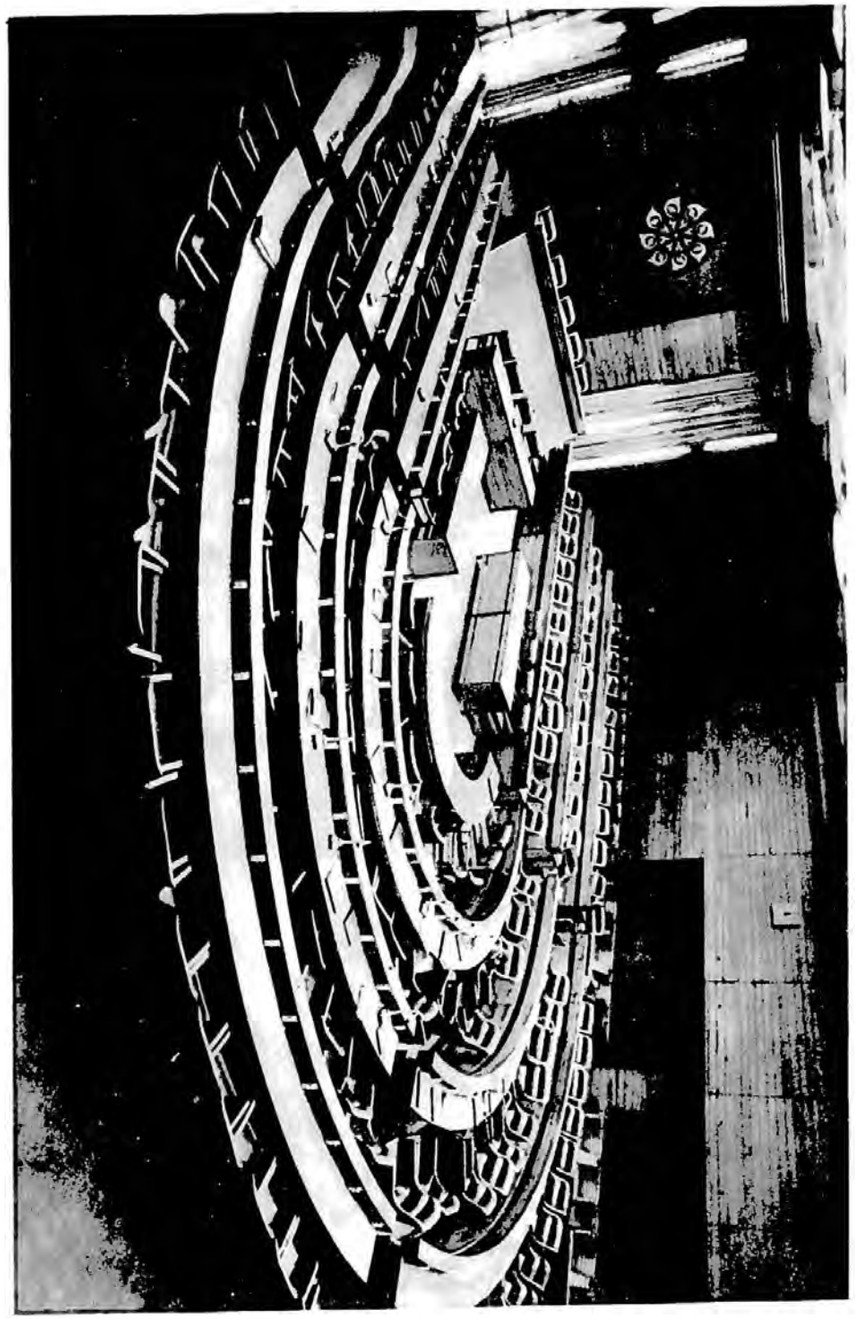
now the office of the Vice-President has been held by persons who have been and are known for their idealism having placed national interest above everything else.

In spite of all the criticism it cannot be denied that the office of our Vice-President has acquired a dignity and prestige of its own and the personality of the persons who have held this high office, which ranks second in the Warrant of Precedence, has been one of the major reasons for the same.

February 23, 1977



The inside view of Committee Room
No. 63, Parliament House.



The inside view of the main Committee Room, Parliament House Annexe.

Part Four

The Rajya Sabha and its Working

30

Rajya Sabha—The Kind of Second Chamber India Requires

B. R. BHAGAT*

A period of twenty-five years is not a long period in the history of an institution like the Rajya Sabha except to the extent that the initial years are of importance as the foundations for its working are laid then and the traditions and conventions built in these years play a vital role in setting proper trends for its evolution. Of course, a period of twenty-five years is quite enough to reflect on the functioning of the Rajya Sabha.

There had been prolific writings on second chambers—on their utility or otherwise. These debates emanate first as a democratic reaction shying away from non-representative bodies. The following remark about the House of Lords reflects such thinking :

> "Self-conscious democracy began to ask the question of 'quo-warranto' of a House founded upon every sort of title except democratic functional utility."[1]

Secondly it started as a reaction against extremism of democracy, out of scare

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1. 'Theory and Practice of Modern Government', Finer, p. 401.

that the democratic trends may sweep away permanent values without giving an opportunity or time to the people to reconsider.

> "Therefore, a fence was required and this must be a body, enlightened, of limited number and with the 'firmness reasonably to interpose against impetuous counsels'."[2]

If 'revolutionaries do not want obstructionists' sums up the former way of thinking, 'one is the product of inspiration and the other of reason' suggests the other.

Despite controversies on the subject of bicameralism, second chambers continued to be constituted as a revising and delaying chamber or to represent the interests of the constituent units in a federal polity. It is of interest to note that even the Communist States conceived of Parliament as a bicameral institution.

The Rajya Sabha did not have any controversy over its genesis. There were no doubt discussions on the mode of its constitution. But at no time was there any discussion on the need or otherwise of the Council of States. It was taken for granted that a federation like ours should have a second chamber in the Centre. I am particularly saying Centre for, when it came to the States, the opinion was not that unanimous. Dr. Ambedkar, the architect of the Constitution, himself had different thoughts in regard to a second chamber in the States. He said :

> "All that we are doing by the Constitution is to introduce the Second Chamber purely as an experimental measure. . .There is sufficient provision in Article 304 for getting rid of the Second Chamber."[3]

West Bengal and Punjab invoked the provisions and abolished the Legislative Councils in their respective States. But Andhra Pradesh taking advantage of the provision had a Council constituted. Thus should a State have a second chamber or not was left to the States themselves to decide depending upon their requirements and conditions. But the federal character of our polity was considered a sufficient ground for the constitution of the Rajya Sabha. No doubt it was not conceived only to represent the interests of the States but also as a revising chamber and a chamber of elders. Association of elders and the wise in congregations and assemblies is an age-old custom. Mahabharata bespeaks of an assembly bereft of elders as not an assembly at all :

न सा सभा यत्र न सन्ति वृद्धाः ।[4]

2. *Ibid.*
3. Constituent Assembly Debates, Vol. VII, 1949, p. 1317.
4. Mahabharata, 5/35/58.

While modern parliamentary democracies accept the utility of inducting the wise and experienced, the method of their association and the extent of their participation in decision-making have materially altered. They are not given the power of veto against popular will which alone reigns supreme in a democratic structure.

> "The modern world has rejected the application of ability to government unless it is representative of the interests of those expected to obey the law."

Thus the modern constitutions provide for a second chamber which could comprise of men comparatively in higher age group and men with standing in diverse fields. It is in this context we have to consider the position given to the Rajya Sabha in our Constitution.

The Rajya Sabha is not a nominated body or a body representing hereditary or other vested interests. During the British days due to the restricted franchise the Council of States was in a way evolving itself as a body representing landed aristocracy. But the Rajya Sabha was a departure from that Council. The Rajya Sabha was to consist of not more than 250 members. But for the 12 members nominated by the President for their special knowledge, the remaining 238 members are indirectly elected. They are elected by the elected members of the State Assemblies by a system of proportional representation by means of the single transferable vote. By making the State Assemblies to elect the members of the Rajya Sabha, it is sought to give the Rajya Sabha the character of representing the constituent States. But equality of seats for each State has not been provided for. By providing election according to proportional representation, it has been sought to reproduce the State Legislative Assemblies in a miniature form in the Rajya Sabha. Differing interests, parties and groups in the State Assemblies get representation in the Rajya Sabha according to their strength in the Assemblies.

Let us take the strength and mode of constitution of a few second chambers in other countries. The U.S. Senate is constituted on the basis of equality of seats among the constituent States and now consists of 102 members. The Australian Senate consists of only 60 members, 10 from each State directly elected by the people. The Canadian Senate is a nominated body of 104 members who hold office till they reach the age of 75. The Malaysian Senate is also dominated by the nominated element. Out of 58 members, only 26 are elected by 13 constituent States.

The Rajya Sabha is not an unwieldy body like the House of Lords nor is it a select body like the Senate of U.S.A., Canada or Australia. It is a medium sized second chamber, conceived of more as a deliberative body. In fact the procedure of election that we have adopted makes it possible to get proportionate representation to all groups in a State Assembly and to that extent, the Rajya Sabha becomes more representative of State interests. It looks as if we have sought to constitute a second chamber which would represent not only the totality of the nation but the totality of the national interests.

The indirect election in a way helps in inducting experienced and seasoned

persons from different walks of life. In fact, many parties have brought into the Rajya Sabha their stalwarts who would not like to face the uncertain fortunes of an election. It is often said that the second chamber helps to pack it with defeated members—defeated in the election to a Legislative Assembly or the Lok Sabha. But the number of such defeated candidates provided berth is rather very small. Even then, I do not see any harm in bringing in really capable and seasoned leaders though they might have been defeated at the polls. Many parties have brought their stalwarts whose standing and experience the parties could ill-afford to lose and whose advice might continue to be available to the country. The question is not : Should such leaders be brought to the Rajya Sabha ? It should rather be : Should their advice and knowledge be denied to the country through an institutionalised forum ?

The second provision that seeks to bring comparatively experienced men relates to the minimum age requirement. The Constitution provides a minimum age limit of 30 for being elected to the Rajya Sabha, compared to the age limit prescribed for the Lok Sabha, namely 25. The idea is that there should be more experienced persons in the Rajya Sabha. If we analyse the membership of the Rajya Sabha over the twenty-five years, we do find that those who were returned to it have had a term or two already in the State Assemblies or Councils or even in the Lok Sabha. They are not new to parliamentary life. But some of the members returned to the Rajya Sabha have been comparatively novices to parliamentary institutions. They have been elected for the first time and that too to the Rajya Sabha. But their number is comparatively low.

If we compare the age composition in the two Houses, we find that there has been not much difference despite the higher minimum prescribed for the Rajya Sabha. The reason is not far to seek. Most of the persons who had offered themselves for election to the Lok Sabha are men who had participated in the freedom struggle. They were known for their sacrifice and dedication to the national cause in their area and were sure to succeed in any general election. The Lok Sabha, therefore, continued to be composed of men who were past their prime. This is likely to change now for the 'class' known as freedom fighters is fast dwindling in number with the passage of time. Therefore, it is in the next decade we have to see if the age prescription affects the age composition in the two Houses. But the 12 members to be nominated to the Rajya Sabha did fall under a category of people on the wrong side of fifty-five and above.

Further the mere fact that a lesser age limit is prescribed for the Lok Sabha need not mean that persons higher in age could not offer themselves for election to that House or that they cannot be elected. The age limit to the Rajya Sabha has to be only interpreted as an attempt to bring men with some experience to come to that House.

Compared to the above, the Canadian Senate prescribes a retirement age of 75 for its nominated members. Naturally, the Canadian Senate is likely to have members past their prime on its roll at any given time.

Lastly, the attempt to give the Rajya Sabha to evolve comparatively a conservative outlook is in the permanent nature of its constitution. It is a permanent body, one-third of its members retiring every two years. In other words, each member can ordinarily hope to have a term of six years, with the possibility of another term or two. Continuous existence of the Rajya Sabha and longer term for its members sought to ensure the existence of more experienced persons in the Rajya Sabha at any given time. But the position has since changed. The life of the Lok Sabha and the State Assemblies has also been now fixed at six years. It could no longer, therefore, be argued that by the mere fact of its term, the Rajya Sabha could hope to have more experienced men.

The different terms for Assemblies and the permanent character of the Rajya Sabha did hold out a chance of the Lok Sabha and the Rajya Sabha being composed of different elements. It will have to be seen if the change in the terms of the Assemblies is likely to make the above far more remote and will help the return of like-minded persons to both the Houses removing the possibility of any sharp disagreement on any important socio-economic legislation.

The point we have to remember is that the mode of composing the above two Houses is not the same. But the difference in the method has failed to establish an 'aristocracy leading to the subjection of the people' as Mathien de Montmorency feared. The Rajya Sabha has been quite alive to popular demand and has risen to the occasion always.

The powers enjoyed by the Rajya Sabha fall into the following categories :

(*i*) Special powers as representing the States;
(*ii*) Powers it shares as a co-equal of the Lok Sabha; and
(*iii*) Powers it enjoys in financial matters.

The powers it enjoys as representing the State interests singles it out as a second chamber in a federation. These relate to the power vested in the Rajya Sabha to pass a resolution to enable laws to be passed by Parliament on State subjects for the whole of India or any part thereof (Article 249). A special majority of 2/3 present and voting is prescribed for the purpose. But this power is subjected to two limitations. The resolution does not debar the State or States from legislating on the subject, but in the event of conflict with the Central law, the State law will not be valid to the extent of its repugnancy with the Central law. Secondly, the validity of the resolution is confined to a year at a time and has to be extended by fresh resolutions passed annually.

The second power it enjoys is in the matter of creation of all-India Services. If the Rajya Sabha passes a resolution that it is expedient in the national interest to create one or more all-India Services, Parliament will have the power to create by law such services (Article 312). Here again the resolution has to be passed by 2/3 majority of the members present and voting.

There had been no occasion to invoke the provisions of Article 249 in regard to legislation on State subjects by Parliament. But the Indian Service of Engineers, the Indian Medical and Health Services and the Indian Forest Service were created

on the basis of a resolution passed by the Rajya Sabha in 1961 and the Indian Agricultural Service and the Indian Educational Service in pursuance of a resolution passed in 1965.

By providing for a special majority it has been sought to give the resolution the character of national consensus, not merely the desire of the majority of the members of the Rajya Sabha. In other words, such a resolution should be passed by members representing at least 2/3 of the States.

The Rajya Sabha enjoys co-equal powers with the Lok Sabha in the matter of ordinary legislation. It also enjoys equal constituent powers. While the second chambers enjoy more or less the same powers of legislation, the constituent powers enjoyed by the Rajya Sabha puts it by a class. In 1970, the Constitution (Twenty-fourth) Amendment Bill though passed by an overwbelming majority by the Lok Sabha was defeated by a fraction of a vote in the Rajya Sabha. The non-passing of the Bill in effect resulted in the mid-term polls in 1971.

Ordinary legislation can be introduced in the Rajya Sabha. No reservation has been imposed in this respect. In fact some of the weighty and important legislation that has found entry into the statute book was introduced in the Rajya Sabha. In the case of Bills passed by and transmitted from the Lok Sabha it enjoys unrestricted amending power. In case of any disagreement between the two Houses there is a provision for a joint sitting of both the Houses to resolve the deadlock. This provision brings out clearly the supremacy of the popular will in the event of any disagreement and also puts a limit on the Rajya Sabha as the revising and delaying Chamber. In the event of the joint sitting, the members of the Lok Sabha will be numerically strong. But the irony of the situation, of course, is in the case of the single joint sitting of the two Houses convened in these twenty-five years, the amendment proposed originally by the Rajya Sabha which was in dispute was accepted.

But all these theoretical discussions assume that members of the two Houses have evolved a separate identity, based on loyalty to the House they are members of, distinct from any loyalty they owe to their party or the constituency. No doubt in the earlier years it looked as if the Houses were trying to assert their separate identities, but it was short-lived. Such controversies arose over Money Bills and participation of the Rajya Sabha in the Public Accounts Committee. Despite the fact of their different modes of composition, they have failed to develop any marked identity as a body-corporate; I will come to the reason for this later.

In the matter of financial matters and Money Bills, the Rajya Sabha does not enjoy co-equal powers with the Lok Sabha. Though the Annual Financial Statements are laid on the Tables of both the Houses, the budget speech is delivered only in the Lok Sabha. Discussion on and voting of Demands for Grants only take place in the Lower House. Only the Appropriation Bill goes to the Rajya Sabha for recommendations, if any. The Rajya Sabha has no power to amend the Money Bills. It can only recommend amendments to the Lok Sabha. The authority to

accept or reject those amendments vests in the Lok Sabha. The period within which such recommendations are to be made is confined to fourteen days.

Compared to the Rajya Sabha, the Senate of the Australian Parliament enjoys greater powers in financial matters. The only limitation imposed is that Appropriation Bills and Bills imposing tax shall not originate in the Senate. Even in these Bills, the Senate enjoys the right to veto. We know what happened to the Ministry headed by Mr. Whitlam in Australia in 1974. The Australian Senate used the power to force the Government to go to the people. It was not done by refusing supply. An amendment was moved to the Appropriation Bill and when the Government obtained from Governor-General approval to the double dissolution—dissolution of the Lower House and the Senate—the amendment was withdrawn and supply was passed.[5] Thus the Senate used its power to veto as a Sword of Damocles and forced the Government to go to the polls. Such a situation is not likely to arise here in view of the fact that the Rajya Sabha does not enjoy the power to veto in financial matters.

The Canadian Senate has also co-equal powers with the Commons except that the Senate may not propose or increase the amount of any measure dealing with taxes or spending. But we have the statement of one of the abolitionists of the second chamber, Mr. Knowles to vouch that the Senate normally does not use its veto :

> "I know some Members will ask why I keep referring to the use of the veto since Senate does not use it very often. The number of times in history that the Senate has rejected something from this House can be counted on the fingers."[6]

But these descriptions are only touching the periphery of the real issue. The most important single factor that lends greater power or dignity to the Lok Sabha is the fact that the Council of Ministers, though composed of members from both the Houses, is responsible to it [Article 75(3)].

I had earlier referred to the fact that the Houses have not evolved any distinct personality. The reason is not far to seek. In any parliamentary democracy the leadership is provided by the Cabinet. It is the Cabinet that enjoys initiative in the matter of legislation; Private Members' role is extremely limited. This role is confined to one of eliciting information, bringing to the notice of Government matters of public importance and generally voicing the desire of the people and critically evaluating the role of the Government on all occasions and opportunities provided for him.

The Cabinet is backed by a solid majority in both the Houses : Though

5. Australian Senate and Its Power to Withhold Supply, The Commonwealth Parliaments, p. 100.
6. Quoted by Renaude Lapointe in his article 'The Role of Canadian Senate', The Commonwealth Parliaments.

differently constituted the party composition in both the Houses is more or less the same. The members belonging to one party have failed, so to say, to extricate themselves from the party discipline and owe loyalty to the House they belong. The party decides all issues coming before the two Houses and also the conduct of its members. What I say is not confined to the ruling party alone. All parties and groups function under one leadership for both the Houses and under one Parliamentary Party or Group. In such circumstances, it is difficult for any member to develop an identity surpassing his loyalty to the party.

Incidentally this would explain why there had not been much differences between the two Houses, extraconstitutional machinery of party having resolved such differences at its own level. It is not, therefore, surprising that in the twenty-five years there had been only one joint sitting of the two Houses and that too on a Bill where freedom to individual members was given by the parties.

What I would like to stress here is this. One reads a lot of literature on the second chambers and is led to believe that if there are two chambers, they must essentially differ and their efficacy lies in the amount of differences. I believe the two Houses could agree and still be useful.

One vital point has to be kept in mind. Freedom for which the nation struggled was not an end in itself. It was the beginning of an era to re-order our society, our social and economic infra-structure. It was the key to open the gate for the evolution of an egalitarian society. Our conditions warrant quick social and economic transformation. All this has to be achieved at the shortest possible time and speed should be the watchword. We have, therefore, to model our institutions in such a way that they provide for the minimum of restraint, a minimum of delay, which will give an opportunity to the people to re-assess or re-evaluate things and if need be revise them. But we cannot have the luxury of prolonged delay or confrontation in the name of checks against extremities of democracy. People get impatient and restive when delays occur in the implementation of the programmes. Recent history is a catalogue of events of delay and the consequences flowing therefrom. We could not, therefore, have conceived of a second chamber as an instrument of obstruction or retarding progress. It is in this light that some of the innovations we have made in the working of the two Houses can become explicable, like Joint Select Committee on Bills etc. In fact it goes to the credit of the Rajya Sabha that it stood in the forefront to suggest social and economic reforms.

In conclusion, I would like to say that the Rajya Sabha as a revising chamber cannot be compared to any other second chamber. It is the product of our demands and conditions. It affords that much delay as to enable the Government to bring any amendments that might have become necessary or accept such other amendments as may be proposed by members as a result of re-thinking during the delay or evaluation of public opinion. By way of an example, I can cite a case. The Travancore-Cochin Appropriation (Vote on Account) Bill, 1955, was passed by the Lok Sabha on the 29th March, 1956. The Bill had to be enacted before the

end of March 1956. But at that time, the Rajya Sabha was not in session necessitating the issue of an Ordinance to give effect to the Bill. The Bill was transmitted to the Rajya Sabha when it reassembled in April. An amendment was proposed to the effect that the Ordinance promulgated be repealed and it was accepted by the Lok Sabha. This is not only in the case of the Rajya Sabha, but the same thing happens to a Bill introduced in the Rajya Sabha and transmitted to the Lok Sabha. The system provides that minimum of delay as is necessitated by circumstances and works well.

The Lok Sabha and the Rajya Sabha are two deliberative wings of Parliament, each functioning in its assigned field, each enjoying powers peculiar to itself, and each becomes complementary to the other. If the Lok Sabha devotes greater time to financial matters, the Rajya Sabha can bestow more time to social and other measures. Together they could effect accountability to Parliament fully. I am reminded what Prime Minister Nehru said :

> "Under our Constitution, Parliament consists of two Houses, each functioning in the allotted sphere . . . the successful working of our Constitution as of any democratic structure, demands the closest cooperation between the two Houses."

In fact the history of the past decade or more shows how close the cooperation had been between the two Houses, which is as it should be.

January 15, 1977

31

Rajya Sabha : Position under Constitution, its Powers and Functions

JAISUKHLAL HATHI*

Article 79 of the Constitution provides for the two Houses of Parliament to be known respectively as the Council of States and the House of the People. These two Houses are now known as the Rajya Sabha and the Lok Sabha.

The Rajya Sabha is a permanent body and not subject to dissolution. The term of office of members is six years, but as nearly as possible one-third of the members holding seats of each category would retire every second year.[1] Accordingly one-third of the members of the Rajya Sabha retire after every second year and on each occasion elections are held and nominations made to fill the seats vacated by the retiring members.

The Vice-President of India is the *ex-officio* Chairman of the Rajya Sabha.[2] He is elected by the members of both the Houses of Parliament by the secret ballot and in accordance with the system of proportional representation by means of the single transferable vote. The Vice-President holds office for a term of five years from

*Shri Jaisukhlal Hathi was the Leader of the House in the Rajya Sabha and Union Minister holding important portfolios under the Government. He is at present Governor of Haryana.

1. Article 83.
2. Article 89.

the date on which he takes office. The Rajya Sabha also chooses one of its members as its Deputy Chairman.[3]

The institution of a second chamber is found all over the world, whatever be the type of administration, whether it is the cabinet form of government or whether it is irremovable executive or the presidential type. In U.S.A., Canada, Australia, U.S.S.R., France and other countries there are bicameral legislatures.

There is a school of thought which concedes that it is useful and necessary for a federal type of government to have a second chamber for the purpose of protecting the interests of the federating states, but in a unitary type of government, they say, it is absolutely out of place and unnecessary. John Stuart Mill not only sought to justify the usefulness of a second chamber in a federal type of government but also justified a second chamber in a unitary form of government in the following words :

> "A second chamber in a unitary state is often described as a brake, a device for delay, a means of checking what a 19th century Lord Chancellor called the inconsiderate, rash, hasty and undigested legislation of the other house."

It is commonly conceded that the advantages of a second chamber are : (1) the security it gives against hasty legislation, (2) opportunity it provides for full consideration and revision of any Bill passed by the Lower House before it becomes law, (3) it can relieve congestion of business in the Lower House because Bills could be originated in either House. Equally important is the fact that the second chambers provide for the continued counsel of men who might be unwilling for a contested election but whose knowledge and experience enable them to make an invaluable contribution to the government of the country.

The legislative function of a second chamber is seriously curtailed by the fact that it has no right to control finance and that Bills of major importance usually originate in the House which consists of the country's elected representatives. In India, however, quite a large number of public measures are originally introduced in the Rajya Sabha. So much so the Government has originated in the Rajya Sabha at least two Constitution (Amendment) Bills of far-reaching importance.

It is not necessary to reproduce the provisions of articles 79 and 80 of the Constitution of India which provide for the constitution of Parliament and composition of the Rajya Sabha respectively. A mere look into these provisions will show that unlike the United States, Australia and Switzerland where local states (cantons) are represented in the second House by an equal number of seats, States of the Indian Union do not enjoy equal representation in the Council of States. The framers of the Constitution accepted the scheme suggested by the Union Constitution Committee regarding the allocation of seats in the Council of States on the basis of one seat for every million of the population of the States up to five

3. Article 89.

millions, plus one representative for every additional two millions, plus twelve members to be nominated by the President.[4]

One of the great advantages of indirect election, such as has been provided for by the Constitution for election to the Rajya Sabha, is that it enables the nation to bring into the Legislature men who have risen to position of great eminence in different spheres of life but who are unwilling to contest direct elections because of the trouble and effort involved. Besides the trouble involved, there is another difficulty which deters such men from entering the electoral arena. While the voters have the undisputed right to elect men of their own choice, a great scientist or academician may apprehend defeat at the hands of a least formally educated and knowledgeable person. Indirect election is the channel provided by the Constitution for bringing in such people into the Legislature. In this way the Rajya Sabha decidedly is less of a brake and more of a balancing force.

The Constitution contains special provisions for Central intervention in the State legislative field. Under article 249 of the Constitution, Parliament is empowered to legislate with respect to a matter in the State List if the Rajya Sabha declares by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient, in the national interest that Parliament should make laws with respect to that matter. Again, under article 312 of the Constitution, Parliament is empowered to make laws providing for the creation of one or more all-India services common to the Union and the States, if the Rajya Sabha has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do. It may be noted that in the matter of Central intervention in the State Legislative field under the aforesaid provisions, the Constitution has assigned a special position to the Rajya Sabha as it is composed of representatives of the States and the adoption by the Rajya Sabha of the resolutions referred to above with two-thirds majority would be tantamount to the giving of consent by the States.

The Constitution no doubt curtails the powers of the Rajya Sabha in financial matters. However, the role assigned to it in this regard is by no means negligible. The Constitution provides that the annual Budget of the Union is to be laid before both Houses of Parliament.[5] The Budget can be discussed in the Rajya Sabha as well, although demands for grants are to be made only in the Lok Sabha which has the power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to any reduction.[6] The reports of the Comptroller and Auditor-General of India relating to the accounts of the Union are also required to be laid before both Houses of Parliament.[7]

As has been already noted the Budget is required to be placed simultaneously

4. Constituent Assembly Debates, Vol. X, pp. 407-10.
5. Article 112 (1).
6. Article 113.
7. Article 151(1).

before both the Houses of Parliament. Among the most important annual debates in the Rajya Sabha are the lengthy debates that take place on the General Budget, the Railway Budget and the Appropriation and the Finance Bills. The debate on the Motion of Thanks to the President for his Address to both Houses assembled together cannot be ignored in this connection. These debates, in their wide sweep, take in all aspects of the financial affairs of the country, ranging from the minutest details of taxation to the basic policies underlying economic planning and the problem of distributive justice. And among the members who participate in these discussions in the Rajya Sabha are always to be found men of great eminence having vast experience of public affairs. Naturally the suggestions put forward in the course of these discussions are taken note of by the Government.

It is only by taking into account all these facts, as well as the important work being done by the Rajya Sabha members on the Public Accounts Committee and the Committee on Public Undertakings that one can hope to have a clear idea of the kind of influence the Rajya Sabha members have been exerting on the financial affairs of the country. Even all this, however, will not give a complete picture of the matter. The innumerable questions that are answered every year and the many motions that come up before the House include many directly relating to the fianancial and economic problems of the country. And since, in the complex conditions of the modern life, financial and non-financial matters deeply interpenetrate one another almost every debate comes to have some bearing on financial matters.

Much depends on the general atmosphere of a House, and the galaxy of eminent men, who have served the Rajya Sabha since it came into existence, have made their own contribution to the traditions and general atmosphere of the House. Many of them were or are persons of whom any legislature in the world could well be proud of.

The debates in a House in which men of such calibre frequently speak can naturally be expected to reach a high level and since the very beginning the Rajya Sabha has drawn the admiration of political observers for high level debate. Referring to the foreign affairs debate that was held in the Rajya Sabha in August 1954, the political correspondent of *The Statesman* wrote :

> There was touch of greatness in the tone and content of the Rajya Sabha debate last week on foreign affairs which may serve the other House as a useful example.[8]

Because of participation in the Rajya Sabha debates by eminent and experienced members, whose views cannot be ignored by any Government, the Ministers including Prime Minister Nehru took special care to reply to the points raised in the House. Referring to the replies given by Prime Minister Nehru in both Lok Sabha and Rajya Sabha to the debates on the President's Address, the political correspondent of *The Statesman* made the following observation on May 6, 1962 :

8. Quoted by S. S. Bhalerao : "Rajya Sabha: Its Powers and Position," Journal of Constitutonal and Parliamentary Studies, Vol. 1, No. 2, 1967, p. 72.

"His (Prime Minister's) reply in the Lok Sabha not only lacked tone and colour but also substance. In the Rajya Sabha he had much more to say on a large number of subjects—so much more in fact that the Lok Sabha may well feel neglected."[9]

The Rajya Sabha is quite sensitive to the public opinion. This has been the feeling of keen political observers, but none may know it better than the Ministers of the Government who are kept busy throughout the Session in dealing with some point or query made in the House or some criticism hurled at the Treasury Benches. Members miss no opportunity to put questions and raise other matters during the Question Hour and otherwise also through the Calling Attention Motions. This is almost a daily feature. No problem, however small, goes unnoticed in the Rajya Sabha and not a chink in the Government's armour is spared by it. In a country of India's dimensions, with the diversity and complexity that characterise the national affairs a unicameral Parliament, one feels, would not have provided adequate opportunities for ventilating grievances or spotlighting the faults of the administration.

The practical utility of the Rajya Sabha has been explained thus :

"The Upper House of the Indian Parliament is a Legislative Chamber with a vigorous personality. It is a House that takes itself seriously and a House that takes itself seriously cannot fail to be taken seriously by Government and others concerned. From the very beginning, Government have treated the House with due deference and have given ample proof of their anxiety to uphold its dignity and help it to discharge without let or hindrance the functions entrusted to it by the fundamental law of the land."[10]

The active members include men of ability and extensive public experience. A substantial proportion of those who predominate may be former members of the Lok Sabha and some others who have acquired valuable experience in many walks of life. Consequently, the debates in the Rajya Sabha are as important as those in the Lok Sabha. Debates in the Rajya Sabha have a character and importance of their own and are not without their influence on public opinion and Government policy. The style of speech is simpler, quieter, less lengthy but at times equally and sharply controversial also.

The Rajya Sabha, in general, is expeditious in examining legislation; and, since its sittings are as long as those of Lok Sabha, the Rajya Sabha is able to devote quite some time and attention to the consideration of motions on varied subjects promoted by back-bench as well as front-bench members. Sometimes these debates are about high issues of public policy in the national and international spheres or the economic state of the nation, and at other times they may deal with relatively small matters which, nevertheless, are of interest to sections of the public. How far

9. S. S. Bhalerao, *op. cit.*
10. *Ibid.*, p. 75.

these debates have a manifest impact on Government policy and the administration depends upon the subject together with the merits of the debate. They can, and at times do stir public opinion, or they may ventilate real public grievances or have repercussions in the Lok Sabha. They may thus make the Government conscious of some failures or shortcomings. No Government, therefore, whatever its political complexion, can studiously and systematically afford to ignore the opinion of the Upper House. If party politics are not heavily involved, the Rajya Sabha is usually business-like and competent in the revision and enactment of legislation.

Drafting imperfections would materially increase if the country were to rely upon single-chamber legislation. The fact that the Rajya Sabha is a different kind of assembly from the Lok Sabha means that, except when their political blood is up, its members sit about the task of revision in a different spirit, looking at the Bill, perhaps, from a somewhat different angle; and that helps. Because it includes not only distinguished lawyers (as indeed does the Lok Sabha) but a number of members who have functioned in senior administrative and other specialised positions earlier, the views expressed in the House are specially valuable means in the matter of spotting lack of clarity and doubtful matters of drafting.

There has in recent years been an increase in the significance of subordinate legislation, with the result that the scope for the Rajya Sabha to use its powers in order to oversee their formulation and implementation has increased considerably. Over a wide area, which tends to expand as the process of legislation and of Government becomes more complex, provisions supplementary to legislation are left to be made by the Executive through subordinate legislation. The enactments conferring these powers normally include provisions for Parliament to supervise their use, which essentially means that rules made under the power may be annulled by resolution of either House or that such an instrument cannot come into force (or remain in force) unless approved by resolution of each House. Except in the fields of taxation and other financial matters, these provisions give parallel powers to both Houses. The absence of the Upper House would subject the Lower House to severe strain.

The working of 25 years of the Rajya Sabha has amply proved the need and importance of this august House. A House of Elders, as it is known, has shown that the debates in this House are of a high level and has always exercised sobering influence on many measures. With the increasing awakening among our social and economic strata more and more men having little education but great local influence are likely to gravitate to the high level of national politics and find their way to the popularly elected Lok Sabha. This situation emphasises the need for a built-in arrangement for continually siphoning into the legislature the men of learning and wisdom from different fields of national life in order to make it well-balanced. The Rajya Sabha in the Indian democratic set-up is designed *inter alia* to serve this purpose as well.

December 31, 1976

32

The Rajya Sabha—Position, Powers and Functions under the Constitution

JASWANT SINGH*

The Council of States better known as Rajya Sabha is an integral and autonomous limb of our Parliament which is bicameral. It consists of twelve members nominated by the President from among persons having special knowledge or practical experience in respect of matters such as literature, science, or in social service, in addition to not more than 238 representatives of the States and Union territories. The mode of election of these representatives is indirect. Whereas the representatives of each State, the strength whereof has to be in accordance with the provisions of the Fourth Schedule to the Constitution in order to give proper representation to the units of federation, are elected by the members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote which ensures an effective share in political life to each minority group, the representatives of the Union territories are chosen in accordance with law made by Parliament (*See* Part IV-A of the Representation of the People Act, LXX of 1950). An elected member being a deputy or representative of the entire nation and not a delegate of his constituency is expected to vote on every question in favour of the proposal which is conducive to the welfare of

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the nation as a whole. While the Vice-President of India is the *ex-officio* Chairman of the Council of States, the Deputy Chairman of the Council is chosen by the Council itself.

The position of the Council of States may not be as important as that of the American Senate, but it is not inferior like that of the House of Lords as it now stands. There is no provision in the Constitution making any invidious distinction between the two Houses so far as the selection of Ministers is concerned. Time and again several Ministers have been drawn from the Council of States. Unlike the English system, a Minister who is a member of the Rajya Sabha has like a Minister who is a member of the Lok Sabha, the right to speak in and otherwise to take part in the proceedings of the other House, in joint sittings of the Houses and in any Committee of the Parliament of which he is named as member, but is not entitled to vote. Like the House of the People or the Lok Sabha, the Council of States or the Rajya Sabha enjoys the same powers and privileges and is the sole judge of its proceedings as well as the law applicable to those proceedings. It has, like the House of Lords, powers to initiate any Bill (including the one relating to amendment in the Constitution) except the Money or Financial Bills. An analysis of the Bills introduced in our Parliament reveals that many Bills of great social, educational and legal importance were introduced in the Rajya Sabha. In addition to this, many dignified debates relating to important issues like the abolition of privy purses and privileges of ex-rulers, the nationalisation of the major banks of the country, the demands for enquiry into the charges against the late Sardar Partap Singh Kairon and the affairs of Dharma Teja and Jayanti Shipping Company were held in the Rajya Sabha. It can, therefore, be safely said that our Constitution envisages equality of status of both the Houses of Parliament to a large extent. It will be apposite in this connection to refer to the following statement made in the Rajya Sabha on May 6, 1953, by Prime Minister Jawaharlal Nehru :

> "Under our Constitution Parliament consists of two Houses, each functioning in the allotted sphere laid down in that Constitution. We derive authority from the Constitution. Sometimes we refer back to the practice and conventions prevailing in the House of Parliament of the United Kingdom and even refer erroneously to an Upper House and a Lower House. I do not think that is correct. Nor is it helpful always to refer back to the procedure of the British Parliament which has grown up in the course of several hundred years and as a result of conflicts originally with the authority of the King and later between the Commons and the Lords. We have no such history behind us, though in making our Constitution we have profited by the experience of others. Our guide must, therefore, be our own Constitution which has clearly specified the functions of the Council of States and the House of the People. To call either of these Houses as Upper House or a Lower House is not correct. Each House has full authority to regulate its own procedure within the limits of the Constitution. Neither House, by itself, constitutes Parliament. It is the two Houses

together that are the Parliament of India. The successful working of our Constitution, as of any democratic structure, demands the closest cooperation between the two Houses."

It is only with respect to the following matters that the position of the Rajya Sabha differs from that of the Lok Sabha :

1. A Money Bill cannot, according to articles 107(1), 108, 109, and 117 of the Constitution be introduced in the Rajya Sabha.
2. Under clauses (4) and (5) of article 109, the Rajya Sabha is debarred from rejecting or amending a Money Bill. It can only make recommendations with regard to the Bill to the Lok Sabha which the latter may or may not accept and the Bill is deemed to have been passed by both the Houses of Parliament without the concurrence of the Rajya Sabha if it does not return the Bill after according its concurrence thereto within 14 days of its receipt or make recommendations which are not accepted by the Lok Sabha.
3. It is the Speaker of the Lok Sabha, and not the Chairman of the Rajya Sabha, who is, under article 110(3) of the Constitution, invested with the power of deciding whether a Bill is a Money Bill or otherwise and whose decision in that behalf is final, which means that it is not open to challenge.
4. The Rajya Sabha, no doubt, has the power to discuss the estimates relating to the expenditure which are not charged on the Consolidated Fund of India, but it has no power like the Lok Sabha to assent or to refuse to assent to any demand or assent to a demand subject to reduction of the amount specified therein. In fact, the Rajya Sabha has no power to vote money for the public expenditure and demands for grants are not submitted for the vote of the Rajya Sabha.
5. Because of its numerical inferiority—its membership being limited to 250 as against 544 of the Lok Sabha, the Rajya Sabha seems to suffer from a certain amount of disability when a joint session of the two Houses is called by the President to resolve a deadlock between the two Houses but in actual practice, this impression has been belied. It will be recalled that in May 1961 when both the Houses of Parliament met to resolve a deadlock on the Dowry Prohibition Bill, one of the very important amendments suggested by the Rajya Sabha was accepted and adopted.

The following special powers which the Rajya Sabha enjoys and which the Lok Sabha is not invested with, however, add to the prestige and dignity of the former.

It will be remembered that under the scheme of distribution of legislative powers, exclusive jurisdiction is conferred on the State Legislatures to legislate

with respect to matters specified in List II of the Seventh Schedule to the Constitution but the Rajya Sabha is empowered to make it lawful for the Parliament to make temporary laws for the whole or any part of the territory of India. This important power is conferred on the Rajya Sabha in national interest by article 249 of the Constitution which is in the nature of a *non-obstante* provision conferring therein power on the Parliament to legislate with respect to a matter enumerated in the State List in the national interest. The Parliament becomes entitled to do this if the Rajya Sabha declares by a resolution supported by not less than two-third of its members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matters enumerated in the State List specified in the resolution. The resolution makes it lawful for the Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force. The life of the resolution can extend to one year depending on the period specified therein by the Rajya Sabha but the period can be extended for a further period of one year under the proviso to clause (2) of article 249 of the Constitution. Under article 312(1) of the Constitution, Parliament becomes empowered to make laws providing for the creation of one or more all-India services common to the Union or States, if the Rajya Sabha declares by a resolution supported by not less than two-third of its members present and voting that it is necessary or expedient in the national interest so to do. In exercise of this power the Rajya Sabha passed a resolution on December 6, 1961, for the creation of (*i*) the Indian Service of Engineers (irrigation, power, building and roads), (*ii*) the Indian Forest Service, and (*iii*) the Indian Medical and Health Services. Similar resolution for the creation of the Indian Agricultural Service and the Indian Educational Service was passed by the Rajya Sabha on March 30, 1965.

Unlike the English system, where once the Parliament is dissolved, both the House of Commons and the House of Lords stand dissolved, in India the Rajya Sabha is not subject to dissolution though it is not allowed to become stale or deprived of the fresh talent as article 83 of the Constitution, following the American model, provides that as nearly as possible, one-third of its members shall retire as soon as may be on the expiration of every two years in accordance with the provisions made in that behalf by the Parliament by law. In this connection, the following observations made by the Supreme Court of India in *Purushottaman Namboodiri* v. *State of Kerala* (1962) 1 Supp. S.C.R. 753 will repay perusal :

> "What then is the result of the provisions of article 196 which deals with the legislative procedure and makes provisions in regard to the introduction and passing of bills ? Before dealing with this question it may be useful to refer to some relevant provisions in regard to the State Legislature under the Constitution. Article 168 provides that for every State there shall be a Legislature which shall consist of the Governor and (a) in the State of Bihar, Bombay, Madhya Pradesh, Madras, Mysore, Punjab, Uttar Pradesh and West Bengal,

two Houses, and (b) in other States, one House. In the present petition we are concerned with the State of Kerala which has only one House. Article 168(2) provides that where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly. Article 170 deals with the composition of the Legislative Assembly, and Article 171 with that of the Legislative Council. Article 172 provides for the duration of the State Legislatures. Under Article 172(1) the normal period for the life of the Assembly is five years unless it is sooner dissolved. Article 172(2) provides that the Legislative Council of a State shall not be subjected to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law. It would thus be seen that under the Constitution where the State Legislature is bicameral the Legislative Council is not subject to dissolution and this is a feature which distinguished the State Legislatures from the English House of Parliament. When the Parliament is dissolved both the Houses stand dissolved, whereas the position is different in India. In the States with bicameral Legislature only the Legislative Assembly can be dissolved but not the Legislative Council. The same is the position under Article 83 in regard to the House of the People and the Council of States. This material distinction has to be borne in mind in construing the provisions of Article 196 and appreciating their effect."

Looking in retrospect, it can be said without any fear of contradiction that the Rajya Sabha had admirably discharged its functions and lived up to the noble and lofty ideals which Dr. Radhakrishnan the first Chairman of the Rajya Sabha and an illustrious and distinguished son of the soil hinted at in the Rajya Sabha in 1952 in the following words :

> "There is a general impression that this House cannot make or unmake governments and therefore it is a superfluous body. But there are functions which a revising chamber can fulfil fruitfully. Parliament is not only a legislative but a deliberative body. So far as its deliberative functions are concerned it will be open to us to make very valuable contributions, and it will depend on our work whether we justify or do not justify this two chamber system, which is now an integral part of our Constitution. So it is a test to which we are submitted. We are for the first time starting, under the new parliamentary system, with a Second Chamber in the Centre, and we should try to do everything in our power to justify to the public of this country that a Second Chamber is essential to prevent hasty legislation."

January 28, 1977

33

The Rajya Sabha—Position under the Constitution, Powers and Functions

RANBIR SINGH*

When the Constituent Assembly met in 1946 to frame a Constitution for India, the founding fathers of our Constitution had before them the various constitutions of the world to draw upon. As such they could make provision for a second chamber by synthesising the best aspects of different constitutions which were considered suitable for our country.

The idea of a bicameral legislature at the Centre did not however originate with the commencement of the Constitution after Independence. A second chamber at the Centre was already in existence since the Government of India Act 1919, whereunder the Central Legislature consisted of two Houses—the Council of State and the Legislative Assembly. These bodies continued even after the Government of India Act, 1935 and since 1946 the Constituent Assembly acted as the Central Legislature till 1950 when the Provisional Parliament came into existence under the Constitution of India. Against this background of historical continuity, a second chamber at the Centre, under the Constitution, was a logical corollary.

Since it was decided to have a federal system of Government, there was no difference of opinion about the desirability of having a second chamber at the

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Centre and the following observations of Shri N. Gopalaswami Ayyangar summed up generally the mood of the Constitution-makers :

> "The need has been felt (for a second chamber) practically all over the world wherever there are federations of importance."

This principle of bicameralism was adopted in respect of the States also, though not all the States were provided with a Legislative Council at the commencement of the Constitution. While an Upper House, *i.e.*, a Legislative Council was set up in some States, the question was left open for the other States by making provision for the abolition or creation of such Councils by Parliament by law, on the basis of a resolution of the respective Legislative Assembly adopted by a special majority provided under article 169 (1) of the Constitution. No such situation has been envisaged in the case of the Rajya Sabha which continues to be a permanent body. The continuity of the parliamentary institution has been sought to be achieved through the Rajya Sabha.

The democratic and parliamentary form of government in a federal structure requires a legislative body consisting of two Houses. A legislature with a single directly elected House in India was evidently not considered adequate to meet all the requirements due to the vastness of the country, variety and complexity of the problems involved and the various kinds of minorities, *e.g.*, religious, linguistic, cultural and political, residing in the country. The creation of two Houses having the same structure and composition would have only meant a duplication. The Rajya Sabha was therefore created with an altogether different composition and method of election from that of the Lok Sabha. With that end in view, the founders of the Constitution conceived of a second chamber with a relatively smaller membership with provision for definite allocation of seats to different States and Union territories on the basis of population and provision for nomination of 12 members from amongst those who had distinguished themselves in science, art, literature, social service etc. The superiority and maturity of this House was sought to be achieved by fixing a higher minimum age-limit of 30 years for its membership. Finally, by making the Vice-President as the *ex-officio* Chairman of the Rajya Sabha, an added element of dignity and prestige was sought to be brought into the composition of the House by placing at its head a dignitary who is second in status and rank only to the President of India; and who is elected by members of both the Houses of Parliament.

Thus, in respect of the composition, mode of election and nature of membership, the Rajya Sabha came to occupy a position of dignity and authority.

The powers and functions of the Rajya Sabha are also commensurate with its constitutional position. It is true that in respect of certain matters, the powers and functions of this House compare less favourably with those of the Lok Sabha. As for example the Council of Ministers is collectively responsible to the Lok Sabha only and not to the Rajya Sabha and the Rajya Sabha does not have as much

financial powers as the Lok Sabha, but short of these, the Rajya Sabha has been equated to the other House in all important respects. A Bill has to be approved in both Houses of Parliament before it can become an Act. In case of disagreement between the two Houses, it has to be resolved by a joint sitting of both the Houses. The numerical inferiority of the Rajya Sabha *vis-a-vis* the Lok Sabha is considered by some as a source of its weakness for the purpose of such joint sittings. But the solitary instance of a joint sitting in respect of the Dowry Prohibition Bill, 1959 clearly showed that one of the important amendments pressed by the Rajya Sabha in respect of this Bill was adopted at the joint sitting of the two Houses. It is, therefore, clear that the numerical superiority of the Lok Sabha may not always overshadow the Rajya Sabha in every such situation.

In respect of a Bill to amend the Constitution, the Rajya Sabha has equal powers with the Lok Sabha. Such a Bill has to be passed by each House of Parliament by a special majority provided for in the Constitution. The Constitution (Twenty-fourth Amendment) Bill, 1970 adopted by the Lok Sabha but rejected by the Rajya Sabha by a fraction of a vote failed to become an Act.

The two exclusive powers of the Rajya Sabha under the Constitution relate first, to the passing of resolutions under article 249 by a special majority to enable Parliament to make laws on subjects included in the State List and second, to pass resolutions under article 312 to create one or more all-India services common to all the States.

It is heartening and encouraging that the working and functioning of the Rajya Sabha for the last 25 years has proved that it is a House which has fulfilled the objectives for which it was set up. Mutual respect and consideration, by and large, have governed not only the proceedings of the House but also its relations with the other House, *i.e.*, the Lok Sabha. In my opinion, it would be in the interest of smooth functioning of parliamentary system, if the Rajya Sabha is allowed to share with the Lok Sabha the full burden of parliamentary authority. This objective will be achieved if the Council of Ministers, which at present is exclusively responsible to the Lok Sabha, could be made responsible to the Rajya Sabha as such, similarly, the demands for grants which are at present considered and voted only by the Lok Sabha could also be placed before the Rajya Sabha for eliciting the well-conceived views of the Rajya Sabha thereon. These two changes would give necessary strength to the Parliament as a whole to function as a more vital organ of our well-established polity and to serve as a living instrument of national welfare.

February 10, 1977

34

A Unique Second Chamber

M. ANANDAM*

Twenty-five years in the service of the nation, the people and parliamentary democracy—this is exactly what the Council of States commonly known as the Rajya Sabha, has achieved. The Upper Chamber has certainly distinguished itself during the last twenty-five years which no doubt is not a long period taking into account the whole life of a nation, but history will record the splendid work done by the Council of Elders during this span. In a way, all this has a great constitutional significance since it adequately proves that a second chamber is as much a necessity for the proper functioning of parliamentary democracy as the popularly elected chamber is. For ages, the controversy whether and to what extent a second chamber is really useful has been going on and differing views have been expressed by leading political thinkers on this subject, but, ultimately, it has not really been possible to do away with this institution even in countries where one could find its bitterest critics. We can now with a certain confidence assert that second chambers have come to stay and they will continue to function and function effectively for years to come.

For this phenomenon, as one may put it, to have occurred the contribution

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made in general by the members of the second chambers, wherever they exist, is not insignificant and one might as well say that they have proved beyond doubt how without this institution, parliamentary democracy would have been brought to nought. India has adopted a federal constitution deliberately though the word "federation" does not occur anywhere in the Constitution. But even a cursory perusal would make it clear that it has all the characteristics of a federal government as it is normally understood—division of powers, an independent judiciary, a written constitution which is rigid and which ensures a satisfactory method of amendment. There is no question of secession and it is this that ensures certain amount of permanency to the whole fabric. A federal constitution by its very nature implies two Houses of legislature though it is true there is a view that this is not an essential pre-requisite. But a second chamber has really helped in maintaining the integrity of the federations. In America, for instance, the Senate has proved to be even more effective than the House of Representatives though it is mainly due to the fact that the Upper House there is clothed with powers that are almost co-equal if not superior to that of the Lower House. It is even said that the American Senate is the most powerful second chamber in the world but the truth seems to be that the Rajya Sabha, as it is constituted, is in a way more superior to any other second chamber not excluding the American Senate. We will revert to this aspect later.

Even if it be of academic interest, it will be worthwhile recording as to why a second chamber is held to be useful in all modern constitutions. John Stuart Mill, more than whom very few would have expounded the theory of representative government, was strongly of the view that a second chamber is a safeguard against the despotism of a single chamber. Lecky went a step further when he said that of all forms of government that are possible among mankind, there is none "which is likely to be worse than the government of a single omnipotent democratic chamber for it is as much susceptible as an individual despot to the temptations that grow out of the possession of uncontrolled power and it is likely to act with much less sense of responsibility and much less real deliberation." Mill drew a parallel with what the Romans did when they had two consuls—each to act as a check on the other and said that it is precisely for this reason there should be two chambers in a democracy. The Roman consul held his position for just a year, but, even so, it was thought that if there were two of them, neither would be exposed to the corrupting influence of the other. This, no doubt, is an extreme view for in a parliamentary democracy of the type we have, the question of the Lower House being despotic does not arise. What might really happen is that an utterly irresponsible government that might come to power by sheer chance might act in a manner that is not really becoming of a democratic government through an equally irresponsible Lower House. To undo the mischief, one would normally have to wait for a new election to take place when the people will in all certainty defeat the party that has indulged in such undesirable actions. This is what happened in our own country when non-Congress governments were in power in some States and they managed to get all kinds of legislation passed. But at the next election, they had all been wiped out.

The real point is that in the process much mischief would have been done. A second chamber would certainly help in halting such a tendency and bring sense to a highly tyrannical government.

A second chamber performs the very useful function of giving what could be called "another" opinion on important measures. It is an institution which could serve as a check on hasty and ill-considered legislation. It is quite possible that the party in power sometimes in its anxiety to have legislation pushed through introduces measures in the Lower House and gets them passed. A second chamber like the Rajya Sabha consisting as it does of persons of eminence in various fields of activity can certainly help to correct the distortions that might creep into such legislation. As a leading political scientist observed, it interposes a necessary delay between the introduction and the final passing of a measure and subjects it to revision which might introduce improvements in form or substance. Actually, at one time in Britain, the House of Lords had equal powers with the Lower House but the situation did not last long. The position underwent a sea change in 1911 when an Act was passed following the rejection by the Lords of the Finance Bill of 1909 providing for a tax on increase in land values. This led to a constitutional crisis as it were and the result was that the House of Lords was deprived of its powers to a large extent. The Upper House thus became subordinate to the House of Commons. All that it could now do is to delay ordinary Bills by one year. Even so, the House of Lords has been performing certain useful functions and according to W. B. Munro it compels sober second thoughts and gives opportunity for passions to subside. This alone could be enough justification for its existence though it has been pointed out by critics that being a hereditary body, it is an anarchronism in a parliamentary democracy.

Fortunately, for us in this country, the position is radically different. Though there is a small nominated element in the House, which itself has been introduced advisedly to give representation to certain special interests, the entire House is an elected body. And, naturally, the way its members are elected is different from the manner in which members of the Lok Sabha are returned. It is an accepted doctrine that the two chambers should not have equal powers since that might lead to frequent conflicts between the two Houses which is bound to impede all governmental work. And if it is accepted that the two Houses do not have equal powers, it also follows from it that they are not either elected in the same or similar manner. The Rajya Sabha consists of representatives of all the States elected by the State Assemblies once in six years, a third of the members retiring every two years. This ensures continuity of the House and at no time more than a third of its members are new. A notable feature is that the number of representatives from each State varies according to the size of the State, Uttar Pradesh having the largest number. This is a wholesome principle and is very much unlike the system prevalent in the United States where each State returns two members to the Senate. While the dissimilarity ends there, the point to be noted is that the Rajya Sabha is very much unlike other second chambers though it could not be said that it is as powerful as the American

Senate in all respects. The Rajya Sabha has a unique position in the Constitution in that under article 249 it can, by a resolution supported by not less than two-thirds of the members present and voting, authorise Parliament to make laws for the whole or any part of the country with respect to even a matter enumerated in the State List. Further, a Proclamation of Emergency for its continuance can be approved by the Rajya Sabha, if, in the meanwhile, the Lok Sabha has been dissolved. Article 352(2) which provides for this is an important aspect of the functioning of the Rajya Sabha. Thus it would be wrong to imagine that the Rajya Sabha is just another second chamber and is of no consequence, though the usual disabilities in regard to financial measures are there. For instance, there is no representation of the Rajya Sabha on the Estimates Committee though I strongly feel that this should be rectified.

When one glances through the history of the Rajya Sabha in the last 25 years, one can easily get an idea of the important role it has played in the politics of the country. It has supplied some eminent men to the Cabinet as Ministers. Prime Minister Indira Gandhi herself was a member of the Rajya Sabha when she was first inducted into that high office but true to traditions, and conventions, she sought election to the Lok Sabha soon after. The Vice-President of the country is the Chairman of the Rajya Sabha which itself speaks volumes about the importance the founding fathers of the Constitution gave to the Rajya Sabha.

It is indeed difficult to talk of the Rajya Sabha except in superlative terms and the role it has played in shaping the destinies of the nation is immense. While the number of distinguished persons that adorned the House is a legion, its performance has been equally impressive. Truly, the Rajya Sabha is a unique chamber of its kind.

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The Rajya Sabha—Upper House of Indian Parliament

SAVITA BEHEN*

Having won freedom from foreign domination through centuries by a prolonged, vigorous and persistent struggle, the founding fathers of the Indian Constitution thought it fit to vest the final sovereign power of governance in the hands of the people; and parliamentary democracy wherein the Government is responsible to the directly elected representatives of the people, was the inevitable choice. Political history had taught us that an individual dictator or monarch, if vested with unlimited political power was sure to turn into a despot, howsoever noble, broad-minded, scholarly he might be, so also a unicameral legislature was more often than not likely to be swayed by mob passions and mass emotions.

Prof. R. G. Gettel of California University, discussing the advantages of bicameral legislature over unicameral one, observed that while "a single House is in danger of being rash and one-sided, swayed by emotion of passion, satisfied with incomplete and hasty generalisations", in the case of a bicameral legislature, "there is likely to be healthy rivalry, between the two Houses, causing each to subject the measures of the other to careful scrutiny, and resulting in more careful analysis of principles than would be the case if the contest were between a majority and minority

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in a single House". No wonder the Constitution-makers in India decided to have two Houses of legislature at the Centre,—the House of the People and the Council of States; and as their names suggest, the members of the House of the People (Lok Sabha) are to be elected directly by the people through a system of adult franchise and the members of the Council of States (Rajya Sabha) who represent their respective States, are to be elected by elected members of the concerned State Legislative Assembly. The constitutionalists in India have naturally adopted the good features of several world democracies and adjusted them to specific Indian needs and conditions. Prof. N. R. Raghavachariar while commenting on the Indian Constitution, with bicameral legislature at the Centre, observed that "None of the other constitutions can hope to equal the Indian Constitution in the safeguards against the tyranny of a despot or the passion of the proletariat. There is little fear of the country being led and run down solely by the ambitions of a mob (as in a unicameral set-up), it is a constitution both elastic and pliable. It can bend before any storm only to rise again, but it will never break."

The Upper House, Rajya Sabha, was accordingly created to represent the States, as in other federations, but it did not represent the equality of the States as in the Senate of the United States of America. The States are represented in the Rajya Sabha not equally but in proportion to their population. The Rajya Sabha, according to Prof. Jitendra Ranjan, "is not only the best constituted second chamber in the world, it is also most balanced in its powers to fit in modern democracy and to serve the constitutional purpose which a second chamber in a democracy is required to perform in the best possible manner . . . Rajya Sabha is not all too powerful like the U.S.A. Senate nor only a dilatory body like the British House of Lords and the French Council of Republic."

The outstanding powers of the Senate, the second chamber in U.S.A , of participation not only in legislation but also in the exercise of executive powers including the powers of appointments, external affairs and defence, arise from the zeal of the framers of the U.S. Constitution to retain the individuality, independence and equality of the federal States giving as little powers to the Centre as were essential for achieving the limited purpose of ensuring collective security and other collective benefits. With regard to the division of powers between the Centre and the States, the Indian Constitution follows the Canadian model, because of the similarity of the circumstances, the framers of the two Constitutions were faced with. In the case of Canada, when the Constitution was being drafted in 1865, the dangers of a weak Centre were clear on account of the civil war going on in U.S.A. between the northern and the southern States. The Canadians felt that if they also provided for a weak federal government as in U.S.A. any unit or group of units may dare to defy the authority of the federal Government. In order to avoid such a danger, the Canadian Constitution provided for a strong Central Government. In the case of India also, the circumstances demanded the establishment of a strong Central Government. A strong Centre was essential for national integration. It could not be forgotten that the establishment of Pakistan was partly due to the

fact that while Provincial Autonomy was inaugurated, the federal part of the Act of 1935 was not enforced. It was felt that India could fight against any external foe only if there was a strong Government at the Centre. All the resources of the country must be at the disposal of the Government of India so that any invasion may be met successfully. The resources of the country were frittered away on account of the mutual jealousies of the Indian princes who ruled over different parts of the country. It was thought that it would not be proper to repeat the old story by giving the States too much of autonomy in their field. There was a possibility of the border States or the Provinces to defy the authority of the Government of India and thereby jeopardise the security of the country as a whole.

Obviously under the U.S. Constitution, with a view to ensuring equal participation to the constituent States in the affairs of the federal Government in the matter of appointments to high posts, declaration of war and peace and treaty-making for establishing external relations, besides legislation, the framers of that Constitution provided for equal representation in the Senate. Every State, big or small, can send two representatives to the Senate, who are elected directly by the people.

The composition of the Rajya Sabha in India is also not less democratic than the Senate even though its members are not directly elected by the people. The members of the Rajya Sabha very much represent the people insofar as they are elected by the representatives of the people in the State Legislatures. Being elected by the elected members of the State Legislative Assembly concerned, on the basis of proportional representation by means of the single transferable vote, the membership of the Rajya Sabha represents the various shades of opinion in more or less the same proportion in which they are represented in the assemblies concerned. Members of the Rajya Sabha do not represent well-demarcated constituencies, but represent their respective States. In actual practice, however, they do not keep their allegiance confined to their respective States and keep the interest of the nation above the interest of the State.

It may be mentioned in this context that the House of Lords in England is merely a hereditary chamber, an anachronism in a democratic set-up. In the words of Augustine Berrel it "represents no body but itself." It stands no comparison as a representative chamber with the Rajya Sabha.

The members of the Rajya Sabha in India elected as they are by the elected members of the respective State Legislatures, are usually men of eminence and standing in public life. The names of following eminent personalities and great men who have been members of the Rajya Sabha may well be mentioned in this context :

Pandit Hriday Nath Kunzru
Sardar K. M. Panikkar
Dr. Zakir Husain
Shri Alladi Krishnaswami Aiyar
Shri P. N. Sapru
Dr. G. S. Pathak
Dr. Ramaswami Mudaliar

Shri B. Ramakrishna Rao
Shri Sahib Singh Sokhey
Shri Ajit Prasad Jain
Shri Ramdhari Singh 'Dinkar'
Shri B. C. Bhagwati
Shri N. G. Goray
Shri Bhupesh Gupta
Dr. (Smt.) Seeta Parmanand
Shrimati Violet Alva
Shrimati Uma Nehru
Diwan Chaman Lall
Shri N. Sanjiva Reddy
Shri K. Santhanam

While in respect of executive and treaty-making powers the American Senate has no comparison in the world, so far as the legislative powers are concerned the Rajya Sabha in India is not in any way less than the American Senate as a second chamber. The second chamber in India is not secondary in any respect. This would be evident from the following facts :

1. But for the Money Bills this House enjoys equal powers of initiation and passing of all (non-Money) Bills. No Bill can become a law unless passed by both the Houses of Parliament. Of course, in case of a tie the President under article 108 would summon both the Houses to meet in a joint sitting and the Lok Sabha because of the superiority of their numbers may have a final say in passing a controversial measure. Only once during the past 25 years of the working of the Constitution, the two Houses had to be summoned in such a joint sitting in connection with the Dowry Prohibition Bill, 1959.

2. The Rajya Sabha has equal powers with the Lok Sabha in the case of all constitutional measures. All Bills for amending the Constitution are to be passed by a 2/3rd majority of the members present and voting and by a majority of the total membership in both the Houses. Such Bills can be initiated in either of the Houses of Parliament. At a rather unhappy occasion during the past 25 years, the passage of the Constitution Amendment Bill to provide for abolition of the privy purses in 1970, had to encounter some difficulty when it could not muster the support of the requisite majority in the Rajya Sabha.

3. Even in the case of Money Bills, this House has reviewing and recommendatory powers and its recommendations are given due consideration by the Lower House. So also in the matter of budget-making, while this House is not entitled to vote the demands for grants, it does express itself on the various aspects of the Budget generally, and its views are given due weightage by the Lok Sabha while passing the demands.

4. Though the Council of Ministers is not responsible to this House, yet this House has always made considerable contribution in Ministry-making. At one time even the Prime Minister Shrimati Indira Gandhi was drawn from this House. The

House can boast of very important and senior members of the Government as its members.

5. From a cross section of the legislative measures initiated in the Rajya Sabha it would appear that many of the important social, socio-economic, labour and other legislations found their origin in the Rajya Sabha :

I. Social Measures

(*a*) The Special Marriage Bill, 1952
(*b*) The Hindu Marriage and Divorce Bill, 1952
(*c*) The Hindu Minority and Guardianship Bill, 1953
(*d*) The Drugs and Magic Remedies (Objectionable Advertisement) Bill, 1953
(*e*) The Hindu Adoptions and Maintenance Bill, 1956
(*f*) The Children Bill, 1959
(*g*) The Delhi Primary Education Bill, 1960
(*h*) The Registration of Births and Deaths Bill, 1967

II. Socio-economic Measures

(*a*) The Hindu Succession Bill, 1954
(*b*) The Indian Succession (Amendment) Bill, 1956 and 1961
(*c*) The Prevention of Corruption (Amendment) Bill, 1957
(*d*) The Married Women's Property (Extension) Bill, 1959
(*e*) The Monopolies and Restrictive Trade Practices Bill, 1967
(*f*) The Foreign Contributions (Regulation) Bill, 1973
(*g*) The Economic Offences (Inapplicability of Limitation) Bill, 1974
(*h*) The Prevention of Food Adulteration (Amendment) Bill, 1974
(*i*) The Bonded Labour System (Abolition) Bill, 1976
(*j*) The Equal Remuneration Bill, 1976

III. Labour Legislation

(*a*) The Factories (Amendment) Bill, 1953
(*b*) The Employees' Provident Fund (Amendment) Bill, 1953
(*c*) The Workmen's Compensation (Amendment) Bill, 1958
(*d*) The Industrial Disputes (Amendment) Bill, 1964
(*e*) The Maternity Benefit (Amendment) Bill, 1965
(*f*) The Working Journalists (Conditions of Service and Miscellaneous Provisions) (Amendment) Bill, 1974

IV. Law and Procedures

(*a*) The Supreme Court (Number of Judges) (Amendment) Bill, 1956
(*b*) The Criminal Law (Amendment) Bill, 1959
(*c*) The Limitation Bill, 1962
(*d*) The Code of Civil Procedure (Amendment) Bill, 1963
(*e*) The Contempt of Courts Bill, 1968
(*f*) The Code of Criminal Procedure Bill, 1970

V. Constitutional Legislation

The Constitution (Twenty-first Amendment) Bill, 1967

VI. Other Miscellaneous Important Legislations

(*a*) The Press Council Bill, 1956
(*b*) The Passport Bill, 1967
(*c*) The Indian Official Secrets (Amendment) Bill, 1967

The Rajya Sabha has been vested with certain exclusive powers which are not shared by the Lok Sabha. They are contained in articles 249 and 312 of the Constitution.

The Rajya Sabha has been assigned special functions in relation to the continuance of Emergency (Article 352) and in relation to a State under President's Rule (Article 356), when the Lok Sabha stands dissolved. The Rajya Sabha, in fact, did meet in a brief session on the 28th February and 1st March 1977, to extend the period of President's Rule in the States of Tamil Nadu and Nagaland.

The Rajya Sabha by its working through the past 25 years has proved to be not only a chamber of dignified debate but has done considerable constructive work and has been equally as responsive to public opinion as the Lok Sabha has been. On the one hand this House has built up a tradition of dignified debate, which in no less measure is attributable to the eminent personalities who adorned the office of the Chairman—Dr. S. Radhakrishnan, a great philosopher and statesman; Dr. Zakir Husain, a great educationist; Shri V. V. Giri, a famous labour leader with outstandingly socialist outlook; Dr. G. S. Pathak, an eminent legal luminary and Shri B. D. Jatti, a distinguished social and political worker—besides a galaxy of eminent philosophers, professors, writers, poets, jurists, labour leaders and prominent social workers who have been its members. On the other hand through the large number of social, socio-economic, progressive, labour and constitutional measures initiated in this House, the Rajya Sabha has proved itself to be a House of intense activity and constructive responsiveness to the public voice. That it has not only been contributing but also pioneering in the progressive advancement of the country towards the goal of establishing a socialist, secular, democratic republic with an egalitarian society, is borne out by the numerous socialistic and socio-economic measures initiated and passed by the Rajya Sabha.

The parties are represented in the Lok Sabha in almost the same proportion as members in the different State Legislative Assemblies and these elected members of the Legislative Assemblies, who constitute the electoral college for the members of the Rajya Sabha, naturally send their representatives to the Upper House at the Centre in more or less the same proportion in which they are represented in the legislatures. That is to say the broad spectrum of the party representations in both the Houses of Parliament has been quite similar and in actual practice there has been no rivalry between the two Houses and the much talked of 'competition' between the two Houses has given place to cooperation and coordination between them.

January 16, 1977

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The Rajya Sabha

R. DASARATHARAMA REDDY*

> "The composition of almost every second chamber in the world ensures the existence of experienced personnel in the House, so that all legislative measures may receive a second consideration by a body different in character from the primary representative Assembly, and if possible superior or supplementary in intellectual qualification."[1]

POSITION UNDER THE CONSTITUTION

Most modern legislatures have two chambers. Even revolutionary States like U.S.S.R. have a bicameral legislature, a Soviet of the Union and a Soviet of Nationalities. So strong is the urge for bicameralism that the Legislature in Norway, the 'Storting' which is elected as one body breaks itself up into two parts, a 'Lagting' of 38 members and an 'Odelsting' with the remaining 112 members.

The House of Lords in U.K. is the oldest second chamber in the world. Of all the second chambers, it is most numerous and primarily hereditary in its character. The average attendance is not above fifty, though there are over 1000 members. About 100 hereditary Peers have not taken oath. The Lord Chancellor, a senior

*Shri R. Dasaratharama Reddy is the Speaker of the Andhra Pradesh Legislative Assembly.

1. Elements of Politics, Sidgwick.

member of the Government with important ministerial and judicial functions, acts as the Speaker of the House of Lords.

In Canada, 104 members representing various Provinces are appointed to the Senate by the Governor-General in Council, on the advice of the Prime Minister, and hold their position till they reach 75 years of age.

In the matter of character and composition, the Rajya Sabha is modern among the second chambers in all the democracies. The members are fully representative of the component States or Union territories and the allocation of seats to each of the States and the Union territories is set out in the Fourth Schedule to the Constitution. The maximum strength of the House is 250 of whom only 12 are nominated by the President.

The Rajya Sabha is not subject to dissolution. The term of office of members is six years and one-third of the members retire every second year.

The President, the Lok Sabha and the Rajya Sabha together constitute the Parliament. The Vice-President is elected by the members of both the Houses of Parliament by secret ballot in accordance with the system of proportional representation by means of the single transferable vote and he is the *ex-officio* Chairman of the Rajya Sabha.

Under the provisions of the Constitution the members of the Rajya Sabha enjoy equal rights with the members of the Lok Sabha to be on the Council of Ministers. Such members by virtue of being Ministers are entitled to sit and otherwise take part in the proceedings of the House of which they are not members, but they cannot vote there.

POWERS AND FUNCTIONS

Dr. Radhakrishnan, the first Chairman of the Rajya Sabha at the time of the inauguration of the Rajya Sabha in 1952 observed :

> "There is a general impression that this House cannot make or unmake governments and therefore, it is a superfluous body. But there are functions, which a revising chamber can fulfil fruitfully. Parliament is not only a legislative but a deliberative body. So far as its deliberative functions are concerned it will be open to us to make very valuable contributions, and it will depend on our work whether we justify this two chamber system, which is now an integral part of our Constitution. So, it is a test to which we are submitted. We are for the first time starting under the parliamentary system, with a second chamber in the Centre, and we should try to do everything in our power to justify to the public of this country that a second chamber is essential to prevent hasty legislation."

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Generally, the responsibilities discharged by the second chambers in almost all democracies in the world in the matter of grant of supplies for the services of the

Government and in the imposition of taxation, is concurrence and recommendation, not initiation or amendment. The curtailment of financial powers of the second chambers is historical and the Rajya Sabha under the Indian Constitution is no exception. Nevertheless, the powers and functions of the Rajya Sabha in financial matters are better than those enjoyed by the House of Lords in U.K.

The modern practice in respect of the Commons' financial privileges is based upon the resolutions of 1671 and 1678 'That in all aids given to the King by the Commons the rate of tax ought not to be altered by the Lords' and 'That all aids and supplies and aids to His Majesty in Parliament are the sole gift of the Commons; and all bills for the granting of any such aids and supplies ought to begin with the Commons; and that is the unbounded and sole right of the Commons to direct, limit and appoint in such bills the ends, purposes, considerations, conditions, limitations and qualifications of such grants, which ought not to be changed or altered by the House of Lords'.

If the Lords withhold their assent to a Money Bill for more than one month after the Bill had reached them, the Bill may be presented for the King's assent, and, on the assent being given, will become law.

Our Constitution provides that the annual budget of the Union must be laid before both the Houses of Parliament. The budget can be discussed in the Rajya Sabha. The Rajya Sabha can neither vote the demands for grants nor reduce them. The Rajya Sabha can make recommendations with regard to a Money Bill, and return it within a period of fourteen days from the date of receipt of the Bill. The Lok Sabha may accept or reject the recommendations. The Bill is deemed to have been passed by both the Houses of Parliament in the form in which it is passed by the Lok Sabha. The Rajya Sabha has, however, full powers to reject or amend any Financial Bill (although it cannot be introduced in the Rajya Sabha) as in the case of any ordinary Bill.

From 1970 (72nd Session) the Rajya Sabha started discussing the working of the different Ministries of the Government of India. The innovation is a reasonable compensation for the Rajya Sabha for not having the right under the Constitution to pass the demands for grants of the various Ministries.

The reports of the Comptroller and Auditor-General of India relating to the Accounts of the Union are also required to be laid before both the Houses of Parliament. The Rajya Sabha is represented on the two Financial Committees, the Public Accounts Committee and the Public Undertakings Committee. The former examines the Appropriation Accounts and the reports of the Comptroller and Auditor-General of India of Union Accounts relating to Railways, Defence Services, P & T Department and other Civil Ministries of the Government of India. The latter examines the Reports and Accounts of Public Undertakings and the reports, if any, of the Comptroller and Auditor-General on the Public Undertakings.

Bills, other than Money Bills and Financial Bills, can be introduced in the Rajya Sabha. Bills, introduced in either House, can be referred to a Select Committee of that House or a Joint Committee of both the Houses. A Bill, passed in one

House when returned with amendments, not acceptable to the other House, or when a Bill passed by the Lok Sabha is pending in the Rajya Sabha for more than six months it will be brought before a joint sitting of both the Houses by the President. The Bill as passed at the joint sitting is deemed to have been passed by both the Houses. In case of final disagreement between the two Houses the Lok Sabha has not been given the power to override the Rajya Sabha as is done in the case of such disagreement between the House of Commons and the House of Lords in Great Britain. If a Bill other than a Money Bill is passed by the Commons in two successive sessions (within an interval of not less than one year) whether of the same Parliament or not, it may on second rejection by the Lords be presented for King's assent and on that assent being given will become law. In the States in India, however, if the Legislative Assembly passes the Bill a second time and transmits it to the Legislative Council, and if the Legislative Council does not accept it within one month in the form in which it was passed by the Legislative Assembly, it is deemed to have been passed by both the Houses.

As is well-known the Rajya Sabha has been endowed with two special powers, which the Lok Sabha does not enjoy. These relate to its power to pass resolutions enabling Parliament to make laws in respect of matters included in the State List (Article 249) and for the creation of all-India services (Article 312).

When the Rajya Sabha met for the first time in May 1952, the question hour was restricted to only twice a week. On a demand made from all sections of the House, the Chairman, in consultation with the Rules Committee fixed the first four days in the week for questions—Monday to Thursday. From the 1st July 1964 when the revised rules came into effect, the first hour of every sitting was made available for the asking and answering of questions. The revised rules also provided for calling attention and short duration discussions on matters of urgent public importance, which opened new avenues of discussion to private members, so that they could take more active part and keep a watch on the policies and performances of the Government. The revised Rules of 1964 permitted a petition on any matter of general public interest to be presented to the Rajya Sabha. A new committee, Committee on Subordinate Legislation, was also constituted to scrutinise and examine the various rules, orders, regulations etc. framed in pursuance of the legislative functions delegated by Parliament to a subordinate authority.

Several more changes were carried out in the Rules from the 1st July 1972. The scope and jurisdiction of the Committee on Subordinate Legislation was extended by including within the ambit of its functions various rules, regulations and orders framed not merely under different Acts of Parliament but also framed in pursuance of the Constitution of India. A Committee on Government Assurances was set up to scrutinise the various assurances, promises and undertakings given by the Ministers from time to time on the floor of the House. This Committee provides a new instrument to the private members to control the Government in a more effective manner.

As on today, the Rajya Sabha enjoys the same position as the Lok Sabha in

the matter of asking and answering of questions and other matters of public importance, except that 'Motion of No-Confidence' in the Council of Ministers cannot be moved in the Rajya Sabha.

It is gratifying to note that the functioning of the Rajya Sabha during the past twenty-five years has justified its existence to consider matters brought before it as a body different in character from the Lok Sabha. The qualifications prescribed for the members of the Rajya Sabha are the same as those prescribed for the Lok Sabha except that one should be over thirty years of age to be a member of the Rajya Sabha. There is, however, a feeling that in order to attract persons with superior intelligence and experience, the age limit fixed for members of the Rajya Sabha may be increased to forty years.

December 30, 1976

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Our Rajya Sabha and its Role

C. S. ROY*

The Rajya Sabha was first constituted in April 1952 and held its first Session on the 13th May 1952. The Rajya Sabha is going to complete twenty-five years of its glorious life in April 1977.

In this article it is not my purpose to enter into any discussion about the controversy that has centred round the bicameral system of legislature. I would, however, only point out that in spite of and notwithstanding, such a long-standing and heated controversy, almost all the leading countries of the world have thought it fit and advisable to have a second chamber. According to Sir Winston Churchill, "it is difficult to find a powerful, successful, free democratic constitution of a great sovereign State which has adopted the single chamber Government". The need for a second chamber has been felt all over the world wherever there are federations of importance.

When our Constitution was framed and adopted, the framers of the Constitution were fully aware of, and took into consideration, all the points for and against second chambers and decided in favour of having a second chamber. And the role

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that has been played by our Second Chamber, the Rajya Sabha, during this long period of twenty-five years has amply proved the great wisdom of their decision.

The composition of all second chambers is generally such that one can expect more aged and experienced persons as their members and also that all legislative measures would receive a second and further consideration by a body different in character from the primary representative body. It is generally said that the important function of a second chamber is the interposition of delay in the passing of a Bill which would enable the public to form and express its opinion after mature deliberation and that this is very much necessary if the Bills relate to matters of highly controversial nature. This point was also stressed during the debate in the Constituent Assembly when it was said that what we can expect the second chamber to do is to hold dignified and instructive debates on important issues and to delay such legislation which might be the outcome of the passions of the moment.

There is a general and popular impression that the role of the Upper House is to function as a revising chamber and in doing so, the Upper House serves to correct and eliminate the errors of the Lower House. While the impression may not be without basis, yet in the context of our Constitution it would not, in my view, be quite correct to call our Rajya Sabha a mere revising body. As it is clear from the provisions of the Constitution, except in some financial spheres, Bills can originate in the Rajya Sabha also. In fact innumerable legislative measures have originated in the Rajya Sabha and as such the Rajya Sabha is both a revising as well as an initiating body. And that is the position of the second chambers in almost all the constitutions.

But nowadays legislation is not the whole but only a part of the role played by a House of legislature and a major portion of the time is spent not in legislative discussion but in what may be called the supervision and direction of the administration. These discussions and deliberations consume much more time of a House than discussion on direct legislative measures. Such discussions in the Rajya Sabha have contributed a great deal to the improvement of the administration or modification in the policies of the Government and also to the vigilant supervision and superintendence by Parliament over the general executive administration.

One cannot fail to notice the dignity and decorum with which the proceedings in the Rajya Sabha have all along been conducted thereby inspiring and increasing the faith of the people in the parliamentary system of Government. Without meaning any disrespect to the Lok Sabha, one must admit and acknowledge the great contribution made by the Rajya Sabha during these twenty-five years in maintaining the dignity of Parliament and educating people in the principles of democratic government by its discussions and deliberations which have always been dignified and instructive, thoughtful and thought-provoking, educative and illuminating and shorn of political abracadabra and gibberish heat generated by political passions.

It is very often contended that second chambers obstruct the will of the people. But from the way the Rajya Sabha has worked during this quarter of a century we can unhesitatingly say that the Rajya Sabha has belied that contention and far from

obstructing the will of the people, the Rajya Sabha has all along endeavoured to give better and more useful expression to the will of the people.

It is said that the Rajya Sabha occupies a position inferior to the Lok Sabha. In spite of the theory of equality propounded by Prime Minister Nehru "that the Constitution treats the two Houses equally except in certain financial matters", the impression that we can gather from the provisions of the Constitution is that the Rajya Sabha does not occupy a status of equality with the Lok Sabha. The Rajya Sabha cannot initiate a Money Bill; cannot reject or even amend a Money Bill. It has no power to vote money for the public expenditure; demands for grants are not submitted for the vote of the Rajya Sabha; the Council of Ministers is responsible only to the Lok Sabha and not to the Rajya Sabha. The Rajya Sabha also suffers by reason of its numerical minority and has got to yield to the Lok Sabha in case a joint sitting is summoned by the President under clause (1) of article 108 of the Constitution to resolve a deadlock between the two Houses arising as a result of any disagreement between the Rajya Sabha and the Lok Sabha as to any Bill or any amendment thereto. If under clause (4) of the said article the Bill is passed by a majority of total number of members of both Houses present and voting, it shall be deemed to have been passed by both the Houses.

The position, however, is different in respect of Bills to amend the Constitution as under the special procedure prescribed therefor under article 368, a Constitution Amendment Bill must be passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting. Therefore, if the Rajya Sabha does not agree to a Constitution Amendment Bill passed by the Lok Sabha, the deadlock cannot be resolved at a joint sitting of the two Houses under article 108, because a Bill passed at such a joint sitting shall, under article 108 (4), be deemed to have been passed by both the Houses, while article 368 requires that a Constitution Amendment Bill must be passed by each House and that again with a special majority in each House. A Bill deemed to have been passed by both the Houses, under article 108 (4), cannot be deemed to have been passed by each of the Houses, and with such a special majority in each House as is required under the mandatory provisions of article 368. The Rajya Sabha has, therefore, a very powerful and an equal role to play in respect of Constitution Amendment Bills.

Our Constitution has given some special powers to the Rajya Sabha which the Lok Sabha does not possess. Under article 249 of the Constitution, Parliament can legislate even on a matter included in the State List if the Rajya Sabha declares by a resolution supported by not less than two-thirds of its members present and voting that it is necessary or expedient to do so in the national interest. Again under article 312 of the Constitution, Parliament is empowered to make laws providing for the creation of one or more all-India services common to the Union and the States if the Rajya Sabha has declared by a resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient to do so in the national interest.

But in my view the greatest point of prestige and honour of the Rajya Sabha is that the Constitution has made it a permanent body and not subject to any periodical dissolution like the Lok Sabha. If this position is now sought to be changed it can be changed only by an amendment of the Constitution and as I have already pointed out such an amendment of the Constitution, in order to be effective, must be agreed to by the Rajya Sabha itself.

From what we know and from what we have seen of the Rajya Sabha, we are confident that it shall continue to play its great role in the years to come and would continue to inspire the faith of the people in parliamentary democracy as it has done during the last twenty-five years of its glorious life.

December 28, 1976

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The Rajya Sabha : Is it a mere Second Chamber or a Revising Chamber ?

S. P. SEN-VARMA*

Article 79 of the Constitution of India provides :

> "There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People."

The Council of States is now also known as the Rajya Sabha and the House of the People as the Lok Sabha.

Nowhere in the Constitution does the expression "Second Chamber" or the expression "Revising Chamber" occur as a description of the Rajya Sabha and there are good reasons for this. The expression "Second Chamber" connotes that it occupies an inferior position *vis-a-vis*, and has lesser powers than, the other chamber of a legislature which is usually the popular chamber. In that sense the Rajya Sabha may be regarded as having lesser powers than the Lok Sabha in at least two important respects. In the first place, the Council of Ministers is collectively responsible to the Lok Sabha only. The Council of Ministers is not under

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any provision of the Constitution collectively responsible to the Rajya Sabha. Article 75(3) provides : "The Council of Ministers shall be collectively responsible to the House of the People." This means that it is only the House of the People or the Lok Sabha which can call the Council of Ministers to account for any of its acts in relation to the governance and administration of the country. In other words, the Council of Ministers, *i.e.*, the Central Government in this country is accountable to the Lok Sabha for all its activities, but the Lok Sabha is not the Government. In a very real sense the Council of Ministers forms the Government at the Centre. This is specially so after the amendment of article 74(1) of the Constitution by section 13 of the Constitution (Forty-second Amendment) Act, 1976 which came into force on the 3rd January 1977. It has been said of Gladstone that when at the time of the Crimean War in the fifties of the last century the Government was being severely criticised and taken to task on the floor of the House of Commons for the way in which public money was being spent for the conduct of the War, Gladstone, the then Chancellor of the Exchequer stood up to give a spirited reply on these lines : You can call the Government to account for its activities but you should remember that you are not the Government. The Government is carried on by the Council of Ministers and for that purpose it may do any act which it considers appropriate for the administration of the affairs of the State.

If, therefore, the Council of Ministers, *i.e.*, the Government of the day, is defeated on any major issue in the Lok Sabha or if a No-confidence Motion is passed by the Lok Sabha expressing its lack of confidence in the Council of Ministers on any major policy issue, then the Council of Ministers is bound to resign not only as a matter of constitutional decorum and decency but as the direct consequence of the collective responsibility of the Council of Ministers to the Lok Sabha. The Rajya Sabha, on the other hand, cannot call to account the Council of Ministers; it cannot pass any vote of no-confidence or a vote of censure against the Council of Ministers nor is the Council of Ministers under any obligation to resign if defeated on an important issue relating to the governance and administration of the affairs of the country.

After the amendment of article 74(1), the Council of Ministers has, by the express provision of the Constitution, becomes the real and effective executive at the Centre because the President of India is now required to act in the exercise of his functions in accordance with the advice which may be rendered to him by the Council of Ministers with the Prime Minister at the head. Clause (1) of article 74 of the Constitution after its amendment now reads—

> "(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice."

In the second place, the powers of the Rajya Sabha in relation to money

matters and other financial matters are definitely very much less than the powers of the Lok Sabha. This is clear from the provisions of articles 109 to 117 of the Constitution. Thus under article 109 there are several restrictions placed on the powers of the Rajya Sabha in relation to Money Bills. In the first place, under that article, a Money Bill shall not be introduced in the Rajya Sabha. In the second place, after a Money Bill has been passed by the Lok Sabha, it shall be transmitted to the Rajya Sabha for its recommendations and the Rajya Sabha shall within a period of 14 days from the date of its receipt of the Bill, return the Bill to the Lok Sabha with its recommendations and the Lok Sabha may thereupon either accept or reject all or any of the recommendations of the Rajya Sabha, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Rajya Sabha and accepted by the Lok Sabha. In the third place, if the Lok Sabha does not accept any of the recommendations of the Rajya Sabha, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Lok Sabha without any of the amendments recommended by the Rajya Sabha. Lastly, if a Money Bill passed by the Lok Sabha and transmitted to the Rajya Sabha for its recommendations is not returned to the Lok Sabha within the period of 14 days as mentioned earlier, the Money Bill shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Lok Sabha. These are very important limitations and restrictions on the powers of the Rajya Sabha in respect of Money Bills. The definition of Money Bills as given in article 110 of the Constitution shows the wide scope and ambit of a Money Bill. It is unnecessary to refer to this definition in detail. Again, if a question arises whether a Bill is a Money Bill or not, the final decision on the question rests with the Speaker of the Lok Sabha.

Then, although under article 112 the "annual financial statement" or the Budget is required to be laid before both the Houses of Parliament, under article 113 so much of the estimates of expenditure embodied in the annual financial statement as relates to expenditure other than expenditure charged upon the Consolidated Fund of India, is required to be submitted in the form of Demand for Grants only to the Lok Sabha (and not to the Rajya Sabha at all) and the Lok Sabha shall have the power to assent, or to refuse to assent, to any demand or assent to any demand subject to a reduction of the amount specified therein. Therefore, so far as demands for grants are concerned, it is only the Lok Sabha as the popular chamber of Parliament which has sole control over them. Then under article 115, demands for supplementary, additional or excess grants shall be presented only to the Lok Sabha. Similarly, under article 116, it is only the Lok Sabha which has the power to pass any vote on account or any vote of credit or exceptional grants.

Lastly, a Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 110 which defines Money Bills, shall not be introduced in the Rajya Sabha. These are the important restrictions

and limitations placed upon the powers of the Rajya Sabha in respect of money matters and other financial matters.

But except in respect of these two matters which are indeed of vital importance, the powers of the Rajya Sabha in other respects appear to be the same under our Constitution.

From the provisions of article 107 it is abundantly clear that the legislative powers of the Rajya Sabha in respect of matters except matters in respect of Money Bills and other financial Bills are on an equal and coordinate footing as the powers of the Lok Sabha. The Rajya Sabha is not in respect of non-financial matters merely a revising chamber. A revising chamber implies that all Bills originate in the popular chamber *i.e.* the Lok Sabha, and they come to the Rajya Sabha after they have been passed by the Lok Sabha so that the Rajya Sabha may in the course of its deliberations which are supposed to be carried on in a calmer atmosphere of superior wisdom, may suitably revise the Bills as passed earlier by the Lok Sabha. But as is clear from article 107, this is not the constitutional provision. As a matter of fact, during the last twenty-five years many important Bills of far-reaching consequences originated in the Rajya Sabha. It is not necessary to give a list of them as they will run into hundreds. Therefore it is not correct to regard the Rajya Sabha as merely a second chamber or a revising chamber *par excellence* either. Article 108 provides for joint sittings of both Houses in case of differences between the Lok Sabha and the Rajya Sabha with regard to the passage of any Bill. This article also does not draw any distinction in respect of any Bill which is not a Money Bill.

We may now refer to three important matters which are peculiar to the Rajya Sabha. In the first place, while the Lok Sabha unless sooner dissolved shall continue for six years from the date appointed for its first meeting and no longer and the expiration of the said period of six years shall operate as a dissolution of the House [Article 83(2) of the Constitution as amended by section 17 of the Constitution (Forty-second Amendment) Act, 1976], under clause (1) of article 83, the Rajya Sabha is not subject to dissolution. It is a continuous and perpetual Chamber of the Parliament for the Union. But as nearly as possible, one-third of the members of the Rajya Sabha shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law. This law which has been made in this behalf by Parliament is the Representation of the People Act, 1951.

In the second place, under article 249 of the Constitution it is lawful for Parliament to make laws for the whole or any part of the territory of India with respect to any matter enumerated in the State List if the Rajya Sabha has declared by a resolution supported by not less than two-thirds of the members present and voting that it is necessary and expedient in the national interest that Parliament should make laws with respect to any such matter. Of course, such a law made by Parliament under article 249 shall remain in force so long as the resolution passed by the Rajya Sabha as aforesaid remains in force and any such resolution initially remains in

force for such period not exceeding one year as may be specified in the resolution itself but the proviso to clause (2) of article 249 provides for the continuance of such resolution for a further period of one year.

In the third place, under article 312 of the Constitution, notwithstanding anything in Chapter VI of Part VI or Part XI of the Constitution, Parliament may by law provide for the creation of one or more all-India services common to the Union and the States if the Rajya Sabha has declared by a resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that such service or services should be created Thus both under article 249 and article 312 the passing of resolutions in the requisite manner is the condition precedent to the assumption of power by Parliament to make laws with respect to the matters mentioned in the said two articles.

The question may naturally be asked why power to pass resolutions to enable Parliament to undertake legislation under article 249 or article 312 has been given to the Rajya Sabha and not to the Lok Sabha. The answer is that the Rajya Sabha represents the States as component units of the Union of India. While the Rajya Sabha represents the union or federal principle of government, the Lok Sabha represents the popular or national principle of government. The power to make resolutions under article 249 or under article 312 has been exclusively given to the Rajya Sabha because the laws which may be made by Parliament under each of these articles constitutionally affect the States as component units of the Union of India. Of course, in ultimate analysis, it goes without saying, all laws affect the people. But the States as political entities are immediately and directly affected when laws are passed under article 249 with respect to a matter in the State List or under article 312 creating one or more all-India service or services.

The Rajya Sabha or the Council of States, as either name implies, indicates that it is the House of States as component units of the Union. The very first article of the Constitution provides—"India, that is, Bharat, shall be a Union of States." This is why a resolution supported by a specified (two-thirds majority) of the members of the Rajya Sabha present and voting is the condition precedent for Parliament to undertake legislation under article 249 or article 312 because such legislation directly and immediately affects the powers, functions and jurisdiction of the States as political entities, as component units of the Union of India.

As already observed, the Rajya Sabha may well be regarded as representing the union principle of government and the Lok Sabha as representing the popular or national principle of government. I have purposely used the expression "union principle" and not the expression "federal principle". Nowhere in the Constitution the word "federation" or any of its grammatical variations has been used and this has been done, I should say, purposely. The word "federation" is derived from the word "foedus" meaning a pact, a covenant or a treaty. That is to say, a federation comes into existence when independent and self-governing political entities enter into a pact or covenant or treaty whereby they agree for political reasons to constitute a new political entity at the Centre over them called the federation to which

they surrender their political powers relating to matters of common interests and common concern, such as, defence, foreign affairs, currency, coinage, citizenship, transport, banking, communications etc., while the units which have entered into the covenant, pact or treaty retain for themselves political powers pertaining to their special and local interests and concerns. But in India the component units of the Union were the old provinces which were never separate political entities. Therefore there was no question of any *foedus i.e.*, pact, covenant, agreement or treaty among the provinces which were merely administrative units of the Government of India.

The matter was nicely put in paragraph 120 of the Report of the Montagu-Chelmsford Constitutional Reforms (1917-18) as follows :

> "Granted the announcement of August 20 (1917), we cannot at the present time envisage its complete fulfilment in any form other than that of a congeries of self-governing Indian provinces associated for certain purposes under a responsible Government of India; with possibly what are now the Native States of India finally embodied in the same whole, in some relation which we will not now attempt to define. For such an organisation the English language has no word but 'federal'. But we are bound to point out that whatever may be the case with the Native States of the future into the relation of provincial and central governments, the truly federal element does not, and cannot, enter. There is no element of pact. The government of the country is at present one; and from this point of view the local governments are literally the "agents" of the Government of India. Great powers have been delegated to them because no single administration could support the Atlantean load. But the process before us now is not one of federalising. Setting aside the obstacles presented by the supremacy of Parliament (of the United Kingdom), the last chance of making a federation of British India was in 1774, when Bombay and Madras had rights to surrender. The provinces have now no innate powers of their own and therefore have nothing to surrender in a *foedus*. Our task is not like that of the Fathers of the Union in the United States and Canada. We have to demolish the existing structure, at least in part, before we can build the new. Our business is one of devolution, of drawing lines of demarcation, of cutting long-standing ties. The Government of India must give, and the provinces must receive; for only so can the growing organism of self-government draw air into its lungs and live. It requires no great effort of the imagination to draw a future map of India which shall present the external semblance of a great new confederation within the Empire. But we must sedulously beware the ready application of federal arguments or federal examples to a task which is the very reverse of that which confronted Alexander Hamilton and Sir John Macdonald."

More or less to the same effect were the observations of the Indian Statutory

(Simon) Commission in paragraph 128 of Volume I of their Report, 1930 :

> "The entire Government system was in theory one and indivisible. The rigour of a logical application of that conception to administrative practice had gradually been mitigated by wide delegation of powers and by customary abstentions from interference with the agents of administration. But the principle of the conceptions was still living and operative and had blocked effectively any substantial advance towards the development of self-governing institutions."

This was the position of the provinces. They were for all practical purposes administrative units for the sake of administrative convenience, for no single government could in the words of the Montford Report "support the Atlantean load" of the governance of such a huge and vast country as the then British India. It is no doubt true that the Government of India Act of 1935, Part III of which relating to the governance of the provinces came into operation on the 1st April 1937, introduced some facade of federalism in the governance of the provinces in the sense of making them in some respects self-governing units under the scheme of governance of the provinces as envisaged in Part III of the Government of India Act, 1935. It may be mentioned here that Parts I and II never came into operation because the rulers of the Indian States could not ultimately agree to the provisions embodied in those two parts. Thus there was no element of pact or covenant among the provinces *inter se* as it could not be, because the Government of India was since after the Regulating Act of 1774 the only effective government in the country —the so-called local (subsequently provincial) governments were nothing but the agents of the Government of India.

So far as Indian States were concerned, without going into the protracted and long drawn discussions and negotiations which took place over the years in the relationship of those States with the Government of India and the provinces in the constitutional structure of sovereign India that would come into being after the termination of foreign (British) rule, it may be said that some of them, the very small ones, were merged in the neighbouring provinces and some of them, a little bigger, became Chief Commissioners' provinces, and the bigger ones agreed to accede to the Dominion of India after the Independence Act, 1947 passed by the U.K. Parliament and became as acceding States integral parts of the Dominion of India. All this took place before the commencement of the Constitution on the 26th January 1950. And these bigger States continued to be administered by the Government of the corresponding Indian States. The result was that in the Constitution as it came into force on the 26th January 1950, the States were divided into three categories, Part A States, Part B States and Part C States. In Part A of the First Schedule to the Constitution were included the States which were the provinces of British India before the commencement of the Constitution and in some of these States as already mentioned some smaller Indian States were merged. This is clear from the description of the territories of Part A States which were given in

the First Schedule to the Constitution as it originally stood. In Part B of the First Schedule were included the bigger Indian States, namely, Hyderabad, Jammu & Kashmir, Madhya Bharat, Mysore, Pepsu, Rajasthan, Saurashtra and Travancore-Cochin. In the description of the territories of these Part B States it was provided by and large that the territory of each of these States comprised the territory which immediately before the commencement of the Constitution was comprised in, or administered by the Government of, the corresponding Indian State. In Part C of the First Schedule to the Constitution were included the Chief Commissioners' Provinces which barring the Chief Commissioner's province of Delhi comprised those Indian States which were administered before the commencement of the Constitution as Chief Commissioners' Provinces. It is needless to deal with these matters in detail here as by the Constitution (Seventh Amendment) Act, 1956 and the States Re-organisation Act, 1956, all distinctions between Part A States, Part B States and Part C States were obliterated and erased. Part C States, with a few exceptions, became Union territories, that is to say, the territories of the Union of India administered directly by the President acting to such extent as he thinks fit through an administrator to be appointed by him with such designation as he may specify or through the Governor of an adjoining State. The Part A States and the Part B States became States *simpliciter* and they were placed on the same footing.

In relation to the Indian States also, therefore, there was no element of federalism because the Government of the Union, that is, the Government of India, had been in existence long before the Indian States became integral parts of the Union of India under the Constitution. Therefore, even here there was no element of pact or covenant for bringing the Central Government into existence, but at the same time it is no doubt true that India, that is Bharat, which was made a Union of States had some trappings of a federation. It is needless to refer to these trappings here. But it may be pointed out that the Union supremacy is writ large in the various articles of the Constitution beginning right from article 3 down to article 365. Moreover, none of the States except, of course, the State of Jammu & Kashmir has any separate Constitution of its own. Therefore, one may be justified in saying that the Union which was created by the Constitution was not a federation in the strict sense of the term. The Union was created by the Constitution for giving the component units, the States, some measure of self-government and autonomy for the better governance of the States in relation to affairs and matters of direct interest and concern to the States. About sixteen years ago I discussed the subject in greater detail in an article entitled "Union Supremacy under the Constitution of India" published in the All India Reporter. But even then demands, sometimes vociferous, are occasionally heard from some States for greater and greater autonomy, that is, independence of the Union Government. Without meaning any disrespect to those who voice such demands it may be pointed out that since the beginning of history of this country, India has been one and indivisible. Since the time of Ashoka the Great through the time of Akbar the Great, to the days of British rule in this country, India from the administrative point of view has always

been under a strong Central Government all through. There have no doubt been *satraps* for the local units, such as, *subas* or provinces, but they were no more than delegates or agents of the strong Centre. Apart from this administrative aspect, India has all along been in the course of her history one and indivisible. As has been observed in the book "The Vision of India" by Dr. Sisir Kumar Mitra in Chapter II :

> "The lure of fertile land was the cause of earliest corporate life of man. The first human unification was effected by place from which has developed the idea of a common homeland and through that in due course a common nationality. It is the bounties of nature that attracted groups of humanity to settle in river valleys and organise collective existence by taking to agriculture and gradually to other arts of life that laid the foundation of human civilisations . . . The land of India is endowed by Providence with various features that distinguish here in many ways. This ancient land has its own meaning and mission, its own glory and grandeur, its own distinctive character and interest and culture. This unity is determined by its definite frontiers, the Himalayas on the north, the Hindukush on the northwest, the seas on the east and west. And this unity has developed into a national consciousness permeating the mind and heart of the people whose love of the land of their birth has been an indissoluble cementing bond of a singularly religio-cultural nature. It is a kind of love which is a sacrament, a worship, and which no language can properly define. It has been growing from within not merely as a patriotic impulse but as an abiding religious feeling, as an almost mystic perception. Indeed the awe and admiration the people feel for the snow-swathed summits of the Himalayas, the menacing hills of the frontiers, the laughing valleys of Kashmir, the rolling downs of the Deccan, the surge and thunder of the seas, the limpid flow of the great rivers of the country, is the proof and measure of its inspiring and formative influence. Says, Sri Aurobindo, 'The feeling of almost physical delight in the touch of the mother soil, of the winds that blow from the Indian seas, of the rivers that stream from Indian hills, in the hearing of Indian speech, music and poetry, in the familiar sights, sounds, habits, dress, manners of Indian life, this is the physical root of that love'."

It is unnecessary to describe the various factors which have joined in making India one and indivisible to her people. The interested reader may go through that book by Dr. Mitra. But it may be pointed out without much fear of contradiction that India has a personality all her own, an individuality that marks her out as something that has no equal in the annals of the earth. Prof. C. E. M. Joad, noticing this fundamental unity of India, observed :

> "This admixture of races has had important effects on India's past history and present outlook. The first of these is a sense of fundamental unity far more

vivid and persistent than can be accounted for by the circumstance of propenquity in the same geographical area. Europeans live together in a geographical area whose size is not very different from that of India. But as the wars which have disgraced European history in the past and the quarrels and rivalries that enfeeble the League of Nations in the present only too clearly show that the inhabitants of Europe are very far from being imbued with the sense of unity which distinguishes the inhabitants of India. We cannot, in short, speak of a "European" with the same appropriateness as we can speak of an "Indian" who, in spite of differences of colour, caste and creed looks upon all other Indians as his fellow countrymen and upon India as his home."

—Quoted by Dr. Sisir Kumar Mitra in the book already mentioned

Therefore, those who are now clamouring in the name of greater autonomy for more and more powers from the Centre are, it is submitted with respect, doing a positive harm to this fundamental unity which has marked India since the prehistoric times.

The Raiya Sabha as the House of States representing the Union principle of Government of this country can do a lot in maintaining and strengthening this fundamental unity of India by not only advocating a strong Union but also the unity and integrity of this great and ancient land. I think this is a distinctive function which the Rajya Sabha can do in the interests of the people of India. In order that we can realise in our own life this fundamental unity of India and the unity and integrity of our nation, it is essential that each one of us should develop our faculty of feeling and judgement which is the most important faculty of man, more important than the faculty of the theoretical reasoning or even the faculty of moral wisdom. It has been said by G. K. Chesterton, the famous English litterateur, about St. Francis of Assissi that he used to treat the whole mob of men as a mob of kings. What a deep and sincere respect for human dignity ! If the Rajya Sabha as the House of wise men representing the States can help in rousing this faculty of feeling in the people of this country, then not only the dignity of the individual will be roused in the individual citizens of this country but it will also lay sure foundation for unity and integrity of the nation. And once that is done, the case for a strong Union and a strong Central Government devoting itself to the welfare of the people in all aspects and facets of life will be assured. I look at the Rajya Sabha in this spirit and by its past performance one is hopeful that our Rajya Sabha will give a better account of itself than the corresponding Houses in other countries.

From what has been stated above, it must not be supposed that the Lok Sabha—the House of the People—has no duty in promoting the unity and integrity of the nation. The Lok Sabha representing as it does the popular and national principle of Government, it is needless to point out that it is the basic, inherent and essential function of the Lok Sabha to work towards promoting the unity and integrity of the nation under a strong Union and strong Central Government.

January 14, 1977

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The Relevance of the Rajya Sabha in our Parliamentary Democracy

PHULRENU GUHA*

In May 1977 the Rajya Sabha will be completing 25 years of its very fruitful life. Looking back over these years one, who had also contributed to its work although in a very humble way and had shared with others the thrill of being close to the unfolding process of history, would feel tempted to make some observations by way of evaluation. It is pertinent to recall at the outset that the critics of the Rajya Sabha, whether they were the members of the other House or constitutional experts, were not prepared to give it even two cheers when it, as a new-born baby, was struggling to be on its feet. They prejudged it as a prototype of the British House of Lords and some predicted that it would act as "a House of Party Pocket Boroughs". These very fruitful 25 years have made them appear false prophets.

Prime Minister Jawaharlal Nehru, the principal architect of our parliamentary democracy, had altogether different views of the Rajya Sabha. Speaking in the Rajya Sabha on May 6, 1953, he firmly declared that neither of the two Houses by itself "constitutes the parliament. It is the two Houses together that are Parliament of India". In this Nehru had expressed his faith as well as an expectation. The

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Rajya Sabha through all these years had given substance to his faith and fulfilled his expectations. This is amply proved by the now famous 42nd Amendment of the Constitution. One major target of this amendment is to reassert the supremacy of Parliament on all matters possible and conceivable under the Constitution. Here Parliament means in all cases, wherever not expressly provided, the two Houses. In the scheme of things of our national politics under the very able stewardship of Prime Minister Indira Gandhi, the Rajya Sabha gained a firm place and distinct role in the political process.

It may be of interest at this stage just to have a look around the world to assess and analyse the position and working of the second chambers. It is important to note that in spite of the oft-repeated point that the concept and relevance of the second chambers in modern democracies have suffered a tremendous erosion, all national legislatures worth the name continue to be bicameral. None denies the point that where the second chamber is not given a mass base to cultivate, the popular chamber should have the final say in all matters considered nationally important. This is an article of faith in all parliamentary democracies.

The second chambers in Great Britain, Canada or Australia cannot dream of vetoing the will of the people as expressed in the popular chamber Even the mighty Senate in U.S.A. cannot hope to act in a way contrary to popular interests, although it has both the power and the constitutional sanction to substantially modify everything that comes up to it for consideration. In all financial matters, the second chambers, by and large, are at a disadvantage, with the solitary exception of the Soviet of the Nationalities in U.S.S.R. There are indeed many shades in this degree of disadvantages. For instance, the Senate in U.S.A can strike everything off a Money Bill except its title and cannot itself act as an originating chamber for the same. So the Senate in U.S.A. has substantial powers but not co-equal powers with the Lower House. The American Senate's enjoyment of these substantive powers have now become more important by the 17th Amendment providing for direct election to this body. Money Bills in Canada require passage in both Houses of the Canadian Parliament. But the fact of ministerial responsibility in Canada being to the Lower House and the traditions of its political life have together reduced the Senate to the state of "pocket boroughs" of the Government.

The fathers of our Constitution were well aware of the powers and functions of the second chambers all the world over. This is evident from the records of the Constituent Assembly. But they were keen to have a second chamber in Indian Parliament and shaped it with such powers and functions as would answer our national requirements. Indeed at the formative stage of our parliamentary democracy, a second chamber, neither of the type of the House of Lords nor the Senate in U.S.A. or the Soviet of the Nationalities in U.S.S.R. but something essentially Indian was considered necessary and desirable. This approach is reflected in the composition of the Rajya Sabha and its character and quantum of powers. Naturally they rejected the arguments of uncompromising unicameralism.

Shri N. Gopalaswami Ayyangar, who piloted the Report of the Union Constitution Committee in the Constituent Assembly, clearly maintained that the second chamber was not intended to be a "clog either to legislation or to administration". It was rather expected to "hold dignified debates on important issues and to delay legislation which might be the outcome of passions of the moment." This was expected of the seasoned people who would constitute it, "who may not be in the thickest of the political fray, but who might be willing to participate in the debate with an amount of learning and importance."

It is important to note that the Rajya Sabha as the Second Chamber in the Indian Parliament was not intended to be a federal second chamber of classical vintage. The fathers of the Constitution did not attempt at creating a delicate federal structure, with an elaborate mechanism of checks and balances. They were keen to build up a constitutional system giving top-most priority to unity and solidarity of the country, against all fissiparous tendencies. The result is the creation of a unitary state with subsidiary federal features. If this basic principle is kept in mind, then none would make the futile endeavour to search for the federal attributes in the Rajya Sabha.

Since India is proclaimed to be a "Union of States", where emphasis is more on the unionness than on the identity of States, the principle of equality of representation of the States is ruled out as a constituent principle of the Rajya Sabha. However, the States as units are represented, to honour the subsidiary federal character of the State and to justify the name 'Rajya Sabha' or the Council of States, but on a different principle. The States are represented on the basis of population, *i.e.* more populated a State is, the larger becomes its quota of representation. Besides the States' representatives are elected by the elected members of the Legislative Assemblies. Naturally, the party composition of the State Legislatures is reflected in the Rajya Sabha. In our federal polity, the rich and varied character of our national political life thus finds an expression in the precincts of national Parliament. It is reasonable to assume that the fathers of our Constitution desired to make the Rajya Sabha a real political matrix of the nation. This contention is justified from some of the powers given exclusively to the Rajya Sabha by the Constitution.

It is important to note that the need for a second chamber at the national level was recognised long before the Constituent Assembly met to frame the present Constitution. The Nehru Report of 1928 could be cited as the first national expression of that urge. The Government of India Act, 1935, also provided for it. Sir B. N. Rao wrote in his Precedents (third series, pp. 146-48) that second chambers were "regarded as an essential element of federal constitutions". The Union Constitution Committee during the debates in the formative stage lent its powerful support to the idea. Shri Gopalaswami Ayyangar said in the Constituent Assembly that "the need for a Second Chamber has been felt all over the world, wherever there are federations of any importance" and therefore "no elaborate justification was needed at the Union level in India".

The creation of a second chamber at the Union level was a political imperative considering the diversity of races, languages, religions and cultures, with our Constitution-makers. Hence the Constitution lays down : "There shall be a Parliament for the Union which shall consist of the President and two Houses to be known as the Council of States and the House of the People." (Article 79). This could not be altered without affecting the basic structure of our federal polity. But about the second chambers in the States, the same Constitution provides that they could be created or abolished, if the people so desire, with the sanction of the Parliament. This makes one thing clear. They had attached more importance to a second chamber at the Union level, ensuring our federal character although without equality of representation for the units, but did not allow the same principle to prevail at the unit level since they were unitary in character.

The importance of the Rajya Sabha, as a federal second chamber of a special type, is amply clear in the powers and functions allotted to it. Over the national executive, it has not been given, and quite rightly so, any controlling power. This would have militated against the norms of parliamentary democracy. Equally on the question of controlling the national purse, its powers for very valid reasons should be inconsequential. No chamber, without a popular base, should be allowed to enjoy any substantive power on matters of administration. But the collective responsibility of the national Executive to the Lok Sabha does not mean that the Rajya Sabha is without stings. Its members by raising questions, demanding half-an-hour discussions on matters of importance, etc., can very well demand explanations from the Government in certain circumstances. Defeat on the floor of the Rajya Sabha may not require of a Government to resign, but it surely signals a crisis for the administration.

Apart from these two sectors of unequal powers, the Rajya Sabha stands on a footing of equality with the Lok Sabha in several respects, the most important of which are passing of a Bill of constitutional amendment and approving a Presidential Proclamation of Emergency and all other subsequent proclamations made by him during that period. These are quite substantive powers. The special majority required to pass a constitutional amendment is applicable to both Houses. Disagreements in this case between the two Houses cannot be resolved by a joint sitting of the two Houses. Similarly a Proclamation of Emergency must be passed by both the Houses separately. Further, in the election and removal of the President and the Vice-President, the Rajya Sabha has as much powers as the Lok Sabha, its numerical weakness notwithstanding. Moreover, in the matter of setting up Martial Law Courts, to deal with offences committed by the civilians and indemnifying military personnel for acts done in good faith, during a national emergency, the Rajya Sabha shares equal powers with the Lok Sabha.

Coupled with these, highlighting the role of the Rajya Sabha, there are several special powers granted exclusively to it. Two such powers merit special consideration. Firstly, the Rajya Sabha by a special majority may decide in national interest to shift an item from the State List to the Concurrent List or the Union List for a

term of one year. This could be repeated from year to year. It means the domain of Parliament could be enlarged, within the existing frame of power distribution, only by the Rajya Sabha. Secondly, if there is a compulsion for factors beyond control to proclaim a State of Emergency, when the Lok Sabha stands dissolved, such Proclamation is to be approved by the Rajya Sabha.

Leaving aside other matters, where the Rajya Sabha enjoys co-equal powers with the Lok Sabha or has an edge over the latter, it is enough to conclude from the above description that the Constitution grants the Rajya Sabha something more than an average second chamber status. It is envisaged to perform the role of a federal second chamber, in a special way, in normal times. The rights of the States are to be preserved and protected in a very special sense by it, which its co-equal powers with the Lok Sabha in the above analysis implies. But at the same time it is not a body to represent the States only. It has a distinct national role and responsibility which it must discharge adequately and well in times of crisis in the national interest. It may be said to have a dual character, as the protector of the States' rights within the framework of the Constitution and conscious and alert guardian and defender of national unity and interest. Here lies its uniqueness as a second chamber.

The Rajya Sabha is not designed to be the Indian counterpart of the American Senate or the Soviet of the Nationalities. If that is a weakness, it is born with it. Its real strength lies in the fact that it is aware of its uniqueness. It has never tried to emulate the other House. It is not a pale shadow of the Lok Sabha. It is not the bastion of reaction or conservatism. It is very much status-conscious and has often made its position clear in scintilating debates and thereby contributed to the glory of our parliamentary democracy. The events of the last few years bear an eloquent testimony to it. It has been rightly said by the observers that despite built-in limitations, the Rajya Sabha "has not surprisingly failed to evolve a distinct role for itself", on the other hand, "may be beginning to try its wings as a forum for grand and soaring debate" (Morris Jones : Parliament in India, pp. 257-58). This assessment justifies the hopes entertained by the founding fathers and above all Prime Minister Jawaharlal himself, who did so much to make what the Rajya Sabha is today.

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The Rajya Sabha—Second Chamber in the Indian Parliament

M. N. KAUL*

In a federal set-up, it has become almost universal to adopt the bicameral system of parliamentary government partly as a concession to the federating units who feel assured that their view-point would be represented in the highest governing organ of the country and partly as a safeguard that the lower chamber does not legislate in haste or frame policies which do not have the general support of the local administrations.

India, however, chose the federal system, not because the sovereign power vested in the States which gave up a part of it to the Union, but as a convenient form of government of a vast country where a unitary government would be impracticable, if not impossible. Unlike the United States of America, Canada or Australia, the Indian Union was not the result of a number of previously independent or self-governing States coming together to form a federation, but a centralised and unitary State with its different Provinces being merely convenient administrative divisions of the Centre and deriving their powers only as its delegates or agents. The object of forming a Union or quasi-federation out of this unitary system was mainly to secure efficient governance of the various parts of the country including its far-flung areas, which would be otherwise difficult to achieve under a single central authority. The bicameral system was, therefore, adopted as a matter of choice for the better governance of the country and to make parliamentary decisions more durable and stable and not necessarily under pressure from the smaller versus the bigger States. It is in this background that one has to appreciate the constitution and functioning of the Rajya Sabha or the Second Chamber in the Parliament of India.

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The arguments in the Constituent Assembly of India regarding the utility of second chambers alternated between those who believed that Upper Houses introduced "an element of sobriety and second thought" and those who thought that they acted as impediments to the wheels of progress. Ultimately the Indian Constitution-framers favoured bicameralism as an essential feature of the parliamentary system. They prescribed not only a second chamber in the Union Parliament but also in some of the larger States for the same reason. Bicameralism at the Centre was based on the argument that while one House was to represent the people or the nation as a whole, the other was to embody the federal principle and represent the component States of the Union. It is, however, to be noted here that unlike in the United States of America, where all the States of the federation have equal representation in the Senate or the Upper Chamber, the number of seats allotted to the States and the Union territories in the Rajya Sabha is not uniform and not based on the principle of parity among the federating units.

The Constitution defines Parliament as consisting of the President and the two Houses—the Council of States or the Rajya Sabha and the House of the People or the Lok Sabha. The framers of the Constitution studied the various patterns of the second chambers in existence in different countries in 1947-50 and did not favour either a fully and directly elected Second Chamber as in U.S.A. or a fully nominated House as in Canada. Instead, they decided upon an indirectly elected chamber with a small fixed number of members nominated, as being best suited to the needs of the country.

The maximum number of members of the Rajya Sabha is 250 which is less than half the number of the members of the Lok Sabha. Out of these, twelve members are nominated by the President from among persons having special knowledge or practical experience of such matters as literature, science, art and social service. The element of nomination has been purposely introduced with a view to securing the services of experienced and eminent men in various walks of life, whose counsel would otherwise not be available to the nation. The remaining members are to be the representatives of the States and of the Union territories. The present strength of the Rajya Sabha is 244, of whom 232 represent the States and the Union territories and 12 are nominees of the President.

The representatives of each State are elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote. The representatives of the Union territories are also chosen by indirect election in accordance with the system of proportional representation by means of the single transferable vote by electoral college the members of which are chosen by direct election. The present allocation of seats of 232 elected members in the Rajya Sabha to the States and the Union territories is contained in the Fourth Schedule to the Constitution.

A person is not qualified to be chosen to fill a seat in the Rajya Sabha unless he is a citizen of India and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule to the Constitution; is not less than thirty years of age; and possesses such other qualifications as may be prescribed in that behalf or under any law made by Parliament.

The Rajya Sabha is a permanent body and is not subject to dissolution but as nearly as possible one-third of its members retire on the expiration of every second year. The term of office of a member is six years. Upon the first constitution of the Rajya Sabha in 1952 the term of office of some members then chosen was curtailed in accordance with the provisions of the Council of States (Term of Office of Members) Order, 1952 made by the President in order that as nearly as one-third of the members holding seats of each category would retire every second year. Accordingly one-third of the members of the Rajya Sabha retire after every second year and on each occasion elections are held and nominations made to fill the seats vacated by one-third of the members.

The Vice-President of India is the *ex-officio* Chairman of the Rajya Sabha. He is elected by the members of both Houses of Parliament by secret ballot in accordance with the system of proportional representation by means of the single transferable vote. The Vice-President holds office for a term of five years from the date on which he enters upon his office. The Rajya Sabha chooses one of its members to be its Deputy Chairman.

The first sitting of the Rajya Sabha after its constitution was held on the 13th May 1952 and it will be holding its 100th Session in March-April 1977.

In the countries which have a parliamentary system of Government it is a common practice to exclude the second chamber from a decisive role in the matter of financial Bills. The Constitution of India which has also provided for a parliamentary form of government has restricted the powers of the Rajya Sabha in matters pertaining to finance.

A Money Bill or a Bill with money clauses cannot be introduced in the Rajya Sabha. All other Bills may originate in either House of Parliament. Again, the Rajya Sabha has no power either to reject or to amend a Money Bill. When a Money Bill after it is passed by the Lok Sabha, is transmitted to the Rajya Sabha, the Rajya Sabha can only make recommendations with regard to the Bill and must return it with or without its recommendations within a period of fourteen days from

the date of receipt of the Bill. The Lok Sabha may or may not accept the Rajya Sabha's recommendations. If the Lok Sabha does not accept any of the recommendations of the Rajya Sabha, the Money Bill is deemed to have been passed by both the Houses in the form in which it was passed by the Lok Sabha.

The limitation on the power of the Rajya Sabha with regard to Money Bills or Bills with money clauses should not, however, be taken to mean that the Rajya Sabha has no power at all in financial matters. The Constitution provides that the annual Budget of the Union is to be laid before both the Houses of Parliament. The Budget can be discussed in the Rajya Sabha as well, although the demands for grants are to be made only in the Lok Sabha which has the power to assent or to refuse to assent to any demand, or to assent to any demand subject to a reduction. The reports of the Comptroller and Auditor-General of India relating to the Accounts of the Union are also required to be laid before both the Houses of Parliament. As regards other financial Bills (Bills which contain not only provisions dealing with any of the matters specified in article 110 but also other provisions), there is, however, no limitation on the powers of the Rajya Sabha as stated above and the Rajya Sabha has full power to reject or amend any such financial Bill, as it has in the case of any other Bill which is not a Money Bill, and further such a financial Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been passed by both the Houses.

The contribution made by the Rajya Sabha even in the matter of financial affairs has been significant. As an instance, it may be mentioned that in the Income Tax Bill, 1961, it suggested a number of important amendments, all of which were accepted by the Lok Sabha. Although under the Constitution it has no power to pass the Demands for Grants of the various Ministries, a practice has developed since 1970 of the Rajya Sabha discussing the working of the different Ministries, enabling it to bring to the notice of the public the lapses and shortcomings, if any, of the Government.

The Rajya Sabha is represented on two Financial Committees of Parliament—the Committee on Public Accounts (the Committee which examines the Appropriation Accounts and the Reports of the Comptroller and Auditor-General on the Union Accounts relating to the Railways, Defence Services, P & T Departments and other Civil Ministries of the Government of India) and the Committee on Public Undertakings (the Committee which examines the reports and accounts of Public Undertakings and the reports, if any, of the Comptroller and Auditor-General on the Public Undertakings). Of the 22 members on each of these Committees, seven each are from the Rajya Sabha.

The Constitution contains certain special provisions for Central intervention in the State legislative field. Under article 249 of the Constitution, Parliament is empowered to legislate with respect to a matter in the State List, if the Rajya Sabha declares by a resolution supported by not less than two-thirds of the members present and voting that it is necessary and expedient in the national interest that Parliament should make laws with respect to any of those matters. Again, under

article 312 of the Constitution, Parliament is empowered to make laws for the creation of one or more all-India services common to the Union and the States, if the Rajya Sabha declares by a resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest to do so. In exercise of this power, the Rajya Sabha has in 1961 passed resolutions for the creation of the Indian Service of Engineers, the Indian Forest Service and the Indian Medical and Health Service and in 1965 created the Indian Agricultural Service and the Indian Educational Service. The Constitution has assigned a special position to the Rajya Sabha in the matter of Central intervention in the State legislative field in view of the fact that it is composed of the representatives of the States and the adoption by the Rajya Sabha of such resolutions by a two-thirds majority would be tantamount to the giving of consent by the States. The two-thirds majority has been prescribed as there is no equality in respect of the representation of the States in the Rajya Sabha.

In a bicameral legislature each House is to function in the sphere allotted to it under the Constitution. It goes without saying that for the successful working of the legislative machine there should be closest cooperation between the two Houses. Neither House should consider itself to be superior to the other whatever might be its powers and each House should be regarded as complementary to the other. The relations between the two Houses should be harmonious so that the functions performed by each House could be utilised to the best advantage of the nation and the high dignity of Parliament is maintained.

Dealing with the question of relations between the two Houses, Prime Minister Nehru stated in the Rajya Sabha in May 1953, as follows:

> "Our guide must be our own Constitution which has clearly specified the functions of the Rajya Sabha and the Lok Sabha. To call either of these Houses, an Upper House or a Lower House is not correct. Each House has full authority to regulate its own procedure within the limits of the Constitution. Neither House, by itself, constitutes Parliament; it is (the President and) the two Houses together that are the Parliament of India. The Constitution treats the two Houses equally, except in certain financial matters which are to be the sole purview of the House of the People."

The history of the working of both the Houses of our Parliament during the last quarter of a century would show that on the whole their relationship has been marked by a sense of cordiality, mutual respect and regard and cooperation in matters concerning the business of Parliament. There have of course been a few incidents specially in the early fifties which led to differences over their respective powers and privileges, but these had been solved satisfactorily, laying firm foundations for coordination and mutual consultation on matters affecting the two Houses. The developments since then will bear out that both the Houses fully realise their respective and complementary roles in the legislative set-up of the country and are

drawn together in partnership for the achievement of the goals set out in the Constitution.

One who has studied with care the functioning of Parliament in India will come to the conclusion that the Rajya Sabha has been a vigorous body and has been instrumental in focussing attention on many important matters of public importance. Its contribution to progressive legislation in the form of enactments for the socio-economic betterment of the people has been inconsiderable. Far from being reactionary or conservative in its outlook—an image generally associated with second chambers—it has equally been zealous in promoting measures of far-reaching character for the welfare of the people. Although technically a body representing the States, the Rajya Sabha, like its counterpart, the Lok Sabha, has tried to reflect public opinion truly and faithfully and has not championed sectional interests injurious to national unity or integrity.

The reasons for this are many. To me it appears that this has been possible because there has been horizontal movement of many members from one to the other Chamber at elections; average youthful membership of the Rajya Sabha; attendance of Ministers in both the Chambers; similarity of procedures in both the Houses; equal party discipline in both the Chambers; existence of one dominant party, namely, the Congress Party, in the Centre as well as most of the States since the beginning of the Rajya Sabha. In fact in some respects the Rajya Sabha has at times been equally active with the Lok Sabha in the application of some policy matters in public affairs. It has asserted itself even though it has no constitutional powers to oust the Government. It has built up public opinion in the parliamentary sphere on vital issues before Government. But it cannot be said that the Rajya Sabha has played any significant role in so far as amendments to Bills are concerned. It is not that the Rajya Sabha has no talent or desire to make its contribution to the improving of legislative measures but that the Government has found it inconvenient to agree to amendments lest the passage of Bills is delayed in the transmission of Bills from one to the other Chamber. But the discussions in the Rajya Sabha are studied by Government and they themselves in appropriate cases bring forward amending measures based on assurances given in the House. This has led to a quicker passage of Bills and the chief argument against the delaying tactics of chambers is got over to the satisfaction of everybody. I do not think that our Second Chamber fulfils some of the traditional arguments that are generally given in support of them. For example, the argument that popular representatives can be overhasty and they need checking by a less impulsive and more experienced body is not true of the Rajya Sabha, because at times it has acted just like the Lok Sabha; or again that interposition of delay is needed to crystallise public opinion on all Bills before they become Acts, is also not tenable because the two Chambers have passed laws without any appreciable time-lag, and without the calmer atmosphere or less susceptibility to immediate popular pressure.

The question whether there should be a second chamber in the legislative set-up of the country is a topic which continues to crop up every now and then in

India, as elsewhere. The justification for the existence of the Legislative Councils or Upper Chambers in the States in addition to the Legislative Assemblies or Lower Chambers has often been discussed and during the last 25 years, Legislative Councils have been abolished in two States, namely, Punjab and West Bengal. In the case of the Rajya Sabha, however, there is no provision in the Constitution for its abolition as in the case of the Legislative Councils, and it can be done only under article 368 dealing with the amendment of the Constitution, which of course requires the prescribed majorities of the Rajya Sabha itself. It may be mentioned in this connection that in the modern context of the Welfare State, the volume and complexity of whose legislation are increasing day by day, the existence of a second chamber, specially with a number of experts and men of experience in different fields, would be found very useful not only to scrutinise the measures with the special knowledge needed therefor and fill up any lacuna or loophole but also to consider legislation of a non-controversial character, which cannot be attended to in detail by the popular chamber either for want of time or other causes. In the case of Rajya Sabha, as already stated, there is no danger of its disappearance, so long as it does not itself agree to its abolition by the prescribed majorities. On the other hand, it cannot be gainsaid that the Rajya Sabha has by its record of work established itself as an effective force in our parliamentary system and if it continues to play its useful role, its admirers will increase day by day and critics will have less chance to do it any significant damage.

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The Rajya Sabha and its Role in Indian Parliamentary System

L. M. SINGHVI*

The Rajya Sabha in our country is a vital functioning part of our constitutional parliamentary apparatus. It was meant to be and has largely been an efficient organ and not merely an appendix or an embellishment. Moreover, in the unfolding drama of our parliamentary life and in the long-range dynamics of our democratic dialectics, the Rajya Sabha may find a more distinctive identity and an added role of significance.

The Constituent Assembly of India opted for indispensable bicameralism at the Centre and optional bicameralism in the States, both for historical reasons and on logical and functional considerations. Experience over the years has shown that the Constituent Assembly of India acted with wisdom and sagacity not only in its choice of bicameralism at the Centre but also in adopting a flexible and pragmatic approach in structuring it.

Second chambers have long been targets of ideological and constitutional controversies in the West. The contents of these controversies have differed from age to age and from country to country. In the ultimate analysis, it would seem

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that there is no universally applicable principle on which the second chambers could be assailed or justified. In each country, the idea of second chambers has its own logic or the absence of it.

The House of Lords in the United Kingdom is by all accounts a unique institution. For a long time it represented feudal property and wealth. It still embodies the principle of aristocracy and elitism, although more than one-fifth of the members of the House of Lords excluding peeresses and minors have been appointed to that House by reason of their own merits. The peers no longer have a right to audience and they are no longer summoned to the *Curia Regis*. Many of them seldom attend the House. By and large it is a citadel of the Conservatives; the other political parties are by comparison thinly represented. Attendance in the House of Lords is often scanty. It is not representative of a cross section of the national life. Its powers are limited. As Mr. A. J. Balfour put it as far back as 1907, "The Government of the day, the House of Commons of the day, would treat with derision any vote passed by the House of Lords condemning a particular Ministry or a particular member of the Ministry."[1]

The House of Lords' voting record is consistently conservative. As Sir Ivor Jennings puts it, "The peers vote as their conscience or their pockets indicate—though, of course, the conscience resides so near the pocket that it is rarely possible to separate them."[2] It is remarkable that in spite of its one-sided voting record and its largely non-representative character, the House of Lords has survived. Successive Labour Governments have had difficulties with the House of Lords. There have been occasions when the incumbent Labour Governments and the ruling majorities in the Commons have felt annoyed, offended, angry and exasperated with the House of Lords. There have been occasions when dire threats of wholesale reform and abolition of the House of Lords have been uttered. Recently, in 1976, there was a kind of confrontation between the Labour Government and the House of Lords with regard to certain legislation. But the Lords have continued their limited legislative role unreformed and unrepentant. Its role as a revising and suspending legislative second chamber is profoundly significant. In the words of Bagehot, the House has ceased to be one of latent Directors and has become one of temporary rejectors and palpable alterers.[3]

Indian bicameralism is quite different from its English and American counterparts. The Rajya Sabha is not a relic of history. Nor is it unrepresentative in the sense that the British House of Lords is said to be. It is neither a haven for those who have rendered lifelong party political service or for those who have held high and important non-political offices or for those who possess outstanding professional acumen. Nor is it comparable to the powerful American Senate. The Rajya

1. 176 Parliamentary Debates 4 S, 928, (24 June 1907) quoted by Ivor Jennings, Parliament, Second Edition, 1969, p. 394, f.n. 2.
2. *Ibid.*, p. 394.
3. Bagehot, English Constitution (World's Classics edn), p. 88.

Sabha is more or less akin to the Lok Sabha both in its composition and in its temperament. Functionally, the Rajya Sabha strives to conduct itself in the image of the Lok Sabha and exercises, broadly speaking, the same powers and privileges as the Lok Sabha, except in the financial sphere and in the matter of the constitutional collective responsibility of the Council of Ministers to the House of the People. In a constitutional sense, the Rajya Sabha embodies the quasi-federal principle on which the Indian Union is based and may at times be an authentic reflection of political balance in the country.

Many of the reform proposals mooted from time to time in respect of the second chambers, and more specifically in respect of the House of Lords, are already a part of our bicameral framework. Except for twelve members nominated by the President for their special knowledge or practical experience in respect of such matters as literature, science, art and social service, the Rajya Sabha consists of not more than 238 representatives of the States and the Union territories elected in accordance with the system of proportional representation by means of the single transferable vote. The composition of the Rajya Sabha, thus, synthesises the confluence of four principles : the quasi-federal principle, the representation principle, the principle of "sober second thought" and of checks and balances, and the principle of associating eminent and distinguished individuals with the working of our political system. A close study of the composition of the Rajya Sabha would show that although it is differently elected, by and large it is not radically different from the Lok Sabha. This is both an advantage and a disadvantage. It is possible to argue that if the Rajya Sabha is not quite different in its composition as compared to the Lok Sabha, it is unnecessary or redundant. The argument is obviously fallacious. That is, however, not to say that a change in the pattern of the composition of the Rajya Sabha may not be more conducive to any effective response to the challenges which encounter modern legislatures. A greater emphasis on the functional principle would make the Rajya Sabha a more effective Second Chamber in the pluralistic perspective of State. A greater emphasis on the federal principle would give the Rajya Sabha a more marked identity of its own. Moreover special functional strategies to enable the Rajya Sabha to scrutinise and supervise subordinate legislation, to deal with public grievances and complaints of maladministration and to hold specialised legislative investigation would, in my opinion, pay rich and substantial dividends in terms of maximising legislative efficiency and augmenting the performance capabilities of our parliamentary system.

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Rajya Sabha through the last Twenty-five Years

TUSHAR KANTI GHOSH*

The question of second chambers in a parliamentary democracy has always been a subject of some controversy. As it appears, the recent trend has been unmistakably towards their abolition as an undesirable impediment to the democratic process. At best they are looked upon as no more than revising bodies, and consequently, have very limited powers except where they are directly elected, as in the United States of America and Australia. In most other cases they are hardly in a position to exercise any significant degree of independence. That is one of the reasons why they are often considered almost superfluous. Any assertion of independence on the other hand is bound to lead to a conflict with the more representative Lower House, and then inevitably to the question which House has the greater claim to political legitimacy. The current conflict between the Commons and the House of Lords in U.K. is a case in point. It is also a manifestation of the same problem in a way, though the House of Lords as it is constituted is commonly regarded as an anachronism. The upshot of conflict, as can be expected, has been a persistent demand for its abolition.

But in a federal constitution, as in India, a second chamber at the Centre is

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perhaps essential, not only to safeguard the interests of all the constituent units but also to provide for representation of other special interests as are difficult to include in the Lower House. In a federation such safeguard is often necessary, as the development of social and educational progress is not always even in different parts of the federation. This is more so in a developing society where the unevenness is more marked, as also the difference in the level of representation of the various units. The second chambers thus become a useful forum for cooler and more mature thinking not necessarily always as a check, but also to supplement the efforts of the representative chamber in a larger perspective. They are often desirable, too, for the satisfactory operation of the parliamentary process.

The Council of States in India, known as the Rajya Sabha, was originally intended to be a compromise between these two principles. While it is expected to be a "good check upon democratic outbursts" of the popularly elected House and on hasty legislations, the federal principle was also sought to be served by having a ceiling on the strength of State representations so that the larger States cannot have too dominating an influence. Under the Constitution the Rajya Sabha has specific functions and has also full authority to regulate its own procedure within the limits of the Constitution. It is also to complement the other House of Parliament. As Pandit Jawaharlal Nehru had emphasised, "the successful working of our Constitution, as of any democratic structure, demands the closest cooperation between the two Houses", which together constitute the Parliament of India.

During the last 25 years of its existence, the Rajya Sabha would appear to have fulfilled both these expectations and served a useful purpose in the democratic process. As a legislative chamber, its role has throughout been constructive. It has initiated over 300 Bills, all of which were of immense social, educational and legal importance. As a revising chamber, it made a number of substantial amendments to several Bills passed by the Lok Sabha, which were later accepted by the Lower House. There was a deadlock only once, on the Dowry Prohibition Bill, 1959 but even in the joint sitting that was called to resolve the deadlock, its principal amendment was ultimately adopted. And to belie the stigma of Upper House conservatism, it was always seen to have given unqualified support to all progressive measures, including the abolition of privy purses, bank nationalisation and various constitutional amendments.

This is no doubt an impressive record. From this it would hardly appear as though the Rajya Sabha as a second chamber has been either superfluous or obnoxious. On the contrary, it has been a helpful body both to complement and supplement the representative Lower House in a way as the founding fathers had intended.

Because of its very composition, even in spite of the exigencies of party requirements, the Rajya Sabha has always been full of distinguished people whose contribution to the debates have been dignified and well above the ordinary. Among its members were eminent persons like Dr. Zakir Husain, Sardar K. M. Panikkar,

Dr. H. N. Kunzru, Dr. Tara Chand, Prof. S. N. Bose, Dr. P. V. Kane, Shri M. C. Chagla and many others, whose participation could always raise the level of the debates.

As it is constituted, the Rajya Sabha generally reflects the strength of different parties in the State Assemblies, and as such is expected to be a factor in preserving the federal and inter-State balance. The absence of any conflict with the other House of Parliament so far amply shows that the Rajya Sabha has been a helpful link in maintaining the unity of the federal structure, as much as the homogeneity of the national approach. This may partly be due to the predominance of one party in the Centre as well in the States. But it must also have been largely due to the manner in which the Rajya Sabha, however heterogeneous it has been sometimes, conducted its debates. These have not only been marked with dignity and depth but have also been distinctive. In the present party system of government where the party whip sets the line for parliamentary debates, this is no small achievement. Perhaps more than anything else this must have helped it in establishing a harmonious relationship with the other House, which was the aim of the Constitution.

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The Rajya Sabha as I know it

LEELA DAMODARA MENON*

As a new comer to the Rajya Sabha, I did not feel any nervousness as I was already familiar with its general functioning. I had often listened from the visitors' gallery the speeches of able Parliamentarians of the past two decades. I watched the distinguished Chairmen conduct the proceedings of the House, three of whom later held the highest office as the President of the Indian Republic. I also watched with pride, women chairing and controlling turbulent sessions with impartiality and dignity. I recall many moments of matchless humour and forceful opposition. There were sad and intriguing situations, tense and excited discussions reflecting the prevailing mood of the nation.

The sober red decor of the Rajya Sabha is symbolic of its special role in stabilisation of parliamentary democracy. The Parliament of India, vested as it is with sovereign authority by the people, needs to be protected from certain attitudes and shortcomings of majority opinion, in order to be true to the ideal of democracy. The Rajya Sabha deliberates upon all the proposed legislations as passed by the Lok Sabha and endorses them after giving them thorough and unbiased perusal. It is only rarely that a conflict of opinion has arisen between the Lok Sabha

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and the Rajya Sabha. The Upper Houses have come into existence for a variety of reasons, some even to give expression to very orthodox and conservative opinion. But the Rajya Sabha has been constituted to keep a conscious balance in the process of formulation of laws as well as for giving representation to vital but unrepresented sectors.

The Rajya Sabha is a permanent body yet fresh blood is inducted into it after every two years as one-third of its membership is renewed. Except the 12 members nominated by the President from among men and women who have distinguished themselves in some special spheres of national activity, all other members are elected by the elected members of the State Legislative Assemblies and Union territories. It is thus an additional forum for people's representation in Parliament. In a federal set-up, this avenue of representation to each State Unit has special importance and significance.

The members of the Rajya Sabha hail from all sections of the society. Young ladies, gallant youth, bearded ancients, aged veterans and seasoned men and women of all types come to the Rajya Sabha; their ages ranging from 30 to 85 years, although the age group of 40-60 generally dominates. A study undertaken in 1973 revealed that 15.7% of the members were cultivators and landlords, 27.7% political workers, 18% lawyers, 13.2% traders and industrialists, 8.7% teachers and educationists, 9.1% journalists and writers and the rest from other occupations. The general educational standard of the members was found to be high as compared to that in other legislative bodies. Of the total membership, 46% were graduates, 19% post-graduates, 4% having very high academic qualifications, 22% matriculates and only a small percentage was of non-matriculates.

There have always been outstanding personalities, representing art and literature as members in the Rajya Sabha. Well-known scholars, poets, writers, cartoonists, dancers, cine-stars and specialists in other fields have graced the Rajya Sabha adding to its benches a glamour and glitter. A good number of women members have always lent grace and colour to the House. They outnumber women members in the Lok Sabha and when they appear in groups, they give an impression of a crowd. Even if it irritates male chauvanism, it boosts up the morale of the feminist campaigners.

The standard of debate in the Rajya Sabha is generally high. Members bring to the legislative work, the seriousness it deserves. Some have special talent for the rhetoric. It is not an uncommon sight that a member bursts into poetry and renders the whole speech in verse. Those delivering their maiden speeches must be prepared to address almost empty benches. But such a situation need not deter any member from speaking on behalf of 600 million of his countrymen, which thought alone should give a missionary zeal to his speech. The only occasions when there is full attendance in the House, are when the division bell rings or when the Prime Minister speaks. The question hour is usually lively. The significant part which a legislative body plays is often assessed by the variety and importance of matters raised during its question hour.

The alchemy of the Chairperson and the members does not clash and there are hardly any instances of ruffled feathers and angry outbursts. The Chief Whip's tactful handling of situations and the general bonhomie among members help to retain a peaceful and pleasant atmosphere in the House. There have been awkward moments when a recalcitrant member had to be removed by the Marshal for disorderly behaviour motivated by political frustration. It may happen that one may be hoisted by one's own petard. Once, all the members from Kerala demanded that more rice be rushed to the State to tide over an urgent need. The Kerala members in the Opposition benches in their enthusiasm, rushed up to the dias of the Chairman and then squatted on the floor. They called out to me to join them. Representing the State, I did ask for more allotment of rice to Kerala, but I had to shake my head sadly and disagree with such methods of emphasising a request.

In the Central Hall amidst countless cups of tea and coffee, important programmes and ideas take shape. It also projects the lighter aspect of parliamentary life. The well-equipped library at the service of the members is of immense help in the discharge of their parliamentary work. The sittings of Committees add further interest to the parliamentary activities of the members. A more Committee oriented system may bring greater efficiency and comprehension to legislative work.

Undoubtedly, the Rajya Sabha has generally proved to be a good forum for dispassionate and constructive discussions with equanimity and poise shown in its deliberations and its record of work for the last 25 years has been very interesting. With all this, if I were asked what more does the Rajya Sabha need, I will unhesitatingly answer, 'more women members'.

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My View of Rajya Sabha

H. S. NARASIAH*

Every second year brings into the Rajya Sabha newer element of legislators who have by and large made an impressive impact on the proceedings, even though a good many may not have cared to participate in them to the extent one would have expected them to do. This is rather unfortunate. Nor can it be said that all of them are adequately equipped to contribute to the debates in a meaningful manner. Even where certain members are so equipped adequately, the procedural machinery that operates, does not place in the hands of the members the necessary material within sufficient time to enable the members to prepare themselves fairly well to speak on subjects under discussion. But this is not peculiar to India's Second Chamber only. From the very nature of things it may not be possible for all members in any legislative body anywhere in any country to make equal impact. Hence, taking the performance of Rajya Sabha as a whole, it can be stated that it has justified its existence and fulfilled its expectations.

Article 249 of the Constitution makes it abundantly clear that the framers of the Constitution never wanted the Council of States to be just an unnecessary appendage. If the Rajya Sabha declares by a resolution supported by not less than two-thirds of its members present and voting that it is necessary or expedient in the national interest to empower Parliament to legislate in respect of even a State

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subject, it can do so. That the Council of Elders has not so far invoked this power, only goes to show that the division of powers between the Centre and the States has been well conceived and running smoothly in the national interest. Again article 312 declares, "Notwithstanding anything in Part XI, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all-India services common to the Union and the States and subject to the other provisions of this Chapter, regulate the recruitment and conditions of service of persons appointed to any such service." The Rajya Sabha has exercised the powers conferred under this article and has passed Resolutions.

The Rajya Sabha has also initiated several important measures which subsequently the Lower House has passed. It goes to the credit of a private member of this House Shri Banka Behari Das for having successfully moved a resolution for the first time for the abolition of privy purses. Thus it falsified the apprehensions held by several members of the Constituent Assembly that a second chamber might prove to be a clog in the wheel of progress involving huge expenses and adding nothing to the efficiency of parliamentary work, it may be that it cannot make or unmake Governments but certainly it cannot be characterised as a superfluous body. Nor is it just a House composed of gentlemen and ladies of great distinction in various walks of life but politically a neutral entity. The common notion that the Rajya Sabha is just a 'yes' body is also a misnomer. The Constitution (Twenty-fourth Amendment) Bill, 1970 failed because it was rejected by the Rajya Sabha by a fraction of a vote.

Only on one occasion there was a disagreement between the Rajya Sabha and the Lok Sabha which was in respect of the Dowry Prohibition Bill, 1959. Under article 108 of the Constitution a Joint Session had to be held to resolve it. In such sessions, though the Lok Sabha, by virtue of its numerical strength, can always have its way, yet the view of the Rajya Sabha may prevail on merits.

A conflict also arose between the two Houses which related to the issue whether the Rajya Sabha should be represented on the all-important Public Accounts Committee. The members of the Lok Sabha opposed it on the ground that it would constitute an encroachment on their exclusive jurisdiction in regard to "Voting of Supply". Prime Minister Nehru intervened and the motion in favour of Rajya Sabha was passed.

The Rajya Sabha has 12 nominated members. They are drawn from spheres which have enriched national life in all walks.

Thus it stands out as a lighthouse with its revolving biennial lights and spreading its lustre on the boisterous billows of democracy splashing on its solid rocks of secularism, socialism and national solidarity, once in six years, all through these eventful period of post-Independence era.

January 27, 1977

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The Role of the Rajya Sabha in Decision-Making and Policy-Formulation

M. S. OBEROI*

The Rajya Sabha, of which I have had the privilege of being a member for nearly 12 years, will complete the Silver Jubilee of its existence in the course of its 100th session in May 1977. Being a member of this august body a certain element of subjectivity may creep into my appraisal of its role in decision-making and policy-formulations at the highest level. Nonetheless, I hope I can say quite objectively that the Rajya Sabha plays a vital and important role in determining national policies. Because of the historical background our Parliament is often compared to the British model. But in fact our Upper House, Rajya Sabha, performs more functions and is more representative of the people than the House of Lords. For instance, unlike the British Upper House, in Rajya Sabha there is a Question Hour on all the days of its sitting and Ministers of Government who may be members of Lok Sabha can participate in our deliberations. Basically there is only one major difference in the functions of the two Houses; Money Bills cannot be initiated in the Rajya Sabha.

India's bicameral Parliament, specially with the passing of the recent amendments to the Constitution which have been passed by both Houses of Parliament

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and ratified by a number of State Legislatures now enjoys over-riding constitutional powers. Parliament can amend or change any provisions of the Constitution without any judicial review. That means that the supremacy of Parliament which consists of the President of India, the Rajya Sabha and the Lok Sabha is now an unquestioned legal and constitutional reality. More than ever before Parliament today represents the sovereignty of the people of India, their hopes and their aspirations, and in that sense members of Parliament directly represent the political will of its citizens.

On a perusal of the provisions of the Constitution relating to the Rajya Sabha, it would be observed that the Rajya Sabha does not in any way subordinate itself to the Lok Sabha. The Constitution expressly lays down that a Bill can originate in either House of Parliament and "subject to the provisions of articles 108 and 109, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses."

The provisions of the Constitution make no distinction whatsoever between members of the Lok Sabha and the Rajya Sabha in the matter of their powers and privileges. Again, salaries and allowances of members of both Rajya Sabha and the Lok Sabha as well as the other perquisites enjoyed by them are also identical.

It is not necessary for me to go into the details of the legislative history of recent times to establish the fact that a large number of Bills which had political and social significance for hundreds of millions of people in India could not have been passed into Acts of Parliament or transferred to the statute books if members of the Rajya Sabha had not exhibited an extremely lively sense of history by responding to the need for change, the need for social reform and the need to make Parliament a real instrument for translating the will of the people of India. It is a matter of tremendous gratification to me, as a member of the Rajya Sabha, that this House, which is supposed to be the House of Elders, has not been found wanting in sensitivity to the needs of times. It is true that while the basic age of persons seeking to get elected to the Lok Sabha is twenty-five, in case of the Rajya Sabha the minimum age is thirty, and generally the age group of the members of the Rajya Sabha is comparatively somewhat higher. In fact Rajya Sabha has an edge over the Lok Sabha because it has a certain number of members who are nominated because of their expertise in art and science or their established reputation in public affairs. I admit that the original intention of the framers of the Constitution of India in having bicameral legislatures both at the Central and the State levels, was to have members in the Upper House with maturity, experience and status in life in order to provide a sort of brake on the exuberance of the younger members of the Lower Houses. And the Rajya Sabha did try to provide what are termed as "checks and balances" on legislative measures which the members felt were not timely or did not correspond to real national interest. By virtue of their background in industry, commerce, sciences and humanities, members of the Rajya Sabha can be trusted upon for having maturer and sounder judgement. But age has not proved to be

a factor for conservatism over the years I have been associated with the Rajya Sabha.

I have witnessed a change in its mood. In earlier years Rajya Sabha's tendency was to sit in judgement on the measures passed by the Lok Sabha. More recently the Rajya Sabha has shown as much enthusiasm in supporting progressive and forward-looking measures as the Lok Sabha has. This does not mean that any dilution in the autonomy of the Rajya Sabha has taken place. It only means that the Upper House has complemented the functions of the Lower House so that Parliament as a whole can frame national policies that would shape the destiny of our great Republic.

December 20, 1976

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The Role of Opposition in Parliament and Legislatures in India

RAM KISHORE VYAS*

The concept of opposition in a parliamentary democracy is a dynamic concept. Ever since the formation of Parliament and the State Legislatures in India, after the first General Elections, the role of opposition has been a subject-matter of discussion at different forums and by different political parties. The subject is still open for discussion and in view of the fast changing values of our political system and the fluid situation, no code about the duties and functions of opposition could be framed so far.

Democracy, as is well known, functions through the Legislature, through the Executive and through an independent Judiciary. It is a government by discussion and discussion pre-supposes arguments and counter-arguments. That is why we call the Legislature a deliberative body and not a governing body. The essence of democracy, therefore, basically lies in the fact that the majority has its way and the minority has its say. In a developing society, the needs of the people are always growing. The best is never reached and hence there is always the opportunity to and necessary promise more and do better. Consequently, the opposition would always be desirable If we look to the role of the opposition in this background, role

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of the opposition appears much more important than even the role of the ruling party which functions mainly on the support of its voting strength.

OPPOSITION AS ALTERNATIVE GOVERNMENT IN BRITAIN

We have adopted the British parliamentary system in our Constitution substituting an elected President in place of the Crown. There happens to be only two main parties in the British Parliament, though it may have been the result of accident rather than design. But it has several advantages. Firstly, this enables the electorate directly to choose its own government, whereas in the multi-party system the choice of government is left to the elected representatives. Secondly, in a two-party system the responsibility for action is fixed on a definite group which has been returned in a majority. The multi-party system either makes for a coalition government or a minority government which is apt to be weak and ineffective.

The essential pre-condition for the success of parliamentary democracy and cabinet system is a strong opposition, preferably within the background of a bi-party system. It works evently and well where two great political parties exist, which alternatively hold the power of the government, and of which each one is gradually forced to give place to the other. In England, the Opposition is a regular part of the parliamentary system. 'Her Majesty's Opposition' is second in importance to 'Her Majesty's Government'. The opposition knows that it has to take responsibility of its criticism and if the government fails, it has to hold power. Thus its behaviour is always constructive and it even forms the 'shadow cabinet' to perform the task of directing criticism of government policy. The cause of success of the cabinet system in England is that from the early days of party alignments, the British system has presented a two-party system.

The British system is based on an understanding between the government and the opposition. They agree in the fundamentals and even have formed coalitions in the past in times of national crisis. So observes Jennings, 'Parliamentary debate is not a perpetual Trojan way.' The system offers a high degree of flexibility which is much needed in the political life. But in India flexibility has deteriorated into instability and uncertainty. If the much controversial article 356 of our Constitution was not there, constitutional deadlock would have wrecked our democratic life.

OPPOSITION IN INDIA : A BRIEF SURVEY

After Independence, we adopted parliamentary form of government based on the pattern of British parliamentary system. This, in other words, meant a rule of the people, for the people and by the people. In such a system, the opposition has a very important objective and vital role to play inasmuch as we cannot conceive a democracy without opposition. But, before going into the niceties of this point, it would be worthwhile to understand the background of our political system which worked during pre-Independence period. There existed certain political groups holding different ideologies in the political life of this country but they were not functioning within the framework of parliamentary democracy. All these political groups were working for a definite common purpose, *i.e.*, independence of the country. India, in a strict sense, had no party system like Western countries until 1952 when the first General Elections were held on party basis. As against this, England had a mature and stable party system since 1641 and all the political parties were well trained in their respective political set-up, political consciousness and political behaviour. There was a complete absence of competitive politics when India achieved Independence and whatever political groups existed during the pre-Independence period, they had no training in democratic behaviour and values. The Socialist Party, Communist Party, Peasants and Workers Party etc. that emerged during the first General Elections, were not stable, efficient and well-organised political parties in the country and when we discuss the role of opposition in the context of Indian legislatures, this fact should not be lost sight of.

The first opposition in Independent India was formed in 1950 under the leadership of Prof. K. T. Shah. It had only 14 members. Its purpose was mainly corrective as it had no basic differences with the Congress though it tended towards the Left. But the real opposition came in 1952 after the general elections under the Constitution. The Communists were the biggest group and the Socialists came next. Dr. Syama Prasad Mookerjee collected several splinter groups and formed a Democratic Party of almost the size of the Communists, but this group disintegrated. There were some who united themselves under the leadership of Shri Tulsidas Kilachand but they had no programme or policy to execute.

CONDITIONS FOR RECOGNITION OF A PARLIAMENTARY PARTY OR GROUP

The Speaker of the First Lok Sabha Shri G. V. Mavalankar, felt that the test, at least for the party status, should be stiffened and three qualifications were regarded as necessary for recognition as a Parliamentary Party : (i) a party should be in a position to keep the House, *i.e.*, the number of members should not be less than the quorum fixed to constitute a sitting of the House; (ii) it should have unity of ideology and programme; and (iii) it should have organisation both inside and outside the House. A parliamentary group, on the other hand, has to satisfy the conditions specified in items (ii) and (iii) and shall have at least a strength of 30 members in the House.

Consistent with the aforesaid principles, only the Congress Party had been given the status of a party in the Parliament. There was no recognised Leader of the Opposition in the Parliament. The opposition composed of representatives of more than twenty different opposition parties in the Lok Sabha and so a broad organisation of the opposition was difficult. During the first three years of the First Lok Sabha (1952-57), some leading members of the opposition groups, namely, Dr. Syama Prasad Mookerjee, Acharya J. B. Kripalani, A. K. Gopalan and Jaipal Singh in the Lok Sabha and Dr. Kalidas Nag in the Rajya Sabha made attempts to

form a united opposition under their respective leadership. But, while they failed in their primary task, they succeeded in bringing heterogeneous groups together from time to time. The Speaker, however, refused to confer the status of a party to any opposition group and all the opposition groups were technically known as groups in the House. However, the Speaker allowed Shri A. K. Gopalan, the Leader of the Communist Group, to occupy the seat reserved for the Leader of the Opposition on the front bench. The Leader of the Communist Group occupied this seat till the split in the Communist Party in 1964. After that year, the seat reserved for the Leader of the Opposition was occupied by the Leader of the Swatantra Group. He occupied this seat till September 1969.

RECOGNITION OF LEADER OF OPPOSITION

The most remarkable development in the Parliament in December 1969, was the emergence of the institution of the Leader of the Opposition. The Speaker of the Lok Sabha recognised the Leader of the Congress (Organisation) Party, Dr. Ram Subhag Singh as the Leader of the Opposition. In the Rajya Sabha, Shri S. N. Mishra, the Leader of the same Party, was also recognised as the Leader of the Opposition in that House. This was the first time since Independence that the Parliament had a recognised Opposition Party and a Leader of the Opposition, although for a brief spell of one year (1969-70). The role, privileges and responsibilities of the Leader of the Opposition are not as yet defined in the Indian context. Dr. Ram Subhag Singh had only been allotted the seat which in a parliamentary system is given to the Leader of the Opposition. He did not function as a Leader of collective opposition as other opposition groups maintained their right to speak for themselves. But, in Britain, the position of the Leader of the Opposition is recognised not only in parliamentary practice, but also in statute. In that position, he receives an annual salary in addition to his salary as member. Among other facilities given to him are his own parliamentary secretary and a room for his office.

ROLE AND PURPOSE OF OPPOSITION

As stated earlier, the opposition in our country is in the process of making. We have not been able to build an effective and united opposition even after the lapse of 25 years of the working of our political system. The reasons are obvious. Firstly, we lack in a sound and balanced party system which is the backbone for the creation of a healthy Opposition. Secondly, the issues which divide various political parties and groups within the opposition are so fundamental that they are not even negotiable. An in-fight and a clash of political interests amongst various factions of opposition are also noticed in our legislatures which is a testimony to the fact that they cannot reconcile to the formation of a common strategy in attack ing the Government. They unite and differ from issue to issue. All these differences

within the opposition, therefore, produce a weak and ineffective opposition which, in effect, severely impairs the quality of democratic values. It is probably under these eventualities that the institution of opposition is often described as an embodiment of negative attitudes and irresponsible criticism. Thirdly, the opposition constitutes a very poor numerical minority in the legislature with the result that even with best intentions, pursuasive arguments and best expression of talent and calibre, it proves, in the ultimate analysis, to be an ineffective opposition. The result is frustration, turmoil, pandemonium and disorderly scenes in the legislature.

The politicians have become increasingly concerned about the quality of present functioning of Opposition in Parliament and its future. Even in Britain where the institution first appeared, no less an observer than Prime Minister Harold Wilson drew the attention in the spring of 1966 to the problem of opposition. It seemed that the Conservatives, then in opposition, had become so purposeless, so lacking in an attentive programme that it raised the whole question whether an opposition was still necessary. Political scientists deplore the fact and cannot conceal their anxiety at the gradual decline of opposition in liberal democracies. Like the parliamentary system, political opposition, whieh is part and parcel of that system, has in recent years come under attack from all quarters. What useful purpose does it serve today ? Is verbal and representative opposition as effective as the direct action of the group opposition ? Does not parliamentary opposition by its negative and dilatory action distract the Government from concentrating on more important and urgent task ? And what anyway is opposition in the constitutional framework ? These are some of the important questions which are raised in connection with 'Institutional Opposition'. The present role and the future possibilities of the institution, vital to the functioning of the parliamentary system, should be seriously considered by all concerned and interested in democracy.

The opposition is not allowed to exist in one-party system as a separate institution. It may take the shape of dissident group with minority tendencies and criticise the government at party meetings with varying degrees of freedom. On the world map, the number of governments without a political opposition has grown larger. The number of States with parliamentary government has rapidly decreased. Within such States, too, there is less confidence in the value of political opposition and, indeed, it arouses less interest.

But in spite of so many handicaps the opposition has fared well. The government and the opposition worked together in arranging the business of the House. Even with small number, and those too divided in several groups, the opposition in India has been making its presence felt by securing modifications in several Bills and Motions. The ruling party showed a spirit of accommodation and the opposition a sense of responsiveness.

TECHNIQUES AND METHODS OF OPPOSITION

It may now be examined as to what are the techniques and methods which the

opposition applies in playing its role in the legislature. The Rules of Procedure provide ample opportunities to the opposition to ventilate public grievances through Questions, Calling Attention Notices, Adjournment Motions, debates on various matters of public importance, discussion on Budget, Governor's Address, and sometimes No-confidence Motion. It is through the medium of the Rules of Procedure that the opposition exposes the weakness of the administration and harasses the government in every possible way. There cannot be two opinions that if the opposition makes proper and careful use of the Rules of Procedure it can achieve dignity and decorum in the performance of its job not merely to its satisfaction but also to the satisfaction of the electorate of the country at large. Apart from the performance of its duties in the House, the opposition has to prove its worth in the work of parliamentary committees also which examine the working of the administration in all its entirety.

The opposition is essential part of the parliamentary democracy. The assertion made by Sir William Harcourt that 'the function of an opposition is to oppose' is not wholly correct. Many proposals of the government are not opposed because there is general agreement. Incidental details may be criticised or even opposed, for a scheme which is good in principle may be weak in details. It is possible, too, to criticise a proposal without opposing it. The opposition may agree that increased armaments are necessary but assert that the reason for the necessity is the unfortunate foreign policy of the government If a scheme is opposed, it does not follow that every part of it must be opposed. The opposition's task is not to prevent the government from carrying out its policy but to criticise that policy in the hope that the electorate will choose a different government next time. If there are proposals about which the opposition feels so strongly that it must obstruct, the government has to use its powers which are ample to overcome the obstruction. Frequent use of these powers has harmful effects It gives rise to the idea that the way to deal with an opposition is to vote it down. It is easier for a government to stop criticism than to answer it. For then the electors know only one side of the case. If the opposition is constantly obstructed and the government consistently votes it down the dictatorship of the majority would soon be established.

The government governs under criticism from the opposition. The opposition's functions are almost as important as those of the government. So far as possible proceedings are regulated by agreement between government and opposition. If there is disagreement the government must decide and use its majority for the purpose, but since the opposition agrees that the government must govern and the government agrees that the opposition must criticise, the order of business can usually be settled in conference.

In the context of Indian Legislatures, the general impression is that the role of opposition has been to oppose the government on all issues. To some extent this is true for if we look to the proceedings of various legislatures, we find a severe lack of constructive criticism. It appears that many of the opposition leaders have lost

their *modus operandi* and sometimes in a state of frustration make allegations which in a majority of cases, are not borne by facts.

RELATIONS BETWEEN THE GOVERNMENT AND THE OPPOSITION

In a democratic country the majority and minority party or parties together constitute the parliament or legislature. Though both the government and the opposition generally function as contending blocks yet there is a tacit understanding that the majority is to govern and the minority to criticise. Under the parliamentary practice, the majority concedes to the minority's reasonable liberty of speech, expression, association and movement, and the minority, likewise, allows the majority to implement its programmes. This is the natural and constitutional relation between the two sides. There are some common issues which may be raised without party consideration. For example, the defence policy, foreign policy, food policy, five year plans, etc. are some such noteworthy issues. These issues are of such importance that regular cooperation and consultation is not only necessary but particularly desirable.

In the Indian Parliament, several causes contributed in preventing regular consultation between the Government and Opposition. The Opposition consisting of several heterogeneous groups, had been numerically weak. It was a chaotic multitude and possessed more colours than a rainbow. These groups, though united in opposing the ruling party upon some major issues, were not unanimous on many issues. In the Parliament, there was often more division and disagreement in the opposition ranks than between the Government and the Opposition. Moreover, the Independent members had been so chameleonic that no party could depend upon them on any issue. Such divergent views of opposition parties prevented them to make any united parliamentary front under one leader. The Government, because of the presence of several opposition leaders, finds it inconvenient to consult all of them.

SOME RECENT DEVELOPMENTS IN INDIAN PARLIAMENT AND LEGISLATURES

It is perhaps appropriate to mention here some of the developments in our Parliament as also the State Legislatures in recent past. The actions and behaviour of some of the parliamentary groups and parties, in the name of democracy, were far from being democratic. Uproarious and disorderly scenes, boycott of the Address, snatching away of papers, shouting and raising slogans, staging of *dharna* and scenes of physical confrontation between members, wilful obstruction of proceedings, indiscipline and defiance of the Chair had become the order of the day. Even the elected members were *gheraoed*, slapped, assaulted and forced to resign.

What was alarming, even the Chair was not spared. A tendency was gradually developing to criticise the Rulings of the Speaker and the members did not show the courtesy of resuming their seats when the Chair was on its legs. His observa-

tions and authority were deliberately flouted and the situation was becoming rife with mischief. This posed a great challenge to the Chair who, under such circumstances, found it difficult to run the House in an orderly manner. As I said earlier, the Speaker represents the dignity of the House and naturally the very existence of our parliamentary institution depends upon the faith which the members repose in the Speaker. But when a section of the House resorts to agitational politics it is very difficult for the Speaker to contain the tension of democratic politics within the framework of democratic apparatus. After all, the Speaker has to uphold the authority of the House in the interest of the smooth functioning of parliamentary system in the country and it is his responsibility to maintain the honour and prestige of the House and its members.

SOME SUGGESTIONS AS TO IMPROVEMENT IN THE FUNCTIONING OF THE OPPOSITION

There is no other solution for a modern opposition than to defeat government on its own ground. There is no way of convincing of public opinion, but by showing oneself more knowledgeable and better equipped than one's opponent and producing a distinctive and seemingly more adequate and far-sighted alternative policy to that of government. To accept the view that government knows best because it has the expertise amounts to an abdication of real opposition. Parliamentary opposition must know and believe and prove that it knows better than the government on those issues on which it chooses to oppose. Opposition should be provided not only with means of acquiring information but with the means of disseminating their views and policies. In Sweden and West Germany political parties are subsidised by the State in proportion to their following. This example could be adopted and expanded into an allocation of revenues for larger expenditure to meet the requirements of the modern functioning of opposition. But the survival of opposition does not depend only on institutional changes and procedures. A lot depends upon its own will to cover the handicaps from which now it suffers in relation to government. In other words a lot depends upon the skill, ingenuity and tenacity displayed by political leaders, starting from what has been always unfavourable position. Leaders like Gladstone and Churchill have all managed to stage successful come-backs to government from very difficult positions in opposition. Churchill whose main concern was foreign policy, describes very vividly in his Memoirs how he built up for himself what amounted to his own-run private research centre, having the information and knowledge of the best experts available to him.

Opposition should be able to supply itself with, and make use of, information and documentation effectively as does the government. The modern opposition should become as competent and efficient as modern government for if the opposition gave up the task of preparing and producing its own counter proposals and contended itself with a purely negative opposition to all government policies, however, founded strongly on doctrinal and moral values of its own, it would cease to be representative, its contribution to the debate would become inconclusive and it would lose its followers. To oppose without proposing is ultimately self-defeating.

There is no denying of the fact that the government must govern but strong government need strong opposition. The facilities available to the opposition and back-benchers should be greatly increased, particularly the expansion of library into parliamentary workshop of research and investigation, and employing many trained research workers who could serve Committees. There should, therefore, be a deliberate creation of a counter bureaucracy to obtain information for Parliament.

The political opposition is faced with the problem of how to keep up with the expanding centre of power of government. The government is growing as a consequence of process of modernisation. The political opposition should also, therefore, go through the same process of modernisation, if it is to expand proportionately and keep up with government.

The presence of such a large number of political parties was index of political immaturity. Social and economic differences, religious and linguistic feelings, local variations and local differences, landed interests, casteism, etc. perpetuated the multi-party system. Parliamentary democracy functions effectively if there is some tradition of toleration, some willingness to compromise and widely diffused sense of public responsibility. The spirit of tolerance and compromise is rather a product of an agreement on fundamental principles between the main political parties. It is true that parties should differ on issues, but they should not differ on fundamental issues about which compromise is possible. To grow strong, parties should accept the existing regime, turn their attention towards socio-economic questions and organise themselves on national issues and not on communal or regional lines.

I am of the opinion that as long as the multi-party system continues to exist in India, it is neither possible to have an effective opposition nor a Leader of opposition at the apex level in the true parliamentary sense. If the institution of opposition is to be developed in an objective manner, we will have to create a popular understanding and interest about the basis and nature of opposition in a democratic experiment. We believe that if the democracy is to work as a disciplinary socio-political process in our country the opposition will have to modity its temper and behaviour and if it has a desire for status and recognition, it will have to articulate its thinking for more constructive, objective and creative role in a parliamentary democracy. There is another aspect of this point. Notwithstanding the development of political consciousness in our country, we have not been able to educate our people about the importance of an opposition in parliamentary democracy. The people should not only know the necessary role of opposition in a legislature but efforts should be made to inform them about the achievements and performance of the members of opposition. If we create a popular understanding and interest about the basis and nature of opposition in a democratic experiment, and if we are able to reduce the number of political parties, we are sure to get a sound, healthy, effective and a united opposition in our country for it also contributes its mite in making the laws and shaping the destiny of the nation in times to come.

December 30, 1976

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Rajya Sabha vis-a-vis Lok Sabha

DHARAMCHAND JAIN*

The Constitution of India provides for a Parliament for the Union consisting of the President and two Houses—the Council of States and the House of the People. Thus, like the King-in-Parliament in U.K., we have the President-in-Parliament in India. But unlike the Parliament in U.K. which does not owe its origin to a written constitution, the Indian Parliament is the creation of the Constitution of India and its powers, rights, privileges and obligations have to be found in the relevant articles thereof. It is not an uncontrolled body with unlimited powers. Its legislative authority is circumscribed by the written provisions of the Constitution which provide for a federal system of government with the powers of judicial review vested in the High Courts and the Supreme Court.

Bicameral legislature is *sine qua non* of a federation. In most of the modern democracies there exist two Houses. In a federal form of government the second chamber occupies an important position for it protects the interest of the federating units. For this and other reasons the Constitution-makers in India opted for a bicameral legislature at the Centre.

The two Houses as the constituent parts of Parliament have to function within

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the areas allotted to them under the Constitution so as to ensure smooth running of the legislative machinery at the Centre. This presupposes harmony between the two chambers without precluding any chance of conflict or disagreement. Each House acts upon the other as a check and a balance. They enjoy equal powers and perform more or less similar functions except that the Lok Sabha enjoys exclusive powers in financial matters. There are two areas in which the Rajya Sabha does not share its powers with the Lok Sabha. Under article 249, Parliament can legislate on any matter in the State List if the Rajya Sabha by a resolution passed by a majority of not less than two-third members present and voting, declares that it is necessary or expedient in the national interest to do so. Again under article 312, Parliament may make laws providing for the creation of one or more all-India services common to the Centre as well as the States, if the Rajya Sabha similarly passes a resolution to that effect.

Several means, established by parliamentary practice as also under the Constitution, exist for communication and exchange of views between the two Houses. The most important is the device of message. When a Bill is passed by one House, the other House is informed of it through a message. Decision taken by one House is communicated to the other by using this device. Similarly, when the Rajya Sabha elects members on the Standing Financial Committees, namely, the Public Accounts Committee and the Committee on Public Undertakings, which consist of members of both the Houses enjoying equal status and powers, the fact is transmitted to the other House by a message. The Joint Committees of the Houses on Bills provide still another opportunity to members of both the Houses to exchange their views. When the two Houses disagree on a Bill, the device of a joint sitting has been provided in the Constitution for resolving such difference.

A few words may be added concerning other means of communication between the two Houses, less open and ostensible than those already described. The representation of Executive Government in both the Houses by Ministers, who have a common responsibility for the measures and the policy of the State, secures uniformity in the direction of the counsels of these independent bodies. Every public question is presented to both of them from the same point of view; the judgement of the Cabinet and the sentiments of the political party which it represents are adequately expressed in each House, and a general agreement is thus attained which no formal communication could bring about. The organisation of parties also exercises a marked influence upon the relations of the two Houses. When Ministers are able to command a majority in the Rajya Sabha as well as in the Lok Sabha, concord is assured. The views of the dominant party are carried out spontaneously in both Houses, as if they were a single chamber, but when Ministers enjoying the confidence of the majority of the popular chamber are opposed by a majority of the Elders, it is not always easy to avert disagreement between them. The policy approved by one party may be condemned by the other and the minority in the popular chamber naturally looks for the support of the majority in the Elders' body. Hence the decision of one House can often be contested by the other.

When this conflict of opinion arises upon a Bill, the procedure which will ensue has already been mentioned. When such a conflict arises upon a question or policy or administration the course pursued is, in a great measure, determined by the nature and character of the difference in each case.

About the powers and functions of the two Houses, majority of the people hold *a priori* ideas. The Rajya Sabha is looked upon as a superficial body protecting vested interests. The two Houses are referred to as the Upper House and the Lower House. That is an anachronism in terms and is far from correct. These preconceived notions emanate from what they learnt from the history of the second chambers of some foreign countries. The observations made by Prime Minister Nehru in May 1953, in the Rajya Sabha provide the right perspective for viewing the relationship between the two Houses and put the question straight beyond any doubt and misconception. This is what Nehru said :

> "Under our Constitution, Parliament consists of our two Houses, each functioning in the allotted sphere laid down in that Constitution. We derive authority from that Constitution sometimes we refer back to the practice and conventions prevailing in the Houses of Parliament of the United Kingdom and even refer erroneously to an Upper House and a Lower House. I do not think that is correct. Nor is it helpful always to refer back to the procedure of the British Parliament which has grown up in the course of several hundred years and as a result of conflicts originally with the authority of the King and later between the Commons and the Lords. We have no such history behind us, though in making our Constitution we have profited by the experience of others. Our guide must, therefore, be our own Constitution which has clearly specified the functions of the Council of States and the House of the People. To call either of these Houses an Upper House or Lower House is not correct. Each House has full authority to regulate its own procedure within the limits of the Constitution. Neither House, by itself, constitutes Parliament. It is the two Houses together that are the Parliament of India.
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> The successful working of our Constitution, as of any democratic structure, demands the closest co-operation between the two Houses. They are in fact parts of the same structure and any lack of that spirit of cooperation and accommodation would lead to difficulties and come in the way of the proper functioning of our Constitution. It is, therefore, peculiarly to be regretted that any sense of conflict should arise between the two Houses. For those who are interested in the success of the great experiment in nation-building that we have embarked upon, it is a paramount duty to bring about this close co-operation and respect for each other. There can be no constitutional differences between the two Houses because the final authority is the Constitution itself. That Constitution treats the two Houses equally, except in certain financial matters which are to be the sole purview of the House of the People. In regard to what these are, the Speaker is the final authority."[1]

During a reference to the exception taken in the Lok Sabha on the practice of discussing first General and Railway Budgets in the Rajya Sabha raised by Shri Bhupesh Gupta in the Rajya Sabha on the 4th March 1963. Dr. Zakir Husain, Chairman of the Rajya Sabha, made the following observation :

> "There is no superiority or inferiority in anything. We are two different Houses; we have prescribed functions to perform. There is no question of any House being superior to the other House. That point is incontrovertible. Then, I cannot understand why that question was raised there. It might have arisen on account of a misunderstanding. On account of the special privilege of the Lok Sabha in the case of Money Bills, they have probably the impression that the matter should not be discussed here first, which is wrong."[2]

A review of the relationship between the two Houses during the past 25 years leads us to the inevitable conclusion that it has been a long sentence of harmony and concord with small punctuations of disagreement and conflict here and there. There have been only five occasions when the two Houses did not see eye-to-eye with each other. First, during the Budget Session of 1953, when C. C. Biswas, then Law Minister and Leader of the Rajya Sabha, made certain remarks about the Speaker of the Lok Sabha. Jawaharlal Nehru had to intervene to persuade members of both the Houses to drop the matter. Second, on the demand of the Rajya Sabha for having its own Public Accounts Committee and Estimates Committee or in the alternative to have joint committees of both the Houses on these matters; after prolonged lobbying in and outside the Houses a compromise formula was arrived at under which members of the Rajya Sabha were associated with the Public Accounts Committee enjoying the same status and powers as members of the Lok Sabha. Since 1954, seven members of the Rajya Sabha are elected annually on this Committee as full-fledged members. On the same basis since 1964 the Rajya Sabha has been regularly electing five members and since 1974 seven members, on the Committee on Public Undertakings. The third occasion arose in 1954, when a member of the Lok Sabha made certain remarks in a public speech about the Rajya Sabha as "the Upper House, which is supposed to be a body of Elders, seems to be behaving irresponsibly like a pack of urchins." Questions of privilege were raised in both the Houses. The question as to what procedure should be followed when a member of one House commits a breach of privilege of the other, was referred by the Speaker to a joint sitting of the Committees of Privileges of the two Houses. The Committees were able to work out an acceptable formula. The fourth occasion of conflict arose when the two Houses finally disagreed as to the amendments to be

1. R. S. Deb., 6.5.53, cols. 5038-5039.
2. R, S. Deb., 4.3.63, col. 1624.

carried out in the Dowry Prohibition Bill, 1959. The impasse was broken by a joint sitting of both the Houses on May 6 and 9, 1961, summoned by President Rajendra Prasad under article 108 of the Constitution. The last occasion of conflict may be cited as the defeat in the Rajya Sabha by a fraction of a vote of the Constitution (Twenty-fourth Amendment) Bill, 1970, which had earlier been passed by the Lok Sabha.

The above account should not blur our vision to appreciate the unique constitutional arrangement between the popular House and the dignified House. While men of great influence and popularity or a student leader may manage to get elected to the Lok Sabha, great scientists or academicians may not be willing to face the electoral process. They may not view with equanimity the prospects of defeat at the hands of a populist or a demagogue. That is why the Constitution has provided for indirect election to the Rajya Sabha as well as the provision for nomination by the President of twelve persons having special knowledge or experience in the fields of art, literature, science or social service, in order to ensure constant injecting in of men of wisdom and learning.

The composition of the Rajya Sabha is unlike the Canadian Senate, the House of Lords in U.K., the American and Australian Senates. It is neither a hereditary body nor a body of life members; neither having equal representation of the federating units nor as powerful as the American Senate. Our Constitution-makers gained from the experience of others and in providing for the mechanism for regulating the relationship between these two independent bodies they were careful enough to ensure that the relationship remained harmonious throughout. This scheme is *sui generis sine dubio*.

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A Political Miracle

K. L. N. PRASAD*

Neither life nor institutions strictly conform to theory. Where it happens, life loses its values and systems their validity. This is a point that is often missed by social and political scientists. In their zeal to frame rules, to forge systems, to formulate theories, they forget that life as well as institutions that have a bearing on life have a mind of their own, a will of their own, and they tend to transgress rules, to defy systems and baffle theories.

The truth of these general observations is largely borne out by the first twenty-five years of the life of our Rajya Sabha. When it was first constituted many were the doubts expressed about its usefulness. Apart from being of little or no use, it might prove, said some political pundits, a hindrance for the smooth and effective working of our national legislature. What they particularly feared were constant bickerings between both the Houses of Parliament about their respective rights and privileges and their dignity and honour. On these and other scores, all the gloomy forebodings have turned out to be either exaggerated or wrong.

One of the early writers on our Parliament is W. H. Morris-Jones. A product of the famous London School of Economics, his contacts with India were many.

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For a time he served in the Indian Army as a Lieutenant-Colonel. After filling some other posts, he acted as a constitutional adviser on Lord Mountbatten's staff during the transfer of power by the British in 1947. Since those hectic days, he has blossomed into a political scientist. Way back in 1957 when he was Professor of Political Theory and Institutions at the University of Durham, Morris-Jones published his book : *Parliament in India*, and in one of its chapters it has a special section entitled "Relations between the Two Houses". That section begins with the following general observations :

> "It is the habit of institutions to give birth to loyalties, and when two institutions are placed side by side it is easy for clashes to occur and feelings to run high. In a federal state, for example, no amount of skilful vision of labour can prevent a sense of competition from arising between the centre and the units; even if the jurisdictions of each are demarcated with precision, there is always room for charges of unfair encroachment. The same is true of relations between Legislature, Executive and Judiciary—unless the three are highly integrated. This tension is often desirable, and indeed some institutions have been deliberately established with a view to creating a 'separation' and 'balance' of powers. The existence of antagonism between two Houses of Parliament should occasion no more surprise, and is in fact encountered in the political history of more than one country."

These general observations of Morris-Jones are unexceptionable. But when he proceeds to add that they would apply *in toto* to the Indian Parliament he goes wrong. As he is brief and categorical in making his point, he may be quoted in full :

> "Independent India has enjoyed the operation of a bicameral legislature only since the General Elections of 1952. Nevertheless this short time has proved long enough to enable the development of almost bitter rivalry between the two Houses. That this has happened so quickly and in spite of the dominating position of one party in both Houses bears striking witness to the power of institutions to inspire fresh attachments of sympathy and devotion."

To provide a basis for his observation, Morris-Jones proceeds to detail the different instances of clash between the two Houses of our Parliament during the years 1953 and 1954. They are in reality minor clashes, almost storms in the tea cup. Instead of treating them as the inescapable brushes before the two chambers of any parliament learning to work together smoothly and harmoniously, Morris-Jones has taken them to be clear portents of a gloomy future. In this he is proved wholly wrong. True, even after 1954 there were some clashes between the two Houses, but like the earlier ones, they were also of a minor nature. What is more important in this : with each passing year the occasions of clash between the two Houses are getting less and less and at the same time, the area of understanding, of

harmony, of mutual respect, is steadily growing. Indeed, it may be said that no two chambers of any parliamentary body anywhere in the world are functioning as amicably and as effectively as our Rajya Sabha and Lok Sabha.

On a close analysis it will be found that this happy development, despite the gloomy forebodings of Morris-Jones, is primarily due to the following factors :

(1) Our first three Prime Ministers have proved themselves to be highly skilled in handling even the most difficult situations with supreme self-confidence and superb adroitness.
(2) The Presiding Officers of both the Houses have done and are doing everything within their power to avoid crisis between the Houses, and when they occur, to tide over them without lowering in anyway their own prestige or the prestige of the House over which they preside.
(3) The members of both the Houses, in spite of occasional irritations, are showing a high sense of responsibility not only to their Houses but to the nation and the people.
(4) In its class complexion the Rajya Sabha is not radically different from the Lok Sabha. In this particular matter it has no resemblance whatsoever to the House of Lords.

Owing to these and other favourable factors, the history of the working of the Rajya Sabha during the first twenty-five years of its life, and the history of its relations with the Lok Sabha, has been a shining one. We may be sure that Morris-Jones would be one of the very first to accept this fact. Writing about ten years after the publication of his book, *Parliament in India*, he admitted readily that what happened in India in the interval was, indeed, a "political miracle". In a paper which he published in 1966 (It is included as Chapter III in the cooperative study entitled : *Aspects of Democratic Government and Politics in India*) he wrote :

> "It has become customary to adopt highly sceptical views on Indian developments. Indians themselves are very good at this and outside observers are often doing no more than catching the mood of their Indian informants. The position is now reached where failure to share such attitudes is taken as the mark, in an Indian, of some kind of government public relations man and, in an outsider, of a misguided sentimentalist. The question to be raised here is whether sentimentalism is not to be found in larger doses among those who pretend to be the realists. The economic sector is the most popular point of attack : unrealistic planning, sluggish agriculture, disappointments in industry. The social scene is also held to be appropriately regarded in similarly gloomy manner; the maintenance of glaring inequalities, the persistence of social injustice, the increasing prevalence of corruption. By contagion, the political system receives the same hostile inspection and is then revealed as composed of administrative chaos resting on a base of fragmenting factionalism and unprincipled bossism."

This is a very important piece of writing, and though it is about ten years old, it has not lost its relevance. The unthinking critics of our institutions and their functioning, of our plans of development and their achievements, should do well to read it. It will enable them to realise that the "political miracle" in India to which Morris-Jones paid such a glowing tribute a dozen years ago is still there in a larger measure, shining more brightly, and beckoning us to a glorious future.

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Relationship between the Two Houses

S. L. SHAKDHER*

The President and the two Houses—the Lok Sabha and the Rajya Sabha—constitute the Parliament of India. In a federal set-up usually while the people are represented in one House, the States are given due representation in the other House. The federal framework may be the result of joining independent States together as in U.S.A. and Australia, for instance; or as in the case of India, it may be a deliberate choice as a constitutional arrangement for the governance of a big country. The Constituent Assembly after due deliberation decided to have two Houses and carefully set out in the Constitution the composition, role, powers and functions of each House. It is profitless to ask, argue or determine which House is superior and which House has more or less powers. In different countries different systems have evolved over the years. For example, the Senate of U.S.A. enjoys some unusual powers which are not vested in the counter-part Houses in other countries. Or the Senate of Australia has co-equal powers in the matter of budget and finance with the House of Representatives which is not the case in most countries.

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In India, the relations between the two Houses—the Lok Sabha and the Rajya Sabha—are clearly laid down in the Constitution, Rules of Procedure and Conduct of Business of each House and the rules relating to the joint sittings of the Houses and communications between them. In addition, conventions and practices have grown up in respect of a host of other matters of major and minor details.

To begin with, the location of the chambers of the Houses is in the same building. In most countries, there are separate buildings for them or even in the same building each House has clearly demarcated area. The advantage of the proximity of the two chambers leads to closeness between members of both the Houses. In our Parliament House, Central Hall is a unique place. The two chambers radiate at its two ends and members of both the Houses congregate there when they are not otherwise busy in their respective chambers. They meet not only members of their parties but those of other parties and the Ministers, as well, so that important discussions and consultations on matters of parliamentary business and political importance are conducted without notice, agenda or any formality over cups of tea and coffee. Opinions are quickly gathered, formed and communicated to the respective authorities or persons concerned and the temper of Parliament sized up.

Members in both the Houses are organised in political parties on similar lines and form part of the parliamentary party as a whole. The Congress Party which has been the party in power since the Constitution came into being, draws members from both the Houses and functions as a composite party. The members of the party belonging to both the Houses elect a leader who in turn assumes the office of Prime Minister. Similarly the opposition parties are also formed from members of both the Houses and they work in unison, though for working purposes each party has a separate Leader in each House and party organisation, for example, the Deputy Leader, Whip and the Secretary. The Constitution provides that the Ministers, who belong to one House, can speak and take part in the proceedings of the other House. The facility that the Ministers can go from one House to the other and explain Government policies in person makes for smooth working of the Government and the Constitution in both Houses. The roles of the two Houses are complementary, although each House is master of its own procedure and its own privileges and is free in all respects of the other House. Yet, by a system of procedures, in which both Houses have concurred or by conventions, which are acceptable to both Houses they join together in Joint Committees on Bills. If a Bill is introduced in one House and is proposed to be sent to a Joint Committee of both the Houses, the two Houses agree on a motion passed in both the Houses to constitute a Joint Committee. By convention, the proportion of the number of members between the Lok Sabha and the Rajya Sabha is two to one. The House which initiates the motion for a Joint Committee provides the Chairman of the Committee which in turn works under the ultimate control of the Presiding Officer of that House and receives secretarial assistance from that House. The members, while they sit in the Joint Committee, enjoy equal rights. The Report of the Joint Committee is presented to the House which initiates the Joint Committee and is laid on the Table of the other House simultaneously.

In financial matters, though the powers of the Lok Sabha are supreme, yet by conventions the budget is laid on the Table of the Rajya Sabha on the same day and at the same time as it is presented to the Lok Sabha. Similarly, members of Rajya Sabha are associated with the Committee on Public Undertakings and the Public Accounts Committee which are set up by the Lok Sabha. So far the members on these Committees have worked as full-fledged members and there has never been any conflict between members on these Committees.

The Chairman of the Rajya Sabha who is also the Vice-President of the Union is elected by members of both the Houses.

The Constitution does not envisage any breakdown between the two Houses, rather the provisions of the Constitution, rules of procedures and conventions all point to harmony between the two Houses and resolution of all difficulties that may arise. Even the subjects which come up for discussion are similar in both the Houses. Sometime they may even be discussed in both the Houses on the same day. If by any chance or will, there is any disagreement on a Bill, the Constitution provides that there will be a joint sitting of both the Houses to iron out the differences on the Bill. The rules of procedures and conventions turn such a joint sitting into one composite House presided over by the Speaker of the Lok Sabha, quorum being 1/10th of the total membership of all the members of both the Houses, each member being given opportunity to speak and to vote as if he was a member of one House. This submerges the differences between the two Houses and makes for solution of difficult procedural matters based on membership of the Parliament as a whole. One such joint sitting took place when there was disagreement between the two Houses on the Dowry Bill in 1959.

The above analysis will show that both the Houses of our Parliament are in some sense one grand House sitting in two places. Care is, however, taken that as far as possible the same Minister is not required to appear on the same day at the same time at both the places. Further, each House is given due respect. Debates in one House are not referred to in the other House in the same session, and members of one House are not criticised in the other House. There is mutual regard and respect and recognition of the independence of each House.

Messages from one House to the other are given due consideration by the receiving House which deals with them with utmost care and urgency that they deserve and communicates its reaction promptly to the originating House.

There are some powers which belong to one or the other House exclusively. For example, the Council of Ministers is collectively responsible to the Lok Sabha only while the Rajya Sabha can by a resolution passed by a special majority declare that the Union may legislate on any of the subjects enumerated in the State List or create an all-India service. The Rajya Sabha has in fact exercised the power to create Indian Service of Engineers, the Indian Forest Service, the Indian Medical

and Health Service, the Indian Agricultural Service and the Indian Educational Service.

Inter-relationship between the two Houses has not reached the saturation point. It has been evolving and is elastic enough to provide for further evolution in the future. Nevertheless, it has taken some time to bring the relation between the two Houses on the basis of smooth and harmonious working which we see today. In the initial years, there were some incidents, which led to some bad blood between the Houses.

In 1953, there was an incident which related to the question of certification by the Speaker of a Bill as a Money Bill. Later this came to be known as 'le affaire Biswas'. The Speaker had certified the Indian Income Tax (Amendment) Bill, 1952 as reported by the Select Committee, as a Money Bill. When the Bill was transmitted to the Rajya Sabha and taken up for consideration in the House on April 29, 1953, a point was raised whether it was a Money Bill. The Rajya Sabha contended that it was within the competence of that House to refer it back to the Speaker and to enquire under what circumstances this Bill had been certified as a Money Bill. Agreeing with this view, the then Law Minister, Shri C. C. Biswas, who was also the Leader of the Rajya Sabha, allowed himself to say that, according to the information available, the Bill had been treated probably "by the Secretariat of the other House, as a Money Bill and placed before the Speaker as such. . . and the Speaker appended a certificate because the Constitution requires that when the Bill is transmitted to the Rajya Sabha, it shall be accompanied by a certificate by the Speaker". The Law Minister suggested that it might be found out whether the certificate was given as a matter of form or it was given on any question raised that it was not a Money Bill. When these remarks of the Law Minister appeared in the Press the next day, exceptions were taken to them on the floor of the Lok Sabha where they were described 'thoroughly unjustifiable and inconsistent with the dignity of the Speaker'. The Chair observed that the matter might be brought up for discussion the next day when the Law Minister would be present in the House. On the following day a message from the Chairman of the Rajya Sabha was read out, which assured Lok Sabha that "it was nobody's intention, least of all that of the Leader of the Rajya Sabha, to cast aspersions on the integrity and impartiality of the Speaker". The message further said that the Rajya Sabha was anxious to do its best to observe the dignity of the Speaker, and respect the privileges of the Lok Sabha as it expected that the Lok Sabha would protect the interests and the privileges of the Rajya Sabha. The Law Minister associated himself with these remarks and the Chair suggested that further discussion on the matter was perhaps not called for. The Lok Sabha was however in no mood to drop the matter since in the meanwhile it had learnt that the Rajya Sabha had passed a resolution that the Leader of the Rajya Sabha should not present himself in any capacity whatsoever in the Lok Sabha. The propriety of this resolution was called in question in the context of the Minister's clear responsibility to the Lok Sabha. As this incident threatened to cause rupture in the functioning of Parliament and create bitterness

in the working of the two Houses, Prime Minister Jawaharlal Nehru, later made a statement explaining the whole position. He *inter alia* observed, "It is now clear and beyond possibility of dispute that the Speaker's authority is final in declaring that a Bill is a Money Bill, and when the Speaker gives a certificate to this effect this cannot be challenged. The Speaker has no obligation to consult anyone in coming to a decision or in giving his certificate."

It is interesting to note in this connection that before Speaker Mavalankar gave the certificate that the Indian Income Tax Bill was a Money Bill, he had informally consulted the Law Ministry although he was under no obligation to do so and the Law Ministry had in fact advised that the Bill was a Money Bill. It appeared that the Law Minister had not consulted his Ministry before making his remarks in the Rajya Sabha, and did not subsequently revise his attitude either on fact or legal interpretation of the relevant provisions of the Constitution. It was this approach of the Law Minister which led to the hardening of the attitude of the Rajya Sabha and the bitter feeling of resentment in the Lok Sabha.

Another instance where relation between the two Houses became sour was when the Rajya Sabha desired to have either its own Estimates and Public Accounts Committees or demanded membership of their members in these two committees of Lok Sabha. Upon proposals for a Joint Committee on Public Accounts being received in the Lok Sabha in January 1953, the Public Accounts Committee passed a resolution on February 23, 1953 declaring its opinion that a Joint Committee or a separate Committee of the Rajya Sabha on the subject would be against the powers of the Lok Sabha in the matters of finance and accounts. The Rules Committee of Lok Sabha, which also went into this matter, took the view that since Lok Sabha had special responsibilities in financial matters, it could not share them with anyone else. The Rules Committee pointed out that the most that the Rajya Sabha could do was to set up an ad-hoc committee and not a Public Accounts Committee to guide them in their discussions on financial matters. There was a deadlock, but discussions went on behind the scene as there was eagerness in the members of both the Houses to find a solution, which was acceptable to both the Houses in the context of the constitutional provisions to preserve the supremacy of the Lok Sabha in financial matters and at the same time to provide for opportunities to the members of the Rajya Sabha to give their counsel in financial matters. Ultimately it was decided that if the Lok Sabha passed an annual resolution of its own will to seek the association of the members of the Rajya Sabha with the Public Accounts Committee of the Lok Sabha, both the objectives might be realised. Thus such a motion was passed for the first time in December 1953 by the Lok Sabha and the members of the Rajya Sabha came to be associated with the Public Accounts Committee as from May 1954. Since then, the Lok Sabha passes such a resolution every year and the Rajya Sabha nominates its members on the Public Accounts Committee. A similar solution was later adopted in regard to the association of the members of the Rajya Sabha on the Committee on Public Undertakings.

The advantage of such a procedure is that it is a voluntary act by the Lok Sabha and the Lok Sabha can at any time put an end to it, if it chooses to do so. For the present the system has worked smoothly all these years and there is every likelihood that it is going to be a permanent feature of our working.

The third incident, which also occurred during the term of the First Lok Sabha, related to the privileges of the respective Houses. On May 12, 1954, Shri N. C. Chatterjee, member of the Lok Sabha, sought to raise a question of privilege over the letter he had received from the Secretary of the Rajya Sabha. It was stated in the letter that in a public speech delivered by him as President of the All-India Hindu Maha Sabha two days earlier, Shri Chatterjee had cast certain reflections on the proceedings of the Rajya Sabha which had formed the subject-matter of a question of privilege in the Rajya Sabha. Shri Chatterjee was asked to intimate whether the statement attributed to him had been correctly reported by the newspapers to enable the Chairman of the Rajya Sabha to proceed further in the matter. In raising the question of privilege in the Lok Sabha, Shri Chatterjee contended that the members of the Lok Sabha were amenable to the jurisdiction of the Lok Sabha only and the Rajya Sabha had no power to issue a writ to a member of the Lok Sabha for an alleged breach of its privilege. When the discussion was going on in the Lok Sabha on the question whether Shri Chatterjee should submit to the Rajya Sabha or not, Prime Minister Nehru intervened to say that Shri Chatterjee should in keeping with the dignity of the Rajya Sabha and its Chairman, send a reply to him, but Speaker Mavalankar disagreed with the contention of the Prime Minister and said that submission of any statement to the Chairman of the Rajya Sabha by a member of the Lok Sabha would lead to the submission of Lok Sabha to the jurisdiction of the Rajya Sabha and he thought that the matter was too important to be disposed of summarily like that. After some discussion in the House, Speaker Mavalankar suggested that the Privileges Committees of both the Houses might meet together to examine the procedure that should be followed in cases where a breach of privilege had been alleged to have been committed by a member of one House against the other House. Prime Minister Nehru agreed with this suggestion and the Privileges Committees of both the Houses sat together and after considering all the aspects of the matter recommended as follows :

> When a question of breach of privilege is raised in any House in which a member, officer or servant of the other House is involved, the Presiding Officer shall refer the case to the Presiding Officer of the other House, unless on hearing the member who raises the question or perusing any document, where the complaint is based on a document, he is satisfied that no breach of privilege has been committed or the matter is too trivial to be taken notice of, in which case he may disallow the motion for breach of privilege.
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> Upon the case being so referred, the Presiding Officer of the other House shall deal with the matter in same way as if it were a case of breach of privilege of that House or of a member thereof.
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> The Presiding Officer shall thereafter communicate to the Presiding Officer of the House where the question of privilege was originally raised a report about the enquiry, if any, and the action taken on the reference.
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> If the offending member, officer or servant tendered an apology to the Presiding Officer of the House in which the question of privilege was raised or the Presiding Officer of the other House to which the reference was made, no further action in the matter might be taken.

This procedure is now well established and has saved many awkward situations between the two Houses. The principles of these recommendations have been further extended by resolutions between Parliament and State Legislatures where a member of the State Legislature is involved in a breach of privilege of Parliament or *vice versa*. This has led to smooth and harmonious working of all the State Legislatures and the Parliament and eliminated any conflicts and bickerings amongst the various Houses.

The hard feelings which arose in those early days between the two Houses are no more, now, but the strong positions which were then held by either House led to sound and stable relationship and efficient working of Parliament. These principles of smooth and cooperative working between the two Houses have since been extended to the Committee on Offices of Profit, the Railway Convention Committee and the Committee on Welfare of Scheduled Castes and Scheduled Tribes; committees on the detailed examination of the draft Five Year Plans and Committee on Salaries and Allowances of Members of Parliament. Further, where there are separate committees of each House on same subjects, there is joint consultation between the Chairmen of the two Committees, for example, in the case of House Committees, the Chairmen of the two Committees meet oftener to discuss suggestions relating to accommodation and other amenities which are of common interest to members of both the Houses. Similarly, the Library, Research and Reference, Documentation and Information Service caters for the library, research and information needs of members of both the Houses and the Library Committee has members from both the Houses.

The Secretariats of the two Houses, although separate legally and constitutionally, work in unison and complete harmony which in turn leads to the efficient and smooth working of the Houses. Even though the two Secretariats have separate staffs, there are certain common services which have got to be looked after and coordinated by a common agency, for instance, security of Parliament House Estate cannot be divided. Therefore, there is a common Watch and Ward Officer, who has two separate staffs in both the Houses under him. The Watch and Ward Officer has the overall control of security arrangements and functions under the directions of both the Secretaries-General.

The two Secretaries-General meet often and discuss all parliamentary matters

of common interest in order that there is coordination and furthering of the interests of both the Houses. They keep in touch with the procedures of the Houses and evolve, as far as possible, a common approach to the various parliamentary matters. They also discuss administrative and staff matters so that there is cooperation between the two Secretariats and common standards are observed and improved upon.

The constitution of a common Pay Committee of Parliament in August 1973 to go into the pay structure and other matters relating to the officers and staff of the Rajya Sabha and the Lok Sabha Secretariats was a big step forward in the growing cooperation between the two Houses of Parliament and their Secretariats. This Committee headed by Shri R. K. Sinha, Chairman of the Estimates Committee, had on it, besides the Minister of Finance, Shri Y. B. Chavan and the Minister of Parliamentary Affairs, Shri K. Raghuramiah, members from both the Houses as also the Secretaries-General of Lok Sabha and Rajya Sabha. As a result of the recommendations of this Committee, the Secretariats of the two Houses have now been reorganised on a functional basis, following a practically identical organisational pattern. The two Secretariats thus have identical Services and posts with identical designations and time-scales.

The Pay Committee also suggested a Standing Board of the Secretaries-General of the two Houses to evolve rules, procedures, pattern and common norms of the work-load for the various categories of staff in the two Secretariats from time to time, as also joint recruitment to common categories of posts in the two Secretariats for which direct recruitment was provided. Following this recommendation, combined recruitment tests and interviews are now held and panels drawn up on the basis of which appointments are made in the two Secretariats.

Shri Jawaharlal Nehru said that the successful working of our Constitution, as of any democratic structure, demanded the closest cooperation between the two Houses. I think our Parliament has lived up to this ideal and both the Houses are cooperating in the service of the nation to bring about better economic and social conditions in the country. Both the Houses have identity of purpose and they do their best by debates, arguments, discussions and cooperation to fulfil the ideals enunciated in the Constitution.

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First Rajya Sabha and its Leading Luminaries

SUMITRA G. KULKARNI*

The first session of the Rajya Sabha was convened in May 1952. There were 216 members including 12 nominated members. Even though there was the constitutional provision to retire one-third of the members every two years, there was a problem as to how to start this process. A very charming *via-media* was devised. Before the Rajya Sabha met in a formal session, members agreed to submit themselves to the vagaries of lots and it was decided that in 1954, 72 members would retire as per the results of the draw, and another 72 in 1956. Onward, of course, it was a straightforward course. Thus, in the early days of the Rajya Sabha there was a peculiar enthusiasm and a remarkable dedication. It was during these early years that the high traditions of the Rajya Sabha were laid down and every member was conscious of his duty and his responsibility in helping develop this young House of Elders. It did not matter who belonged to which party and who sat where and which side of the House he belonged. What mattered was who he was and what expertise he brought to the House : What did he have to say and how did he say it. These were the criteria for judging the effectiveness of a member. The partisan feeling was more or less absent and people expressed their views cordially and sincerely and in

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a constructive way, with a view to help and guide the Government.

Another important tradition that was set up was that the bitterness and the criticism given or taken on the floor of the House was never allowed to vitiate the outside life. The moment the speech and reply were over, the Lobby was a place of warm friendliness in which all the heat of the past moments was forgotten and members talked and mixed with ease of long comaraderie of people who had fought shoulder to shoulder and suffered agony and risks of long drawn out struggle for the freedom of their country and who were intent upon the regeneration of their nation.

As I go through the list of names of members of the first Rajya Sabha I find in it galaxy of stalwarts and any attempt to write about them or to understand and analyse their work, would be a major research project in itself. This is not the occasion for it, nor is there time for such an attempt. I have merely tried to pick a few leading personalities who were in this Rajya Sabha and who lent dignity and charm to its sessions and brought erudition and knowledge to its proceedings.

Dr. Radhakrishnan was the first Chairman of the Rajya Sabha. Besides being a great philosopher and outstanding scholar he was a great patriarch of the Rajya Sabha. Those of us who have been students of Banaras Hindu University know him as a brilliant Vice-Chancellor. He probably ruled the Rajya Sabha with the same efficiency and effectiveness as he did the University and brought glory to both.

He was a firm and forthright Chairman. During his period the Question Hour was most lively. He had a photogenic memory and knew every member personally. He was the only Chairman who addressed a member by his first name without bothering to prefix it with Mister or Shri and every member obeyed him implicitly and promptly. He never allowed rambling questions and if a member, and for that matter a Minister, was found fumbling for expression he cut them short and helped them pin point the question or the reply. The remarkable thing was that members never objected to his admonitions and admired his ability to focus on the issues so well. Dr. Radhakrishnan was a world renowned orator and always spoke extempore on any subject. The obituary references by him were fine pieces of eloquence. His rulings were also almost always on the spur of the moment and correct. Rarely he needed to postpone a ruling for further consideration. If he was stern in the Rajya Sabha he was also very affectionate and warm in his dealings with the members. For him none was small or big or important or unimportant. He had close relationship with all and members took their political and personal problems to him, and he advised them in a detached and philosophical way. Even Prime Minister Nehru often sought his counsel. His rapport with the members was unique and when he was elected President of India members missed him and felt that the Question Hour had lost its sparkle.

Just as the Chairman was a distinguished philosopher, the Rajya Sabha of 1952 had constitutional experts like Dr. Ambedkar and Shri Alladi Krishnaswami. Dr. Ambedkar was a genius and an excellent speaker, with a sonorous voice and the members had a great respect for him. Dr. Ambedkar had just then completed

drafting and piloting the Constitution through the Constituent Assembly. His views on constitutional or legal matters were greatly valued. In the Central Hall he used to regale the members with his anecdotes and kept them spellbound by his brilliance. He was also a very generous person and his house was a permanent residence for innumerable young and hard working but poor students from all over India. Similarly, Alladi Krishnaswami was an old veteran lawyer and members looked upon him with great awe. His very name conjured up a feeling of a great authority on the Constitution.

Dr. Ramaswami Mudaliar was slightly different but no less in his stature. He was a typical product of the British Rule and was a member of the Viceroy's Executive Council. Even in the hottest summer and at the height of the sultry monsoon months of Delhi he used to be dressed in heavy woollen three-piece suit, with a stiff collar and a tie. He spoke rarely and had rather archaic views, on matters economic or industrial and did not believe in any type of socialism. But he had a great art of presentation and marshalled his facts well and the members heard his differing points of view with respect. Whenever he attended Rajya Sabha he sat through from the first hour to the last moment of the day when it adjourned. It appears he did this when he was a member of the Viceroy's Executive Council also and this gave him a great insight in almost every subject and that created a tremendous impact even on the Viceroy of the day.

Along with these giants from the South was Shri Gopalaswami Ayyangar. He was the finest example of Provincial Civil Service and before being a member of Parliament was the Diwan of Kashmir. He was the first Leader of the House. He had a very meek and mild personality and got up in his chair very quietly. But once he started speaking, members were electrified. He was known for his clarity of thoughts and brevity of expression. He represented India's case on Kashmir at the United Nations and even today that speech is considered a classic. Even though a very non-martial looking personality he held the Defence portfolio and had such a grip on his Ministry that the top brass of the Army, Navy and the Air Force, with their shiny uniforms and chest-full of medals gave him unstinted respect and full support.

Another gem whose name irresistibly attracts our attention is that of Pandit Hridaya Nath Kunzru. Today he is the grand old man of the Indian parliamentary system. In fact he can be described as parliamentarian incarnate. He had 30 years continuous legislative experience before he became a member of the Rajya Sabha, which none else could claim. He is a versatile genius and on almost any subject he could contribute effectively. But foreign affairs and economic matters were his forte, and the Railways his pet subject. The Government experts and officers and Ministers and even Prime Minister Nehru all acknowledged the depth of his knowledge. In fact the Government officers were asked to brief 'Panditji' on important issues so that either his valuable support could be obtained or his knowledgeable criticism could be anticipated. Kunzru was the same age as Nehru and they addressed each other in friendly familiar style. But on the floor of the House Kunzru did not spare

Nehru and invariably there followed an angry rub and clash. The members enjoyed to witness the giants grappling but the moment they came out in the lobby the heat and the anger of the past moments vanished and they were friends as usual. This was a rare spirit of sportsmanship in the Rajya Sabha of those days—the acrimony of the debates subsided in the House itself and outside there was a perfect cordiality and Kunzru and Nehru were the best specimen of this spirit.

Kunzru had poor eyesight and had to read his notes very close to his eyes. This naturally detracted from his style but notwithstanding this the Chair and the members eagerly heard him because he always had some very concrete and pragmatic suggestions for the treasury benches. Though he delighted in putting the Cabinet Ministers on the mat he never went after any junior Ministers. He was ever polite and observed the fullest decorum due to a member of the Council of Ministers; no matter how junior he might be. This again is one of the courteous traditions of Parliament which was started in those early days.

Alongside Kunzru was Acharya Narendra Deva also from Uttar Pradesh. He was an original thinker and a great exponent of socialism. He lived socialism in real spirit. His speeches were naturally partisan. But the members held him in great respect for his character and personality. He was a natural leader of men and had fought in the freedom struggle. Communists hated him though it never bothered him. He was a scholar of Buddhist theology and was a master of several languages like Sanskrit, Persian, Urdu, Hindi, English, Pali and Prakrit. He was an eloquent speaker both in English and Hindi.

Besides these stalwarts there were a few new, comparatively young and unknown, but very intelligent and sharp members. Amongst them was C. G. K. Reddy from Andhra Pradesh. He was a born parliamentarian and a forthright speaker. Because of his flare for parliamentary affairs he was made Deputy Leader of the Socialist Party in the House. Virtually he was the Leader as Acharya Narendra Deva, the recognised Leader, rarely spoke and left the active work to him. 'CGK' had a knack of provoking and baiting Prime Minister Nehru who was sure to hit back in his replies and that gave great publicity to 'CGK'. His career as a promising parliamentarian was cut short because first he was knocked out in the lots and then he lost the re-election by a fraction of a vote.

Another young person who made his mark from the first day is Bhupesh Gupta who is celebrating the silver jubilee of his membership along with the Rajya Sabha. In fact today he is an integral part of the House. He is a gifted speaker with a unique sense of repartee. He is one of the most alert brains that I know of. Nothing escapes his notice and he is sure to make capital out of it on the floor of the House. He can speak extempore for hours. Bhupesh is a bachelor and a master of the English language. He can spin a pun readily and is an irrepressible member. The legend has it that the only person who could command Bhupesh was Dr. Radhakrishnan.

Sardar Swaran Singh is another member of those days. He was then the Minister of Works and Housing. He has always been known for his unassuming manners

and high integrity. His greatest ability is that even if heavens were to fall he remains cool and collected and no amount of agitation and abuse provokes him. He could talk by hours and assuage agitated members without revealing any vital information. This could exasperate members but it is a fine quality for the treasury benches. All through his long career as a Cabinet Minister he enjoyed the fullest confidence of all the three Prime Ministers and gave them his loyalty.

Lal Bahadur Shastri was a very quiet and unobtrusive member. He was a man of principles and lived simply and as a Railway Minister gave up the use of saloon car. During those initial years none suspected that one day he would emerge such a strong Prime Minister of India soon after the legendary Nehru. Even though he was not assertive he was very effective in handling the administrative and parliamentary matters pertaining to his Ministry. Even in those days he was a great power to reckon with in the Congress Parliamentary Party and solved many intricate problems for Nehruji. He was very soft spoken and his motto was "Strong language never breaks bones". He had the rare gift to project the will of the nation and personified the country in his own personality. He came from a poor family and died a poor man.

Abid Ali was another member who started life at two annas a day at the age of thirteen. He was truly a great nationalist and deeply opposed to communalism. He dressed very simply and almost always walked to the Parliament House. He was a true labour leader.

Harish Chandra Mathur came to the Rajya Sabha from Jodhpur where he was the Home Minister to the then Ruler of the erstwhile State of that name. He specialised on administrative matters and spoke with experience. He was respected by all because he was always objective in his criticism with malice to none. Later he was a member of the Administrative Reforms Commission where he made a solid contribution.

A very young and energetic member with pleasant manners was Rajendra Pratap Sinha, popularly known as 'Balaji'. He was an absolute novice and yet by sheer dint of labour he mastered quite a difficult subject like "Defence" and both Gopalaswami Ayyangar, Defence Minister and Pandit Kunzru came to respect his views on the subject. He remained a Rajya Sabha member for twenty years till 1972.

A member who was not a great speaker and yet commanded universal respect was Surendra Nath Dwivedi from Orissa. He is a man of character and crystal purity. Recently he submitted an excellent report on Land Reforms and helped a number of States in framing land legislation.

Prof. Ranga was also one of the members of the first Rajya Sabha. He is a good speaker and spoke on all subjects in the House. He is a great exponent of peasants and farmers lobby and an expert on Gandhian rural economics.

In the 216-member House there were eleven lady members. Each one had her own speciality but some of them were outstanding.

Violet Alva was one of the brightest of them. From the first day she was

acknowledged as a fine speaker with a clear mind and a clear diction. She was a warm hearted friendly person and was first a Deputy Minister for Home Affairs and then Deputy Chairman of the Rajya Sabha. She had the good fortune of being a member when Dr. Radhakrishnan was the Chairman and later on she was one of the most effective presiding officers of the House. She never lost her equanimity and asserted her authority effectively and gave correct rulings. She resigned from the Deputy Chairmanship on the 18th November 1969 and died within twenty-four hours thereafter.

Lakshmi Menon from Kerala represented Bihar in the Rajya Sabha. She was a powerful speaker and worked very hard. She was a successful Deputy Minister for External Affairs and Prime Minister Nehru liked her very well. She represented India in a number of international forums and her presentation used to be superb. Presently she is the President of Kasturba National Memorial Trust.

If this Rajya Sabha was rich in talent in political and economic fields, it could also boast of some great and well-known poets, writers and artists amongst its members.

Out of the twelve nominated members practically every one was a leading figure of his sphere of activity. Amongst them was Dr. Zakir Husain who rose to the high office of the President of the country. He was a great educationist and the finest product of the best of Muslim culture. Ever sprucely dressed with gentle and highly sophisticated manners born of innate culture he was deeply respected by all. He was Vice-Chancellor of Jamia Milia, an educational institution founded by Gandhiji in 1920 on the lines of Gujarat Vidyapeeth and Kashi Vidyapeeth. He kept aloof from politics and devoted himself to constructive work and education. He was a great scholar and this institution is the best tribute to him.

Next to him, but no less rich in grace and beauty, spiritual and otherwise, was Rukmini Arundale a pioneer exponent of Bharat Natyam. She was a powerful speaker with a lovely voice and no other lady member in both the Houses measured up to her. Her whole personality is beautiful and transparently sincere and whatever she said it was with great depth of feelings. Members of the Rajya Sabha were proud of her and felt gratified that she was a member along with them. She always dressed in resplendant Kanjeevaram sarees. She has a saintly beauty and compassion for all living beings. She is the President of the World Theosophical Society.

Along with her but very different from her was the famous Prithvi Raj Kapoor, an actor of great renown. He brought his histrionic talents to the portals of the Rajya Sabha. He spoke in Urdu and held the House spellbound. It was almost as if he was performing a one-man play, with members as audience. It is a matter of surprise that along with his stage and screen activities he was the President of the National Railway Workers Union in the Central Railways.

Maithilisharan Gupta, Banarsi Das Chaturvedi, and Ramdhari Singh Dinkar famous names in Hindi literature, were also members. It was an honour for the House that such a saintly poet like Maithili Babu was its member. His hobby was to spin and favoruite pastime poetry. Whenever he spoke, it was usually in verse.

He was a keen protagonist of Hindi and exhorted members to use the national language He was famous for his *pan* (betel-leaf). Banarsi Das Chaturvedi, the doyen of Hindi literature, was the editor of *Vishal Bharat* and an esteemed member and even today he is a great writer. Ramdhari Singh Dinkar though junior, was even then considered a great Hindi poet. He was a great institution in the Central Hall. He was a powerful speaker in Hindi.

Along with them though not quite like them was Dr. Raghuvira. He was a great Sanskrit scholar and tried to sanskritise Hindi and that probably alienated many States from adopting Hindi. The importance of his contribution in finding a Hindi word for every word in other languages is being realised with the passage of time.

Kakasaheb Kalelkar, who is today 93 years old, was also a member of the Rajya Sabha at the time of its initial constitution. He was a great Gandhian philosopher and a veteran traveller. He has been a prolific writer in Gujarati, Marathi and Hindi. He was one of the finest teachers in the tradition of ancient sages and a highly respected person in both the Houses.

Besides these very famous names, there were others who might have slipped from our memory but were masters in their fields. One such name is of Nanabhai Bhatt from Gujarat, a great educationist, who started a Rural University in Saurashtra and it is doing very well. He wrote innumerable books, especially on each famous character of Ramayana and Mahabharata. He was a social worker and educationist who brought changes in the rural life by the recital of ancient epics before villagers. As early as 1935 he was sent by the then Bhavnagar State to Japan to study the education system there.

Prof. Malkani, a Congress leader from Sind, and a Professor of English along with Acharya J. B. (Dada) Kripalani in Muzaffarpur College was also a member of the Rajya Sabha. He is very humane and very frugal in habits and practises true Gandhian austerity. He took keen interest in the Rajya Sabha and led a parliamentary delegation to survey the damage done by floods in Bihar.

Last but not the least is the name of Dr. Hardikar, who no one can afford to forget. He was a great youth organiser. It was he who founded the Congress Sevadal, an excellent organisation of volunteers. He was a veteran social worker and always wore a blue half pant and a white shirt, uniform of Sevadal. As early as 1917-21, he was the Secretary of the Home Rule League of America and Managing Editor of *Young India* in New York.

Such were the leading luminaries of the first Rajya Sabha of 1952. It had outstanding men from all walks of life. These veterans laid the traditions and nurtured the Rajya Sabha in its pioneering days in a way that today it has flowered into a fine institution of great value and usefulness and quite an effective instrument of parliamentary democracy.

51

Representation of Union Territories in the Rajya Sabha

VAIVENGA*

The concept of Union territories was introduced in the Constitution of India by the Constitution (Seventh Amendment) Act, 1956. This Act made numerous amendments in the Constitution in order to implement the scheme of reorganisation of the States. By section 2 of the above Act, the First Schedule to the Constitution was substituted by a new Schedule which *inter alia* provided for the formation of the following six Union territories :

(1) Delhi
(2) Himachal Pradesh
(3) Manipur
(4) Tripura
(5) The Andaman and Nicobar Islands
(6) The Laccadive, Minicoy and Amindivi Islands
(renamed as "Lakshadweep" on November 1, 1973)

*Shri Vaivenga is the Speaker of the Mizoram Legislative Assembly.

Subsequently the following six Union territories have been formed :

(1) Dadra and Nagar Haveli (w.e.f. 11.8.1961)	By the Constitution (Tenth Amendment) Act, 1961
(2) Goa, Daman and Diu (w.e.f. 20.12.1961)	By the Constitution (Twelfth Amendment) Act, 1962
(3) Pondicherry (w.e.f. 16.8.1962)	By the Constitution (Fourteenth Amendment) Act, 1962
(4) Chandigarh (w.e.f. 1.11.1966)	By the Punjab Reorganisation Act, 1966
(5) Mizoram (w.e.f. 21.1.1972) (6) Arunachal Pradesh (w.e.f. 21.1.1972)	By the North-Eastern Areas (Reorganisation) Act, 1971

By the State of Himachal Pradesh Act, 1970, Himachal Pradesh became a full-fledged State and ceased to be a Union territory with effect from January 25, 1971. Similarly, by the North-Eastern Areas (Reorganisation) Act, 1971, Manipur and Tripura also became full-fledged States and ceased to be Union territories with effect from January 21, 1972. Thus, at present, there are nine Union territories within the Indian Union.

Under article 80 of the Constitution, the Rajya Sabha shall consist of 12 members to be nominated by the President and not more than 238 representatives of the States and of the Union territories. It is provided that the representatives of each State in the Rajya Sabha shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote and the representatives of the Union territories shall be chosen in such manner as Parliament may by law prescribe.

The manner of election of representatives of the Union territories to the Rajya Sabha has been prescribed in the Representation of the People Act, 1950 Section 27A of this Act provides for constitution of electoral colleges for the filling of seats in the Rajya Sabha allotted to the Union territories. It is provided that the electoral college for the Union territory of Delhi shall consist of the elected members of the Metropolitan Council constituted for that territory under the Delhi Administration Act, 1966. The electoral college for the Union territories of Pondicherry, Mizoram and Arunachal Pradesh shall consist of the elected members of the Legislative Assembly constituted under the Government of Union Territories Act, 1963.

At present, the representation of the Union territories in the Rajya Sabha, as prescribed in the Fourth Schedule to the Constitution, is as follows :

Name of Union territory	*No. of seats allotted in the Rajya Sabha*
(1) Delhi	3
(2) Pondicherry	1
(3) Mizoram	1
(4) Arunachal Pradesh	1

The remaining Union territories, namely, (*a*) the Andaman and Nicobar Islands; (*b*) Lakshadweep; (*c*) Dadra and Nagar Haveli; (*d*) Goa, Daman and Diu and (*e*) Chandigarh, have no representatives in the Rajya Sabha. Out of these five Union territories, Goa, Daman and Diu has a Legislative Assembly constituted under the Government of Union Territories Act, 1963. On the analogy of Pondicherry, Mizoram and Arunachal Pradesh which have Legislative Assemblies constituted under the above Act and have also representation in the Rajya Sabha, it is worthwhile considering whether Goa, Daman and Diu could also be placed on the same footing. For the Union territories of Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, and Chandigarh, I feel that, although the population of these territories is small, some means could be found so that the voice of the people from these regions does not go unheard in the Rajya Sabha in the course of deliberations in this august body.

February 26, 1977

52

Nominated Members in the Rajya Sabha

B. R. GOEL*

Shri N. Gopalaswami Ayyangar while speaking in the Constituent Assembly on the necessity of a second chamber at the Centre observed :

> ". . . we also give an opportunity, perhaps, to seasoned people who may not be in the thickest of the political fray, but who might be willing to participate in the debate with an amount of learning and importance which we do not ordinarily associate with a House of the People."[1]

This view found its recognition in the composition of the Rajya Sabha which under article 80 (1) of the Constitution is to consist of :

(*a*) twelve members to be nominated by the President in accordance with the provisions of clause (3); and
(*b*) not more than two hundred and thirty-eight representatives of the States and of the Union territories.

*Shri B. R. Goel is a Senior Legislative Committee Officer in the Rajya Sabha Secretariat.
1. Constituent Assembly Debates, July 28, 1947, Vol. IV, pp. 927-928.

Clause (3) of the said article lays down the criteria for nominating these twelve members. The clause states that the members to be nominated by the President shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely :

Literature, science, art and social service.

The Constituent Assembly of India after considering the reports of the Union Constitution Committee and the Drafting Committee and after a detailed discussion on the floor of the Assembly agreed to have the present procedure of nomination in the Rajya Sabha. Similar powers of nomination to the Legislative Councils in the States have been given to the Governors.

These provisions give sufficient scope for making available to Parliament the services of persons of status and experience who may be unable or are unwilling to engage themselves in political campaigning required for normal elections. In other words, they represent interests not otherwise represented in Parliament. From another angle it can be said that by nominating persons who have earned meritorious distinction in the fields of literature, science, art and social service, the State has recognised their merit and bestowed honour on them. Since the constitution of the Rajya Sabha in 1952, in all 52 members have so far been nominated in the House (Annexure). Among them, we find a galaxy of scholars, educationists, historians, scientists, artistes, poets, litterateurs, jurists, engineers, economists, administrators and social workers of outstanding eminence hailing from all parts of the country and all strata of society.

Dr. Zakir Husain, former President of India, a distinguished scholar and educationist was a nominated member in the first panel of 12 in 1952. Eminent historians like Dr. Radha Kumud Mookerji, Sardar K. M. Panikkar, Dr. Tara Chand and Dr. Kalidas Nag adorned the benches of the Rajya Sabha. Among the men of letters we find poet laureate Maithilisharan Gupta, *Jnanpith* award winners Tara Shankar Banerjee, G. Sankar Kurup and Uma Shankar Joshi, Hindi poet Harivansh Rai Bachchan, Marathi dramatist B. V. (Mama) Warerkar, Bengali novelist Shri Pramath Nath Bisi, Gandhian writer Kakasaheb Kalelkar, Punjabi writer Dr. Gopal Singh, Urdu lexicographer M. Ajmal Khan, Hindi lexicographer and Indologist, Dr. Lokesh Chandra, Prof. Satyavrata Siddhantalankar of Gurukul Kangri Vishvavidyalaya, Shri Krishna Kripalani of Shantiniketan and Sahitya Akademi fame, Prof. Saiyid Nurul Hasan*, Prof. Rasheeduddin Khan and Dr. V. P. Dutt, eminent educationists.

Science Faculty was represented in the House by Prof. Satyendranath Bose, National Professor of Science, Prof. B. N. Prasad, a great Mathematician and Dr. K. Ramiah, an agricultural scientist. World renowned exponent of classical dancing Shrimati Rukmini Devi Arundale, stage and cinema actor Prithviraj Kapoor, dramatist Habib Tanvir, cartoonist Abu Abraham were nominated to represent art.

It was always a great treat to listen to the scholastic but balanced speeches of

*Prof. Nurul Hasan is now an elected Member of the House from Uttar Pradesh.

great legal luminaries, like Shri Alladi Krishnaswami Ayyar, a distinguished member of the Drafting Committee and one of the founding fathers of the Constitution, Dr. P. V. Kane, National Professor of Indology and an authority on *Dharamshastras*, Shri M. C. Setalvad and Shri C. K. Daphtary, former Attorneys-General of India.

Prof. N. R. Malkani, a reputed social worker, Dr. J. M. Kumarappa, Gandhian social scientist, Shri Jairamdas Daulatram, former Union Food and Agriculture Minister and former Governor of Assam and Bihar, Shri Mohanlal Saxena, former Union Minister of Rehabilitation, Shri M. Satyanarayana, well-known for propagation of Hindi in the South, Shrimati Shakuntala Paranjpye, a pioneer in family planning, Shri G. Ramachandran, a Gandhian thinker, Shri R. R. Diwakar, former Union Information and Broadcasting Minister and former Governor of Bihar and an associate of societies popularising the Gandhian thought, Shri Joachim Alva, a journalist, Shri Ganga Sharan Sinha, a social worker known for his independent views, Shrimati Maragatham Chandrasekhar, Shri Bishambhar Nath Pande and Shri Scato Swu—all these persons were nominated to the Rajya Sabha for their distinguished services to the society at large.

We also find Dr. A. N. Khosla, an engineer of world renown and father of river valley projects, Prof. A. R. Wadia, an educationist and intellectual of high order and a great debator, Major-General S. S. Sokhey, medical scientist, Shri M. N. Kaul, former Secretary of the Lok Sabha and Shri B. N. Banerjee, former Secretary-General of the Rajya Sabha, Shri V. T. Krishnamachari, an administrator and former Deputy Chairman, Planning Commission, Dr. D. R. Gadgil, an outstanding economist and former Deputy Chairman, Planning Commission who have at one time adorned or are at present adorning the benches in the House.

There is a feeling that the nominated members who have been bestowed with honour, respect and patronage, are simply adorning the benches of the House without much contribution to the debates in the House. This is not borne out by facts. On the other hand these persons have contributed and have taken active part in the debates of the House whenever the subjects in which they have interest or have achieved eminence come up for discussion in the House. The House is benefited by their well-balanced speeches, thoughtful and matured suggestions. ". . . when such men rose to speak naturally they compelled attention and the Treasury Benches listened to them with respect and attention."[2]

It is neither necessary nor practicable for all the members—nominated or otherwise—to participate in every discussion and debate in the House. The members who do not or cannot participate in the discussions also contribute to the service of the nation in a different way. On the contribution of members of Parliament (especially of nominated members in view of the respect which they command) Dr. A. N. Khosla, a nominated member, stated the following in the House :

2. S. S. Bhalerao, Journal of Constitutional and Parliamentary Studies, Vol. I, No. 2, April-June 1967.

"The contribution to the service of the nation as members of Parliament, need not necessarily be judged only from resolutions, questions, frequency and oratory in speeches but also from the quiet, unobstrusive work which they might do in other spheres of activity equally vital to the work of Parliament and the service of the nation, *i.e.* the committees and in the form of independent specialist advice."[3]

The nominated members are known for their independent, frank, fearless and unreserved views as they do not generally carry any party label. Some members on certain occasions were found more critical of Government policies and programmes than many of the first bencher opposition members. Dr Zakir Husain who was known for his sober and balanced views criticised the Planning Commission in these words :

"I would just say a last word about education. Sir, the Plan, as I understand it, is an instrument of policy for attaining objectives which the nation has set before it. I do not know of any other field in which the national objective is so clearly and quantitatively and definitely and expressly indicated as in the case of the education of boys and girls between the ages of 6 and 14. There is a directive in the Constitution which says that within ten years, all boys and girls between the ages of 6 and 14 must receive free and compulsory education. There is no directive about the railway mileage; there is no directive about steel production and there is no directive about any other thing with that definiteness and of that kind. You have that directive in the Constitution and the Planning Commission is setting out deliberately and openly and unabashedly not to follow that directive. I think there could be no criticism of the Planning Commission more damaging than this. An objective is mentioned in a solemn document and it is before you and yet you are deliberately planning a policy under which we would not be able to send these boys and girls of 6 and 14 to school for another fifteen years."[4]

The nominated members evince a lot of interest when matters of general policy come up before the House. Broadly speaking debates on the President's Address, general discussion on the Budget—General and Railways, discussion on Appropriation Bills, Finance Bills, reports of various commissions and committees, resolutions and motions regarding international situation, food situation etc. have found favour with most of these members. Some of them are appointed on Select/Joint Committees on Bills because of their specialisation, and their contribution in these committees has been noteworthy.

These members are well-known for the high standard of their debates and

3. Rajya Sabha Debates, 18.12.58, col. 2808.
4. *Ibid.*, 6.9.56, cols. 3540-41.

their eloquence. They are known for their knowledge and understanding of the subject matter of discussion and for their style. The following extract from the speech of Dr. Radha Kumud Mookerji on the Finance and Central Excise and Salt (Amendment) Bill, 1953 brings out the wealth of information, subtle criticism of the provisions of the said Bill and the inimitable way it has been put :

". . . South India was the home of the most advanced handicraft in textiles. They were able to produce muslin, twenty yards of which could be passed through a finger ring and Mommsen, the great historian of the Roman Empire said that the Roman Empire was the best customer for the Indian silks and muslin in those days of the earlier centuries of the Christian era. Roman ladies —I wish my friends to remember this very humorous point of historical importance—Roman ladies draped in seven folds of muslin went about the streets of Rome every evening and became a menace to the city's morals with the result that the Roman Parliament was forced to intervene with a legislation which banned the import of Indian muslin into the Roman markets . . ."[5]

It may be observed from the Rajya Sabha proceedings of all the twenty-five years, that the nominated members have made good contribution to the debates in the Rajya Sabha adding to the high standard of the proceedings of the House. At times, some members had highlighted in the House subjects of public interest through questions, Bills and resolutions.

Shri Jairamdas Daulatram a much respected member of the House advocated the cause of Sindhi language through questions and discussions in the House. It is no secret that due to his efforts Sindhi was added as a language of India in the Eighth Schedule to the Constitution. The Minister of Home Affairs while replying to the debate on the Constitution (Twenty-second Amendment) Bill, 1966, for including Sindhi in the Eighth Schedule to the Constitution observed :

"Madam, Shri Jairamdas spoke very feelingly about the contribution made by Sindhis for the Independence of this country but the very process of independence made us lose the home of the Sindhis. Though Sind is lost to us, Sindhi is not lost to us and this Constitution (Amendment) Bill is a recognition of this fact."[6]

Dr. Radha Kumud Mookerji introduced the Hindu Childless Widows' Right to Property Bill in 1953. The Law Minister while intervening in the debate assured the House in these words :

". . . When the promised legislation regarding succession is brought forward, there will be a provision that the interest which a widow inherits will be an

5. Council of States Debates, 23.4.53, col. 3855.
6. Rajya Sabha Debates, 9.12.66, col. 5313.

absolute interest. In view of that possibility it is not necessary to go on with this Bill . . . So the Bill might be withdrawn."[7]

The Bill was withdrawn and the Parliament in 1956 passed a comprehensive law on succession.

Shrimati Rukmini Devi Arundale, a life-long fighter against cruelty to animals introduced a Bill on the subject in 1953. Prime Minister Jawaharlal Nehru who was present in the House at that time gave the following assurance :

"We would prefer the hon. the Mover, with the consent of the House, not to proceed with this matter on the understanding that Government will very soon appoint a Committee to consider the various things contained in this Bill."[8]

Now we find a law on the subject in the Statute Book.

Shrimati Shakuntala Paranjpye, well-known for pioneering work in family planning, introduced the Sterilisation of the Unfit Bill in 1964. The Bill was negatived; but an interesting debate on the family planning took place in the House. The Minister while intervening in the discussion appreciated the efforts made by the member in these words :

". . . I or, if I am not there, my successor will try—I promise—to bring a more comprehensive and acceptable and constitutionally valid measure before this House. I must congratulate her that by and large she has succeeded in her basic intention of creating a public debate, eliciting public opinion, asking people to reflect and think that this problem is something which is very important and must be attacked sooner or later . . ."[9]

After the motion was negatived, the Chair observed as follows :

"Mrs. Shakuntala, let me tell you on behalf of the House that as you will not be here in the House, we appreciate your services and you have brought a very important matter to the notice of Parliament and the Government, as assured by the hon. Minister will take suitable measures in this direction. We appreciate your social service not only in this House but in the country; you have followed in your line your distinguished father, a great educationist of this country."[10]

On March 13, 1970 the House adopted a resolution[11] moved by Shri Joachim

7. Council of States Debates, 4.12.53, col. 1329.
8. *Ibid.*, 5.3.54, col. 1807.
9. Rajya Sabha Debates, 20.3.70, col. 175.
10. *Ibid.*, col. 183.
11. *Ibid*, 27.2.70, col. 163; 13.3.70, cols. 166-178.

Alva regarding routing all Government advertisements including advertisements of railways, statutory corporations, public sector undertakings or any industrial or other organisation which enjoys financial assistance or protection from Government only through the Indian-controlled and Indian-owned advertising agencies and not through foreign advertising agencies whether wholly or partly owned or controlled by foreigners.

Dr. V .P. Dutt another nominated member by moving a resolution[12] gave to the House an opportunity to discuss the educational reforms. The Minister of Education, while intervening in the discussion, gave out Government's policy on 10+2+3 new pattern of education system which was proposed to be introduced uniformly throughout the country.

The nominated members enjoy all the powers, privileges and immunities available to all the elected members of Parliament. However, they are not entitled to vote in the President's election. No such restriction exists in the Vice-President's election. At the Centre no nominated member has as yet been included in the Council of Ministers. However there have been instances when nominated members of the Legislative Councils have been included in the Council of Ministers in some States. Prof. Saiyid Nurul Hasan, a nominated member, had resigned his seat in the Rajya Sabha before his induction in the Union Council of Ministers. Subsequently, he was elected to the House from the State of Uttar Pradesh.

On the whole, the provisions in the Constitution have given an opportunity to 12 talented and distinguished citizens to sit in a House of 244 members and contribute to the proceedings of the House on the basis of their experience and expertise. The presence of nominated members in the House adds to the dignity and sobriety of the Upper House of the Indian Parliament which is already well-known for its parliamentary temper and high standard of debate.

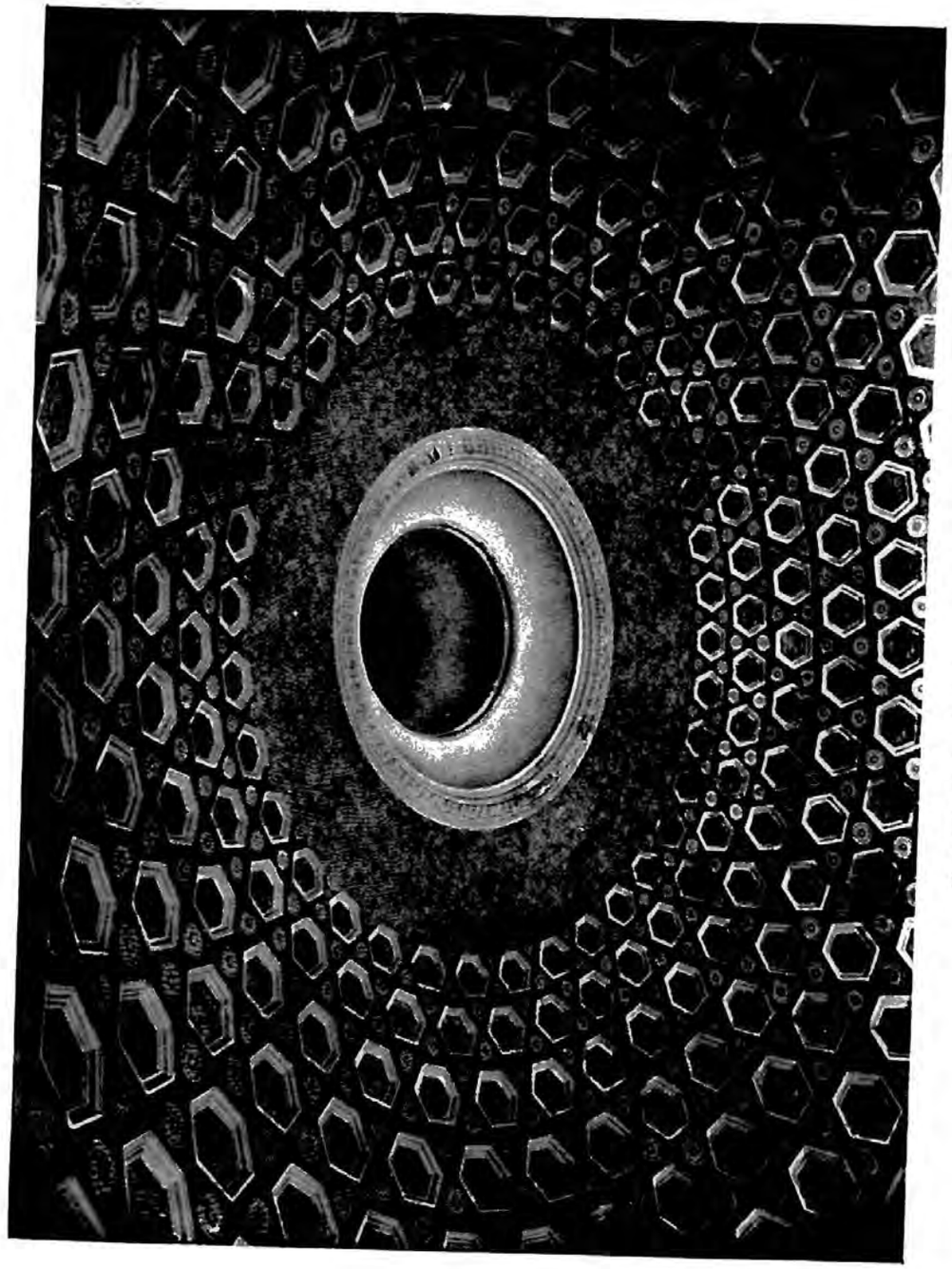
ANNEXURE

1. Dr. Zakir Husain—1952-56, renominated in 1956, resigned in 1957
2. Shri Alladi Krishnaswami Ayyar—1952-58 (died in 1953)
3. Prof. Satyendranath Bose—1952-54, renominated in 1954 (resigned in 1959)
4. Shrimati Rukmini Devi Arundale—1952-56, 1956-62
5. Prof. N. R. Malkani—1952-56, 1956-62
6. Dr. Kalidas Nag—1952-54
7. Dr. J. M. Kumarappa—1952-54
8. Kakasaheb Kalelkar—1952-58, 1958-64
9. Shri Maithilisharan Gupta—1952-58, 1958-64
10. Dr. Radha Kumud Mookerji—1952-58
11. Major-General Sahib Singh Sokhey—1952-56

12. *Ibid.*, 27.7.73, cols. 143-198; 10.8.73, cols. 115-163.

12. Shri Prithviraj Kapoor—1952-54, 1954-60
13. Dr. P. V. Kane—1953-58, renominated in 1958 (resigned in 1959)
14. Prof. A. R. Wadia—1954-60, 1960-66
15. Shri M. Satyanarayan—1954-60, 1960-66
16. Shri B. V. (Mama) Warerkar—1956-62, renominated in 1962 (died in 1964)
17. Dr. Tara Chand—1957-62, 1962-68
18. Dr. A. N. Khosla—1958-64 (resigned in 1959)
19. Sardar K. M. Panikkar—1959-60, renominated in 1960 (resigned in 1961)
20. Shri Jairamdas Daulatram—1959-64, 1964-70, 1970-76
21. Shri Mohan Lal Saxena—1959-64
22. Shri Tarashankar Banerjee—1960-66
23. Shri V. T. Krishnamachari—1961-64 (died in 1964)
24. Shri R. R. Diwakar—1962-68
25. Dr. Gopal Singh—1962-68
26. Shri G. Ramachandran—1964-70
27. Shrimati Shakuntala Paranjpye—1964-70
28. Prof. Satyavrata Siddhantalankar—1964 68
29. Prof. B. N. Prasad—1964-70 (died in 1966)
30. Shri M. Ajmal Khan—1964-66, 1966-72
31. Shri M. C. Setalvad—1966-72
32. Shri M. N. Kaul—1966-70, 1970-72
33. Shri Harivansh Rai Bachchan—1966-72
34. Prof. D. R. Gadgil—1966-72 (resigned in 1967)
35. Shri Joachim Alva—1968-74
36. Prof. Saiyid Nurul Hasan—1968-74 (resigned in 1971)
37. Dr. K. Ramiah—1968-74
38. Shri Ganga Sharan Sinha—1968-74
39. Shri G. Sankar Kurup—1968-72
40. Shrimati Maragatham Chandrasekhar—1970-76, 1976-82
41. Shri Uma Shankar Joshi—1970-76
42. Prof. Rasheeduddin Khan—1970-76, 1976-82
43. Dr. V. P. Dutt—1971-74, 1974-80
44. Shri C. K. Daphtary—1972-78
45. Shri Abu Abraham—1972-78
46. Shri Habib Tanvir—1972-78
47. Shri Pramatha Nath Bisi—1972-78
48. Shri Krishna Kripalani—1974-80
49. Dr. Lokesh Chandra—1974-80
50. Shri Scato Swu—1974-80
51. Shri B. N. Banerjee—1976-82
52. Shri Bishambhar Nath Pande—1976-82

March 7, 1977



The architectural design of the inner side of the Central Hall dome of the Parliament House.

Murals in the corridor leading to the Chairman's Chamber in the Parliament House.

53

The Rajya Sabha—Its Role in Social and Economic Fields during 1952—76

B. N. BANERJEE*

Replying to the discussion on the Objectives Resolution in the Constituent Assembly on the 22nd January 1947, Jawaharlal Nehru *inter alia* observed :

> "The first task of this Assembly is to free India through a new Constitution, to feed the starving people and clothe the naked masses, and to give every Indian fullest opportunity to develop himself according to his capacity. At present the greatest and most important question in India is how to solve the problem of the poor and the starving. Wherever we turn, we are confronted with this problem. If we cannot solve this problem soon, all our paper Constitutions will become useless and purposeless."

What Nehru said in the Constituent Assembly was quite true at that time and that is equally relevant even today. In order to fulfil the socio-economic aspirations of our great leaders, the democratic institutions in India have, since India attained Independence, been taking all possible strides in this direction.

*Shri B. N. Banerjee, a former Secretary-General of the Rajya Sabha, is a Member of Parliament (Rajya Sabha).

When the Government of India was at the threshold of the social and economic uplift of the masses in the country, the Rajya Sabha, the Upper House of Indian Parliament, came into being on April 3, 1952. Since the 13th May 1952, when the Rajya Sabha met for the first time, its members have been striving to thrash out and remove the social and economic imbalances in the country.

During the very first session of the Rajya Sabha when the General Budget for the year 1952-53 came up for discussion in the Rajya Sabha for the first time, the members participated therein very actively and voiced their feelings urging the Government to take all possible measures for the betterment of the people of the country.

From the very beginning it has beeen thought that the serene atmosphere of the Rajya Sabha was particularly suited for initiating legislation on matters for effecting social justice and economic uplift. It was in the Rajya Sabha that the following enactments of far-reaching importance in the social sphere were initiated and later on placed on the Statute Book :

1. The Hindu Marriage and Divorce Bill, 1952
2. The Hindu Minority and Guardianship Bill, 1953
3. The Hindu Succession Bill, 1954
4. The Hindu Adoptions and Maintenance Bill, 1956.

Moving the motion for consideration of the Hindu Marriage and Divorce Bill, 1952, in the Rajya Sabha on December 6, 1954, Shri D. P. Karmarkar, Minister of Commerce, who was piloting the Bill, observed :

> "This is a measure that has evoked very vigorous consideration by all sections, conservative and reformist. But the general consensus is agreed, as we find, upon the desirability of codification of the Hindu law on progressive lines at the earliest possible time. This House would doubtless weigh all considerations very carefully and with an open mind, before coming to final conclusions, I am quite sure that this measure when put on the Statute Book will not only preserve the vitality of the Hindu law as it has evolved through centuries while introducing the results of progressive thought, thus giving the Hindus a law on their secular matters which while satisfying the requirements of all rational concepts, will contribute to the stability of the Hindu society, the essential strength of which has been rightfully the object of admiration to the modern mind."

The veteran parliamentarian, Pandit H. N. Kunzru started his speech in support of the Bill with the following words :

> "Madam, the question of the reform of the Hindu Law has been under consideration for nearly 14 years. All aspects of the question have been considered and Hindu opinion has been fully consulted. Seldom could any measure have been scrutinised more carefully than the proposals made for bringing the Hindu Law in accord with the times that we are living in. I hope, therefore, that this Bill will not merely be approved of by progressive opinion but will, if its provisions are honestly explained, be accepted by the general body of those to whom it applies."

The motion for consideration of the Hindu Minority and Guardianship Bill, 1953, as reported by the Joint Committee of the Houses, was moved in the Rajya Sabha by Shri H. V. Pataskar, Minister in the Ministry of Law, on the 30th March 1955 and received support from all sections of the House.

Next in the line were the Hindu Succession Bill, 1954 and the Hindu Adoptions and Maintenance Bill, 1956 which, after being passed by Parliament, made a complete code on the Hindu Law. These two Bills also received a wide support in the Rajya Sabha and the members of the Rajya Sabha expressed their strong views, while participating in the discussion on these Bills, for the social uplift of people of the country.

Shri H. V. Pataskar, Minister of Legal Affairs, piloted the Hindu Succession Bill, 1954, in the Rajva Sabha from the 1st October to the 30th November 1955 when it was finally passed by the Rajya Sabha. Moving the Motion on October 1 for consideration of the Bill as reported by the Joint Committee of the Houses, Shri Pataskar said :

> "I am aware of the strong sentiments that prevail in the country regarding this question; I am also aware that for many, many long years, on account of peculiar conditions in our country—social, political and economic—women have not been treated on a footing of equality. This Bill is certainly going to make a change in the current ideas of society in this matter. I understand and realise all these feelings and sentiments connected with a subject like this; but the speeches which honourable Members delivered at the time of the discussion of the original motion in both Houses will show very clearly that there was almost unanimity that, so far as women are concerned, the inequality in the matter of succession attached to them on the ground of sex should be removed. There did not appear to be any substantial difference of opinion on this necessity of removing this inequality. Naturally, when you come to the actual solution of a problem like this, difficulties are bound to crop up; and they have cropped up in this case. By and large, I hope I shall be able to convince that the Committee had done their very best under the existing circumstances."

Shrimati Lakshmi Menon, Parliamentary Secretary to the Minister for External Affairs, supported the Bill and observed :

> "Finally, I wish to point out that we have to show that we have an approach to the social and legislative problems—an approach which is neither idealistic nor reactionary—but an approach which is necessitated by the compelling needs of our times. Such an approach will be a true approach and such an approach

only can keep our society together. On the other hand, if we say that laws relating to marriage and property are laws which undermine the moral foundations of our society, we are not telling the truth. Sir, morality is not built upon injustice; morality is not built upon prejudice, it is built on reactitude of conduct—a correct appreciation of the needs of the times, a correct appreciation and an implementation of the principles which society professes. I hope that these needs will be taken into consideration and the opponents of the Bill, if there are any—I know there are not many—will realise that we cannot hold back the change that has come upon us. The most graceful thing would be to accept it and see that other things are done so that the family which is the unit of our society will be maintained and the great and sacred moral standards which we have always been proud to possess, will be valued and cherished."

Shri N. D. M. Prasad Rao giving complete support to the Bill, started his speech on November 21, 1955, with the following words :

"Mr. Deputy Chairman, this is one of the most momentous Bills that this House is discussing. This Bill seeks to undo the wrong that has been done some centuries ago, or, say, some thousands of years ago, to the women. This is the main purpose of this Bill, and so far as it tries to undo the wrong that has been done already to the women I am in full accord. That is the aim of this Bill and I completely support it. Of course, there is a lot of opposition in the country in the name of Hinduism or *Sanatan Dharma* and all sorts of things. I think this House need not take into consideration those things and we need not go into those conditions or those ancient laws which were applicable at a particular time and we need not desist from our duty to undo the wrong."

After the Succession Bill came the Hindu Adoptions and Maintenance Bill, 1956, which also received a big support from all corners of the Rajya Sabha. This Bill was introduced in the Rajya Sabha in August 1956 and in the same month was referred to the Select Committee of the House. After the Select Committee had presented its report, Shri H. V. Pataskar, Minister of Legal Affairs, moved on November 27, 1956, the motion for consideration of the Bill as reported by the Select Committee. Speaking on the motion, and supporting the measure Pandit S. S. N. Tankha, said :

"Mr. Deputy Chairman, Sir, I am glad to support this Bill as it has taken the women in Indian society a long way towards the realisation of equality of status with men. As we know, Sir, the other Acts like the Hindu Marriage Act, etc., which we have passed during the last one year have gone a long way in raising the status of the Hindu women which formerly was very low down at the bottom. By the measure before us now, two significant changes have been brought about. The first of them is that both men and women can now adopt

under the Bill, whereas formerly only men could adopt and women could only adopt where they had obtained the permission of the husband. By the grant of this right to women to adopt their status has now been further raised in the eyes of the world.

The second significant change brought about by this Bill is that while formerly under the old Hindu law only sons could be adopted, now under this Bill the right to adopt a daughter has also been conferred. This additional right also raises the status of women and it places them on a par with men.

In view of these two significant changes, it has to be admitted that the Bill has been framed on the right lines and the position of Hindu women in Indian society will hereafter be considerably raised in the estimation of the world."

Shri P. N. Sapru's support to the Bill came with his following observations :

"Now, Mr. Deputy Chairman, the question of the desirability of the institution of adoption can be viewed from different angles. There may be some people who may think that adoption is a very bad institution. I know there are creeds in which adoption is strictly prohibited. I shall put forward before you a rational point of view because I do not claim to be anything more than a rational person Having no fixed belief in personal immortality, I would like to feel that my name is continued by some after I die. We live in our children and our children's children and it is, therefore, a very natural instinct for a man to give his affection to someone, be it a daughter or be it a son, and to desire that his name or personality may be perpetuated in some way or other. That name can be perpetuated by a daughter. There are many people who even though they have a son, would like to have the experience which a daughter brings. The affection—and I speak as a father—which a daughter gives is somewhat different from that of a son and I would not like anyone to miss that experience. Therefore, I think we are taking in this Bill a humane view."

Replying to the debate on the motion on November 28, Shri Pataskar observed :

"This is last of the measures relating to the Hindu code with which I am dealing and if I can claim humbly anything, I think I have always been sympathetic and trying to do my best to cooperate with whatever suggestions that may have been put forward and it will be my endeavour in this Bill also to do the same because I do not believe in forcing my opinion. After all I want to achieve something, some progress in society by this and I am sure honourable Members will not find any occasion in the course of this piece of legislation when I do not give consideration to any point of view or to any suggestion that may be put forward. Whether we agree or we do not agree, we shall consider from every

point of view whatever suggestions are put forward by any section of the House."

Besides supporting the measures of social importance brought by the Government, the members of the Rajya Sabha have, on their own, also been endeavouring to bring in social changes in the masses of the country by initiating private members' legislation in the House. Some of the important Bills in the social sphere introduced in the Rajya Sabha by private members which were later on accepted by the Rajya Sabha and ultimately became Acts, were :

1. The Hindu Marriage (Amendment) Bill, 1956 by Dr. (Smt.) Seeta Parmanand.
2. The Orphanages and Other Charitable Homes (Supervisory and Control) Bill, 1959 by Shri Kailash Bihari Lal.
3. The Indian Penal Code (Amendment) Bill, 1963 by Diwan Chaman Lall.

Other important Private Members' Bills on social matters introduced and discussed in the Rajya Sabha were :

1. The Indian Suppression of Immoral Traffic and Brothel Bill, 1953 by Dr. (Smt.) Seeta Parmanand.
2. The Women's and Children's Institutions Licensing Bill, 1954 by Dr. (Smt.) Seeta Parmanand.
3. The Punishment for Molestation of Women Bill, 1958 by Smt. Savitry Devi Nigam.

Though these Bills were either rejected by the Rajya Sabha or were withdrawn by the members, the members of the Rajya Sabha definitely got an opportunity of airing their views for the social reform of the women and children in the country.

Even with regard to the Bills on social matters passed by the Lok Sabha, the Rajya Sabha never sits as a spectator. While considering such Bills, the members of the Rajya Sabha have been equally vigilant as each piece of legislation is discussed and examined by them thread-bare. If on some occasion the Rajya Sabha does not see eye to eye with the Lok Sabha on some legislation, it makes its own suggestions and in the event of such suggestions not being accepted by the Lok Sabha, the Rajya Sabha does not hesitate to go to the extent of insisting upon its suggestions. Such a situation had arisen in the case of the Dowry Prohibition Bill, 1959. The disagreement between the Lok Sabha and the Rajya Sabha was in the main over two clauses—clause 2 and clause 4. In clause 2, by inserting the words 'either directly or indirectly', the Rajya Sabha sought to extend the scope of the term 'dowry' to include even gifts and presents voluntarily made. Whereas the Rajya Sabha desired to widen the scope of 'dowry', it was against prescribing penal sanctions and therefore sought the deletion of clause 4. This was because the members of the Rajya Sabha had in mind that such a provision would lead to the making of frivolous complaints to harass innocent people. The deadlock was resolved at the joint sitting of the two Houses of Parliament held on May 6, 1961, and one of the above

amendments which was insisted upon by the Rajya Sabha from the beginning was adopted in the joint sitting.

A landmark in the socio-economic field was the nationalisation of the fourteen major banks of the country. This laudable measure, namely, the Banking Companies (Acquisition and Transfer of Undertakings) Bill, 1969, got an overwhelming support in the Rajya Sabha as the measure was calculated to open new vistas for India's teeming millions. The Rajya Sabha gave its approval to this historic economic measure on August 8, 1969.

The Rajya Sabha's liberal attitude has always added momentum to the wheel of social and economic progress. Of several initiatives taken in the social and economic fields, one is very remarkable. When in 1969 there was a very strong feeling in the country that the privy purses and privileges of the ex-rulers of the Indian States should be abolished and particularly when the Government had not taken any effective step in that regard, it was in the Rajya Sabha, that the following historic resolution moved by a private member, Shri Banka Behari Das, was adopted unanimously :

> "This House is of the opinion that the Government should take all legal and other steps for the abolition of privy purses and privileges of ex-rulers before presentation of the General Budget in the coming February Session of the Parliament."

This resolution had its impact on the Government which brought the Constitution (Twenty-sixth Amendment) Bill, 1971 for the abolition of privy purses and privileges of the ex-rulers. Prime Minister Indira Gandhi moving this historic Bill in the Rajya Sabha on December 9, 1971, said :

> "As I have said on numerous occasions, we do stand for change in society. We think the change could be more rapid, more widespread than it is at the moment, but at the same time we believe that change should be peaceful. We also believe that if the forces of change are obstructed, you do not stop change, you merely obstruct the peaceful and orderly transition. So our attempt at bringing about social change—and this includes the abolition of privileges being enjoyed by the princes—should not be regarded by them or by anybody else as an indictment of the princes as individuals or as a group. The princes acted with practical good sense when the country was politically integrated. Even in this matter which concerns them so intimately, some have displayed the proper understanding of the issues involved. They have recognised that the times have changed and they have seen the wisdom of trying to meet the change half way. It is my belief that to allow such an anachronism to continue would be as much an obstruction to them as to our society as a whole. The princes are Indians as the rest of us are. They are citizens as the rest of us are and we owe a duty to them as they owe a duty to our society and to the country. So at this

moment of danger and difficulty of the country, let us not dwell on the past but look to the great and pressing needs of the present and to the future which beckons us and which we have to build together. I commend this Bill to the House. I invite the princes to join the elite of the modern age, the elite which earns respect by its talent, energy and contribution to human progress all of which can be done only when we work together as equals without regarding anybody as of special status."

When Government of India under the leadership of Smt. Indira Gandhi had put into effect several policies like the nationalisation of banks, nationalisation of general insurance and abolition of privy purses and privileges of the ex-rulers and had also taken steps to improve the conditions of the weaker sections of the people in India like the backward classes, Harijans and Tribals, unfortunately the country was facing a political situation which rather did not conform to norms of a good democracy. A State of Emergency was declared in the country on June 25, 1975. The declaration of Emergency brought many important programmes for the economic uplift of the masses. The Economic Programme which is popularly known as "20-Point Programme" was announced by Prime Minister Indira Gandhi on July 1, 1975. Under this programme, the main object of which was to improve the economic conditions of the poor masses of this country, many important legislations were enacted. Some of the important measures enacted under this programme which received an all-out support in the Rajya Sabha, were :

1. The Bonded Labour System (Abolition) Bill, 1976
2. The Equal Remuneration Bill, 1976
3. The Regional Rural Banks Bill, 1976

The first two Bills had the privilege of being introduced in the Rajya Sabha itself.

Moving the motion on January 12, 1976, for consideration of the Bonded Labour System (Abolition) Bill, 1976, in the Rajya Sabha, Shri K. V. Raghunatha Reddy, Minister of Labour, said :

"By emphasising in the 20-point programme the necessity of the immediate abolition of bonded labour, the Prime Minister voiced the aspirations of that mute and toiling minority of our compatriots that had been condemned to live as exiles from our civilisation. . .The system of bonded labour is the most anomalous remnant of feudalism still vitiating our society. It is the moral duty of the nation to abolish the system. Freedom can never endure with enclaves of bondage; a civilisation with an army of exiles never lasts."

Next came the Equal Remuneration Bill, 1976. This Bill was also taken up in the Rajya Sabha on January 12, 1976 and was also piloted by Shri Reddy. Speaking on the motion for consideration of the Bill, he said ;

"Sir, a significant measure taken by Government in recent months has been the promulgation of the Equal Remuneration Ordinance providing for the payment of equal remuneration to men and women workers and for the prevention of discrimination against women, on the ground of sex, in the matter of employment and for other connected matters. This measure is significant not only because it coincides with the International Women's Year, and brings us fully in line with accepted international standards, but also because it brings immediate relief to millions of our womenfolk employed or seeking employment. As most of those women belong to the weaker sections of the community and are largely employed in agriculture and unorganised sectors of industry, it is only appropriate that this measure was taken on a priority basis, as a part of the Government's policy of improving the condition of the weaker and exploited section of the country."

Again replying to the discussion on the motion for consideration of the Bill, Shri Reddy said :

"Sir, the passing of this Bill is one more historic step and historic task done by this House. This is one of the historic Bills that the country has passed. Even some of the most advanced countries could not provide by legislation equality between men and women in terms of the equal remuneration for the same or similar nature of work."

Sequel to these Bills of socio-economic importance was the Regional Rural Banks Bill, 1976. Shri Pranab Kumar Mukherjee, Minister of Revenue and Banking, commended the Bill to the Rajya Sabha on the 28th January 1976 with his following words :

"As you are aware, the Regional Rural Banks Ordinance, 1975 was promulgated on the 26th September 1975 in order to provide alternative agencies through which institutional credit to small and marginal farmers, agricultural labourers, rural artisans, etc. can be provided. This acquired urgency in the context of the 20-Point Socio-economic Programme which, among others, called for effective steps to liquidate the agencies to fill up the gap in rural credit which would further widen as a result of restricting the role of the village money-lenders."

This Economic Programme not only brought and put into effect several legislations of socio-economic progress in the country, but was intended to put the country on the path of socio-economic uplift. The Rajya Sabha as the highest democratic institution in the country has played a vital role in this field since its birth till today. Dr. Ambedkar's desire for equality in social and economic life of

the people of this country was expressed in the Constituent Assembly on November 25, 1949, in his following words :

> "On the 26th January 1950 we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognising the principle of one man one vote and one vote one value. In our social and economic life we shall by reason of our social and economic structure continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions ? How long shall we continue to deny equality in our social and economic life ? If we continue to deny it for long we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has laboriously built up."

I have no doubt that this expectation will be fulfilled in no distant future and Rajya Sabha's contribution in this great task will certainly be remembered by the people of the country with gratitude and satisfaction.

March 4, 1977

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Private Member's Bill—An Enigma

D. L. SEN GUPTA*

Society is in a state of constant evolution. From primitive disorder and chaos it always aspired for, and marched towards, order. Democracy represents that behaviour. Democracy is a concept and takes different forms, according to the political genius of the people. Parliamentary system of democracy is one such form. It is said "once a nation, no matter how hypocritically, has begun to experiment with the parliamentary system it will end *nolens volens*, by cultivating it and making it genuinely effective; for it will inevitably come to recognise it as the best possible system of Government that a democratic community can adopt in pursuance of its intrinsic aims and interests". In a democracy, irrespective of its shape and form, man is the starting point of thinking. Good of the citizen, as a part of the community, is the basis of democratic thinking; that is why Abraham Lincoln defined a democratic Government as a Government 'by the people, of the people, for the people'. Such a Government of the people is supposed to deliver the goods and for that, have a policy of its own, with particular emphasis on to the good of the oppressed, suppressed and down-trodden masses. Because of the social, economic and political constraints involved, the Government has to be cautious and calculating.

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Government with its vast apparatus and resources, is supposed to be better acquainted than any other, with the real needs of the country, and as such takes the initiative in legislative process which starts with the introduction of a Bill. A new law, which a Bill intends to enact, may be either a change in the existing legislation or the introduction of new legislation to meet the needs of social change.

In a democracy, it is the elected Parliament that makes the law. Legislation in this process reflects the conduct and character of a particular Government and the members of the Parliament, at a relevant point of time. A private member in his personal capacity is also entitled to initiate a Bill, which is known as a "*Private Member's Bill*". This system has got wide recognition almost in all Parliaments of the democratic countries, differing only in details. This article will be limited to the functioning of Private Members' Bills in the Parliament of India of which I had the privilege of being a member for twelve years, in the Council of States (Rajya Sabha), from 1964 to 1976.

A private member, intending to introduce a Bill, has initially to give his thought to the *pros and cons* of the problem in regard to which he wants a legislation. To put the same in concrete terms, the objects and reasons of the Bill is to be put into writing and this is to accompany the Bill also in all cases. The technical part of the drafting of the Bill, even if done by the member, is thoroughly checked by the officers of the Secretariat of the House, to conform it to the objects and reasons of the Bill, without doing any intentional violence to any other existing law. The concerned cell of the Secretariat applies its mind to harmonise the different clauses of the Bill and also gives it proper shape and form, about which the members are generally ignorant. Thus required assistance is there so far as the technical aspect of drafting is concerned. In the case of a Government Bill, the assistance of the officers of the Ministries concerned on all details is there and the Government draftsmen are at their hand's stretch, to make the drafting rich in ideas and otherwise thorough. Usually individual members of the ruling party put their ideas to the Minister concerned and try to bring the Bill through the Government. For this reason Private Members' Bills are generally from members who do not belong to the Government side, though there is no bar whatsoever for a member of the ruling party to bring any such Bill. For obvious difficulties indicated earlier and the Government's attitude towards such Bills not many members from the opposition take much interest in this parliamentary process of legislation.

Article 118(1) of the Constitution of India empowers each House of Parliament to make rules for regulating, subject to the provisions of the Constitution, its procedure and conduct of its business. According to the provisions of this article the Rules for regulating the procedure and conduct of business of both the Houses of Parliament have been framed and they are materially identical. Rule 62 of the Rajya Sabha Rules of Procedure provides :

(1) Any member, other than a Minister, desiring to move for leave to introduce a Bill, shall give notice of his intention, and shall together with the notice, submit a copy of the Bill and an explanatory Statement of Objects and Reasons which shall not contain argument :
Provided that the Chairman may, if he thinks fit, revise the Statement of Objects and Reasons.

(2) If the Bill is a Bill which under the Constitution cannot be introduced without the previous sanction or recommendation of the President, the member shall annex to the notice such sanction or recommendation conveyed through a Minister and the notice shall not be valid until this requirement is complied with.

(3) The period of notice of a motion for leave to introduce a Bill under this rule shall be one month unless the Chairman allows the motion to be made at shorter notice.

Rule 64 further provides :

(1) A Bill involving expenditure shall be accompanied by a financial memorandum which shall invite particular attention to the clauses involving expenditure and shall also give an estimate of the recurring and non-recurring expenditure involved in case the Bill is passed into law.

(2) Clauses or provisions in Bills involving expenditure from public funds shall be printed in thick type or in italics :
Provided that where a clause in a Bill involving expenditure is not printed in thick type or in italics, the Chairman may permit the member in charge of the Bill to bring to the notice of the Council such clauses.

Rule 24 provides for allotment of time for Private Members' business, and Fridays during the Session are usually the days for Private Members' Resolutions and Private Members' Bills, alternately.

With these limitations a member conscious of his duties and responsibilities tries to contribute to the nation's will in the Parliament not only by his speeches and votes but also by bringing forward proposals for legislation in the shape of Bills.

It is the Business Advisory Committee of each House that allots time for a particular item that is expected to come up before the House and the time so allotted is again distributed between the Government and the Opposition in certain proportion. The time so allotted to the Opposition is again redistributed on group basis according to the strength of each group. Time is also set apart for independent members, *i.e.*, members who do not belong to any group. In the process, an independent member normally gets very little time in the House to make any point effectively unless the Chair is lenient and indulgent and other members cooperative. Normally the time given to an independent member is 5 to 10 minutes and that also not on all occasions. Of course, fortuitous circumstances are there, when one becomes the man of the hour and nobody grudges him time. As for example, just by an interruption on the 16th February 1966 in the course of the speech of

Shri C. Subramaniam, the then Minister of Food and Agriculture in regard to the food situation in West Bengal, I, an independent member, became very much conspicuous and got the kind indulgence on all subsequent days when food was the topic of discussion in the House. Similarly, I was the unanimous choice of the opposition to initiate the debate when the Payment of Bonus Bill, 1965 was introduced in the Rajya Sabha and I was allowed about 55 minutes to speak. These incidents clearly bring out the fact that for the purpose of making out a point through a Private Member's Bill, though difficult, time element is not always an insurmountable hurdle even for an independent private member, and in such matters he can also play an effective role.

I had the occasion to introduce thirty Bills : fourteen Bills concerning Trade Union, Industrial Dispute, Bonus and the like, seven Constitution (Amendment) Bills and nine Bills on miscellaneous matters. While introducing the seven Bills proposing amendment to the Constitution, I was conscious of the provisions of article 368 of the Constitution in this regard. Article 368(2) *inter alia* provides "an amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament and when the Bill is passed in each House, by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, the Constitution shall stand amended in accordance with the terms of the Bill." This difficulty was there and naturally my object was to offer my ideas in the matter for the Government to take up and I had no illusion at any time that without the Government's active support any such Bill could be passed. Of the aforesaid thirty Bills several lapsed, some were negatived and others were withdrawn. Some lapsed because I retired from the membership of the Rajya Sabha on the termination of six years' period; those which were negatived could very well have been withdrawn, but I insisted on voting, well anticipating the result of the same. The number of such Bills were only two; if the Minister opposing the Bill had shown an inclination to legislate in the matter, I would have withdrawn those two Bills also as I did in the cases of the other seven Bills. The purpose behind the aforesaid Bills was certainly not to embarrass, harass or humour the Government, or to serve any political interest, but to highlight the problems and the lacunae in the existing laws.

To illustrate the enormity of the problem and the obtuse nature of the Government's attitude to such Private Members' Bills only one instance will do. It was the Industrial Disputes (Amendment) Bill, 1970 to amend section 2 of the Industrial Disputes Act, 1947. The law as it stands today gives no right to the heirs or assignees of the deceased workman to proceed with an industrial dispute, in the 'Conciliation Proceedings' or 'Adjudication Proceedings'. There is no provision for substitution in Industrial Disputes Act, as in the Civil Procedure Code. Consequently the right of a workman wrongfully discharged, dismissed or retrenched, abates in such proceedings the moment he dies, on the plea that a dead workman is not a workman within the meaning of the term as defined in the

Industrial Disputes Act, however just and proper the grievance of the workman might be. My amendment to section 2 was simply to allow the heirs or assignees of the unfortunate deceased workman to pursue the cause demanding justice in appropriate cases and not to let the cause go by default because of death. Incidentally it may be mentioned that several months and years are often taken in 'conciliation' and 'adjudication' after a workman's termination of service in his fight for getting justice in the matter. The Government representative while intervening in the debate stated "I do not oppose the principles contained in the Bill", to which I said in reply "What else is there, except the principle ? Nothing else is there", and continued, "From what transpired in the course of the discussions here in this House, it is patent that the House was in full accord with me in passing this Bill". The Minister, thereafter categorically assured me and the House that the provision, as suggested by me would be incorporated in the Industrial Relations Bill, the draft of which was said to be almost ready. Still he could not accept my Bill. My Bill was introduced on the 27th November 1970 and was withdrawn after that assurance on the 13th December 1974. The Government had four years' time to apply their mind to this important lacuna in the law and bring forward a Government Bill, or to concede to this Private Member's Bill or at least to bring forward a Bill of their own as promised, in the last two years since then. But nothing was done.

Though the Government appreciated the lacuna in the existing law and supported the Bill, yet it was not agreeable to allow the Bill to be passed. If I had pressed for a division in the House, I know, I would have lost for obvious reasons. This invariable becomes the fate of Private Members' Bills unless in exceptional circumstances the Government shows the sagacity and courage to accept the same. But such occasions are rare. This difficult position, therefore, needs a reconsideration to advance the cause of the democratic process. Parliamentary institutions are temples of toleration. In a democracy none can afford to stand on ceremony or prestige. In an ideal concept of democracy, the approach to a question is not who is right but what is right.

The present attitude of the Government towards Private Members' Bills largely contributes to the declining trend in the system of legislation by members of Parliament which is further aggravated because of the availability of technical facilities in a lesser degree than the Government possesses. It must be conceded that the drafting of a Bill not only requires creative imagination and mature political understanding but also the combination of many virtues including a thorough knowledge of social sciences and existing laws. Government should, therefore, welcome such efforts on the part of private members and accept all such measures if found good and otherwise valid. None of the Bills I introduced as a private member, nor any such Bill of any other private member was ever accepted during the period of my membership of 12 years. This sets the pattern.

As against the instance given above, I cite another example where the principle underlying Government's opposition was rational and understandable. It was in regard to Prohibition of Bigamous Marriage Bill, 1970 introduced by me on August

7, 1970. I stated in support of my Bill that the conference of Muslim women, held towards the end of December 1971 in Maharashtra demanded, *inter alia*, for the enactment of a uniform Civil Code. I also pointed out that Shri Abdul Raheem, a noted Muslim jurist, in his speech on the principles of Muhammedan Jurisprudence which was part of Tagore Law Lectures series had stated that the Muhammedan Law undoubtedly contemplates monogamy as an ideal to be aimed at. President Ayyub Khan of Pakistan wrote in his Book 'Friends, not Masters', "a Muslim is allowed by Islam to have more than one wife under certain conditions and this permission has been used to practise indiscriminate polygamy causing immense misery. Innumerable women, tongue-tied women and innocent children of thousands of families have been ruined because of the degenerate manner in which the males have misused this permission to suit their convenience" I also pointed out that according to the Koran or the Hadis, a Muslim could marry a second wife only with the consent of the first wife if the first wife had lost the capacity of bearing children or if she was of ill health.

The Minister concerned in his reply made clear the policy of the Government, when he said, "I do not think the Government should attempt to force a legislation upon the Muslim community without the consent of the Muslim community as such. The Government had never considered changes in the personal law of a minority community as a matter to be decided without the consent of that community." I withdrew the Bill appreciating the Government's stand and also because I did not like to offend the sentiments of my Muslim brothers.

All my Bills which were withdrawn got a large support even from the Government. I had only this satisfaction that I could speak to make my point, and that is all. Such behaviour on the part of the Government appears to stem from the theory that law-making is the special prerogative of those who rule. However, in ultimate analysis it comes to the question of attitude of the Government to the Opposition in parliamentary democracy. If the Opposition is responsible and the Government responsive, both will function as part of the same whole or as two sides of the same coin and then this concept of special prerogative will disappear establishing an era of true and real democracy.

The colossal wastage of money and time involved in printing, distribution and debate in the House on Private Members' Bills in the Houses of Parliament or in the State Legislatures, naturally raises a question of very large dimension, as to whether such a parliamentary practice like Private Members' Bills should at all be allowed to continue when their fate is so well known. I am firmly of the view that unless the trend in parliamentary democracy in India or elsewhere conforms to the standard of best utilisation of all available resources in national interest, including Private Members' Bills and the talent and skill available therein, it will simply be futile to keep provisions relating to such Bills in the Rules of Procedure of the House.

December 30, 1976

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Role of the Rajya Sabha in Legislative Business*

Bicameralism in Legislatures has, in modern times, been regarded as an essential attribute of democratic and federal constitutions. The challenge of Sir Winston Churchill : "Show me a powerful, successful free democratic constitution of great sovereign State which has adopted the principle of single Chamber Government", and the words of Shri Gopalaswami Ayyangar : "The need has been felt (for a second chamber) practically over all the world wherever there are federations of importance" bear support to this statement.

India, having a federal and democratic Constitution, has also chosen a bicameral Parliament with Rajya Sabha as its Second Chamber. As regards the role of the second chamber Shri Gopalaswami Ayyangar observed : "The most that we expect the second chamber to do is perhaps to hold dignified debates on important issues and to delay legislation which might be the outcome of the passions of the moment."

The business transacted in the Houses of Parliament can be classified into two broad heads, namely, Legislative Business and other Business. The role of the

*Contributed by the Bill Office of the Rajya Sabha Secretariat.

Rajya Sabha in legislative business which consists of Government Bills and Private Members' Bills is briefly dealt with in the following paragraphs.

GOVERNMENT BILLS

(i) INITIATION OF BILLS

From its inception in May 1952 till the end of the year 1976, in all 350 Government Bills were introduced in the Rajya Sabha, of which 125 were principal and 225 amending Bills. The range of subjects on which Bills were introduced in the Rajya Sabha clearly establishes its role as an initiating House for legislation on various spheres of citizens' lives. An idea of legislation which was initiated in the Rajya Sabha in some of the important spheres is given below.

Social Welfare : From the very beginning it was thought that the comparative calm atmosphere of the Rajya Sabha was particularly suited for initiating legislation on matters affecting social justice and social welfare. Some of the important measures in social sphere initiated in the Rajya Sabha were the Special Marriage Act, 1954, the Hindu Marriage Act, 1955, the Abolition of Whipping Act, 1955, the Hindu Minority and Guardianship Act, 1956, the Hindu Succession Act, 1956, the Hindu Adoptions and Maintenance Act, 1956, the Slum Areas (Improvements and Clearance) Act, 1956, the Prevention of Corruption (Amendment) Act, 1957, the Married Women's Property (Extension) Act, 1959, the Children Act, 1960, the Foreign Marriage Act, 1969, the Medical Termination of Pregnancy Act, 1971, and the Marriage Laws (Amendment) Act, 1976. The Adoption of Children Bill is another such measure which was introduced in the Rajya Sabha in 1972, and as reported by the Joint Committee of both Houses in 1976 is now pending in the Rajya Sabha.

Labour Welfare : Welfare of the industrial and other workers has been another sphere in which a good number of measures, particularly as amending Bills, were introduced in the Rajya Sabha. Some such measures were the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, the Employees' Provident Funds (Amendment) Acts, 1953, 1962, 1963 and 1964, the Minimum Wages (Amendment) Act, 1954, the Industrial Disputes (Amendment) Acts, 1953, 1963, 1964, 1966, 1967, 1971 and 1976, the Workmen's Compensation (Amendment) Acts, 1959 and 1976, the Iron Ore Mines Labour Welfare Cess (Amendment) Act, 1970, the Maternity Benefit (Amendment) Acts, 1972, 1973 and 1976, the Dock Workers (Regulation of Employment) Amendment Act, 1970, the Payment of Bonus (Amendment) Acts, 1969, 1973, 1974 and 1976, the Apprentices (Amendment) Act, 1972, the Employees' State Insurance (Amendment) Act, 1975, the Payment of Wages (Amendment) Act, 1976, the Sales Promotion Employees (Conditions of Service) Act, 1976, the Bonded Labour System (Abolition) Act, 1976, and the Equal Remuneration Act, 1976. The Plantations Labour (Amendment) Bill, 1973, as reported by the Joint Committee of both Houses in 1975 is now pending in the Rajya Sabha.

Press and Publication : Next in the series of legislative measures introduced in the Rajya Sabha may be mentioned the Working Journalists (Industrial Disputes) Act, 1955, the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955 hailed as "Charter of Rights" for the working journalists, the Newspaper (Price and Page) Act, 1956, the Copyright Act, 1957, the Press Council Act, 1965 and subsequent amending Acts of 1969, 1970, 1973, 1974 and 1975, the Press Council (Repeal) Act, 1976, the Press and Registration of Books (Amendment) Acts, 1960 and 1965 and the Prevention of Publication of Objectionable Matter Act, 1976.

Public Health : Public health is another sphere in which important legislative measures were introduced in the Rajya Sabha. As illustrations of such legislative measures mention may be made of Acts like the Indian Medical Council Act, 1956, the Post Graduate Institute of Medical Education (Chandigarh) Act, 1966, the Indian Medicine Central Council Act, 1970, the Homoeopathy Central Council Act, 1973, and the Water (Prevention and Control of Pollution) Act, 1974 which were introduced as principal Bills. Besides, there were a number of amending Bills which were introduced in the Rajya Sabha. Mention in this category may be made of the Dentists (Amendment) Acts, 1955 and 1972, the Drugs (Amendment) Acts, 1955, 1960 and 1962, the Indian Nursing Council (Amendment) Act, 1957, the Drugs and Cosmetics (Amendment) Acts, 1964 and 1972, the Drugs and Magic Remedies (Objectionable Advertisement) Amendment Act, 1963, the Prevention of Food Adulteration (Amendment) Acts, 1964, 1971 and 1976, and the Pharmacy (Amendment) Act, 1976.

Agriculture and Animals : The Livestock Importation (Amendment) Act, 1953, the Prevention of Cruelty to Animals Act, 1960, the Seeds Act, 1966, the Insecticides Act, 1968, the Insecticides (Amendment) Acts, 1972 and 1976, can be mentioned as some of the legislative measures in this sphere which were introduced in the Rajya Sabha.

Industry : Legislative measures introduced in the Rajya Sabha in this sphere were mainly to amend the Industries (Development and Regulation) Act. The Industries (Development and Regulation) Amendment Acts, 1965, 1971, 1973 and 1974, the Monopolies and Restrictive Trade Practices Act, 1969 and the Industrial Employment (Standing Orders) Amendment Act, 1963 can be mentioned as illustrations of legislation in this sphere.

Education and Culture : Education and culture has been another important sphere in which a few principal Bills and many amending Bills were introduced in the Rajya Sabha. Some of the legislative measures which were introduced in the Rajya Sabha and finally enacted were the Ancient Monuments and Archaeological Sites and Remains Act, 1958, the Delhi Primary Education Act, 1960, the Salar Jung Museum Act, 1961, the Hindi Sahitya Sammelan (Amendment) Act, 1963, the Dakshina Bharat Hindi Prachar Sabha Act, 1964, the Banaras Hindu University

(Amendment) Acts, 1966 and 1969, the Jawaharlal Nehru University Act, 1966, the University Grants Commission (Amendment) Act, 1970, the Aligarh Muslim University (Amendment) Act, 1972, the Delhi University (Amendment) Acts, 1970 and 1972, the Victoria Memorial (Amendment) Act, 1972, and the Rampur Raza Library Act, 1975.

Law and Justice : The Code of Criminal Procedure, 1974, the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Amendment Act, 1972 and the Authorised Translations (Central Laws) Act, 1973, are some of the important measures in the sphere of Law and Justice which were introduced in the Rajya Sabha. The Indian Penal Code (Amendment) Bill, which was introduced in the Rajya Sabha in 1974 and reported by the Joint Committee of Houses in 1976, is now pending in the Rajya Sabha.

Besides legislation in the above-mentioned spheres, almost all the repealing and amending measures were initiated in the Rajya Sabha. Other important measures like the Foreign Contribution (Regulation) Act, 1976, the Tokyo Convention Act, 1975, the Standards of Weights and Measures Act, 1976 and the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, were also initiated in the Rajya Sabha. Measures authorising the delegation of powers of the State Legislatures to the President to make laws in relation thereto in the event of their being under President's Rule were also invariably introduced in the Rajya Sabha. Similarly, the two measures extending the duration of the Kerala Legislative Assembly were also introduced in the Rajya Sabha.

(*ii*) REVISORY ROLE

Besides its role as an initiating Chamber, the Rajya Sabha has also played the role of a revisory Chamber. It has so far found occasions to make amendments in as many as 41 Bills including 3 Money Bills and 4 Private Members' Bills. One of these Bills, the Dowry Prohibition Bill, 1959 on which the two Houses had finally disagreed was passed at the joint sitting of the Houses. Notable in respect of the extent of revision by the Rajya Sabha is the Urban Land (Ceiling and Regulation) Bill, 1976 of which 8 clauses and the Schedule were revised by making amendments there to which were later on accepted by the Lok Sabha.

In case of the following three Money Bills, amendments were recommended also by the Rajya Sabha which were accepted by the Lok Sabha :

1. The Travancore-Cochin Appropriation (Vote on Account) Bill, 1956.
2. The Union Duties of Excise (Distribution) Bill, 1957.
3. The Income-Tax Bill, 1961.

PRIVATE MEMBERS' BILLS

(*i*) BILLS ORIGINATING IN THE RAJYA SABHA

From May 1952 to the end of the year 1976, 302 Private Members' Bills were introduced in the Rajya Sabha. Of them five Bills were finally enacted and included in the Statute Book. Of these, the following 2 measures were introduced as principal Bills :

1. The Orphanages and Other Charitable Homes (Supervision and Control) Bill, 1959, by Shri Kailash Bihari Lall.
2. The Indian Marine Insurance Bill, 1959, by Shri M. P. Bhargava.

The following were the measures which were introduced as amending Bills :

1. The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Amendment Bill, 1954, by Dr. Raghubir Sinh.
2. The Hindu Marriage (Amendment) Bill, 1956, by Dr. (Shrimati) Seeta Parmanand.
3. The Indian Penal Code (Amendment) Bill, 1963, by Diwan Chaman Lall.

(*ii*) BILLS TRANSMITTED BY THE LOK SABHA

The Rajya Sabha revised the following 4 Bills out of the 9 Private Members' Bills which were transmitted by the Lok Sabha and finally became Acts of Parliament by making amendments thereto :

1. The Indian Registration (Amendment) Bill, 1955, by Shri Satish Chandra Samanta.
2. The Code of Criminal Procedure (Amendment) Bill, 1960, by Shrimati Subhadra Joshi.
3. The Salaries and Allowances of Members of Parliament (Amendment) Bill, 1964 by Shri Raghunath Singh.
4. The Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Bill, 1970, by Shri Anand Narain Mulla.

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A Look at the Question Hour in the Rajya Sabha*

The Question Hour or the Question Time, as it is known in some countries, is an important part of the procedures in legislatures of countries which have adopted parliamentary system of Government. This Hour has definitely assumed a great significance in all such legislatures in view of Government's heavy involvement in matters affecting day-to-day life of citizens for which Ministers are directly answerable. The right of asking questions to Government is a refined parliamentary device with a view to eliciting information on various subjects and for exercising control over executive actions. The members ask questions to elicit information or for redressal of grievances which have come to their notice by highlighting them or on the basis of any representations made by their constituents or by others and also on matters which appear in the Press; and are anxious to press home their viewpoint on particular topics. Questions also provide Ministers an opportunity to give information to the House and through the House to the country on all important matters which they feel public should be taken into confidence. The Question Hour thus covers an activity of the House which is very wide engulfing almost any subject under the sun.

*Contributed by the Questions Sections of the Rajya Sabha Secretariat.

Like other legislatures, the Rajya Sabha has also provided for procedure for questions in its Rules of Procedure and Conduct of Business. However, when the first sitting of the Rajya Sabha was held on May 13, 1952, till May 26, 1952 there was no Question Hour in the House. On May 16, 1952, the second sitting of the House, the Chairman, Rajya Sabha made the following announcement :

> ". . . After a good deal of discussion, I decided that we should adopt the procedure of the House of Lords. Questions on two days a week, three Starred Questions a day—that is the procedure of the House of Lords."[1]

Again on May 20, 1952, the Chairman announced the following procedure for giving notices of questions in the House :

> "There was a question raised about question-hour here. Next Tuesday and Wednesday, you will be allowed to have questions raised here. You must give notice of them today or tomorrow. If you are able to put your questions today or tomorrow they may be answered on Tuesday or Wednesday next week. The first half-hour will be devoted to the questions."[2]

In pursuance of the above announcement, the following bulletin for allotment of days for answering questions in the House was issued on May 20, 1952 :

> "As announced by the Chairman in the Council today, the following days have been allotted for answering questions in the Council of States :
> Tuesday, the 27th May 1952
> Wednesday, the 28th May 1952
> The first half-an-hour on both these days will be available for the asking and answering of questions."

The first starred question among the three put down for May 27, 1952, was regarding raw silk industry in India, and was asked by Shri S. V. Krishnamoorthy Rao (who was subsequently elected as Deputy Chairman, Rajya Sabha) and answered by Shri D. P Karmarkar, Deputy Minister of Commerce and Industry. Twelve unstarred questions were also put down in the concerned list and answers thereto were laid on the Table of the House on the same day.

On July 14, 1952 during the second part of the first session of the Rajya Sabha, the Chairman made the following announcement in the House revising the procedure for questions :

> "I have to inform hon. Members that on the recommendation of the Rules

1. Council of States Debates, 16.5.52, col. 45.
2. *Ibid.*, 20.5.52, col. 226.

Committee I have made certain amendments in the provisions relating to questions. These amendments have already been circulated to the members. Under the amended rules, the first hour of the sitting on every Monday, Tuesday, Wednesday and Thursday shall be available for the asking and answering of questions. If the Council does not sit on any of those days, the following Friday shall be also so available. Each Member will be entitled to put three starred questions. A statement showing the allotment of days for answering questions by Ministers will be prepared and circulated to members.

Provision has also been made for half-an-hour discussion on matters of public interest arising out of answers to questions.

The new procedure will be followed in the House as from Monday, the 21st July 1952."[3]

This procedure continued in operation till the Rules of Procedure and Conduct of Business in the Rajya Sabha were revised in July 1964. Under the revised procedure, Fridays were also allotted for questions thus making all the five sittings in a week available for the asking and answering of questions in the Rajya Sabha.

Till 1962 there was no maximum limit of questions which could be included in a day's list of starred questions, however, not more than three starred questions by the same member could be placed in the list of starred questions on any one day. For example, the maximum number of questions, *i.e.*, 59 questions were included in the list of starred questions for September 11, 1957. Unlike the limit of three starred questions per day, there was no limit to the number of unstarred questions by the same member in the list of unstarred questions on any day. With the result, that some members started giving a very large number of notices of unstarred questions for one day. For example, out of a total of 176 unstarred questions put down for answer on September 11, 1957 as many as 127 stood in the name of Shri Nawab Singh Chauhan, 30 in the name of Shri M. Valiullah and the remaining 19 questions in the names of other members As a result of Proclamation of Emergency in the country in October 1962 and with a view to simplifying business and procedure in the Rajya Sabha, a limit of such questions was introduced in the month of November 1962. As per the announcement made by the Chairman in the House on November 13, 1962, not more than five questions, both starred and unstarred combined, by any one member, are placed on the lists of questions for any one day out of which not more than three questions by a member and not more than 30 questions in all are placed on the list of starred questions on any one day.

With a view to determining the *inter se* priority of members who give notices of questions for oral answers for a particular day the procedure regarding ballot was introduced in 1970 and revised in 1974. Before the introduction of the ballot

3. *Ibid.*, 14.7.52, col. 993.

procedure, the questions were placed in the list of starred questions in the order in which notices were received in point of time.

It is provided in the Rules of Procedure (rule 38) of Rajya Sabha that unless the Chairman otherwise directs, the first hour of every sitting shall be available for the asking and answering of questions. There is no provision in the Rules regarding suspension of Question Hour. This power is vested with the Chairman and has been exercised on a few occasions. On June 25, 1975 an Emergency was proclaimed in the country. The Rajya Sabha was summoned to meet in an emergent session on July 21, 1975 to transact certain urgent and important Government business. To facilitate completion of this business, the Chairman suspended the Question Hour for the duration of that session. When the House met on the first day of that session, some members raised objections to the suspension of the rules of procedure. Thereupon the Chair observed :

"... I have decided not to have the question hour. It has been issued to you in bulletin and all of you have got that information. That point is very clear. It is within the authority of the Chairman. He has used it independently of the Government or anybody else. Nobody can question it. It is very clear."[4]

The Question Hour is always very interesting, lively, stimulating and witty. All members evince considerable interest in asking questions and listening to the answers. Even the visitors' galleries are full during this Hour. The members, in addition to seeking information, get an opportunity to criticise Government's policies and programmes and also to check and control the administration through this media. The Question Hour is the very breath of the parliamentary system of Government. During the Question Hour, members find an opportunity to ventilate public grievances, expose Government's lapses and extract promises from Ministers. The members on many occasions give vent to their sentiments when they do not feel satisfied with the answers given. There has been an occasion in the Rajya Sabha when some members staged a walk-out[5] for not being satisfied with the answer given by the Minister of Home Affairs.

The Question Hour serves another useful purpose. The Ministers are made aware of the lapses and failings of their departments which otherwise would have gone unnoticed. Prof. N. G. Ranga, speaking in the House on April 15, 1953 on the Appropriation (No. 3) Bill, 1953, emphasised the importance of questions in the following words :

"...Every Short Notice Question, every Starred Question, every Unstarred Question, is an additional weapon being placed in the hands of the Minister without demanding any sort of a ministerial pay for any one of us, with which

4. Rajya Sabha Debates, 21.7.75, col. 24.
5. *Ibid.*, 17.9.58, cols. 3555-60.

it is possible for them to probe into their own administration. Otherwise complex as it is, the present administration will defy scrutiny, management and control even by the ablest of our Ministers."[6]

The Ministers make it a point to be present in the House to answer the questions addressed to them. In case senior Ministers are not present or leave the House during the Question Hour, the members draw the attention of the Chair to that effect. One such reference made by Shri Bhupesh Gupta, a senior member of the House is as follows :

"I did not want to disturb the Question Hour but you will have noted that although there were a number of questions set for oral answer by the Home Minister, he was there present for a while and then he left. Now, as you know, Madam, the precedent in such matters is very clear and questions are distributed between the two Houses in such a manner that the Minister incharge is always in a position to be present in the House unless some very important duty takes him out. You also know that our late Prime Minister Pandit Nehru, took special care to be present in the House and very important State matters also he sometimes ignored in order to be present in the House during the Question Hour when questions were addressed to him or stood in his name. I do not know why the Home Minister came here and suddenly went away "[7]

The Chair is also particular that the Ministers should be present in the House when there are questions addressed to them as will be observed from the following :

"MR. CHAIRMAN : Next question, I am sorry Mr. Krishnamachari; you were not here when your question was put.

SHRI T. T. KRISHNAMACHARI : I am very sorry, Sir, I have been misled by my clock. I would like to tender my apologies to hon. Members of this House and to you, Sir."[8]

The Rajya Sabha has proved itself to be an effective and assertive House as its members have during all these years often brought before it through the media of questions important matters on which public mind was agitated. To illustrate, subjects like cases of corruption against the Chief Ministers/Ministers in States, loans advanced to the Jayanti Shipping Company, some LIC deals, activities of some business houses like Birla Group of Industries, Thackersey Group of Industries were brought to the front in Rajya Sabha during Question Hour. The raising of questions had resulted in the appointment of commissions/courts of inquiry in some

6. C. S. Debates, 15.4.53, col. 2967.
7. R. S. Debates, 26.3.65, cols. 4686-87.
8. C. S. Debates, 26.2.53, col. 1241.

cases and compelled Government to review their policies and programmes in some of them In this context there are two cases which are worth mentioning as they were first raised in the Rajya Sabha through questions. The question relating to the allegations against late Sardar Pratap Singh Kairon, the then Chief Minister of Punjab, was raised in the Rajya Sabha on August 29, 1963 through the following starred question :

"Will the PRIME MINISTER be pleased to state :
(*a*) whether Government have received any memorandum from the Leaders of the Opposition Parties in the Punjab containing allegations against the Chief Minister of that State; and
(*b*) if so, what action has been taken on the memorandum ?"[9]

As a result of this and subsequent questions a Commission of Inquiry, known as 'Das Commission', was appointed to look into the allegations.

Recently, a question on the issue of import licences to certain firms in Yanam and Mahe in the Union territory of Pondicherry, what is known as the 'licence scandal' case, was raised first in the Rajya Sabha on August 27, 1974.[10] The question was based on a press report. The question created commotion and uproar in parliamentary circles as the Minister in his answer had given some names of members of Parliament who had sponsored the licence applications.

It may be interesting to mention here that in view of the great interest shown by members regarding grant of Statehood to Manipur and Tripura in the House through the media of questions on several occasions, Government announced its very important decision in the Rajya Sabha in the matter. On September 3, 1970 the Minister of State in the Ministry of Home Affairs made the following announcement :

"Mr. Deputy Chairman, Government are aware of the interest taken by members of this House in the question of the constitutional status of Manipur and also Tripura. We appreciate the aspirations of the people of Manipur and Tripura to have the status of their territories raised to Statehood, and fully realise the strength of feeling behind these aspirations. Government have also taken note of the special circumstances of these territories, Manipur and Tripura in which the demands for Statehood have been made. We accept the demands in principle, but details have to be worked out keeping in view the importance of a coordinated approach to the problems of development and security of the north-eastern region and we hope to be able to announce our decision within a short period. Government earnestly hope that in the mean-

9. *Ibid.*, 29.8.63, cols. 1944-56.
10. *Ibid.*, 27.8.74, cols. 21-34.

time an atmosphere of peace and harmony will be maintained by all sections of the people in the two territories."[11]

The Ministers have to be precise and accurate while answering questions. The information given through the answers is always considered to be authentic. So the Ministers have to be very careful in giving answers, they cannot afford to mislead the House by giving wrong or incorrect replies which might lead to raising of questions of privilege. There have been occasions in the House where members had raised questions of privilege on matters arising out of wrong or incorrect replies to questions. Where the Ministers feel that they cannot supply authentic information at the moment the question is put, they can and generally always ask for time and assure the House to supply it as soon as it is available. If it is later on found that the information supplied was incorrect, the Ministers always make a statement in the House correcting the previous reply. It is also possible for a Minister to refuse to answer a question in the public interest but such plea is not generally taken by the Minister and is not much appreciated by the House. Thus a heavy responsibility devolves on a Minister while answering a question as he presents Government's point of view in the House. In this connection it would be interesting to refer to an incident in the House Shri Mahavir Tyagi, before he became a Minister, issued a statement asking the Government of India to demand land from Pakistan to resettle the refugees who had come to India from the area of erstwhile East Pakistan. Later on, when Shri Tyagi assumed the office of the Minister-in-charge of Rehabilitation and a question on the subject was asked in the House, Shri Tyagi's answer to the question, as Minister, was as follows :

"SHRI MAHAVIR TYAGI : Mr. Mahavir Tyagi, member of the A.I.C.C., while participating in that meeting had said that if this trend went on like this, there may come a time when the Government of India would be justified in demanding land. There was no action or decision taken by Government nor has that proposal been considered by the Government at all."[12]

It has been observed that the Ministers are very careful and cautious in replying to questions. A stray remark made casually by a Minister may spark off uproar in the House and put him in an embarrassing position. On June 15, 1967, the Minister of Commerce while replying to a supplementary arising out of a question on the subject of "Cotton Prices", stated that he quite appreciated that the Birla question was very emotional in that House.[13] This remark raised tempers and near pandemonium prevailed in the House for some time.

As has been stated earlier, in case the Ministers inadvertently or through an

11. *Ibid.*, 3.9.70, cols. 29-30.
12. *Ibid.*, 5.6.64, col. 904.
13. *Ibid.*, 15.6.67, col. 3994.

oversight give incorrect reply in the House, they correct the same at the earliest opportunity. They also apologise to the House for giving incorrect information. On September 20, 1963, Prime Minister Jawaharlal Nehru, who always held the House in high esteem, did not hesitate in expressing his apologies to the House in the following manner for the information given by him earlier :

'कल मुझ को ग़लत ख्याल था इसकी मैं माफ़ी मांगता हूं । मुझे याद नहीं था कि अखबारों में छपा था या पब्लिश हुआ था ।"

[Yesterday I had a wrong impression for which I apologise. I could not remember whether it (report) was published in the press or it was printed.][14]

SHORT NOTICE QUESTIONS

The first short notice question[15] was asked on July 24, 1952 by Shri S. P. Ray and was answered by Shri Lal Bahadur, the Minister of Railways and Transport. The subject matter of the question was regarding damage to the Assam link railway and the National Highway as a result of floods in West Bengal.

A short notice question relates to a matter of public importance which may be asked with notice shorter than ten clear days required for other questions under the Rules.

In 1964, the Rajya Sabha evolved a procedure that if the Minister is not in a position to answer the question at short notice and the Chairman is of opinion that the question is of sufficient public importance to be orally answered in the House, he may direct that the question be placed as the first question on the list of questions for the day on which it would be due for answer with a notice of ten clear days; however not more than one such question is accorded first priority on the list of questions for any one day.

Generally members table short notice questions on subjects of recent happenings. The Minister to whom the question is addressed may accept or decline to answer the question at short notice. From a perusal of the Rajya Sabha proceedings, it is seen that Ministers have by and large agreed to answer at short notice questions relating to matters of urgent public importance. The following incident clearly shows how members are sensitive to what is happening in the country and take the earliest opportunity to raise important matters in the House through the agency of short notice questions and it also shows how Ministers do not hesitate to accept their responsibility and to take the House into confidence.

In 1958, an enquiry was held into the LIC deals, by the Chagla Enquiry Committee. The name of Shri T. T. Krishnamachari, Finance Minister, was also mentioned in the Enquiry Committee's Report. As some senior officers were involved in the deals the matter was referred to the Union Public Service Commission

14. *Ibid.*, 20.9.63, col. 4993.
15. C. S. Debates, 24.7.52, cols. 1854-56.

for enquiry. While the enquiry was going on, Shri Govind Ballabh Pant, Home Minister, on the occasion of the unveiling of the portrait of Shri T. T. Krishnamachari at Madras praised his services to the nation. Some members of the House felt that such a statement from the Home Minister at that moment when the Union Public Service Commission was seized of the matter might prejudice the enquiry and gave notice of the following short notice question which was accepted by the Home Minister and answered in the House on December 24, 1958 :

"Will the Minister of Home Affairs be pleased to state :

(*a*) whether his attention has been drawn to the report which has appeared in the Press that on the occasion of the unveiling of Shri T. T. Krishnamachari's portrait in Madras on December 21, 1958 the Home Minister, Shri G. B. Pant, said, "Mr. Krishnamachari had renounced the office of the Union Finance Minister after the Chagla enquiry into 'the Mundhra affair' in order to promote the best of conventions. . .although he was not to blame in any way, either directly or indirectly";

(*b*) whether the above report is a correct reproduction of the words used by the Home Minister;

(*c*) whether the view expressed by him is based on the findings of the Vivian Bose Commission; and

(*d*) whether this view is shared by the Government of India as a whole ?"

The answer given by the Home Minister is reproduced below :

"(*a*) Yes.

(*b*) It does not seem to be an exact reproduction. The reports that have appeared in the Madras Press such as "The Hindu" and "The Indian Express" of what I said on the occasion seem to be correct.

(*c*) No. The Vivian Bose Board of Enquiry was appointed under All India Service (Discipline and Appeal) Rules, 1955, in order to make an enquiry about certain specific charges concerning certain officers and their findings relate to those charges.

(*d*) I expressed my personal view about Shri Krishnamachari."

In order to remove any doubt, lest such a statement by the Home Minister should prejudice the Commission in its enquiry, Pandit H. N .Kunzru asked the following supplementary :

"Sir, whatever the discussions in this House may have been, it is still possible for the persons whose conduct is being enquired into, to say that they were not wholly to blame or that they were not to blame at all because they virtually received orders from their superior officers. Will not therefore—in spite of what might have been said in this House—consideration of their case by the Union Public Service Commission at least be prejudiced by what the Home Minister said in Madras ?"

The Home Minister in order to remove any misgivings that might have crept in public mind, further clarified the position in the following terms :

"Certainly the Union Public Service Commission will take an impartial view of the matter. The Union Public Service Commission is an independent body, and it is not in any way controlled by the Government or any member thereof, and I am certain that the Union Public Service Commission will ignore all that I have said and take a just view of the matter regardless of any individual opinions that may be expressed by Ministers for or against any particular proposition."[16]

The Government may while answering questions, not only give information asked for but also take the opportunity to declare their policies and thinking on the floor of the House on a matter of national importance. On December 18, 1970 a short notice question was asked to draw Government's attention and to ascertain their reaction to a speech in Delhi propagating communalism. The reply given by the Minister as reproduced below was in the nature of a policy statement in such matters :

"Government unequivocally condemn all propaganda projecting the doctrine of Hindu Rashtra as it is totally opposed to the concept of Indian nationhood under our Constitution. Our Constitution guarantees to every citizen freedom to follow his own religion. Fundamental rights and corresponding obligations are secular matters. Government thoroughly deplore any attempt to cast doubts on the loyalty and patriotism of any section of the population merely on grounds of their religion."[17]

As there is no time limit within which short notice questions and supplementaries thereto are to be answered on the floor of the House such questions provide a valuable opportunity to the members to discuss matters of recent public importance, at length. There have been occasions where supplementary questions and answer to one short notice question went on for more than an hour.[18]

HALF-AN-HOUR DISCUSSION

At times, members are not satisfied with answers to certain questions and wish

16. R. S. Debates, 24.12.58, cols. 3599-3606.
17. *Ibid.*, 18.12.70, cols. 29-53.
18. *Ibid.*, 18.12.70, cols. 29-53 (SNQ No. 2).

to pursue the matter through a short discussion. To meet such a contingency a provision for half-an-hour discussion has been made since July 21, 1952 in the Rules of Procedure and Conduct of Business in the Rajya Sabha. The Rules provide that half-an-hour discussion can be raised on a matter of sufficient public importance which has been the subject matter of a recent starred, unstarred or a short notice question in the House and the answer to which needs elucidation on a matter of fact.

The first half-an hour discussion was raised in the House on July 25, 1952 by Shri C. G. K. Reddy and replied to by Shri S. N. Buragohain, Deputy Minister for Works, Housing and Supply; the subject raised related to auxiliary machinery in Visakhapatnam Shipyard.

On August 26, 1966, half-an-hour discussion was raised[19] on recovery of special advance given to TISCO and IISCO. The members repeatedly focussed Government's attention to various aspects of the working of these two industrial units in the private sector. The discussion which brought out clearly the way in which members were thinking on the subject, may have possibly prompted Government in taking a decision on the nationalisation of IISCO.

A question on ceiling on urban property was answered in the House on August 5, 1970. As it was the last question to come up for oral answer in the House on that day, the members were not satisfied with the answers and demanded half-an-hour discussion. On the notice being admitted by the Chair, the discussion took place in the House on August 10, 1970.

During the course of discussion, members raised various points pertaining to ceiling on urban property. While replying to the discussion, the Minister concerned stated as under :

> ". . . We want to bring about ceiling on rural lands. We must also say that just as there is ceiling on rural agricultural land there should be ceiling on urban lands."[20]

The discussion, it would appear, paved the way for Parliament for enacting a legislation on the subject. Thus we find the Urban Land (Ceiling and Regulation) Act, 1976 on the Statute Book.

The questions, as a device through which an effective probe may be made into administrative lapses, shortcomings and inactivity, have assumed such importance that almost all the modern legislatures wedded to parliamentary system have in their rules of procedure recognised a member's right to ask questions. An active member who might not get an opportunity to put his view-point before Government through a resolution, motion or a Bill can easily do so by availing of his right of asking questions.

19. *Ibid.*, 26 8.66, cols. 4340-52.
20. *Ibid.*, 10.8.70, cols. 245-256.

The members of Rajya Sabha have always been alive to this right and it will be interesting to note that in the quarter century during which the Rajya Sabha has been in existence, the statistics of starred, unstarred and short notice questions asked and half-an-hour discussions raised run into substantial figures, as will be evident from the following statement :

		Notices received	*Admitted*
(*i*)	Starred Questions	245205	112937
(*ii*)	Unstarred Questions	23225	12680
(*iii*)	Short Notice Questions	3057	351
(*iv*)	Half-an-Hour Discussions	776	123

Needless to say, the 'Question Hour' has played a very significant role in the working of the Rajya Sabha and has definitely placed the Upper House of the Indian Parliament amongst the effective Upper Houses of Parliaments in other countries

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Committee on Petitions of the Rajya Sabha

BRAHMANANDA PANDA*

There are often some little known facts about well-known institutions. And Parliament is no exception to that. To many, Parliament is just a place where laws are enacted and budgets are passed. What is not known is that the functions of Parliament are not confined only to the proceedings in the two Houses. Parliament acts in an equal measure—sometimes to a greater extent—through its several Committees. The Committee system has proved its worth over the years and today it is an effective media by which Parliament exerts its influence on different walks of public life.

The Committees provide a vital link between the Government on the one side and the Parliament and the people on the other The Committee system has come to stay and if at all any thinking is required in this connection, it is for strengthening the system and enlarging its scope in the years to come.

The Committee on Petitions, one of the Standing Committees of Parliament, is perhaps one of the oldest Committees. If we trace its origin, we find that such a Committee was first constituted in India in 1924 and it was then known as the Committee on Public Petitions. The Committee got its present nomenclature,

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namely, the Committee on Petitions in the year 1933. In the Constitution of India also we find an indirect reference to the concept of petitions. Article 350 of the Constitution recognises the right of a citizen to submit a representation for the redress of any grievance to any officer or authority of the Union or a State.

The Committee on Petitions of the Rajya Sabha was appointed in the year 1952 with Shri Jaspat Roy Kapoor as the Chairman and 4 others as its members. The membership of the Committee continued to be 5 till the year 1964 when it was increased to 10 and since then the Committee continues to be composed of 10 members.

Till the year 1964, petitions could be presented to the Rajya Sabha only with regard to Bills which had been published in the Gazette of India or introduced in the House or in respect of which notice to move for leave to introduce the Bill had been received. The scope of the Committee was thus limited to consideration of such petitions only. Since 1964, however, when the Rules of Procedure of the Rajya Sabha were amended, the scope of the Committee has been widened as under the revised Rules, petitions could also be presented on any matter of general public interest provided that it is not one—

(*a*) which falls within the cognizance of a court of law having jurisdiction in any part of India or a court of enquiry or a statutory tribunal or authority or quasi-judicial body or commission;
(*b*) which raises matters which are not primarily the concern of the Government of India;
(*c*) which can be raised on a substantive motion or resolution; or
(*d*) for which remedy is available under the law, including rules, regulations or bye-laws made by the Central Government or by an authority to whom power to make such rules, regulations or bye-laws is delegated.

The Rajya Sabha receives from time to time petitions from a cross-section of society and most of them are referred to the Committee. For example, there have been petitions from civil servants, pensioners, workers, physically handicapped persons and so on. During the last twenty-five years, the Committee has considered and reported to the House on 50 petitions.

The Committee on Petitions, under the Rules of Procedure, is appointed by the Chairman of the Rajya Sabha. It consists of 10 members and the Chairman of the Committee is appointed by the Chairman of the Rajya Sabha from amongst the members of the Committee. If the Chairman of the Committee is absent from any meeting, the Committee chooses another member from amongst the members present to act as the Chairman of the Committee for that meeting. Normally, the Committee is re-constituted every year. The Committee continues in office till a new Committee is nominated.

All petitions presented to the House stand automatically referred to the Committee. The functions of the Committee are—

(*a*) to examine every petition referred to it and if the petition complies with the rules, to direct that it be circulated *in extenso* or in summary form, as the case may be; and

(*b*) to report to the House on specific complaints made in the petition referred to it after taking such evidence as it deems fit and to suggest remedial measures either in a concrete form applicable to the case under consideration or to prevent recurrence of such cases.

The first step the Committee takes on a petition which has been referred to it, is to obtain the comments of the concerned Ministry/Department of the Government on the various points raised therein. The second stage of consideration by the Committee is to record oral evidence of the petitioner and others concerned with the petition. The petitioner, the representatives of the Government and other persons including representatives of an institution or body, whose evidence may be relevant to the petition are invited to appear before the Committee and give evidence in regard to the petition. The Committee's final recommendations are arrived at by mutual discussions and are, by convention, unanimous. The Committee's approach is always unbiased, non-partisan and constructive.

The Committee has recently framed its internal rules whereunder it pursues with the Government the recommendations made in its Reports presented to the House from time to time in order to ensure their effective implementation. The Ministries/Departments of the Government are asked to inform the Committee about the action taken by them or proposed to be taken by them on the Reports presented to the House earlier. Where the Ministries/Departments find difficulty in implementing any recommendation, they are required to state the nature of the difficulties adducing convincing reasons for the satisfaction of the Committee. The Committee is empowered, wherever necessary, to present further Reports on the petitions considered earlier by it.

The Committee on Petitions is one of the oldest parliamentary institutions and has proved itself to be a valuable instrument for redressal of public grievances. The Committee on Petitions of the Rajya Sabha has done very useful work during the 25 years of its existence and will continue to render equally useful service in the years to come. There is, however, need for greater public awareness of the existence and functioning of this Committee so that it may serve better the cause for which it has been conceived.

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The Scrutiny Committee of the Rajya Sabha

MULKA GOVINDA REDDY*

Our Constitution provides for the establishment of a Welfare State based on justice and equality. The guidelines for the purpose have been given in the Directive Principles of State Policy contained in Part IV of the Constitution. In a Welfare State there is hardly any activity of a common man's life which is not regulated by the State in one form or the other. Therefore, the area and extent of Governmental activity widen considerably necessitating enactment of a large number of laws.

Over the last quarter of a century, Parliament has passed an increasing volume of legislation, extending the activities of Government into a great number of fields and often involving provisions of considerable complexity. At the same time, it has become more and more important to "lighten the load borne by the legislative machine". It is not possible for any legislature to pass comprehensive legislative measures, anticipating and meeting all possible contingencies and situations because of pressure on parliamentary time; technical and sometimes complicated nature of the subject-matter; and the need to have flexibility and adaptability and to act speedily. Hence the details which are essentially subsidiary or procedural in nature

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are conveniently left to be supplied and supplemented by rules, regulations and orders within the prescribed framework of and limits imposed by the statute itself and subject to parliamentary control.

Parliament does not attempt to do more than lay down the broad principles of any legislation on hand. It merely formulates legislative policy and leaves the application of the law to be worked out in greater detail within that policy or those principles. The instruments that embody these details are known by various names such as rules, regulations, bye-laws, schemes and orders. They form what is called subordinate legislation, *i.e.* legislation made by a body named in a statute which is subordinate and subject to the control of the supreme legislative body, Parliament. Parliament exercises its control on subordinate legislation in three ways. First, it requires, by providing in the statute, that the rules etc. made thereunder should be laid on the Table so that Parliament is kept informed about them. Secondly. it gives, again through the statute, a right to the Parliament to make modifications or amendments in these rules by adopting a motion or resolution moved within a stipulated time. Thirdly, each House of Parliament has set up a Committee known as Committee on Subordinate Legislation to scrutinise the rules framed under the statute.

One of the least publicised, nevertheless, one of the most important committees of Parliament is the Committee on Subordinate Legislation. In several democratic countries where there is a parliamentary form of government such Committees have been found useful to undertake surveillance of use of legislative powers by a subordinate authority on behalf of Parliament. In India too almost all the State Legislatures have their own Committees on Subordinate Legislation. The Committee on Subordinate Legislation of the Lok Sabha has been in existence since December 1953. Until 1964. the Rajya Sabha did not have a Committee on Subordinate Legislation of its own. The members of the Rajya Sabha were also not represented on the Lok Sabha Committee unlike on the Public Accounts Committee. In 1964, the Rules of Procedure and Conduct of Business of the Rajya Sabha were extensively revised and amended and consequently a Committee on Subordinate Legislation was established in that year with power to scrutinise rules etc. framed only under the Acts of Parliament. The Rules of Procedure of the Rajya Sabha were amended in 1972 to widen the sphere of the Committee's functioning so that the Committee could scrutinise rules and regulations framed under the Constitution also.

The terms of reference or scope of the Committee are set out in rules 204 and 209 of the Rules of Procedure and Conduct of Business in the Rajya Sabha. The main work of the Committee is to consider, scrutinise and report to the House whether the powers delegated by the Constitution or a statute of Parliament have been properly exercised within the framework of the Constitution or the concerned statute. While this is the broad guideline for the Committee, the Committee has particularly to see the following aspects of a rule or regulation :

(*i*) whether it is in accord with the provisions of the Constitution or the Act pursuant to which it is made;
(*ii*) whether it contains matter which, in the opinion of the Committee, should more properly be dealt with in an Act of Parliament;
(*iii*) whether it contains imposition of taxation;
(*iv*) whether it directly or indirectly bars the jurisdiction of the court;
(*v*) whether it gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
(*vi*) whether it involves expenditure from the Consolidated Fund of India or the public revenues;
(*vii*) whether it appears to make some unusual or unexpected use of the power conferred by the Constitution or the Act pursuant to which it is made;
(*viii*) whether there appears to have been unjustifiable delay in its publication or laying before Parliament;
(*ix*) whether for any reason its form or purport calls for elucidation.

Almost all statutes enacted after the coming into force of the Constitution provide for laying of rules made thereunder on the Table in both the Houses of Parliament. Some of the pre-Constitution laws, however, do not provide for such laying. The Constitution confers powers on authorities to make rules but barring one or two exceptions the rules are not required to be laid on the Table. It is advisable and necessary that all rules made in exercise of powers delegated by an Act or the Constitution come under scrutiny. Hence by a Direction of the Chairman of the Rajya Sabha the scope of Committee's functioning has been widened. The Direction is as follows :

> "The Committee on Subordinate Legislation may examine all 'Orders' whether laid before the Council or not, framed in pursuance of the legislative functions delegated by Parliament to a subordinate authority to make such orders."

By another Direction the Committee is brought in after a Bill is introduced so that the Committee can look into the subordinate legislation aspect of the Bill. That Direction is as follows :

> "The Committee on Subordinate Legislation may also examine provisions of Bills which seek to—
> (*i*) delegate powers to make 'Orders', or
> (*ii*) amend earlier Acts delegating such powers, with a view to seeing whether suitable provisions for the laying of the 'Orders' before the Council have been made therein."

The Committee has framed rules for its internal working and for convenient scrutiny of rules. In its work the Committee is assisted by the Secretariat, Every

year hundreds of rules are framed by the Central Government. They are either under the statutes or the Constitution. The bulk of the rules now belongs to the latter category and these are recruitment rules framed under article 309. The statutory rules are generally laid on the Table while the recruitment rules are only published in the Gazette. Each and every rule, regulation, etc either laid on the Table or published in the Gazette is examined. If any points in regard to the exercise of the rule-making power by the subordinate authority arise during that examination, a clarification from the Department is sought and, thereafter, the matter is placed before the Committee in the form of a Memorandum giving the details such as the rule objected to, the grounds of objection and the Department's comments or clari fication thereon. The Committee considers the Memorandum and comes to its conclusions. If further elucidation is needed by the Committee, it is sought either in writing or by calling the representatives of the Ministries concerned. The details of all these matters find place in the Report of the Committee so that on reading it one gets a complete idea about a particular set of rules reported on by the Committee. The Reports of the Committee are reasoned and give ample indication why particular rule was selected for criticism or sent to the Ministry for elucidation.

The Committee has also evolved its own procedure for pursuing its recommendations. The Committee reports to the House periodically on the implementation of the recommendations made by it.

The Rajya Sabha Committee on Subordinate Legislation has been in existence for the last 13 years, and it has so far presented 24 reports to the House. The Reports make an interesting reading. They reveal certain noteworthy contributions made by the Committee not merely in the matter of improving the form or drafting of the subordinate legislation but also in the matter of substance and content thereof especially in respect of rules which appear to affect a citizen's rights. It is not proposed to survey here all the Reports presented so far. But some important matters on which recommendations have been made by the Committee may usefully be highlighted generally.

In 1968, the All India Services (Laying of Regulations before Parliament) Bill, 1968 was introduced in the Rajya Sabha. One of the purposes of the Bill was to provide for laying of regulations framed under the All India Services Act, 1951 (as it then was) and to validate the regulations made prior to 1st July 1967 which had not been laid before Parliament. The Committee felt that the Bill was of an unusual character in the sense that it was the first of its kind to be introduced in any legislature in India. The Committee examined both the form and content of the proposed legislation. The Committee looked upon Government's failure to lay regulations as a 'serious error' depriving the House of some measure of control over these regulations for a considerably long time.

The Committee has played a useful role to check delays which were usually casual in making subordinate legislation. It has pointed out in the last 13 years a number of cases in which delays ranging between 10 and 20 years have taken place

in making the rules. With a view to eliminating delays, the Committee has suggested a time-bound schedule in the matter of framing rules.

In scrutinising rules the Committee has scrupulously watched that hardship is not caused to a citizen either by the levy of a fee which is not authorised by a statute or if authorised, is excessive or by depriving him of a licence or permit or any other right without following the rules of natural justice (*i.e* giving an opportunity of hearing or making an appeal against the order to a higher authority) or by the exercise of arbitrary, unguided and unspecified discretion. The Committee has also seen to it that the jurisdiction of courts is not ousted directly or indirectly by means of rules or regulations. The Committee has, accordingly, brought to light many cases of imposition of unauthorised fiscal levies be those for the purpose of inspection of minutes of a statutory body or for vaccination. In many cases, thanks to the Committee, provisions have been made in the rules for appeal to higher authorities against decisions of lower authorities. The Committee recommended that a poor furrier should have a right to appeal against an order depriving him of his licence under the Prevention of Cruelty to Animals Rules.

The Committee has required that guidelines or broad criteria should be laid down in the rules whenever discretionary powers have been conferred on an authority or are intended to be used so that these are circumscribed within well-defined limits and are not abused. Where the rules sought to clothe the authorities with powers which were of a substantive character, for example, power of search and seizure, power of a civil court or power to annul private agreements or contracts of service, the Committee was quick to point out that such powers should more appropriately be sought from the statute rather than subordinate legislation. The Committee has also not viewed with favour the creation of bodies by means of rules since this involved expenditure from the Consolidated Fund of India which is not brought to notice of Parliament at the time of consideration of a statute. As in the case of fees, the Committee has construed strictly the penalty provisions contained in the rules and has limited them within the letter of the statute.

In regard to recruitment rules also, the Committee's contribution has not been meagre. It has improved the form and purport of a number of such rules. In scrutinising these, the Committee has tried to safeguard the interests of employees. In these cases the Committee has also seen to it that the rules do not operate harshly. For instance the Committee objected to a rule which gave powers to an authority to reduce the amount of gratuity in the case of a deceased government servant whose service was considered unsatisfactory.

One of the functions of the Committee on Subordinate Legislation is to examine whether a rule gives retrospective effect to any of the provisions in respect of which the parent Act does not expressly give such power. The Committee has recommended that if in a particular case, the rules have to be given retrospective effect due to any unavoidable circumstances, Government should take immediate steps to clothe itself with legal sanction for the purpose; and even when a statute empowers giving of retrospective effect, the rule should be accompanied by an

Explanatory Memorandum setting out therein the reasons and the circumstances which necessitated giving of such retrospective effect.

If the Committee is not satisfied with the views of the administrative Ministry or the Ministry of Law on a particular statutory rule, it has not hesitated to seek the opinion of the Attorney-General of India. In the case of a Cantonment Board which had sought to impose surcharge on show tax on behalf of the State Government, the Committee objected to the use of the machinery of the Cantonment Board by the State Government not contemplated by the Cantonment Act. The Attorney-General who was consulted in the matter upheld the Committee's view. In another case, a rule permitted Government to withhold a document from perusal by the Unlawful Activities (Prevention) Tribunal. The Committee felt that it restricted the power of the Tribunal not visualised by the Act. The Attorney-General who was consulted in the matter agreed with the Committee that the rule was repugnant to the scheme of the parent Act.

One point must be made clear here. When the Committee examines any order and makes its recommendations, it does not act in a spirit of hostility to the Executive. In its capacity, as Parliament's delegate, the Committee's role is to ensure that the will of Parliament as embodied in the statutes is implemented. Its efforts have always been complementary and contributory in this direction. While it is conscious of a citizen's hardships, if any, it is not unmindful of Administration's view-point.

Although under the Internal Rules, the Secretariat examines the rules, etc., prepares memoranda and does other spadework for and on behalf of the Committee, members of the Committee are not precluded from examining the orders themselves and giving suggestions. For this purpose they are supplied with copies of all orders laid on the Table of the House from time to time. Members take very active and keen interest in understanding, appreciating and judging all the issues involved in a particular rule placed before them.

Looking at the working of the Committee since 1964, it can confidently be said that the Committee functions in an extremely cordial atmosphere. Members discuss matters without any party considerations. The recommendations made are unanimous and are influenced only by consideration of public interest. Members apply themselves to the task with earnestness and enthusiasm. In this, they are actuated by public good and a desire to serve the people through the instrumentality of the Committee. Although compared to the number of statutory rules etc., made every year by the Executive, those which are reported on are few, yet the very existence of the Committee, its non-partisan and quasi-judicial approach have a salutary effect on its Departments. A study of its Reports provides clear evidence of the meticulous care with which every rule etc., is examined, ably advised and assisted by the Secretariat.

The efforts and influence of the Committees of the Rajya Sabha and of the Lok Sabha have led to a number of useful procedural reforms. The awareness of the Committee's existence has kept the administration on the right track. The very

thought that the administrative activity in the form of rule-making might come in for adverse criticism of the Committee and brought to the attention of the House, exercises a healthy check on the Administration. This leads it to act with the utmost circumspection and alertness. The scope for waywardness is thus eliminated.

The opportunities for discussing delegated legislation in the House are extremely limited. Rarely statutory rules are debated in the House. As far as could be gathered there had been so far just a dozen occasions on which rules had come up for discussion in the House upon, what is called, a 'Motion for Modification' of statutory rules. In view of this fact and of the impossibility of finding sufficient time for discussion of each and every such legislation in the House, the task of supervising this form of administrative activity has been entrusted to this Committee. The main agency through which Parliament produces a degree of scrutiny of subordinate legislation is the Committee on Subordinate Legislation which works "unobtrusively to realise a conception of parliamentary control". The conclusion which emerges from this study from Parliament's point of view also, is that parliamentary knowledge of, and action on, delegated legislation is probably somewhat greater than it would be in the absence of such a Committee. The consideration of rules by a Committee is a valuable way of assuring that parliamentary attention is drawn to them, in the light of the fact that they are made under powers given by Parliament. The House has, it may safely be said, the safeguard of the Committee.

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Committee on Government Assurances of the Rajya Sabha

Z. A. AHMAD*

Parliamentary Committees play a very important role in the parliamentary system. The Committees are meant to aid and assist the Legislature in discharging its duties and regulating its functions effectively, expeditiously and efficiently. They are devices used by Parliament for influencing and exercising its supervision and control over the Executive. The very existence of a Committee has a salutary effect on the latter. The fear of exposure keeps the Executive vigilant and alert. Parliamentary Committees are, therefore, necessary to keep a continuous watch on how far the Administration is conforming to the policies, directions and wishes of Parliament. In India the financial committees, namely; the Committees on Public Accounts, Estimates and Public Undertakings exercise proper control over expenditure and effect economy in Government expenditure, and the Committee on Subordinate Legislation exercises a check on the delegated legislation. These Committees are, therefore, very important parliamentary institutions which perform, on behalf of Parliament, the tasks of watching and controlling the activities of the Executive. In this context the importance of Parliamentary Questions is well

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known. The questions put down for oral as well as for written answers are devices for keeping the Administration under the continual surveillance of the Legislature. It is obvious that in many cases, a Minister while replying to a question or supplementaries thereon in the House, cannot meet the demands of or supply forthwith all the information asked for, by the questioner. The questioner also is aware that he cannot expect that the matter raised by him would always receive a satisfactory reply immediately. What he expects, however, is a reasonable response from the Minister in the form of an assurance as to what Government propose to do in the matter. Thus, many a time Ministers give assurances, undertakings or promises either to consider the matter, take appropriate action thereon or collect and furnish relevant information to the House. Such assurances are given not only while replying to questions but also during discussion on Bills, Resolutions, Motions, etc.

These assurances are like safety-valves and help in calming down momentary tensions which generally arise if the replies given by Government spokesmen are evasive or unsatisfactory. But the matter should not, in public interest, be allowed to rest there. There is a possibility that a Minister, after giving an assurance, may forget what he had said in the House. On the other hand it is very difficult for a member to keep a watch on whether the assurances given by the Minister on the floor of the House have actually been fulfilled or implemented. He has normally no means of knowing whether all the assurances given by the Ministers have been implemented as he does not have complete record of such assurances. There were, therefore, innumerable difficulties which an individual member had to surmount to get an assurance implemented. Sometimes a Minister might claim that a particular assurance had been implemented, but if one goes deep into the matter, one would find that there was no implementation of assurance at all. It may also happen that a portion of the assurance, which may not be substantial, has been implemented and the material part of it has not been attended to at all. In the past there was no obligation on the part of the Government to make a report to Parliament and it was left to its good sense to fulfil the assurances, promises etc., given by its Ministers on the floor of the House. Thus it became necessary to devise a parliamentary machinery to ensure satisfactory implementation of the assurances given by the Ministers on the floor of the House and to remove the difficulties mentioned above. It was on the initiative of Speaker Mavalankar that the Lok Sabha constituted a Committee on 1st December 1953 known as the Committee on Government Assurances for this purpose. The Rajya Sabha also constituted a similar Committee of its own on 1st July 1972.

The Committee on Government Assurances is 'wholly an Indian innovation' and has no parallel in any other Parliament.

The functions of the Committee on Government Assurances have been enunciated in rule 212A of the Rules of Procedure and Conduct of Business in the Rajya Sabha which enjoin on the Committee to scrutinise the assurances, promises, undertakings, etc. given by Ministers, from time to time, on the floor of the Rajya Sabha and to report on—

(*a*) the extent to which such assurances, promises, undertakings have been implemented; and

(*b*) when implemented whether such implementation has taken place within the minimum time necessary for the purpose.

The Committee has adopted a standard list of 34 expressions or forms which are treated as constituting assurances, undertakings, etc., given by the Ministers on the floor of the House. This list of expressions or forms is not exhaustive and is meant for the guidance of the Committee as well as the Rajya Sabha Secretariat. For example, if an expression does not strictly fall within the standard form of assurances, the synonymous sentences and words or clauses would be taken as an expression involving some assurance. Any addition to or deletion from this list is done by the Committee itself. If the Ministries question the propriety of the inclusion of certain statements made by the Minister on the floor of the House in the list of assurances, the matter comes up before the Chairman of the Committee on Government Assurances for decision. In important cases the Chairman keeps the Committee informed of the action taken by him on behalf of the Committee.

Since the purpose and value of an assurance is lost unless it is implemented within a reasonable time, the Committee has laid down the time limit of three months for the implementation of the assurances.

The procedure followed by the Committee is : The first stage is to extract assurances from the verbatim proceedings of the House on the basis of the standard list of expressions or forms approved by the Committee. Such lists are also prepared by the Department of Parliamentary Affairs on behalf of the Ministry and by the Secretariat of the House on behalf of the Committee. If there is any discrepancy between the two lists, the matter is taken up with the Department.

After the assurances, etc. are culled from the proceedings of the House, the Secretariat of the House sends them to the Ministries concerned for implementing the assurances. The Ministry thereupon takes action under intimation to the Department of Parliamentary Affairs. On the basis of the information furnished by the Ministries, the Minister of Parliamentary Affairs lays on the Table of the House from time to time a statement of action taken by the Ministries. Such a statement shows clearly the implementation of specific assurances supported by documents wherever necessary.

As soon as statements on the implementation of the assurances are laid on the Table of the House, the Secretariat of the House on behalf of the Committee examines these statements to see whether there has been a complete and satisfactory implementation of the assurances or whether something further is required to be done on any of the assurances or whether inordinate delay had occurred in their implementation. The findings in the matter are placed before the Committee for its consideration. It is also possible for public organisations, associations, or individuals to approach the Committee for redressal of their grievances relating to non-implementation of the assurances given by the Minister in the House and the

Committee can examine each case on merits and in that way help the aggrieved persons as far as possible.

While considering the statement in regard to action taken by Government in the implementation of certain assurances, or in respect of assurances which have not been implemented satisfactorily or in case of delay in implementation, the Committee has the discretion to issue a questionnaire and summon officers of the concerned Ministries to give evidence before it. It is also open to the Government to bring to the notice of the Committee any fact which they desire the Committee to be seized of with reference to any specific assurance.

After the examination of the action taken by the Government to implement the assurances, the Committee arrives at its own conclusions regarding the extent to which they have actually been implemented and the time taken for implementation and then makes its recommendations for inclusion in the report. On the basis of these conclusions and recommendations, a draft report is prepared by the Secretariat which after the Chairman's approval is circulated to the members of the Committee for consideration at a sitting convened for the purpose.

The report duly approved by the Committee is then presented to the House by the Chairman or by any member of the Committee so authorised for the purpose. The report of the Committee has not as yet been discussed in the House.

The Committee on Government Assurances has proved its utility not only for the Members of the House but also for the general public whose problems are generally highlighted on the floor of the House. I, as Chairman of this important Parliamentary Committee, feel proud to say that this is one of the most important institutions in a parliamentary democracy as in our country for keeping a constant watch over the promises/assurances/undertakings which the Ministers give to ward off tensions in the Parliament at a time when tempers are high on both sides. The matters which are postponed by the Executive are chased and followed up by the Secretariat of the House and placed before the Committee if the assurances are not fulfilled within the reasonable time of three months.

This 'Indian innovation' has proved to be a very useful organ for keeping a constant watch and vigil over the activities of the Executive.

March 18, 1977

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Committees in Indian Legislatures

NIVARTHI VENKATA SUBBIAH*

"The Committees meet a practical need; the House as a whole is too unwieldy a body to deliberate effectively on the problems put before it unless they have first been considered by a smaller body"

—MICHEL AMMELLER

The importance of committees in a modern legislature is undeniable, which is clearly demonstrated by the growing opinion among the competent persons in favour of the committees, by the powers being increasingly vested in them in various countries and also by the growing number of committees in the legislatures which some even describe as 'Committee Explosion'. This is considered as a healthy feature and an effective means to ensure the control of the Legislature over the Executive, notwithstanding a few discordant notes from conservative statesmen like Sir Winston Churchill who remarked, "We are over run by them like the Australians by the rabbits". President Woodrow Wilson, the celebrated American statesman, described them as "Little Legislatures". In our own country an eminent parliamentarian of the stature of the late G. V. Mavalankar expressed the view, "the Com-

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mittees of the House will keep a watch on the executive system to satisfy themselves that such executive is within the limits of the policy laid down and is carried on in the best manner possible. The committee will also see whether a revision of the policy is necessary in the light of the results."

The need for committees arises out of two factors, the first being the need for vigilance on the part of the legislature over the actions of the Executive while the second factor is the peculiar limitations of the legislature to carry out any detailed investigations into the actions of the Executive on the floor of the House. Legislature's limitations arise out of the fact that during the limited period it meets in a year it can discuss only the broad policies but cannot go into details; nor will it be in a position to summon experts and specialists to appear before it and express their views on intricate issues. For example, the solitary outsider who can speak in State legislatures' meetings in India is the Advocate General. Discussions in a committee are conducive to greater secrecy than those in the House. There is also a significant difference betweeen the approach of the members to problems of public interest, on the floor of the House and that in a committee sitting, where they probe into the issues in a calm manner without any party considerations.

This tendency of leaving a good deal of work to be transacted by the parliamentary committees is by no means peculiar to India. In the House of Commons (U.K.) which provides the model to the Indian legislatures, committees constitute a very essential integral part. These committees are of two kinds, namely, standing committees and select committees. The former are "Committees to legislate" in the words of Mr. Wheare, whereas the latter are intended for inquiry, scrutiny and control. There were previously only three select committees, namely, on estimates, public instruments and public accounts. To this two more were added in 1966 for agriculture and also for science and technology to ensure 'continuous parliamentary control over the executive'. They carry out continuous work with extensive powers. The powers vested in their counterparts in the United States of America are even more far reaching because the committees of the Congress not only formulate policy but also intervene in the actions of the executive. Besides legislative functions, deliberative functions of the House are delegated to committees to such an extent that some regard the committees as super legislatures. The committees in Indian legislatures, however, compare very unfavourably with their counterparts in the aforementioned two countries.

It should also be mentioned that India had a tradition of having parliamentary committees sven during the British rule. Bills were referred to select committees for law-making purposes. So far as standing committees were concerned, Public Accounts Committee was set up by the Central Legislative Assembly for the first time in 1923 and this was due to the foresight of Sir Frederic Gauntlet, the then Auditor-General of India. Similar committees came into existence in the Provincial Legislatures at the same time. Parliamentarians like Shri S. Satyamurthy, gave a commendable account of themselves as Members of the Public Accounts Committee. In view of the inadequacies of the standing Finance Committee that was set up in 1921

consisting of members of Central Legislature it was contemplated in 1938 to establish an Estimates Committee in the Central Legislature, but the proposal did not materialise at that time perhaps due to the political events that the Second World War brought in its wake. Whatever might be the powers of the committees of the legislatures which themselves had a very limited authority, these committees set up a tradition and also conclusively demonstrated the fruitful use to which the Indian parliamentarians were capable of putting these committees.

The Committees in Indian legislatures lend themselves to classification according to various criteria. They are classified into *ad hoc* and Standing Committees according to their passing nature or permanence. Select Committees and Joint Select Committees on Bills and Committees appointed by the House from time to time to enquire into specific issues come under the category of *ad hoc* committees, whereas the rest like Estimates Committee, Public Accounts Committee and Subordinate Legislation Committee, etc. which have a continuous existence come under the category of Standing Committees. In this connection, it may be mentioned that the *ad hoc* Committees intended to enquire into a particular matter as well as the Standing Committees constituted to provide amenities to members were called "House Committees". As this is likely to create confusion, the Committee intended to look into the provision of amenities to members is at present called Amenities Committee in Andhra Pradesh Legislature. The Committees can also be classified into financial and non-financial committees. Public Accounts Committee, Estimates Committee and Public Undertakings Committee come under the category of financial committees. Special importance is attached to the work attended by them for understandable reasons as they ensure effective financial control by the Legislature, though other committees too have their own importance in the parliamentary scheme of things.

Another important classification of committees is into committees consisting of members of one House and those consisting members of both the Houses. The need for this kind of classification arises only in the case of legislatures with a bicameral set-up. Each House has its own Business Advisory Committee, Assurances Committee, Petitions Committee, Rules Committee, Privileges Committee, but *ad hoc* Committees like Joint Select Committees and Standing Committees like the Public Accounts Committee, Public Undertakings Committee, Joint Committee on Offices of Profit consist of members of both the Houses. In this connection, it may be mentioned that the Estimates Committee consists exclusively of members of the Lok Sabha in the Parliament. The same position obtained in the case of Committee on Subordinate Legislation till July 1964, when the Rajya Sabha constituted its own Committee. It is interesting to note that these Committees are constituted with Members from both the Houses in States like Andhra Pradesh, where they consist of twenty members each, of whom fifteen are elected from the Legislative Assembly and five from the Legislative Council.

Leaving aside the technical classification into Joint Committees consisting of members of both the Houses and Committees with which members of the Upper

House are merely associated, the author who has served in several Committees consisting of members of both the Houses prior to his election to the present office of the Chairman of the Legislative Council, can say without any fear of contradiction that such committees are highly conducive to promote cordial relations between members of both the Houses. He has enjoyed every minute that he had spent in such meetings. In States such opportunity exists for members of both the Houses to meet only in the joint meetings of the Legislature addressed by the Governor, in the Joint Select Committees and in the Standing Committees in which members from both the Houses are represented. Such committees are also conducive to economy.

It is nearly three decades since our Constitution was enacted and quarter of a century since legislatures were brought into existence through the First General Elections in 1952 If we take an overall picture of the performance of our committees, we have every reason to be satisfied with their work. They have shown alertness and kept a vigilant watch over the actions of the Executive. Our concern for the progress and prosperity of the weaker sections of the community has taken a tangible shape in the form of committees specially constituted for the welfare of the Scheduled Castes, the Scheduled Tribes and the Backward Communities. The Government have also, by and large, responded well by giving due weight to the recommendations of these committees, though individual officers might have been at times found wanting in promptness in complying with the directives of the committees. When the author in his capacity as a Presiding Officer had directed the Government that a responsible officer should be posted to make a note of the assurances given by Ministers on the floor of the House, the Government promptly responded by making that arrangement. We should also be prepared to make such changes as are necessary in the functioning of the committees. For example, the Conference of Chairmen of the Public Accounts Committees of Parliament and State Legislatures had recommended in 1974 that the meetings of Public Accounts Committees should be thrown open to public so that economic and other offenders could be exposed.

We in India are engaged in the gigantic task of national reconstruction. Our cherished desire is to eradicate poverty, remove unemployment and wipe out inequality and vested interests which are eating into the vitals of the nation. Our ambition is to give the common man what he is entitled to but which has all along been denied to him on account of a faulty economic structure and slow moving administration. Our Constitution through the recent amendments has placed glorious objectives before the nation. Efforts to create a new social order based on justice and equality are on the anvil. At this juncture committees of the legislatures also should gird up their loins, put their shoulder to the wheel and help the nation to reach its cherished goal.

December 22, 1976

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My Experiences of the Functioning of the Public Accounts Committee

T. N. SINGH*

My association with the Rajya Sabha began in 1964 when I was appointed Minister of Industry and Heavy Engineering in the Cabinet headed by Shri Lal Bahadur Shastri. Before that, apart from 6 years' interval as member of the Planning Commission, I had been a member of the Lok Sabha from 1950 to 1958. As a parliamentarian I have always been interested and have actively participated in committees of the two Houses. Apart from several Select Committees and Joint Committees of the Houses on Bills, my longest association has been with the Public Accounts Committee. For nearly 8 years, I represented the Lok Sabha in the Public Accounts Committee and before joining the Planning Commission, was also its Chairman. As fate would have it, even as a member of the Rajya Sabha, I was elected to the Public Accounts Committee during 1974-75. I have thus had the experience of the functioning of this Committee for well nigh nine years. I virtually began my career as a parliamentarian in the said Committee which was often considered a post-mortem body of little importance. Under the able Chairmanship of

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Shri B Das, the Committee acquired a high reputation which, according to me, hardly any other committee of the two Houses enjoys.

The strength of the Public Accounts Committee lies in the fact that its investigations and proceedings are marked by the helpful participation of the Comptroller and Auditor-General and his able colleagues. The important cases that are taken up by the Committee have been thoroughly examined from the accounts point of view by the Comptroller and Auditor-General himself and the note that appears about the facts of the cases reported are considered to be agreed drafts between the Ministry and the Audit. Of course, the conclusions in these reports are of those of the Comptroller and Auditor-General himself.

I am probably one of the few members of either House of Parliament who can claim the longest record with the Public Accounts Committee. For one full year I worked on this Committee as a member of the Rajya Sabha. The reports of the Committee during this year were of greater importance than the reports presented during my previous association with it. I have watched how this Committee became a powerful organisation in the very first decade of our Independence when for the first time, a non-official member became its Chairman; formerly the Finance Minister used to be the Chairman of this Committee.

In the initial years, the Public Accounts Committee had to deal with several cases of financial irregularities, principally in Defence, Works and Housing, Industry and Supply and Rehabilitation departments. Though many of my colleagues in the Congress Party as also the bureaucracy were much annoyed by our critical attitude, I am happy to record that never did Jawaharlalji discourage us or influenced, in any way, individual Congress Party members when they exercised their independent judgement in cases of irregularity or infructuous expenditure. I believe people have not yet forgotten the controversy that arose over what is popularly known as 'jeep scandal'. It related to the purchase of 400 and odd second-hand jeeps by the Indian High Commission in London. None of these jeeps on arrival were found serviceable. It seems no examination was made of the road-worthiness of these jeeps before they were shipped and yet payment was made promptly beforehand. There was also the case of purchase of stern grenades and other defence material by the High Commission from the same supplier. This transaction was also considered irregular. Naturally the responsibility for these purchases was thought to be that of Shri Krishna Menon, who was then our High Commissioner. Panditji had great regard and affection for Shri Menon who had done splendid service to the country as the moving spirit behind the India League in England. He had to suffer many privations and difficulties and yet he carried on the work of propagating the Indian cause in U.K. and also in other countries of the world. Though Panditji did not like the criticisms against Shri Krishna Menon by the Committee or in the House, I do not remember a single occasion when he expressed any disapproval of my or other members' conduct in this important parliamentary committee. When his term as High Commissioner was over, Panditji wished to appoint Shri Krishna Menon as a Minister in his Cabinet in 1957. I have reason to believe that Maulana

Azad was against Shri Menon's appointment till he was cleared by the Public Accounts Committee. My memory is quite fresh how one day Panditji called me and asked me only to re-examine the whole case with a view to finding out in what way Shri Menon was personally responsible. That was the objective attitude of our first and greatest Prime Minister in regard to an issue on which he personally felt very strongly. The matter was referred to the Public Accounts Committee again by the Finance Minister. We re-examined the whole case and stuck to our earlier decision. The report of this Committee is there for anybody to see. I can say that no pressure was brought to bear on me or any member of the Committee by Pandit Nehru or by any of his colleagues. That was the respect in which members of the Public Accounts Committee were held in the time of Pandit Nehru.

Sometimes the officials appearing before the Public Accounts Committee used to avoid disclosing files and papers on the ground of secrecy or public interest. The then Speaker Shri Mavalankar had ruled that when such a plea was raised it should be accepted only if the Speaker himself had gone through the document and felt that it would not be in the public interest to disclose the contents of the files. The same attitude was taken by Shri B. Das and myself as Chairmen of the Committee whenever Ministries' representatives used to avoid making papers available to the Committee. Such a plea was taken by the concerned Ministry when the Hirakud Irrigation Project was under scrutiny by a Sub Committee of the Public Accounts Committee. I happened to be the Chairman of this Sub-Committee and ultimately on my ruling the Government had to produce the papers.

But when I functioned as a member of this Committee during my term as a member of the Rajya Sabha, I found the situation changed. The officers declined to give information and apparently the Chairman had no remedy. I had been appointed Chairman of a Sub-Committee of the Public Accounts Committee in 1975 by Shri Jyotirmoy Bosu, the Chairman of the Committee, to go into the question of cash assistance to exporters. Shri Jyotirmoy Bosu wrote to the Commerce Ministry to supply us information regarding cash assistance given to certain firms and the nature and reason of such assistance. Except for two cases the Ministry declined to supply us information in regard to others. They took the plea that no specific mention of these firms was made in the Audit Report. It should be remembered that our audit is sample audit and not complete and exhaustive of all incomes and expenditures of the Government. As the Chairman of the Sub-Committee investigating the Hirakud Project I had no difficulty in getting connected papers though no specific mention of every case was found in the Audit Report. As a matter of fact we investigated in detail many aspects of the functioning of the Hirakud Project administration the basis being mention of certain irregularities in the Audit Report. Despite the example given of this instance, the bureaucracy in the Commerce Ministry ignored us and refused to supply the requisite connected information. Never has the authority of Parliament been flouted in such a blatant manner by the Executive. The Public Accounts Committee after all represents the

Parliament and works for and on behalf of it in all matters relating to the propriety or otherwise of incomes and expenditures of the Government of India from the Consolidated Fund. This is the difference I noted between the status of the Committee in 1974-75 as against what it was from 1950 to 1958 during which period I was also its member.

The erosion of the authority of the Committees of Parliament has been occurring in recent years in some respects and as one who entered Parliament nearly 27 years ago and has been almost continuously a member of Parliament for well nigh 20 years, except for the period when I was member of the Planning Commission, I can say that I had never witnessed such downgrading of the authority of Parliament by the Executive. The Comptroller and Auditor-General, because of the vastness of the task, is not in a position to make comprehensive and detailed audit of the Government of all items of incomes and expenditures. His officers are able to audit a few cases. When irregularities of a kind are discovered which may be of repeated character, it is time for Parliament to awaken and go deeper into such irregularities. Restricting powers of Parliament in regard to investigation of such financial irregularities amounts to defying parliamentary authority.

The Public Accounts Committee draws its members from both the Lok Sabha and the Rajya Sabha and it has got the authority of both. Therefore, it must be treated with all respect by the Executive. As a matter of fact, the authority which the Committee enjoyed in the years 1951 to 1967 was built up slowly and after a great deal of opposition from the Executive. In the pre-Independence days, the British Government Finance Minister as its Chairman put a great deal of restraint on scrutiny by the Public Accounts Committee. After the Independence we had a non-official Chairman for the first time. In the initial years, I believe, right up to 1966, the Chairman of this Committee belonged to the party in power. Even though I was accepted as the Chairman of this Committee by both sides of the House, I advocated the need for appointing the Opposition Leader as its Chairman. This was conceded after Shri Lal Bahadur Shastri's death.

Now looking at things in retrospect I feel the necessity of re-establishing the prestige of this Committee in the interest of honest and efficient administration. The Comptroller and Auditor-General is in a way an officer of Parliament under the Constitution. He reports directly to the President and irregularities and lapses discovered in the process are set out in reports published on the directions of the President. That a Ministry should be able to freely flout the authority of the Committee and decline to cooperate with it is a position against all democratic principles and traditions. I only hope and pray that the P.A.C. which has done very useful work all these years in bringing to the notice of the people financial and administrative irregularities in an authoritative manner will not only be a much stronger organisation than it is today, but it will have to be seen that its reports receive full consideration by the two Houses. Its reports should be discussed year after year and days should be specifically set apart by the custodians of the two Houses for such discussions.

March 1, 1977

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The Working of the Committees of the Rajya Sabha

SUDARSHAN AGARWAL*

It is well known that the committee system is the most essential component of the parliamentary apparatus. It is a vibrant link between the Parliament, the Executive and the general public. The significance of the committee system is valued as the modern legislature these days is over-burdened with heavy volume of work with limited time at its disposal. It thus becomes impossible that every matter should be thoroughly and systematically scrutinised and considered on the floor of the House. If the work is to be done with reasonable care, naturally some parliamentary responsibility has to be entrusted to an agency in which the whole House has confidence. Thus delegation of certain powers of the House to the committees has become a normal practice. This has become all the more necessary as the committee provides the expertise on a matter which is referred to it. In a committee the matter is deliberated at length, views are expressed freely and the matter is considered in depth in a business-like fashion in a calmer atmosphere. In most of the committees, public is directly or indirectly associated when memoranda of suggestions are received, on-the-spot study is undertaken and evidence is taken which help the committees in arriving at their conclusions. Very often committees *suo*

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motu invite persons having specialised knowledge in that particular matter for giving evidence which is always of a high order. This forms part of the committee's report which renders valuable assistance to the legislature when the matter comes before it for consideration and passage.

Since the parliamentary committees are creation of the House, they are in fact miniature Parliaments. Committees are to aid and assist the legislature in discharging its duties and regulating its functions effectively, expeditiously and efficiently. They are devices used by Parliament for the purpose of influencing and exercising its supervision and control over the administration. The very existence of committees has a salutary effect on the Executive. The fear of exposure keeps the Executive on an even keel and right track. Parliamentary Committees are therefore necessary to keep a continuous watch and vigilance to ensure that the administration conforms to the policies, directions and wishes of the Parliament. It is sometimes argued that committees are meant for postponing and absorbing political tension by taking away one issue or the other from public controversy to a more protected and sheltered situation as the committees meet *in camera*. But often times it has been found that committees have provided momentum for action. Sometimes they generate such momentum which becomes inexorable and cannot be arrested by an organ of the government. Committees, at the same time, are not meant to weaken the administration; instead they prevent it from being abused. This, in brief, is the rationale of the committee system. Indeed, the hope of parliamentary government in terms of its fulfilling the objectives of scrutinising, controlling and supervising the administration and making it accountable to a reasonable degree lies in an effective and coherent committee system.

We now come to the Committee Structure in the Rajya Sabha.

The committees may be classified as *ad hoc* Committees or Standing Committees according to temporary matters or continued matters which they have to consider. *Ad hoc* Committees are those which are appointed from time to time to enquire into specific subjects. They are not named as such in the Rules of Procedure of the Rajya Sabha but come into being on a specific motion and become *functus officio* immediately after reporting to the House on matters assigned to them. *Ad hoc* Committees are generally Select Committees and Joint Committees on Bills. However, *ad hoc* Committees have been appointed by the House on other specific subjects as for example in 1962 the House appointed an *ad hoc* Committee to consider its Rules of Procedure and in 1976 another Committee was appointed to enquire into the conduct of a sitting member of the House.

The second category of committees, namely, Standing Committees may be divided in terms of their functions under four broad heads :

1. *Committees to Enquire*—Under this category come—
   (*a*) the Committee on Petitions.
   (*b*) the Committee of Privileges.

2. *Committees to Scrutinise and Control*—Under this head come—
   (*a*) the Committee on Government Assurances.
   (*b*) the Committee on Subordinate Legislation.
3. *Committees to Advise*—Under this head come—
   (*a*) the Business Advisory Committee.
   (*b*) the Rules Committee.
4. *House Keeping Committees*—These include—
   (*a*) the House Committee,
   (*b*) the General Purposes Committee.

There are some Committees of the Lok Sabha with which members of the Rajya Sabha are associated. These are :

(*a*) the Public Accounts Committee.
(*b*) the Committee on Public Undertakings.
(*c*) the Library Committee.

Then, there are Parliamentary Committees constituted by both the Houses of Parliament by passing motions in that behalf. Such Committees are :

(*a*) Committee on the Welfare of the Scheduled Castes and Scheduled Tribes.
(*b*) Joint Committee on Offices of Profit.
(*c*) Parliamentary Committee to review the Rate of Dividend payable by the Railway Undertaking to the General Revenues.

There are also some other Committees of both the Houses constituted under the provisions of law, for example, the Joint Committee of the Houses of Parliament constituted under section 9(1) of the Salary, Allowances and Pension of Members of Parlia ment Act, 1954.

The members of the Rajya Sabha on these joint committees are either elected by the House or nominated by the Chairman. The members of the Rajya Sabha on the Public Accounts Committee and the Committee on Public Undertakings, the Committee on Offices of Profit and the Committee on the Welfare of the Scheduled Castes and Scheduled Tribes are elected, while members of the other Joint Committees are nominated by the Chairman. The number of members on these committees is not uniform; however the proportion of members of the two Houses on these Committees is in the ratio of 2 members of the Lok Sabha to 1 from the Rajya Sabha.

In 1952, when the Rajya Sabha was first constituted it had only four committees, namely, the Rules Committee, the Committee of Privileges, the Committee on Petitions and the House Committee. Later on, four more Committees were constituted. These are : the Business Advisory Committee, the Committee on Subordinate Legislation, the Committee on Government Assurances and the General Purposes Committee. The Rajya Sabha is represented on other bodies such as the Delhi Development Authority, All India Institute of Medical Sciences, Indian Institute of Science, Bangalore, Banaras Hindu University, Jawaharlal Nehru University, etc. The Rajya Sabha is also represented on the Committee on Official Language.

A description of the Committees in the Rajya Sabha is briefly given here.

COMMITTEE ON PETITIONS

The Committee on Petitions is one of the oldest Parliamentary Committees. In the Rajya Sabha it was first nominated on the 22nd May 1952 with five members including the Chairman of the Committee. The membership of the Committee continued to be five till the year 1964 when it was increased to ten and since then the Committee has continued to be composed of ten members. The Committee is nominated by the Chairman of the Rajya Sabha every year.

Till the year 1964, petitions could be presented to the Rajya Sabha only with regard to Bills which had been published in the Gazette of India or introduced in the House or in respect of which notice to move for leave to introduce the Bill had been received. The scope of the Committee was thus limited. However, in 1964, the rules were amended with a view to widening the scope of the petition and under the revised rules, petitions can also be presented on any matter of general public interest provided that it is not one—

(*a*) which falls within the cognizance of a court of law having jurisdiction in any part of India or a court of enquiry or a statutory tribunal or authority or quasi-judicial body or commission;
(*b*) which raises matters which are not primarily the concern of the Government of India;
(*c*) which can be raised on a substantive motion or resolution; or
(*d*) for which remedy is available under the law, including rules, regulations, or bye-laws made by the Central Government or by an authority to whom power to make such rules, regulations or bye-laws is delegated.

The Committee receives petitions from a cross-section of the society. The Committee has so far considered and reported to the House on 50 petitions.

The Committee has framed its internal working Rules whereunder it pursues with Government its recommendations made from time to time in order to ensure their effective implementation. By this process, the Committee keeps itself informed about the action taken or proposed to be taken by Government on the various recommendations made by it on different petitions considered and reported upon by it. The Committee is empowered, wherever necessary, to present further Reports on the petitions considered earlier by it.

With greater public awareness of its functioning, the Committee on Petitions, which has already in its Reports made its mark in affording parliamentary support

to the common man in the matter of redressal of his just grievances, can prove to be a real boon to those wronged and oppressed citizens for whom no remedy or relief is available elsewhere.

COMMITTEE OF PRIVILEGES

The Committee of Privileges is one of the important committees functioning in the Rajya Sabha since 22nd May 1952 when it was first nominated. The Committee is constituted to examine every question of privilege referred to it either by the House or by the Chairman and to determine with reference to the facts of each case whether a breach of privilege is involved, and, if so, the nature of the breach, the circumstances leading to it and to make such recommendations as it may deem fit. The Committee can also report to the House the procedure that should be followed by the House in giving effect to the recommendations made by the Committee.

The Committee consists of ten members nominated by the Chairman. Generally the Deputy Chairman is appointed a member and Chairman of the Committee. The Committee holds office until a new Committee is nominated. Normally the Committee is constituted every year.

Every report of the Committee is presented to the House by the Chairman of the Committee or in his absence by a member of the Committee. After the report is presented to the House a motion for consideration of the report may be moved by the Chairman of the Committee or any other member of the Committee. Any member may give notice of amendments to the motion for consideration of the report in such form as may be considered appropriate by the Chairman, Rajya Sabha. After the motion for consideration of the report has been carried, the Chairman or any member of the Committee or any other member as the case may be move that the House agrees or disagrees or agrees with amendments with the recommendations contained in the report. The Committee has so far presented 16 reports to the House on matters referred to it.*

COMMITTEE ON GOVERNMENT ASSURANCES

During the Question Hour and in answer to several points raised during discussion on Bills etc., it is common practice for a Minister to say in reply that "I will look into the matter"; "I will gather information"; "the matter is under consideration" etc. and thus throw some assurances, promises and undertakings to calm down a momentary passion or to escape from an unexpected predicament. What may happen later on is that either the matter is forgotten or the concerned member has to pursue the assurance privately but this in turn presents innumerable difficulties.

*For details *see* a separate article on the subject in this Part.—*Ed.*

There is a possibility that a Minister after giving an assurance may forget what he had said in the House. On the other hand it is very difficult for an individual member to keep a watch whether or not the assurance has been fully implemented.

It was with a view to removing these difficulties and keeping a watch over the implementation of such assurances that the need for constituting some parliamentary agency to look into such matters was felt. This is how the Committee on Government Assurances came into being. This Committee is 'wholly an Indian innovation' and has no parallel in any of the Parliaments in other countries.

The first Committee on Government Assurances of the Rajya Sabha was constituted on the 1st July 1972. The Committee consists of 10 members including the Chairman. Care is taken to see that all parties/groups in the House are represented in the Committee, as far as possible in proportion to their strength in the House.

The function of the Committee is to scrutinise the assurances, promises, undertakings, etc., given by Ministers, from time to time, on the floor of the Rajya Sabha and to report on—

(*a*) the extent to which such assurances, promises, undertakings have been implemented; and
(*b*) when implemented whether such implementation has taken place within the minimum time necessary for the purpose.

Since its inception in 1972 the Committee has culled/scrutinised implementation statements and heard representatives of the various Ministries/Departments as detailed below :

Year	*No. of assurances brought forward*	*No. of assurances culled*	*Total*	*No. of assurances fulfilled*	*No. of assurances outstanding*	*No. of representatives of Ministries/ Departments of Govt. heard by the Committee*
1972	. .	919	919	180	739	. .
1973	739	1022	1761	816	945	. .
1974	945	738	1683	964	719	40
1975	719	384	1103	579	524	45
1976	524	781	1305	957	348	50

COMMITTEE ON SUBORDINATE LEGISLATION

In the context of the Welfare State the nature and range of functions of Government are changing at a rapid speed and the responsibilities of the Legislatures are also becoming increasingly onerous. There is hardly any walk of the common man's life which is not regulated by the State in some way or the other. In a situation like this, it is difficult, perhaps impossible, for any legislative body to deliberate upon, discuss and approve every minute detail of the legislation which may be necessary for proper administration. The technicality of the subject and the need to provide for temporary expedients or to meet unforeseen contingencies make delegated legislation necessary. Delegated legislation is considered a necessary evil and it has come to stay. Delegation of legislative powers has certain risks inherent in it. The problem is not to abolish the system or find a substitute for it, but to ensure effective parliamentary control over delegated or subordinate legislation. The Committee which is the agent of Parliament in such matter is entrusted with the responsibility to see whether the authority delegated by Parliament and the statutes has been properly exercised by the Executive to the extent permissible and in the manner envisaged. The Executive is always expected to comply with the wishes of Parliament and frame rules and regulations in exercise of the authority vested in them by law. It may happen that in their eagerness to discharge their duties more expeditiously and effectively, the Executive may commit mistakes. Maybe, that sometimes out of thirst for greater and wider powers, they might go astray. The job of the Committee is to put them on the right track, because in the ultimate analysis, the object of all legislation is to promote the welfare of the community.

The first Committee on Subordinate Legislation of the Rajya Sabha with 15 members was nominated by the Chairman, Rajya Sabha, on the 30th September 1964. The Committee has so far submitted 24 reports. Many of the recommendations made by the Committee have also led to amendment of statutes. The Committee also reports to the House from time to time on the action taken or proposed to be taken by Government on tne various recommendations made by the Committee.

BUSINESS ADVISORY COMMITTEE

The Business Advisory Committee recommends the time that should be allocated for the discussion of the stage or stages of such Government Bills and other business as the Chairman in consultation with the Leader of the House may direct for being referred to the Committee which has the power to indicate in the proposed time-table the different hours at which the various stages of the Bill or other business shall be completed. The Committee, in short, decides the time-table for Government and other business in the House.

The Chairman nominates the Committee consisting of 10 members including

the Chairman of the Rajya Sabha who is the *ex-officio* Chairman of the Committee. The Committee so nominated holds office until a new Committee is nominated.

The Rules of Procedure of the Rajya Sabha provide that the report of the Committee regarding allocation of time for various items of business before the Rajya Sabha should be presented to the House and that on a motion moved to that effect it may be accepted by the House with or without amendment. However the practice in the Rajya Sabha has all along been for the Chair to examine the report of the Committee in the House; and no motion as visualised in the Rules has ever been moved in the House.

COMMITTEE ON RULES

A well-established system of procedures is essential for the effective functioning of a legislature. Article 118 (1) of our Constitution provides that each House of Parliament may make rules for regulating, subject to the provisions of the Constitution, its procedure and conduct of its business. The Rules of Procedure and Conduct of Business in the Rajya Sabha have been framed in pursuance of this provision of the Constitution.

When the Rajya Sabha first met on May 13, 1952, it had no procedure of its own. For the purpose of regulating the procedure and conduct of business in the Rajya Sabha, the Constituent Assembly (Legislative) Rules of Procedure and Conduct of Business, in force immediately before the commencement of the Constitution of India were modified and adapted by the Chairman of the Rajya Sabha in exercise of the powers conferred by clause (2) of article 118 of the Constitution. These rules continued to regulate the procedure and conduct of business in the Rajya Sabha for 12 years.

The first Rules Committee of the House was nominated on May 22, 1952. It consists of 15 members with the Chairman, Rajya Sabha, as the *ex-officio* Chairman. Its normal tenure is one year. The main function of the Committee is to consider matters of procedure and conduct of business and to recommend any amendments or additions to the rules that may be deemed necessary. On the acceptance of the recommendations of the Committee, amendments are made to the Rules of Procedure and Conduct of Business and they come into force on such date as the Chairman, Rajya Sabha, may appoint.

On the 7th September 1962 the Rajya Sabha adopted a Resolution for setting up an *ad hoc* Committee consisting of 15 members to recommend draft rules for regulating the procedure and conduct of business in the Rajya Sabha, so that the House could take action on them in pursuance of clause (1) of article 118 of the Constitution. The report of the Committee recommending the draft rules was presented to the House on the 29th November, 1963. On a motion moved in the House on the 27th May 1964, the Rules as amended, were adopted by the House on the 2nd June 1964. These rules came into force with effect from 1st July 1964.

The procedures for Calling Attention and Short Duration Discussion relating to matters of urgent public importance were for the first time introduced in the Rajya Sabha under these Rules. The Committee on Subordinate Legislation was also constituted under these Rules. The scope of the Committee on Petitions was also enlarged. These rules were further modified by the House on the basis of the Report of the Committee on Rules in 1972. In pursuance thereof, a Committee on Government Assurances was constituted.

HOUSE COMMITTEE

The functions of the House Committee are to deal with questions relating to housing and residential accommodation for members of the Rajya Sabha and for exercising supervision over facilities for accommodation, catering, medical aid and other amenities accorded to members in Government hostels, during their stay in Delhi.

The House Committee was first nominated by the Chairman on the 22nd May 1952. It consists of 7 members including a Chairman. The House Committee has shown considerable interest in ensuring proper housing facilities to members including proper furnishing of their residential accommodation. When problems in this matter concerning members of both the Houses arise the Chairmen of the House Committees of both the Houses meet and resolve them.

GENERAL PURPOSES COMMITTEE

The General Purposes Committee consists of the Chairman, Deputy Chairman, Leader of the House, Leader of the Opposition, Members of the Panel of Vice-Chairmen, Chairmen of all Standing Parliamentary Committees of Rajya Sabha, Leaders of recognised parties and groups in the Rajya Sabha and such other members as may be nominated by the Chairman. No fixed number is prescribed. The first Committee which was constituted on the 28th May 1956 had 16 members on it; the Committee constituted on 12th August 1976 consists of 21 members. The Chairman, Rajya Sabha, is the *ex-officio* Chairman of the Committee. The function of the Committee is to consider and advise on matters concerning the affairs of the House and such other matters as may be referred to it by the Chairman from time to time. The Committee was called from time to time and it has rendered advice on various matters of procedure to the Chairman. The decision to celebrate the 25th anniversary and the 100th Session of the Rajya Sabha in May 1977 was taken by the General Purposes Committee.

SELECT/JOINT COMMITTEES ON BILLS*

Many Select Committees of the Rajya Sabha or Joint Committees of both Houses of Parliament have been set up to consider such legislative measures as were introduced in the Rajya Sabha. In the last 25 years, 46 such Committees have been set up out of which 6 Select Committees consisted of members of Rajya Sabha only and the remaining were Joint Committees of both the Houses—Rajya Sabha and the Lok Sabha. In the case of Joint Committee on a Bill introduced in the Rajya Sabha, the Chairman of the Committee is generally from amongst the members of the Rajya Sabha. Such Joint Committees function under the Rajya Sabha Rules of Procedure and the Secretarial service is provided by the Rajya Sabha Secretariat. Mention may be made of the following important enactments, Bills in respect of which were introduced in the Rajya Sabha and were later referred to Joint Committees :

1. Four enactments on Hindu Law, namely : (i) the Hindu Marriage Act, 1955; (ii) the Hindu Minority and Guardianship Act, 1956; (iii) the Hindu Succession Act, 1956; and (iv) the Hindu Adoptions and Maintenance Act, 1956.
2. The Copyright Act, 1957.
3. The Prevention of Cruelty to Animals Act, 1960.
4. The Jawaharlal Nehru University Act, 1966.
5. The Monopolies and Restrictive Trade Practices Act, 1969.
6. The Contempt of Courts Act, 1971.
7. The Medical Termination of Pregnancy Act, 1973.
8. The Water (Prevention and Control of Pollution) Act, 1974.
9. The Code of Criminal Procedure Act, 1973.
10. The Foreign Contribution (Regulation) Act, 1976.
11. The Prevention of Food Adulteration (Amendment) Act, 1976.
12. The Advocates (Amendment) Act, 1976.

March 11, 1977

*An article on the subject entitled 'Impact of Committees on Legislative Process in the Rajya Sabha' appears later in this Part.—*Ed.*

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Impact of Committees on Legislative Process in the Rajya Sabha

B. G. GUJAR*

A former Chairman of the United States Committee on Judiciary once observed, "History has shown us that the best law is the one which is based upon the most widespread human knowledge and proper ascertainment of the facts. A rule made by one man is not nearly so good as the one a man would make after consultation with those who are intimately acquainted with the situation the rule is designed to cover." (A. Wiley, quoted in *Australian Senate Practice* by J. R. Odgers, p. 10). The root of the development of the committee system in the legislative field in all modern legislatures which are democratic and parliamentary, lies in this historical truth, and this is true about India also.

In the Indian Parliament, the origin of the committee system for legislation can be traced to Standing Order No. LXV of the Legislative Council (1854-61) which was set up to make a beginning of devolution of power by the British Government to the Indian Government. In the Legislative Council every Bill, read a second time used to be referred to a Select Committee upon a motion made. The first such motion was made on June 17, 1854, when a member moved that the Bill "for the management of the Post Office and for the regulation of the duties of postage" be

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referred to a Select Committee. This practice of referring a Bill to a Select Committee upon a motion made by the member-in-charge of the Bill continued in the succeeding Councils (1862-1920) also. It appears that even simple Bills of innocuous character used to be referred to Select Committees with the hope that Select Committees would suggest improvements and point out drawbacks which might have been overlooked in the Bills as introduced in the Council. The Rules of Procedure and Conduct of Business of the Rajya Sabha and the Lok Sabha which permit a member-in-charge of the Bill to make, after introduction of the Bill, a motion to refer the Bill to a Select Committee of the House have only continued that practice, so that a legislative proposal is considered several times by the two Houses at different recognised stages before it becomes the law of the land.

The Montagu-Chelmsford Report referring to the influence of non-official members on determining the shape of the Bills after introduction observed : "Much of the most solid and useful work in the sphere of legislation is done in the seclusion of the Committee room and not in the publicity of the Council Chamber. The presence of the official block may to some extent give an air of unreality to criticism in the Council Hall, but to the Committee Rooms its influence does not extend. The non-official member who is really interested in a particular measure or anxious to have a Bill altered generally arranges to be put on the Select Committee on the Bill, or to approach the official member-in-charge and to discuss the question with him in private." (Report of the Indian Constitutional Reforms by Montagu and Chelmsford, 1918, para 92).

The advantages of referring a Bill to a small body composed of members of the Legislature for detailed consideration and report are many. It serves to improve the form as well as the contents of the legislation, no doubt within the framework of the policy outlined in the Bill and consistent with the principle behind the legislation as accepted by the House. The time of the House in considering lengthy, technical or complicated Bills is saved and it is also recognised that detailed examination of a long and complicated or an important Bill is not possible in a formal discussion in the House. The reference of a Bill to a Committee affords Government an opportunity to give a second look to the controversial or complicated provisions of the Bill in the light of discussions in the Committee as also the views of experts which may be heard in the Committee. The debates in the Committees are informal and intensive. Every view-point is permitted to be projected and pursued. In the absence of publicity of the speeches of the members, a very cordial atmosphere prevails in the Committees. There is no bitterness or bickering. Members apply themselves to the task with a great sense of public service and without any party or political bias or consideration. Rarely do members allow themselves to be influenced by party considerations when sitting in the Committees. Rarely votes are taken or divisions ordered. Most of the decisions are arrived at unanimously or by a method of consensus and accommodation.

The most meritorious feature of the functioning of the Committees on Bills is, however, not so much the near unanimity of recommendations as the democratic

approach and fair-mindedness of the members who serve on these Committees. It is here that the most intensive consideration is given to the proposed measures and persons interested in the subject matter of the Bill are given an opportunity to be heard. For securing this purpose the Committees not only issue press communique to invite comments and opinions on Bills but approach experts and others who are known to be interested in the Bills or who are in a position to enlighten the Committees. Of late, there has developed a healthy and wholesome practice to address to universities and Bar Councils and Associations and other organised bodies for their views on impending legislations. The tours which the Committees undertake enable members to assess at first hand the impact and effect of, and the reaction of the public to, the legislative measures being considered by the Committees. The common man has an easy access to them. Any individual who is interested may submit a written memorandum to a Committee and thereafter during oral testimony if invited, expound or expand his views in response to questions or comments from the members. In this way the fullest exposition is given to all viewpoints, as is befitting the democratic way of life.

This phase of Committee's procedure is fully borne out by the published volumes of Evidence taken by several Joint/Select Committees. They amply illustrate and eloquently speak as to the extent of 'hearing' the Committees give to experts as well as to lay-men. Before the Joint Committee on the Contempt of Courts Bill, 1968, for instance, a person came all the way from Jabalpur to depose before the Committee on the issue of Contempt of Court. The Joint Committee on the Adoption of Children Bill, 1972, heard at various places representatives and members of many religious organisations. The Joint Committee on the Motor Vehicles (Amendment) Bill, 1965, heard the Taxi-Drivers' Unions. The Joint Committee on the Plantations Labour (Amendment) Bill, 1973, visited many plantations to see for itself the conditions of workers engaged in plantations, so also did the Joint Committee on the Prevention of Water Pollution Bill, 1969, which visited industries and plants to assess the problem of water pollution. Before the Joint Committee on the Homoeopathy Central Council Bill, 1971, appeared a number of private Homoeopathic practitioners to project their views on the Bill. The Joint Committee on the Prevention of Food Adulteration (Amendment) Bill, 1974, listened to the views of many organisations of grocers, retailers and foodgrain dealers. A Block Development Officer was heard by the Joint Committee on the Insecticides Bill, 1964, and a Station House Officer by the Joint Committee on the Code of Criminal Procedure Bill, 1970.

The procedure and process of 'hearing' gives those who are heard a great satisfaction that they got an opportunity to acquaint and apprise the elected representatives sitting as legislators in Committee, with the views for or against a measure and thus participate and share with them in an important stage of law-making. To the members also the 'hearings' are a rewarding and educative experience After all, the Joint Committees reflect the great quality of Parliament which is "the quality of sense, of average intelligence, examining into the matters, being a sort of

jury". They are not specialised Committees in the sense of being Committees set up to deal with Bills relating to particular fields or subjects, as are the Committees of the United States Congress and of many continental parliaments. They are 'lay' Committees with a substantial body of 'common sense' citizens. To such members the hearings help to understand problems and comprehend issues in proper perspective.

The benefit of this 'hearing' process is extended even to residents of foreign countries. It will be interesting to reproduce here what the foreigners have felt when they were in the midst of our Committees. The representative of the International Confederation of Authors and Composers, Paris, the Performing Right Society, London and the British Joint Copyright Council, London, who appeared before the Joint Committee on the Copyright Bill, 1955, had this to say :

> "When I make my report to the authors' societies of thirty countries I shall make it a point to mention this very patient and long hearing which you have given me."

The Joint Committee on the Prevention of Water Pollution Bill, 1969, had the benefit of hearing 10 foreign experts on environment and public health. One scientist out of them who appeared before the Committee observed : "This is a very unusual privilege and honour to have the opportunity to come to Parliament House and sit with the distinguished Committee of the House." Another eminent authority on the subject while thanking the Committee said : "You must recognise that it is a very unique experience for me. I am afraid that the talking by me has been much and the giving very little." Yet another scientist observed : "I do want to say that I testified many times before my own state public committees but I think that this is probably a much greater honour than I have ever had to be able to testify before this august body. It is a very unique experience and an honour." In the words of one more witness : "It is a rare privilege for a citizen of our country, 10,000 miles away, to have a chance to address the Parliament of India, the greatest democracy on earth."

The main purpose of Committees is to help Parliament expedite its business by examining on its behalf Bills entrusted to them. Many Bills as reported by the Committees had therefore been finally passed with only brief debates and without amendments. [The Foreign Marriage Bill, 1963, the Foreign Contribution (Regulation) Bill, 1973 (with only a formal amendment)]. But this does not mean that the Houses do not amend the Bills which emerge from the Committees. Many important Bills have been amended on the floor. The Code of Criminal Procedure Bill, 1970 is a classic example. It was a Bill to replace the 75-year old Criminal Code of the country. The Committee made very comprehensive and extensive amendments. When the Bill came back to the Rajya Sabha from the Committee, the Rajya Sabha passed the Bill with amendments only in 15 clauses but the Lok Sabha

amended as many as 67 clauses and also the two Schedules to which the Rajya Sabha agreed later.

In our present legislative system, however, it is not that all legislation passes through the Committees. Only those Bills which are either complicated, both from drafting as well as from their contents point of view, or are contentious and Government is not in a hurry to get them passed are referred to Joint/Select Committees. Unlike the practice prevailing in the House of Commons of U.K. where Standing Committees on all Bills are constituted, in India a Select/Joint Committee is appointed on an *ad hoc* basis on a motion moved for the purpose.

Broadly speaking, Committees to which important Bills—other than Money and Financial Bills—are referred are Joint Committees consisting of members both of the Rajya Sabha and the Lok Sabha in the ratio of 1 : 2. In case a Bill is to be referred to a Committee, experience shows that it is better to refer it to a Joint Committee of both the Houses than to a Select Committee of one House or the other so that the same ground is not treaded, smooth passage of the Bill is ensured and the possible criticism from one House or the other that it was not associated at the Committee stage or it was ignored or shut out from participation and consultation is avoided. Such a situation did arise in the past on more than one occasion. The Major Port Trusts Bill, 1963, which had been referred to the Select Committee of the Lok Sabha had to go to a Select Committee of the Rajya Sabha too. Similar was the case with the Banking Laws (Amendment) Bill, 1968, which was an important Bill to provide for the extension of social control over banks and which was first referred only to Select Committee of the Lok Sabha. When the Bill came to the Rajya Sabha for consideration, over 30 members gave an amendment for reference of the Bill to a Select Committee of the Rajya Sabha, and the Bill was eventually sent to the Select Committee before its passage by the House.

The same is true the other way also. The Indian Penal Code (Amendment) Bill, 1963, which was introduced in the Rajya Sabha by a private member to liberalise the law of obscenity in favour of works of science, literature and art and to define the concept of obscenity on the basis of certain standard principles laid down by the Law Courts and also to provide for deterrent punishment for publication of obscene matters was referred to a Select Committee of the Rajya Sabha. The Rajya Sabha Committee heard the witnesses, collected evidence from the public and reported the Bill, as amended. When the Bill went to the Lok Sabha, that House in its wisdom referred the Bill to its own Select Committee which again went through the process of hearing witnesses and collecting evidence etc. from the public. This duplication could have been avoided had the Bill been referred to a Joint Committee of both the Houses.

The utility of Select/Joint Committees has been strikingly demonstrated during the last twenty-five years when a number of measures of far-reaching importance affecting the economic, social, educational and political life of the nation were introduced in the Rajya Sabha and processed through its Committees. As will be shown hereinafter the shape and content of these measures had been considerably

improved by the Committees. During the past quarter of a century, the Rajya Sabha referred in all 46 Bills to Committees for consideration and report.* Out of these, 6 Bills were referred to its Select Committees and the rest to the Joint Committees of both the Houses. Again, out of these 46 Bills, 4 Bills, namely : the Orphanages and Other Charitable Homes (Supervision and Control) Bill, 1959, the Indian Marine Insurance Bill, 1959, the Indian Penal Code (Amendment) Bill, 1963 and the Delhi Rent Control (Amendment) Bill, 1964, were Private Members' Bills and the rest were Government Bills. The subjects of legislation were various. Eleven Bills were on social and labour welfare; 7 were of purely legal nature; 6 each were on education and health matters; 5 touched upon fiscal and industrial subjects like banking, insurance, monopolies, hire-purchase etc.; 4 belonged to agricultural matters; 2 covered the subject of transport and the rest 5 dealt with miscellaneous subjects like rent control, Press Council, cantonments, public premises and regulation of foreign contribution.

The Cantonments (Amendment) Bill, 1952, was the first Bill to be referred to a Select Committee of the Rajya Sabha. It was a small Bill for the purpose of amending the Cantonments Act of 1924 to democratise the administration of cantonments. The Committee consisted of 18 members. The Committee worked in a businesslike manner just for two hours,** considered the Bill and submitted its Report. Since then, however, with the passing of years much improvement has been made in the manner and method of Committees' functioning as has been shown above.

Of all the measures in the social sphere initiated in the Rajya Sabha, the four on Hindu Law, namely, (1) the Hindu Marriage and Divorce Bill, 1952; (2) the Hindu Minority and Guardianship Bill, 1953; (3) the Hindu Succession Bill, 1954; and (4) the Hindu Adoptions and Maintenance Bill, 1956, were the most important. All these four measures particularly those relating to marriage and succession, evoked great interest and roused feelings and controversies throughout the country. The Bills were intended to bring about changes in the social pattern of the Hindu community. All the Bills were referred to Committees after eliciting voluminous evidence and opinions thereon. The Hindu Succession Bill, 1954, brought about substantial changes in the law of inheritance as applicable to the Hindus. The most notable, far-reaching and progressive change effected by the Committee in the Bill was to provide for a share to the daughter in the *Mitakshara* coparcenary properties. This evoked a mixed reception and controversy. Amongst the members of the Committee itself the reactions were : "the draft Bill as amended by the Joint Committee is likely to disorganise the Hindu Society and will rob

*For list, *see* statistical part of this volume.

**A Member of the Committee complained in his Minute of Dissent :

"Such an important Bill as the present one, which is introduced as a result of the recommendations of an important Committee as the Central Committee on Cantonments, which took nearly 3 years to submit its report has been rushed through in the Select Committee just in 2 hours' time in one sitting."

every family of its peace"; "the Committee has brought the Bill 'as close to the spirit of modern times as possible' "; "the Bill when passed is sure to raise a country-wide storm".

Another Bill of great social significance was the Adoption of Children Bill, 1972. It was a measure not only for enacting a general and uniform law of adoption applicable to all communities in India but to provide necessary safeguards to prevent unsuitable adoptions and adoptions with mercenary or immoral objects and to protect adopted children from cruelty, ill-treatment, exploitation or exposure to pernicious influences. The Joint Committee to which the Bill was referred presented its Report on August 20, 1976, after labouring for 4 long years. The Committee held 57 sittings, heard and examined 147 witnesses and received and considered 144 memoranda besides a number of letters, telegrams etc. addressed to it. The oral testimony before the Committee alone ran into 565 printed pages in three volumes. It was indeed an impressive record of the Committee's work by any reckoning.

On the educational subjects were the Joint Committees on the Copyright Bill, 1955, the Banaras Hindu University (Amendment) Bill, 1964 and the Jawaharlal Nehru University Bill, 1964. The Copyright Bill came out from the Committee in a considerably improved form. The Committee amended as many as 58 clauses to bring the provisions in line with the Berne Convention to which India was a signatory. The Banaras Hindu University (Amendment) Bill, 1964 was a legislation for the better working, improvement and development of the University. It came at a time when certain disquieting features and unhealthy influences on the discipline in the University were noticed. The Bill as reported by the Committee aroused great controversy, not only on its various provisions but also on its very name—whether Banaras Hindu University should be styled as Kashi Vishwavidyalaya or should be named after its founder, Pandit Madan Mohan Malviya.

The Jawaharlal Nehru University Bill, 1964, was a unique piece of legislation. The Joint Committee embodied in the Bill the objects of the University, namely, "to advance knowledge, wisdom and understanding by teaching and research and by the example and influence of its corporate life". The Committee added a Schedule to the Bill to spell out elaborately the objectives of the University thus : "the University shall endeavour to promote the study of the principles and fulfil the ideals that Jawaharlal Nehru stood and worked for during his lifetime, namely, national integration, social justice, secularism. democratic way of life, international understanding and scientific approach to the problems of the country" so that the University becomes "worthy of its name". The Committee made changes in the Bill with a view to emphasise the "unique character of the University" named after Pandit Jawaharlal Nehru. A provision was made in the Bill empowering the University to recognise and associate institutions of higher learning wherever they were situated. The University was converted from merely an affiliating body proposed in the Bill into "an all-India institution of national importance".

Out of the seven Bills on legal matters, mention has already been made of the

Code of Criminal Procedure Bill, 1970 and the Indian Penal Code (Amendment) Bill, 1963. Other Bills in this category were the Limitation Bill, 1962, which made substantial changes in the existing law of limitation thus replacing the hundred and fifty year-old law on the subject. The contribution of the Joint Committee on the Contempt of Courts Bill, 1968, was noteworthy in that it defined, after giving a very anxious and elaborate thought, the expression 'Contempt of Court' which had long remained undefined. On this the Committee significantly observed : "The law of Contempt of Court touches upon citizens' fundamental rights to personal liberty and to freedom of expression and therefore it is essential that all should have a clear idea about it. The Committee were however aware that it would be difficult to define in precise terms the concept of Contempt of Court; nevertheless it was not beyond human ingenuity to frame or formulate a suitable definition thereof."

The Joint Committee on the Advocates (Amendment) Bill, 1970 recommended that—

(1) the dual system on the original sides of High Courts of Bombay and Calcutta should be abolished as it was expensive and causing hardship;
(2) a comprehensive legal aid programme should be formulated and for that purpose necessary legislation should be brought;
(3) the present mode of addressing a judge as 'My Lord', 'Your Lordship' being out-moded should be changed.

A clause was inserted in the Bill by the Committee to enable State Bar Councils to undertake welfare schemes for the benefit of disabled, indigent advocates and constitute legal aid funds for giving legal aid or advice to the poor. Another clause was added to the effect that a person who had been convicted of offence involving moral turpitude or offence under the Untouchability Act should not be admitted or enrolled as an advocate for a specified period.

The Joint Committee on the Indian Penal Code (Amendment) Bill, 1972, the last Bill on the legal subject, made its report to the House on January 21, 1976. On this comprehensive Bill consisting of over 200 clauses, the Committee laboured hard for more than 3 years, held 97 sittings (the maximum to be held by any Committee of the Rajya Sabha so far), heard 129 witnesses, received and considered the largest number of memoranda, *i.e.* 256. The Committee amended over 80 clauses including addition of some new and omission of a few clauses in the Bill. Amongst the changes proposed by the Committee were :

(1) introduction of two new punishments, namely, 'community service' and 'disqualification from holding office';
(2) bringing within the purview of the Penal Code certain new offences like cheating of Government by contractors in connivance with public servants; printing and circulation of grossly indecent scurrilous matter

intended for blackmail; causing death by what is commonly called 'hit and run' method; frauds on public by false advertisements etc.; and sabotage.

As to health measures, mention may be made of three significant legislations. They were the Medical Termination of Pregnancy Bill, 1969, which legalised abortion on certain grounds; the Prevention of Water Pollution Bill, 1969; and the last but not the least, the Prevention of Food Adulteration (Amendment) Bill, 1974. The Joint Committee on the Prevention of Water Pollution Bill changed the long and short titles of the proposed enactment to Water (Prevention and Control of Pollution) Act to emphasise the aspect of *control* of water pollution besides its *prevention* so that in cases where prevention may not be practicable at least control should be exercised. The Committee also modified the definition of "Pollution" to include therein both direct and indirect pollution. The Committee made the provisions in the Bill relating to penalties more stringent and deterrent so that "polluters do not find it easy to ignore the requirements of law".

The Prevention of Food Adulteration (Amendment) Bill was a major offensive against the evil of food adulteration. It aimed at curbing the evil, plugging the loopholes in the existing law on the subject and providing for more stringent and effective punishments. One of the highlights of the Committee's recommendations had been that primary food which had become sub-standard due to natural causes and causes beyond the control of human agency, but was not injurious to health had been totally excluded from the purview of the definition of the term "adulteration" thus saving harassment to innocent traders.

In the sphere of economic and political life of the country a reference may be made to two Bills, namely, the Monopolies and Restrictive Trade Practices Bill, 1967, and the Foreign Contribution (Regulation) Bill, 1973. The aim of the first was to provide that the operation of the economic system did not result in the concentration of economic power to the common detriment. The second Bill was "to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain persons or associations, with a view to ensuring that parliamentary institutions, political associations and academic and other voluntary organisations as well as individuals working in the important areas of national life function in a manner consistent with the values of a Sovereign Democratic Republic". On both these Bills the concerned Joint Committees deliberated thoroughly and made significant contribution towards improving the shape of the Bills and also their contents in achieving the aforesaid objectives. The Joint Committee on the Monopolies and Restrictive Trade Practices Bill, 1967, made substantial changes in the definitions of the crucial words "undertaking", "dominant undertaking", "monopolistic undertaking", and "interconnected undertakings". The Joint Committee on the Foreign Contribution (Regulation) Bill, 1973, reduced the value of gift for personal use from the definition of "foreign contribution" from Rs. 5 000 which was provided for in the Bill as introduced, to Rs. 1,000 to make the prohibition more meaningful. The Committee also brought within the ambit of the law, candidates for election to

Municipal Corporations, etc., cartoonists and owners of newspapers so that these could also not accept any foreign contribution like members of legislatures, journalists, etc. The Committee laid down guidelines for determining which organisations were organisations of political nature so that they could not accept foreign contribution without the prior permission of the Central Government. The Committee also prescribed time-limit within which applications for permission to accept foreign contribution should be disposed of by Government.

The Joint Committee on the Hire-Purchase Bill, 1968, which was yet another significant commercial legislation made a number of improvements in the Bill for protecting the interests of hirers. Section 7 of the Hire-Purchase Act, 1972 (26 of 1972) which puts a limitation on hire-purchase charges and for that purpose lays down a formula was the substantial and solid contribution of the Committee to save the hirers from being exploited by the owners by charging exorbitant amounts by way of hire-purchase charges. The Joint Committee appointed 3 sub-committees to consider the interests of hirers and incorporated many changes in the original Bill for the benefit of hirers.

It may, therefore, be concluded that a very important phase of Parliament's legislative procedure is the work by its Committees. From this brief survey of some of the Reports presented by Select/Joint Committees on Bills of the Rajya Sabha one can get a fair idea of the contributions made by them in improving the quality and content of legislations. This contribution becomes more pronounced and positive when we take into account the fact that many of these Bills had originated from the recommendations of Commissions and Committees which had already studied the subjects in depth, such as the Law Commission or other specific expert Committees. The concerned Bills had been examined informally and dispassionately by a group of members sitting round a table with the assistance of information provided by officials and outside interests. To back-benchers the Committees had provided opportunity to influence the process of legislation by debating, projecting and if necessary pressing their view-points so that they could secure changes in the Bills; and to deploy the special knowledge gained in the Committees in the service of the House. From the point of view of Parliament as a whole, these Committees had lightened the load of the legislative machine. There would have definitely resulted congestion of business on the floor of the House had the task of detailed scrutiny of at least some of these legislations been attempted on the floor. From the point of view of Government also, the scrutiny of the legislation by these Committees had provided it an opportunity to better familiarise itself with the views and opinions of members of Parliament and public and to incorporate desired changes in the Bills.

There is no gainsaying in the fact that many Bills can be more quietly and effectively examined by members speaking when sitting rather than standing. Government can receive the benefit of advice and close scrutiny by the Committees at the initial stage of legislation. From the point of view of the people at large, the Committees afford them an opportunity to have their direct say in the formulation of

laws which govern them. They provide the most effective and democratic instrument for the detailed examination of legislation and although a very small number of Bills come to the share of the Committees for consideration, compared to a large volume of Bills introduced and laws passed by the House, the Committees serve as a valuable element in the system of Government by discussion and consent.

February 21, 1977

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Committee of Privileges of the Rajya Sabha*

Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. When any of these rights and immunities, both of the members, individually, and of the assembly in its collective capacity, which are known by the general name of privileges, are disregarded or attacked by any individual or authority, the offence is called a breach of privilege, and is punishable under the law of Parliament. Article 105/194 of the Constitution deals with the powers, privileges and immunities of Members of Parliament/State Legislatures and their Houses, Members and Committees. Each House also claims the right to punish actions which, while not breaches of any specific privilege, are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon itself, its officers or its members. Such actions, though called "breaches of privilege" are more properly distinguished as "contempts".

In this light the Committee of Privileges is one of the important Committees functioning in the Rajya Sabha since 1952. This Committee is constituted to examine

*Contributed by the Legislative Section of the Rajya Sabha Secretariat.

every question of privilege referred to it either by the House or by the Chairman and to determine with reference to the facts of each case whether a breach of privilege is involved, the circumstances leading to it and to make such recommendations as it may deem fit. It consists of ten members nominated by the Chairman. The Chairman of the Committee is also appointed by the Chairman from amongst the members of the Committee. Generally, the Deputy Chairman is appointed the Chairman of the Committee. Normally, the tenure of the Committee is one year.

In all, the Committee has submitted 16 reports. Details of some of the important cases dealt with by the Committee are summarised below.

(1) On the 11th May 1954, Shri P. S. Rajagopal Naidu, a Member of the Council of States (Rajya Sabha), raised in the House a question of breach of privilege in respect of certain statements reported to have been made by Shri N. C. Chatterjee relating to the passing by the Council of States of the Special Marriage Bill, in the course of a speech made by him at Hyderabad on the 10th May 1954, as President of the All-India Hindu Mahasabha at the concluding session of the Mahasabha and published in the local newspapers. According to the newspaper's report, Shri Chatterjee was alleged to have said that it was a "Wonderful Parliament" which was considering the Bill and that the Upper House "which is supposed to be a body of elders seems to be behaving irresponsibly like a pack of urchins". As Shri N. C. Chatterjee happened to be a Member of the House of the People (Lok Sabha), under the directions of the Chairman, Council of States (Rajya Sabha), an inquiry was made from Shri Chatterjee whether the statements attributed to him were correctly reported in the newspapers. This matter was also raised in the Lok Sabha on the 13th May 1954. On the 14th May 1954, the Speaker observed that the Privilege Committees of both the Houses of Parliament might examine the procedure that should be followed in cases where the breach of privilege or contempt of the House was alleged to have been committed by a Member of the other House. The suggestion was agreed to by the Chairman, Rajya Sabha. Accordingly, the Privilege Committees of both the Houses held three joint sittings on the 15th, 18th and 21st May 1954. The following procedure was recommended in the Report of the Joint Sittings of the Committees which was approved by both the Houses—Lok Sabha on 2nd December and Rajya Sabha on 6th December 1954 :

(*i*) When a question of breach of privilege is raised in any House in which a member, officer or servant of the other House is involved, the Presiding Officer shall refer the case to the Presiding Officer of the other House, unless on hearing the member who raises the question or perusing any document, where the complaint is based on a document, he is satisfied that no breach of privilege has been committed or the matter is too trivial to be taken notice of, in which case he may disallow the motion for breach of privilege.

(*ii*) Upon the case being so referred, the Presiding Officer of the other House shall deal with the matter in the same way as if it were a case of breach of privilege of that House or of a member thereof.

(*iii*) The Presiding Officer shall thereafter communicate to the Presiding Officer of the House where the question of privilege was originally raised, a report about the enquiry, if any, and the action taken on the reference.

If the offending member, officer or servant tenders an apology to the Presiding Officer of the House in which the question of privilege is raised or the Presiding Officer of the other House to which the reference is made, no further action in the matter be taken after such apology is tendered.

In connection with the question of privilege raised by Shri P. S. Rajagopal Naidu at the sitting of the House on May 11, 1954, the Chairman read out to the House on December 8, 1954, the following letter dated 6th December 1954, addressed to the Speaker of the Lok Sabha by Shri N. C. Chatterjee, Member, Lok Sabha, and transmitted to the Chairman by the Speaker :

> "Since the question of privilege has been raised and the procedure has now been settled, may I request you to inform the Chairman that I did not intend any disrespect to the Rajya Sabha or the Members thereof ? But if a wrong impression has been conveyed, I am sorry for it."

The Chairman stated that in view of this letter, the matter would now be treated as closed.

(2) On the 3rd April 1958 a request was received by the Secretary, Rajya Sabha from the Election Tribunal, Calcutta for production of the Rajya Sabha file regarding a firm "Indo-German Trade Centre" which had entered into a contract for installation of automatic vote recorder in the Rajya Sabha and Lok Sabha Chambers. The case was referred by the Chairman to the Committee of Privileges to decide two issues—(*i*) what procedure should be followed when a request is received from a Court for the production of documents connected with the proceedings of the House or any Committee or in the custody of the officers of the House or for giving oral evidence by an officer of the House in respect of any such proceedings or documents; and (*ii*) whether in the present case permission should be given for the production of documents before the Tribunal.

On the first question the Committee laid dowm *inter alia* that no member or officer of the House should give evidence in respect of any proceedings of the House or any Committee thereof or any document relating to or connected with any such proceedings or in the custody of officers of the House or produce any such document, in a court of law without leave of the House being first obtained. When the House is not in session, the Chairman may in emergent cases, in order to prevent delays in the administration of justice, permit a member or officer of the House to give evidence before a court in respect of any of the above matters or allow the production of the relevant documents and he will inform the House

accordingly of the fact when it assembles. If however the matter involves any question of privilege, especially the privilege of a witness or should the production of the documents appear to the Chairman to be a subject for the discretion of the House itself, he may decline to grant the required permission and refer the matter to the Committee of Privileges for examination and report. The Committee recommended that whenever any document relating to the proceedings of the House or any Committee thereof is required to be produced before a court of law, the court should request the House stating precisely the documents required, the purpose for which they are required and the date by which they are required. It should also specifically be stated in each case whether only a certified copy of the document should be sent or an officer of the House should produce it before the court. Similarly, when the oral evidence of an officer of the House is required the court should request the House stating precisely the matters on which and the purpose for which his evidence is required and the date on which he is required to appear before the court.

The Committee further prescribed that when a request is received during a session for the production of documents before a court relating to or connected with the proceedings of the House or a Committee or in the custody of officer of the House or for oral examination of any member or officer of the House in respect of any such proceedings or documents, the case may be referred by the Chairman to the Committee of Privileges. On a report from the Committee a motion may be moved in the House by the Chairman or a member of the Committee to the effect that the House agrees with the report and further action should be taken in accordance with the decision of the House.

On the second question the Committee recommended that the Secretary, Rajya Sabha might designate an officer of the Rajya Sabha Secretariat to produce before the Election Tribunal the correspondence between the Indo-German Trade Centre and the Rajya Sabha Secretariat regarding the installation of the automatic vote recording system in the Rajya Sabha during 1956-57. (First Report of the Committee of Privileges—presented on 1.5.1958).

(3) On June 5, 1967, Shri Chandra Shekhar, a Member of the Rajya Sabha, gave notice seeking the consent of the Chairman to raise a question involving a breach of privilege. The notice was directed against the Editor of the Hindustan Times of New Delhi for certain writings contained in a feature article "National Affairs" with a sub-title "Shades of the Star Chamber" published in its issue of June 4, 1967. According to the submission of Shri Chandra Shekhar, the relevant statement in the article constituted a "gross reflection on the proceedings of the House and amounted to indignities to the House and its Members". On the Chairman giving consent Shri Chandra Shekhar raised the matter in the House on the same day and asked for the leave of the House. On leave being granted, the Leader of the House moved that the complaint be referred to the Committee of Privileges. The motion was adopted on the same day.

The Committee went through the impugned article in the Hindustan Times and

was of the view that the writer of the article had used strong language and had expressed himself equally strongly in relation to certain discussions that took place in the Rajya Sabha concerning the House of the Birlas. Nevertheless the Committee felt that it was not necessary to attach undue significance to such writings and thereby bring them within the ambit of the privilege of the House. The article taken as a whole did not in the opinion of the Committee constitute a breach of privilege or contempt of the House. In this connection the Committee quoted, with approval, what Mr. Gladstone observed in a privilege case in the House of Commons (U.K.) in what was known as The Times case in 1888 :

> "Breach of Privilege is a very wide net, and it would be very undesirable that notice should be taken in this House of all cases in which hon. Members are unfairly criticised. Breach of Privilege is not exactly to be defined. It is rather to be held in the air to be exercised on proper occasions when, in the opinion of the House, a fit case for its exercise occurs. To put this weapon unduly in force is to invite a combat upon unequal terms wheresoever and by whomsoever carried on . . . Indeed, it is absolutely necessary that there should be freedom of comment. That freedom of comment may, of course, be occasionally abused; but I do not think it is becoming the dignity of the House to notice that abuse of it."

In the view taken by the Committee and in the circumstances of the case, the Committee recommended to the House that no action was called for on the complaint. The report of the Committee was presented to the House on the 14th August 1967* (10th Report).

(4) A Hindi daily 'Hindustan' in its issue dated June 2, 1967, published an editorial under the caption "Baseless, Absurd and Improper". The impugned editorial related to a discussion in the Rajya Sabha on May 30 and 31, 1967, on the Interim Report on Industrial Planning and Licensing Policy by Prof. Hazari. The issue was referred to the Committee on the 5th June 1967. The Committee in its Report came to the conclusion that certain statements in the editorial made serious reflections on the character and proceedings of Parliament and on the conduct of its members and thereby tended to bring Parliament and its members into disrepute, and thus it was a clear case of breach of privilege and contempt of the House. The Committee, however, in view of the apology tendered by the editor and the expression of regret by him, recommended to the House to take no further action in the matter. The Report was presented to the House on 14th August 1967 (9th Report).

(5) Shri Bhupesh Gupta, a Member of the Rajya Sabha, referred in the House

*This case was raised in the Lok Sabha also. The Committee of Privileges of that House held that the impugned article constituted a gross breach of privilege and contempt of the House,

on the 29th April and also on the 2nd May 1968 to an incident in which a police officer from Chandigarh called at his house during the inter-session period between the 63rd and 64th Session of the Rajya Sabha in connection with the investigation of the alleged theft of a page of the Punjab Appropriation Bill, 1968. According to Shri Gupta, the Bill, which the Punjab Legislative Assembly had approved, had been signed by the Governor of Punjab (when it was submitted to him for assent) without any certificate thereon signed by the Speaker or the Deputy Speaker of the Punjab Legislative Assembly. Shri Gupta produced in the House a photostat copy of the relevant page of the Bill. As the issues involved were of considerable importance from the point of view of Member's rights and privileges, the Chairman referred the matter to the Committee.

The Committee after examining the issues involved, proceeded to consider how the police should proceed in a case when it found from a disclosure made by a Member on the floor of the House that he was in possession of vital information in a criminal case which might be under investigation by the police. The Committee recommended the following procedure :

> "If in a case a Member states something on the floor of the House which may be directly relevant to a criminal investigation and is, in the opinion of the investigating authorities, of vital importance to them as positive evidence, the investigating authority may make a report to the Minister of Home Affairs accordingly. If the Minister is satisfied that the matter requires seeking the assistance of the Member concerned, he would request the Member, through the Chairman, to meet him. If the Member agrees to meet the Home Minister and also agrees to give the required information, the Home Minister will use it in a manner which will not conflict with any parliamentary right of the Member. If, however, the Member refuses to respond to the Home Minister's request, the matter should be allowed to rest there."

The report of the Committee was presented to the House on the 6th December 1968, and was adopted on the 20th December 1968 (12th Report).

(6) On the 7th September 1970 a complaint of breach of privilege against Shri Ram Nath Goenka was referred to the Committee. The complaint arose out of a statement made by Shri Goenka which had appeared in the Indian Express of the 4th September 1970 under the heading "Goenka refutes Minister's charge". The statement of Shri Goenka related to the replies given in the Rajya Sabha on the 31st August 1970 by Shri K. V. Raghunatha Reddy, to certain supplementaries put by Shri Krishan Kant on starred question No. 679 regarding C.B.I. enquiry into firms connected with Goenkas. On November 6, 1970 Shri Krishan Kant also raised a question of privilege arising out of certain statements contained in a writ petition filed by the National Company Limited and Shri Goenka, a Director of the Company, in the High Court of Calcutta. This issue was also referred to the Committee. On examining the case the Committee came to the conclusion that

Shri Goenka had committed a breach of privilege and contempt of the House. The Committee observed that responsible persons in public life should refrain from commenting on the proceedings in Parliament in a manner which would bring them within the penal jurisdiction of the House. Keeping in view the facts that Shri Goenka had then been returned to the Lok Sabha during the 1971 elections, the Committee did not consider it necessary to recommend any further action in the matter. For the same reasons the Committee recommended that no further action need be taken on the complaint of Shri Krishan Kant against the National Company Limited and Shri Goenka (13th Report).

(7) On August 26, 1974, notices were given seeking the consent of the Chairman to raise a question involving breach of privilege of Shri Niren Ghosh, Member of the Rajya Sabha, and of the House, arising from the alleged assault on Shri Ghosh by some policemen on February 2, 1974, in the residential quarters of the workers of the Alliance Jute Mills in Jagatdal area in West Bengal, where Shri Ghosh, it was alleged, was holding a meeting in violation of an order under section 144 of the Code of Criminal Procedure prohibiting an assembly of five or more persons.

On the directions of the Chairman, Rajya Sabha, the Minister of State in the Ministry of Home Affairs made a statement on this incident in the House on August 26, 1974. The Minister stated that the allegation that Shri Ghosh had been assaulted by some policemen on February 2, 1974 had been denied by the West Bengal Government. Shri Ghosh characterised the denial of the West Bengal Government as 'utterly false' and 'a white lie'. The Chairman, after considering the matter, referred the question of privilege to the Committee of Privileges for examination, investigation and report.

The Committee formulated the following two issues for its examination :

(1) Whether an assault on Shri Niren Ghosh, Member, Rajya Sabha, on February 2, 1974, when he was "talking to the workers" of the Alliance Jute Mills in Jagatdal area, constituted a breach of privilege of the member, and of the House ?
(2) Whether the report on the incident received from the West Bengal Government was factually incorrect and if so, whether the same was sent to the Rajya Sabha Secretariat with the knowledge that it was so and with the intention of misleading the House and the Committee of Privileges ?

The Committee came to the following conclusion on the first issue :

"On the evidence adduced before the Committee it is clear that the alleged incident took place when Shri Niren Ghosh was talking to the workers near the Alliance Jute Mills Labour Lines in Jagatdal area. It cannot, therefore, be said that Shri Niren Ghosh was performing any parliamentary duty at the

time of the incident and as such, his arrest and the alleged assault on him, in these circumstances do not involve any breach of privilege or contempt of the House or of the Member."

While considering the second issue, the Committee took note of the following facts that emerged from the evidence on record :

(*i*) The Jute Mills workers were on strike and an order under section 144, Cr. P. C. prohibiting an assembly of five or more persons within the area of Jagatdal Police Station, was in force at this relevant point of time.

(*ii*) The Police authorities knew that a Member of Parliament and a trade union leader of eminence was going to address the jute mills workers in the Jagatdal area.

(*iii*) When the police party rushed to the spot and found an assembly of 300/400 persons, they got down from the police van, chased the mob brandishing lathis to disperse them.

(*iv*) In spite of the categorical denial by the West Bengal Government in their report and by the officers in their evidence before the Committee, Shri Niren Ghosh reiterated that one blow from a lathi was struck against him by a policeman.

On a perusal of the evidence before it, the Committee was of the view that in the melee it was quite possible that Shri Niren Ghosh might have received a lathi blow from a policeman. The Committee saw no reason to disbelieve the testimony of Shri Ghosh in this behalf.

The Committee then considered the question whether the West Bengal Government had sent their report on the incident with the knowledge that it was incorrect and with the intention of misleading the House and the Committee m ,de the following observations :

"Acts which mislead or tend to mislead must be done wilfully with the intention to mislead or deceive and that the element of deliberateness is an essential ingredient of the offence. There may be a number of statements or depositions coming up before the House or its Committees which may not be wholly true and many statements so made, may, in the end, be found to be based on wrong information given to those who had made them. Such statements will not constitute contempt of the House unless they were made with the knowledge that they were incorrect and also with the intention of deliberately misleading the House. In the present case it is difficult to hold that the West Bengal Government had forwarded the report of the District Magistrate in the matter with the knowledge that it was incorrect or with the intention to mislead the House or the Committee of Privileges. So, on this score, the Committee

came to the conclusion that no breach of privilege or contempt of the House was involved "

The Committee however took a serious view of the fact that the matter, which concerned a Member of Parliament and raised more than once in the House, was not treated by the West Bengal Government with the gravity that it deserved and made the following observations :

"However unwarranted and open to censure the action of the police authorities may be, the Committee finds it difficult to spell out any breach of privilege from the findings arrived at in this case. The Committee, however, considers it necessary to emphasise that Members of Parliament are entitled to the utmost consideration and respect at the hands of the public servants and as such police or any other authority should not do anything or act in a manner as will hamper them in their functioning as public men. The authorities, when dealing with Members of Parliament, should act with great restraint and circumspection and show all courtesy which is legitimately due to the representatives of the people."

In the view taken by the Committee and in the circumstances of the case, the Committee recommended that no further action be taken by the House in the matter.

The report was presented to the House on May 14. 1975 (16th Report).

(8) On the 5th September 1974 Shri Lal K. Advani raised a question of breach of privilege in the House in regard to the article published in the Hindi Weekly "Pratipaksha" in its issue of the 8th September 1974 under the heading "Sansad Ya Choron Aur Dalalon Ka Adda". Shri Advani stated that in the said article Parliament had been described as a den of thieves and touts and the derogatory remarks appearing in that article impinged on the integrity and dignity of entire Parliament and constituted a gross breach of privilege and contempt of the House. After leave was granted by the House, the Leader of the House moved a motion to the effect that the said article constituted a gross breach of privilege and contempt of the House and that the House would consult its own dignity by taking no further action in the matter. The motion moved by the Leader of the House was thereafter adopted.

Besides these cases actually referred to the Committee of Privileges, many questions of breach of privileges are raised on the floor of the House and many more notices seeking consent of the Chairman to raise such questions are received in the Secretariat. All such cases are disposed of according to the rules and practices of the House.

There was also a case in the Rajya Sabha akin to a privilege case. On September 2, 1976, on a motion moved by Shri Om Mehta, Minister of State in the Ministry of Home Affairs and Department of Parliamentary Affairs and adopted

by the House, an *ad hoc* Committee consisting of ten members, who were also members of the Privileges Committee of the Rajya Sabha, was appointed to investigate the conduct and activities of Shri Subramanian Swamy, Member of the Rajya Sabha, during the past one year or more both within and outside the country, including anti-Indian propaganda calculated to bring the Parliament and the country's democratic institutions into disrepute and generally behaving in a manner unworthy of a Member of this House.

The Report of the Committee was presented to the House on November 12, 1976. On the basis of the findings and recommendations of the Committee, Shri Kamlapati Tripathi, Leader of the House, moved a motion in the House on November 15, 1976 to the effect that the Rajya Sabha "accepts the findings of the Committee that the conduct of Shri Swamy is derogatory to the dignity of the House and its members, and inconsistent with the standards which the House expects from its members and resolves that Shri Subramanian Swamy be expelled from the House." The Motion was adopted by the House on the same day.

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Growth of the Secretariat*

Prior to the 15th August, 1947, *i.e.* the establishment of the Dominion of India, there were two Houses of the Central Legislature, *viz.* the Legislative Assembly and the Council of State. As from the 15th August 1947, these two Houses were replaced by a single House, that is the Constituent Assembly of India (Legislative), as the Dominion Legislature. On the commencement of the Constitution of India on the 26th January 1950, the Constituent Assembly became the Provisional Parliament and began to exercise all the powers and to perform all the duties conferred by the Constitution on the two Houses of Parliament and continued to do so until the two Houses were duly constituted. After the first general elections held in 1952, the Provisional Parliament was succeeded by the two Houses of Parliament, namely, the House of the People and the Council of States and a continuity was thus maintained in the line of succession of the House or Houses of the Central Legislature since the establishment of the Central Legislative Assembly in 1920 under the then Government of India Act, 1919.

Parliament being the Legislative Organ of the State it is imperative that it should have a separate Secretariat of its own, independent of the Executive Govern-

*Contributed by the Rajya Sabha Secretariat.

ment and that the Secretariat of each of the Houses should function directly under the guidance and administrative control of its Presiding Officer. This idea, which was accepted long before Independence, was given a concrete shape by inserting article 98(1) in the Constitution which has provided for a separate Secretarial Staff for each House of Parliament. Accordingly, with the commencement of the Constitution and setting up of the Council of States a separate and independent Secretariat, designated "Council of States Secretariat", came into existence in May 1952.

Shri B. N. Kaul, Principal Private Secretary to Prime Minister Nehru, was appointed to work as Secretary, Council of States, till such time as a more permanent appointment was made and from the afternoon of the 12th May 1952, Shri S. N. Mukerjee, a senior officer in the Ministry of Law, took over as Secretary of the Council of States. Even after the Council of States and the House of People came into existence in 1952, the Secretariat of the House of the People continued to be called the Parliament Secretariat. However, the names of the two Secretariats were changed to Rajya Sabha Secretariat and the Lok Sabha Secretariat in 1954. After the death of Shri Mukerjee on the 8th October 1963, Shri B. N. Banerjee, Joint Secretary in the Secretariat was appointed to the post with effect from the 9th October 1963. In November 1973, Hon'ble Chairman made an announcement in the House regarding the redesignation of the post of Secretary, Rajya Sabha, as Secretary-General, Rajya Sabha. Shri Banerjee continued as Secretary-General till his retirement on the 1st April 1976 and Shri S. S. Bhalerao, Additional Secretary in the Secretariat took over charge as Secretary-General, Rajya Sabha.

The special provisions in the Constitution in respect of the Secretarial staff of the two Houses of Parliament were obviously made not only to safeguard the independence of Parliament and the Presiding Officers of its Houses but also to ensure that the persons of calibre, intellect and appropriate educational background were recruited to carry out the specialised nature of work required to be handled by these Secretariats. This objective is achieved by the provisions contained in clause (3) of article 98 of the Constitution which enable the Presiding Officers to have a say in the matter of framing of rules for recruitment and conditions of service of the persons to be appointed in their respective Secretariat. Upto March 1957 when it was at its formative stage, the Rajya Sabha Secretariat had no rules of its own governing the recruitment and other conditions of service of its employees. They continued to be governed by the Legislative Assembly Department (Conditions of Service) Rules, 1929, as amended from time to time. The Rajya Sabha Secretariat (Recruitment and Conditions of Service) Rules, were framed and promulgated with effect from March 15, 1957, by the President of India, in consultation with the Chairman, Rajya Sabha, under article 98(3) of the Constitution of India.

The same considerations actuated the Government of India and the Union Public Service Commission to agree that there was no need to consult the Commission in regard to matters relating to the officers of the two Parliament Secretariats and a provision to this effect was accordingly made in the Union Public Service Commission (Exemption from Consultation) Regulations, 1958. The Commission

is, therefore, not consulted in the matter of recruitment of officers and the two Secretariats directly recruit them under the orders of their respective Presiding Officer whenever necessity for such a recruitment arises.

Under the Rajya Sabha Secretariat (Recruitment and Conditions of Service) Rules, 1957, and Order called the Rajya Sabha Secretariat (Methods of Recruitment and Qualifications for Appointment) Order, 1958, was issued and came into effect from the 1st August 1958, wherein qualifications, etc. required for appointment to the various categories of posts and also the methods of recruitment for filling up those posts were prescribed. This Order was superseded by a subsequent Order of 1969 which in turn was further superseded by the Order of December 1, 1974.

At the formative stage the Secretariat started with a very limited staff and on the 1st January 1955, the regular strength of the Secretariat stood at 167 only, out of which 13 were Gazetted Officers. Besides, many persons belonging to different categories used to be appointed during the session periods of the Rajya Sabha. The Secretariat had to be expanded further and its sanctioned strength on the last day of the year 1955 stood at 203 including 17 Gazetted Officers. With the increase in parliamentary activity the work-load continued to grow, both in volume and complexity, and consequently the Secretariat had to be expanded from time to time.

In view of the special position assigned to the Secretariats of the two Houses of Parliament under the Constitution, the recommendations of the Second Central Pay Commission (1957-59) were not made automatically applicable to their staff. However, the pay scales of the employees of the Rajya Sabha Secretariat were revised broadly on the basis of the scales recommended by the said Pay Commission for Central Government Employees under orders issued by the Chairman after consultation with the Ministry of Finance. The Third Central Pay Commission stated in their report that the employees of the Secretariats of Parliament were excluded from their purview in view of the provisions of article 98 of the Constitution. In view of this position, the Presiding Officers of the two Houses appointed a Committee of Parliament to report on the structure of pay, allowances, leave and pensionary benefits for the officers and staff of the Rajya Sabha and Lok Sabha Secretariats.

Pursuant to the acceptance of the recommendations of the Committee by the Chairman, Rajya Sabha and Speaker, Lok Sabha, the officers and staff of the two Secretariats were, from the 1st January 1973, allowed the same pay scales as recommended by the Pay Commission for corresponding posts in the Central Secretariat and on redesignation of various posts from the 1st December 1974, the scales of pay as recommended for those posts by the Committee.

Among the notable changes made in the context of the recommendations of the Committee are the upgradation and redesignation of the post of Joint Secretary as Additional Secretary, reorganisation of the Secretariat on functional basis, whereby the Secretariat was divided into ten services and altering of the nomenclature of various posts indicative of the nature of functions entrusted to them.

From the very inception, the Secretariat had to cater to the peculiar needs of

the House and make arrangements for the specialised services essential for the functioning of the House. In this context mention may be made of the Reporting and Security arrangements which the Secretariat had to make from the first sitting of the Rajya Sabha in May 1952. Simultaneous interpretation of speeches delivered in the House is yet another specialised service for which arrangements were made by the Secretariat subsequently.

PARLIAMENTARY REPORTING

The maintenance of accurate verbatim record of proceedings of the House and its Committees is a very important part of parliamentary activity in any legislature. As such, an organisation for reporting of such proceedings in the Rajya Sabha has been in existence since its inception in May 1952, but reporting as such has a history much longer than these 25 years. Going through the old records one finds that the proceedings of the old Imperial Legislative Council were reported by a set of four Reporters. Compared to the volume of reporting these days the reporting work was not by any means substantial in the early twenties or earlier than that. It was for this reason perhaps, that whenever the posts of Reporters were advertised by the then Federal Public Service Commission the condition that during the period the Council was not in session the services of the Reporters would be utilised in any way that the Government of India might direct, was included in the advertisement. Soon after the adjournment of the brief Council sessions the services of the Reporters were often requisitioned by different Departments of Government in connection with their committees even when those committees went on long tours to distant places. Such an arrangement which amounted to a duality of control of an important section of the legislature staff was resented by those who were at the helm of affairs in the legislature and who wanted a separate and self-contained office for the legislature. Probably the seeds of the noble idea contained in article 98(1) of the Constitution were sown by the President of the Central Legislative Assembly, Shri Vithalbhai Patel, who made a proposal to that effect in 1927.

When in 1952 the Rajya Sabha was set up with a separate Secretariat, parliamentary reporting in the Rajya Sabha started with six Reporters who were working in the Council of States and the Constituent Assembly. To cope with the increase in work of the Parliament of Independent India the strength of reporting staff was also increased correspondingly from time to time.

The process of parliamentary reporting is quite an intricate one as a Reporter has to reproduce with a fair amount of accuracy, the speeches made at high speed which may sometimes reach 200 words per minute, during uproarious scenes when a number of members speak at the same time and between interruptions made from a corner of the House not visible to him from his seat in the House.

According to rule 260 of the Rules of Procedure and Conduct of Business in

the Rajya Sabha, the Secretary-General shall cause to be prepared a full report of the proceedings of the Rajya Sabha at each of its meetings and shall as soon as practicable, publish it in such form and manner as the Chairman may from time to time direct. Accordingly, every day when the Rajya Sabha sits a full report of the proceedings containing almost every word spoken in the House from the formal commencement of the proceedings till its adjournment is prepared and cyclostyled copies thereof entitled "RAJYA SABHA DEBATES – Official Report" are available for perusal by members and others early next morning.

The volume of work transacted by the House has increased considerably over the years. In the beginning the sessions used to be of short durations, the sittings also were only for a limited period and not infrequently did the House adjourn ahead of the schedule having completed all the business set down for the day. The reporting hours in the House rose from 567 hours 39 minutes in 1956 to 622 hours 18 minutes in 1974. Of course, there was a fall in reporting hours during the years 1975 and 1976 due to lesser number of sessions being held but as there was an increase in the number of meetings of parliamentary committees the tempo of reporting work remained almost unchanged.

As stated earlier in addition to the proceedings of the House a record of the proceedings of parliamentary committees is also maintained. Over the years there has been a phenomenal increase in the volume of committee work also and consequently a new cadre of Committee Reporters was introduced to supplement the Parliamentary Reporters.

The Committee reporting rose to 336 hours 33 minutes in 1975 as against 31 hours 45 minutes in 1956. This would give a clear indication of the volume of increase in the committee activities during the last 20 years which the Reporters had to cover.

SIMULTANEOUS INTERPRETATION OF SPEECHES

India's population of over six hundred million consists of people who belong to different cultural groups and speak different languages. The Constitution has fully recognised this diversity by granting to the people the right to conserve their respective languages, scripts and cultures. Fifteen major languages have been recognised for this purpose and have been listed in the Eighth Schedule to the Constitution.

Although the States have been given full freedom to adopt any language as their official language, under article 343 of the Constitution Hindi has been adopted as the official language and English as the associate language of the Union. Both Hindi and English are, therefore, the languages of debate in the two Houses of Parliament, there being no bar on members speaking in other recognised languages also with the permission of the Chair.

Ever since the inception of the Rajya Sabha, speeches in the House were made

both in English and Hindi. With the passage of time, however, more and more people who belonged to the common walks of life started coming to the House as representatives of the people. Many of them did not understand either Hindi or English. It was, therefore, difficult for many members to follow the proceedings of the House continuously. In view of this the need for introducing a service for the simultaneous translation of all speeches from Hindi into English and *vice-versa* in the House was felt in the early sixties. Prime Minister Jawaharlal Nehru himself took keen interest in the proposal.

The proposal involved finding suitable persons who could undertake the difficult work of simultaneous interpretation. That was a new type of work and as there was no school of conference interpreters in the country, talent had to be found from within the Secretariat. Accordingly, after an improvised training some persons were selected and given intensive training for about a year. It was as a result of the well organised training programme that a team of simultaneous interpreters could finally be selected for the Rajya Sabha. The equipment for simultaneous interpretation of speeches in the House was installed and the Simultaneous Interpretation Service for Hindi and English was introduced in the House on the 7th September 1964. Members were thus in a position to listen to the debate in the House in the language of their choice just by using the headphones provided for the purpose.

The success of the scheme, however, led to the demand that facility be provided for other languages also. Some members who came to the House from the far corners of the country were not well conversant with both Hindi and English. For better participation in the proceedings of the House, they wanted that they should be able to express themselves in their mother tongue provided it was one of the recognised languages in the Constitution. To meet their demand, Interpreters for several languages were trained and in 1971 Interpretation Service in Hindi and English for Tamil, Telugu, Malayalam, Kannada, Marathi, Bengali and Punjabi was introduced.

SECURITY ARRANGEMENTS IN THE CHAMBER, LOBBIES AND GALLERIES

Soon after the bomb incident in the Central Legislative Assembly in Delhi in 1929, the President of the Central Legislative Assembly, Shri Vithalbhai Patel constituted a nine-member Watch and Ward Committee under the Chairmanship of Hon'ble Sir James Crerar. The terms of reference of the Committee *inter alia* included the following :

> "To consider and recommend whether the time has arrived for the Assembly to entertain its own staff for the purpose of guarding the floor, the galleries and the lobbies, and also of regulating the admission of the visitors and to leave it to the police under the orders of the President to guard other parts of the Assembly building, and if so, what should be the number of Door-keepers and Messengers required, their remuneration, method of recruitment, conditions of service etc."

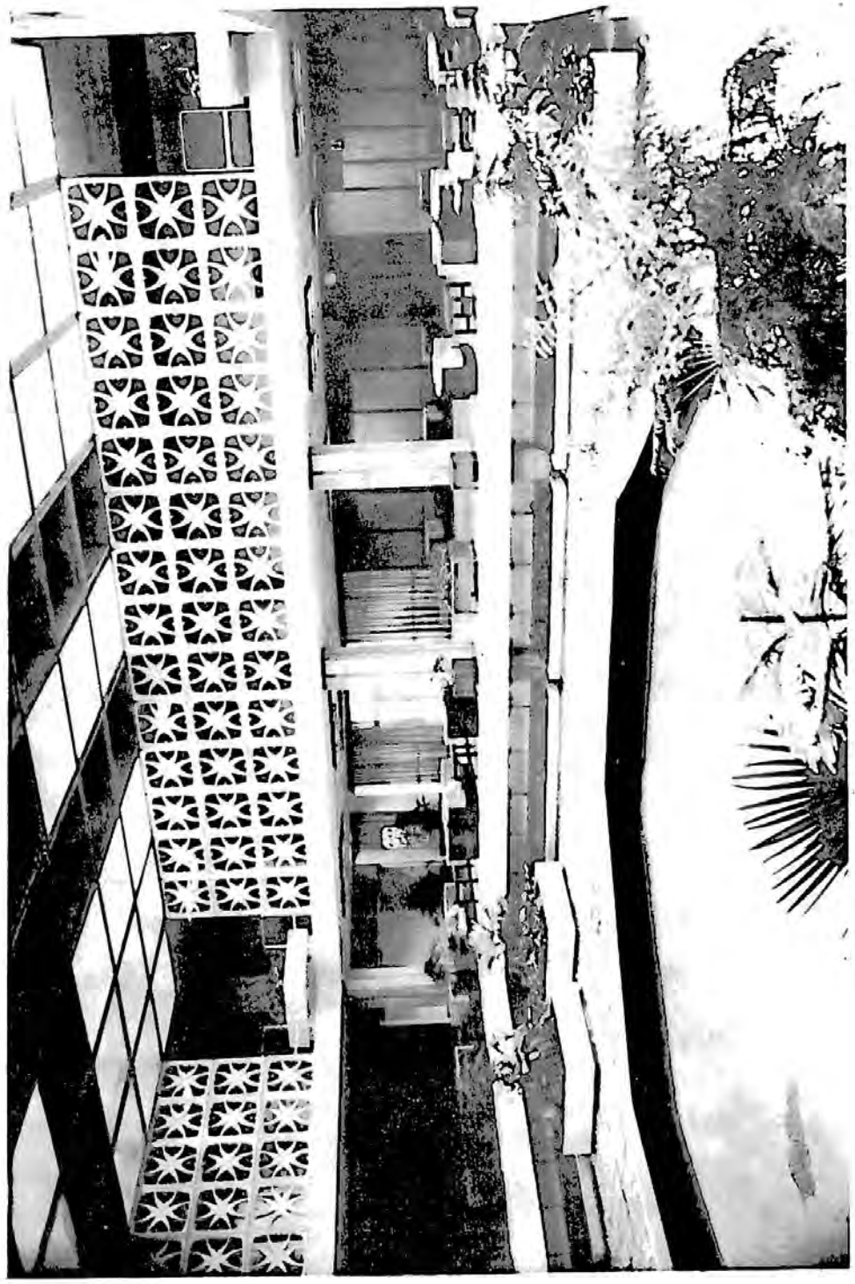
In its report the Committee proposed that for security purposes Parliament building should be divided into two distinct portions, namely, (*i*) the 'Inner Precincts', which include the floor of the Chamber itself, the lobbies and galleries, and (*ii*) the 'Outer Precincts', which comprise the entrances to the Assembly sector, the outer corridors and the approaches to the inner precincts.

In regard to inner precincts the Committee's recommendation was that a separate Assembly establishment of Door-keepers and Messengers should be entertained for the purpose of checking admission, controlling the entrances and exits of the visitors to the galleries, showing their seats to the visitors and dealing with minor forms of disorder. The Committee further recommended that the inner precincts should be placed entirely in the hands of the Assembly establishment while that of the outer precincts and the roof should be vested with the police who would intervene in matters relating to inner precincts only when requested to do so by the President of the Assembly. The report submitted by the Committee was adopted by the House and the Watch and Ward organisation came into existence and its functions *vis-a-vis* the police force were distinctly demarcated.

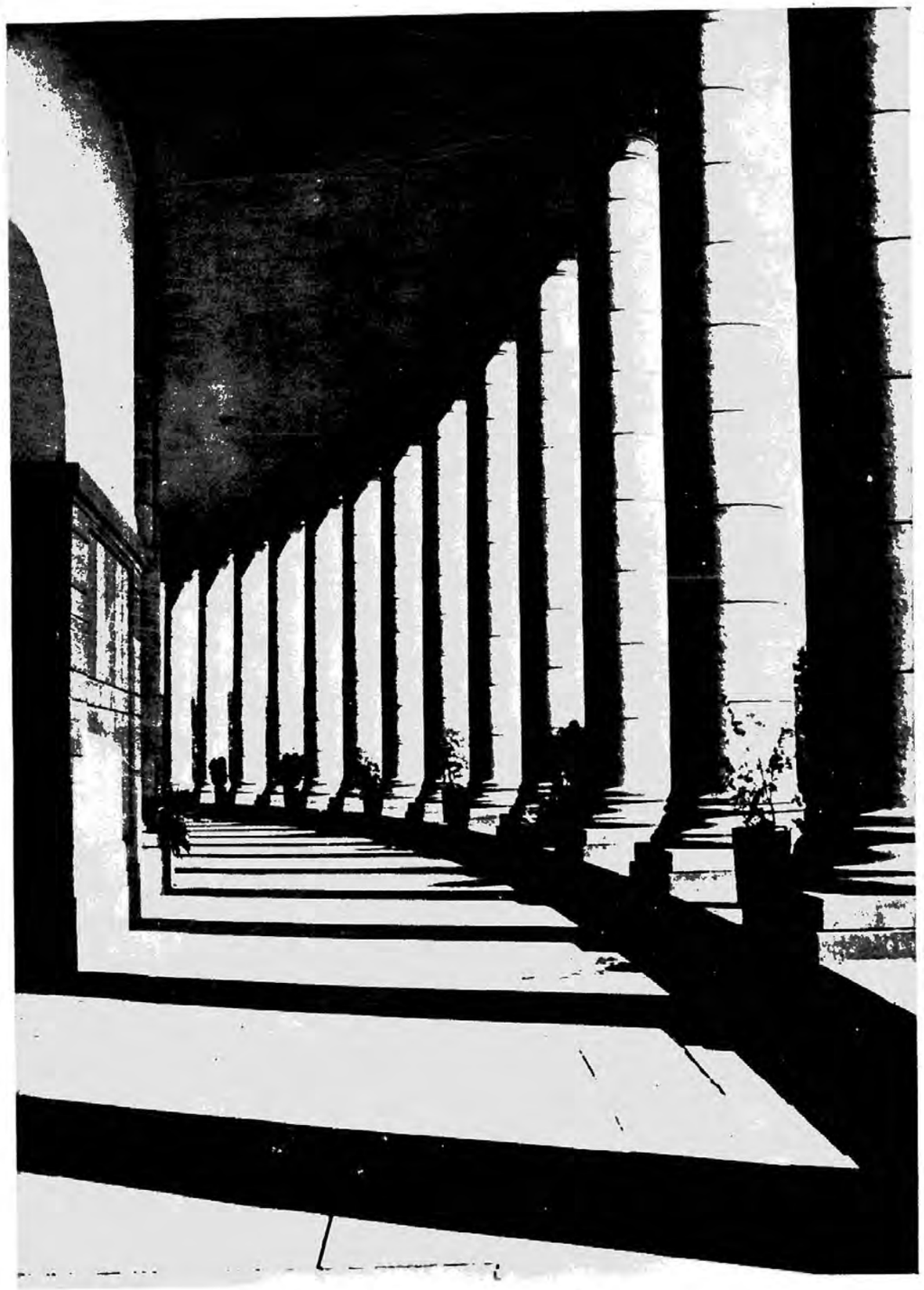
On the formation of the two Houses of Parliament, under the Constitution it became imperative to make security arrangements in the Chamber, lobbies and galleries of the two Houses. When the Rajya Sabha met for the first time there was no regular Watch and Ward force as such and the work pertaining to security of the Chamber and galleries vested in persons temporarily recruited for session periods only duly assisted by the clerical staff of the Secretariat. This practice continued for a year when two Junior Watch and Ward Assistants and one Senior Watch and Ward Assistant were recruited on a regular basis. However, during the sessions of the House outsiders continued to be recruited on a purely temporary basis to assist the regular staff. With the passage of time it was felt that the security of Parliament House should not be entrusted to such casual employees particularly in view of the fact that leaders of the country assembled there during the sessions of Parliament and meetings of its Committees. A regular full-fledged Watch and Ward organisation was, therefore, set up in the Rajya Sabha Secretariat in 1956. Its strength was considerably augmented from time to time and promising young men were recruited to it. Arrangements were also made for imparting the Watch and Ward personnel intensive training in security measures, fire fighting, handling of fire-arms, explosives, etc. at different police and military centres in the country and lectures by various intelligence and police officers for their benefit were also arranged from time to time. The security of the Chamber, its lobbies and galleries was fully entrusted to them, their duties were clearly defined and they were provided with distinctive uniforms in consonance with the dignity of the House.

The Watch and Ward Officer is common to both the Houses of Parliament being in overall charge of the Watch and Ward organisation in both the Secretariats acts under the direct control of the Secretaries-General of the two Houses without any interference from an outside agency.

It will be seen from the foregoing that the Secretariat, beginning with a nucleus in 1952, has not only endeavoured to meet the requirements of the developing Parliamentary Institution of free India but has also reached a stage where it is capable of meeting the demands of any new parliamentary innovations and developments.



Hexagonal pond flanked by Committee Rooms in the Parliament House Annexe.



A view of the colonnade on the first floor of the Parliament House.

Part Five

Second Chambers in State Legislatures

66

Are Legislative Councils in States necessary ?

K. S. NAGARATHANAMMA*

One of the most vexed questions of political science is that of the second chambers in legislatures. In the world today in most of the countries, legislatures are bicameral. They are bicameral because the framers of the constitutions of these countries thought that it would be advantageous to have bicameral legislatures. There are bicameral legislatures both under the parliamentary system of government—as that of the United Kingdom or of our country—and the presidential system—as that of the United States. There are bicameral legislatures in Canada, Australia, France and even in U.S.S.R. In U.S.S.R. and South Africa the constituent units of the State are unicameral. In Canada, out of eight provinces, only two have second chambers. In Switzerland, out of 18 cantons all, except two, are unicameral.

A study of the history of second chambers would perhaps indicate that second chambers have been created by force of tradition. It is said that wherever there are vested interests which require to be protected second chambers are claimed.

In India, bicameral legislature was first created under the Government of India Act of 1919. This was intended to enable the consideration of legislations in a cooler

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atmosphere. No federal principle was involved at that time because the then Government functioned on the basis of devolution of authority from the Centre.

The Constituent Assembly appointed two Committees, namely, the Union Constitution Committee and the Provincial Constitution Committee and the reports of these two Committees were considered by the Constituent Assembly. The question of the role of the second chamber and its place in a federal set-up was discussed by the Constituent Assembly. It would be useful to recall what some of the leading luminaries among our Constitution-makers had to say about this matter. Shri H. V. Kamath, for instance, admitted that a Upper House in New Delhi was acceptable but in Provinces, such Houses were "pernicious" and "vicious". Professor K. T. Shah also said that he did not believe in bicameral legislatures at least for the States. He was of the view that a second chamber was not only not representative of the people as such but also where it was constituted in such a way as to represent some aspect of the country other than the pure popular vote, it was there more as a dilatory engine than a help in reflecting popular opinion on crucial questions of legislation. He pointed out that the second chamber involved considerable outlay from the public exchequer on account of salaries and allowances of members and incidental expenses. He further very vehemently expressed the view that the second chamber aided party bosses to distribute more patronage and helped in obstructing or delaying legislation. According to him, the case of the Centre as compared to the States was different inasmuch as the interests to be represented were more particularly those of the units than of the country. He, therefore, suggested that the question whether to have a second chamber or not in a State may be left to that particular State. Shri Kuldip Chalia from Assam, pointing out that second chambers had been creatures of tradition, felt that they were nothing but a clog in the way of progressive legislation. Shri K. Hanumanthaiya explained that in a party system of government, every major decision was taken in the party meeting and not in the Lower House or Upper House and, therefore, once the party took a decision there was no question of preventing hasty legislation. He felt that it was a costly formality to have two chambers particularly when the legislative field of the unit was very limited. He expressed a further view that administratively it was inconvenient to have two chambers as much of the time of the Ministers was likely to be spent only in talking which was detrimental to the interest of efficiency. Shrimati Renuka Ray also felt that it was unnecessary to have a second chamber. Shri O. V. Alagesan was more caustic when he said that a second chamber was a sort of an old age pension. Shri Biswanath Dass from Orissa was also not in favour of a second chamber in the States. He felt that a chamber with indirectly elected members and nominated element did not enjoy much prestige and influence. Shri L. Krishna Swamy Bharati from Madras, who struck a different note, was of the opinion that opposition to a second chamber was born out of prejudice. According to him the idea of a second chamber was to prevent or check hasty legislation. He quoted the famous example of George Washington who said to Jeferson, "Why Mr. Jeferson, why are you pouring coffee into your saucer ?" Jeferson replied, "To cool it". Washington said, "We want to cool legislation by putting it into the saucer of senatorial chamber". Shri Gopalaswamy Ayyangar told the Assembly, "the need for a second chamber has been felt practically all over the world where there are federations of any importance". He did not, however, justify the second chamber on any of the accepted federal grounds. He said, "the most that we expect the second chamber to do is perhaps to hold dignified debates on important issues and to delay legislation which might be the outcome of the passions of the moment". Dr. B. R. Ambedkar replying to the debate in the Constituent Assembly said, "speaking for myself I cannot say I am very strongly pre-processed in favour of a second chamber. To me it is like the curate's egg—good only in parts. All that we are doing by this Constitution is to introduce the second chamber as an experimental measure. There is sufficient provision to get rid of it. I suggest that as a sort of compromise this article may be allowed to be retained in the Constitution".

From the foregoing analysis it would appear that the argument as to whether there should be a second chamber or not admits of wide room of difference of opinion. Many feel that as bicameral system prevails elsewhere in democratic countries, why not we have it here also. The other argument they plead for the system is that it checks hasty legislation and safeguards the interest of units in a federation. A further view is that the Upper House contains men of sagacity and wisdom. If we are to come to correct conclusions about the role of a second chamber, we should assess whether the virtues described above have been realised in practice. Is it proved that the Upper Houses have prevented hasty legislation ? Or is it only in theory ? *Prima facie* I am inclined to agree with the view expressed by Shri K. Hanumanthaiya in the Constituent Assembly that since it is the Party which decides all issues in a party system of government, the argument that the Upper House prevents hasty legislation loses its validity. I do not think the Legislative Councils in States have made any substantial amendments to the Bills passed by the Legislative Assemblies. Even if some have been made, they are brought forward by government on its own, not necessarily as a result of the force of opinion expressed in the Legislative Council. It is common experience that debates on identical issues are repeated in both the Houses so much so that it would appear that instead of two Houses there is only one House sitting in two different chambers.

I am further inclined to subscribe to the view that there is justification for a second chamber at the Centre in a federation like India, firstly, because the Rajya Sabha consists of the representatives of the States and it has some special powers which are not there in respect of State Legislative Councils and secondly, because as stated above the powers of legislation of our States are very much limited and hence discussion of some matters in two places will not achieve any objective which is not so at its Centre. It is also true that some very eminent and distinguished personalities have adorned the benches of the Rajya Sabha who would not have liked to contest general elections. Can this be said about the Legislative Councils in the States ? I am afraid I cannot comment without the availability of full facts. Another feature of the Legislative Councils in the States about which doubts can be cast is

whether these Houses really consist of elders as they are supposed to consist to apply brakes to the impulsive actions of the Legislative Assemblies. This claim also requires to be established.

As I have pointed out earlier our founding fathers were chary of such a claim made on behalf of the protagonists of the upper chamber and they, therefore, have kept a provision in the Constitution that the Legislative Council can be abolished if the Legislative Assembly does not want it in that State. Two of the States, namely, Punjab and West Bengal have abolished the Legislative Councils in their respective States. In Karnataka also a resolution was moved in the Legislative Assembly for the abolition of the Legislative Council sometime back. The resolution was, however, not passed by the House. Since as Dr. Ambedkar put it, it was only as an experimental measure that Legislative Councils were introduced in some States, it is better if a proper and detailed study of these institutions is made to establish their utility. My purpose in making these observations is not to make any remarks against the individuals who are members of the Legislative Councils at any particular point of time because I am aware that there have been some very dignified and intelligent debates in the Legislative Councils. However, the problem requires a thorough study as otherwise divergent views will continue to be expressed.

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Origin and Growth of the Legislative Council in Tamil Nadu

M, P. SIVAGNANAM*

Among the three organs of Government—the Executive, the Legislature and the Judiciary—the Legislature gets the pride of place since it performs the primary functions of Government, namely, that of making laws which the Judiciary interprets and the Executive implements. Indeed, the Legislature can promote or mar the progress and welfare of the people which depends on the nature of laws passed by it. Therefore, a great responsibility rests on the Legislature, the supreme law-making body in all democracies.

LAW MEMBER OF THE GOVERNOR-GENERAL-IN-COUNCIL

The genesis of legislatures in India can be traced to the Charter Act of 1833 which, for the first time, provided for the addition of a fourth member to the Governor-General-in-Council in India for the sole purpose of legislation. This Act, however, extinguished the independent legislative powers of the Governors-in-Council of the Presidencies. The legislative power was thus solely vested in the Governor-General-in-Council. The Charter Act of 1853 which was the next milestone in the

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evolution of legislatures in India made the Law Member of the Governor-General-in-Council a full member and also enlarged the Governor-General's Council for legislative purpose by the addition of the Chief Justice, another Judge of the Supreme Court of Calcutta and one paid representative each of the Presidencies or the Governor's Provinces.

NON-OFFICIAL ELEMENT

The Indian Councils Act, 1861, constituted a great landmark in the growth and development of legislatures. The Act, for the first time, associated with the Executive Council of the Governor of Madras eight *ad hoc* members, of whom at least one-half should be non-officials nominated by the Governor who would hold office for a period of two years. The functions of the new Legislative Council were limited to legislation. The Council did not have any of the privileges of a deliberative body as it was practically an advisory committee. Nevertheless, the Act did sow the seed for future Legislatures as an independent entity separate from the Executive Thiru C. Sankaran Nair, the Raja of Venkatagiri and Thiru V. Bhashyam Aiyangar were some of the members nominated to the Legislative Council of the Governor in Madras. The Madras Village Cess Bill and the Hindu Gains of Learning Bill were among the Bills considered by the Council.

PRINCIPLE OF REPRESENTATION

The next important stage in the evolution of the Madras Legislature was reached when the Indian Councils Act of 1892 was passed by which the number of additional members of the Madras Legislative Council was raised to 20, of whom not more than 9 had to be officials. The Act, however, introduced the principle of representation, though indirect. This Act was an improvement over the preceding one in that the Council could now discuss the Annual Financial Statement and question the Government on matters of administration and of public interest and importance by means of interpellations, subject, of course, to certain limitations.

The first Legislative Council in Madras, constituted under the Act, met at 3 P.M. on January 17, 1893 in the Council Chamber, Fort St George. The first question in the Council was put by Thiru C. Sankaran Nair on behalf of Thiru V. Bhashyam Aiyangar, another member. The Council discussed for the first time the Financial Statement of the Province for the year 1893-94 on May 2, 1893. Only two members took part in the discussion. During the period the Act of 1892 was in force, the deliberations of the Council were enriched by the return of many eminent non-officials like Thiruvalargal V. Bashyam Aiyangar, Sankaran Nair, A. T. Arundel, C. Jambulinga Mudaliar, C. Vijayaraghavachariar, I. Rathinasabapathi Pillai, P. S. Sivaswami Iyer, the Maharaja of Vizianagaram and the Raja of Bobbili. The Council passed some important pieces of legislation like the Madras Cess Bill (1893)

the Proprietary Estates Village Service Bill (1894), the Village Officers Hereditary Succession Bill (1895), the Malabar Marriage Bill and the Madras Tenancy Bill.

MINTO-MORLEY REFORMS

The Act of 1909, embodying the Minto-Morley-Scheme, reconstructed and enlarged the Legislative Council. It introduced, for the first time, the method of election, though not direct. The number of additional members of the Madras Council was increased from 20 to a maximum of 50 with a non-official majority. The Act gave the members the right to move resolutions upon matters of general public interest and also the Budget. The first resolution was moved by Thiru Kesava Pillai who became the Deputy President of the Council in 1921, and it ran as follows :

> "That this Council recommend to the Governor-in-Council to relieve the Village Monigar or Headman of the duty of finding supplies to public servants on circuit."

For the first time, the right to put supplementary questions was allowed. Though this right was given only to the original questioner, it was rarely exercised. Many eminent persons like Thiruvalaragal P. Thiagaraya Chetty, P. Kesava Pillai, Mohammed Habibullah Sahib, Sambandha Mudaliar, K. P. Raman Menon, T. M. Nair, P. Rajagopalachariar, T. N. Sivagnanam Pillai, M. C. Raja, P. Siva Rao and M. C. Muthia Chettiar, adorned the Council during the eleven years when the Act was in force. During this period, the Council passed many important pieces of legislation like the Madras Hackney Carriage Bill (1911), the Medical Practitioners Registration Bill (1913), the Madras Irrigation Bill (1914), the Madras City Municipal Bill (1919), the Elementary Education Bill (1920), the Local Boards Bill (1920) and the Town Planning Bill (1920).

MONTAGU-CHELMSFORD REFORMS

The most important feature of the Government of India Act, 1919, which embodied the Montagu-Chelmsford Reforms, was the introduction of the system of Dyarchy in the Provinces which ushered in a measure of a responsible Government. The proportion of elected members of the Provincial Legislative Council was raised to over 70 per cent. Madras had the largest Council with a total of 127 members. The legislative power of the Council extended to Provincial matters only.

The term of the Legislative Council was three years. The right of moving motions of adjournment to discuss matters of public importance was granted for the first time and the first Adjournment Motion was moved on February 18, 1921. The Council had the power to vote on the Budget and could reject or reduce

demands for grants. But such rejection or reduction could be undone on certification by the Governor. The local legislatures were also empowered to extend franchise to women. It must be said to the credit of the Madras Legislative Council that in its very first session on April 1, 1921, it resolved in favour of the removal of sex disqualification on women for franchise and on a subsequent occasion it removed the sex disqualification for election as a member. Dr. Muthulakshmi Reddi was the first woman elected to the Madras Legislative Council in 1927 and she was also elected as Deputy President of the Council.

Before the Montford Reforms in 1919, the Governor himself used to preside over the meetings of the Legislative Council; in his absence, the Vice-President of the Executive Council, who was generally the first Member of the Executive Council, presided. The system of the President being nominated continued for four years after inauguration of the Montford Reforms and Sir P. Rajagopalachariar was nominated as the first President by the Governor. Thiru Kesava Pillai was elected by the Council on January 8, 1921 as the Deputy President. It was only in February 1925 that the Council, for the first time, elected the President. Thiru L. D. Swamikannu Pillai, who had been Secretary of the Legislative Council from 1921 and then its nominated President from 1924, was elected as President of the Council.

Thiru M. Ruthnaswamy, who succeeded Thiru L. D. Swamikannu Pillai as President of the Council continued in office till December 1926, when Thiru C. V. S. Narasimha Raju, the leader of the majority party in the Council was elected as President.

The Fourth Legislative Council under the Montford Reforms met on November 6, 1930 and the life of this Council was extended from time to time, so that it functioned till the end of 1936, when Provincial Autonomy under the Government of India Act, 1935, was ushered in. Thiru B. Ramachandra Reddi was the President of the Council from 1930 to 1936.

The Council had an interesting assortment of different kinds of members who were of a high intellectual calibre and some of the prominent members among them were the Raja of Panagal, Sir A. Ramaswamy Mudaliar, Thiru T. A. Ramalingam Chettiar, Sir P. T. Rajan, Sir C. P. Ramaswamy Iyer, Thiru S. Satyamurthi, the Raja of Bobbili, Sir Mohammed Usman, Dr. P. Subbarayan, Dr. C. R. Reddi, Sir R. K. Shanmugam Chetty, Thiru P. Siva Rao, Sir K. V. Reddi, Sir P. Thiyagaraya Chetti and Sir S. Varadachari (former Chief Justice, Federal Court).

PROVINCIAL AUTONOMY

The Government of India Act, 1935, marked the next general stride in the evolution of Legislatures. Though the Act received the assent of the King on August 2, 1935, it came into effect only on April 1, 1937 and that too only in part, that is to say, in so far as it related to the administration of the Province. With the introduction of Provincial Autonomy in 1937, the Provincial Legislatures came to have,

in a wider measure than before, the powers and functions associated with democratic legislatures under a system of Responsible Government. The Act established a bicameral legislature in the Province of Madras, as it was then called, and the legislature consisted of the Governor and two Chambers called the Legislative Council and the Legislative Assembly. Thus was born the Second Chamber in Madras. Section 71 of the Government of India Act guaranteed certain privileges to members like freedom of speech in the House and immunity from legal proceedings for speeches made in the House. The legislature could, by enactment, confer other privileges on them. The Madras Legislature did not, however, make use of this power.

The Legislative Council consisted of not less than 54, and not more than 56, members. One-third of the members were to retire once in 3 years. No officials could be nominated to the Council. The distribution of seats in the Council was : General—35, Mohammedan—7, European—1, Indian Christian—3, Nomination by the Governor—not less than 8 and not more than 10. Dr. U. Rama Rao functioned as President of the Council during 1937-46. In 1946, Thiru R. B. Ramakrishna Raju was elected as President of the Council and he continued as such up to 1950, and as Chairman (formerly called President) of the Legislative Council from January 26, 1950, consequent on the coming into force of the Constitution of India. Sir K. V. Reddi, the Rt. Hon. V. S. Srinivasa Sastri, Sir Md. Usman, Thiru K. Venkataswamy Naidu, Thiru C. Perumalswamy Reddy, Dr. T. S. S. Rajan, Dr. A. Lakshmanaswamy Mudaliar, Thiru C. N. Muthuranga Mudaliar and Thiru O. P. Ramaswamy Reddiar (Premier of Madras in 1947-48) were some of the prominent members of the Council during this period.

COUNCIL UNDER THE CONSTITUTION OF INDIA

The Madras Legislative Council under the Constitution of India began functioning on and from April 21, 1952. It consisted of 72 members of whom 12 were nominated by the Governor and the rest elected from the Assembly, the Graduates, the Teachers and the Local Authorities Constituencies. Dr. P. V. Cherian, an eminent surgeon of international repute and a former Surgeon-General to the Government of Madras, was elected as Chairman and he enjoyed a continuous spell of twelve years in office till 1964. Thiru M. A. Manickavelu, a former Minister and a veteran parliamentarian succeeded him. He continued in office till 1970 when Thiru C. P. Chitrarasu was elected as Chairman; his term expired in April 1976 by reason of his ceasing to be a member of the Council by efflux of time. In view of the suspension of the relevant articles of the Constitution relating to prorogation and summoning of the Legislative Council on the advent of President's Rule from January 31, 1976, the Council could not meet to elect a Chairman and hence the duties of the office of Chairman are now being discharged by the Deputy Chairman.

On the formation of the Andhra State, with effect from October 1, 1953, the strength of the Council was reduced to 51. It was further reduced to 48 by the States Reorganisation Act, 1956, but increased to 50 by the States Reorganisation (Amend-

ment) Act, 1956. In pursuance, however, of the Resolution passed by the Council on December 21, 1956, the strength of the Council was raised to 63 by the Legislative Council Act, 1957.

From 1952 to 1976 (January) the Council held 51 Sessions and met for 964 days.

The Constitution does not make any distinction between the two Houses of the Legislature in the matter of selection of Ministers. The first Chief Minister of Tamil Nadu after the First General Elections under the Constitution was Dr. C. Rajagopalachariar, a member of the Council. Dr. C. N. Annadurai, who was Chief Minister during 1967-69 was also a member of the Council. In every Ministry formed after 1952, there was at least one Minister who was a member of the Council. Many veteran parliamentarians and eminent jurists have been members of the Council during the above period. Mention may be made in this connection of Thiru T. Prakasam, Thiru M. Patanjali Sastri, a former Chief Justice of the Supreme Court, Dr. P. V. Rajamannar, a former Chief Justice of the Madras High Court, Dr A Lakshmanaswamy Mudaliar, a leading educationist and Vice-Chancellor of the Madras University for a quarter of a century, Sir P. T. Rajan, Thiru R. Venkataraman, Sir R. K. Shanmukham Chetty, a former Finance Minister of the Government of India, Thiru Chakkarai Chetty, veteran trade unionist, Sir Md. Usman, a former Governor of Madras, Shrímati Clubwala, Dr. Muthulakshmi Reddi, Thiru M. Bhaktavatsalam and Thiru Namakkal V. Ramalingam Pillai (Poet Laureate of Madras). Thiru M. P. Sivagnanam, the author, was also a member of the Council when it was constituted for the first time under the Constitution of India.

The relationship between the two Houses of Legislature has always been very cordial. From 1952 to 1976, twenty-three Bills were introduced in the Council and then transmitted to, and passed by the Assembly. Also two non-official Bills, *viz.*, the Madras Animal and Bird Sacrifices Abolition Bill, 1947 and the Madras Preservation of Parks, Playfields and Open Spaces Bill, 1958, were first passed by the Council and accepted by the Assembly and became Acts. With regard to the Bills passed by the Assembly, the Council made amendments, or recommendations to fourteen of them. In twelve cases the Assembly accepted the amendments. In one of these twelve cases, the Bill, as passed by the Assembly, was also referred to a Select Committee of the Council. In two cases the Assembly rejected the amendments and the Council reconsidered the same and agreed to the Bills as originally passed by the Assembly.

It would be of interest to know that a rather extraordinary incident took place in Madras on May 6, 1952, when the Governor of Madras was about to commence his first Address to both Houses of the Legislature constituted after the first General Elections under the Constitution. A senior member of the Legislative Council rose on, what he called, a "Point of Order", made a speech and staged a walkout with some other members. The Governor then delivered his Address. Later at a meeting of the Legislative Council held on May 13, 1952, the Leader of the House (Council) moved a motion for admonition to the member who interrupted the

Governor's Address on May 6, 1952. The motion was subsequently withdrawn by leave of the House. The Madras Council Rules have been amended to the effect that any obstruction or interruption to the Governor's Address before or after the Address or during its duration shall be regarded as a gross breach of order of the House and shall be dealt with by the Chairman as such. This provision has subsequently been adopted by several other legislative bodies in the country.

One of the important innovations in the transaction of business in the Tamil Nadu Legislative Council in recent times is the discussion of "Policy Notes" during the Budget Session. The Constitution does not prohibit discussion in the Upper House of the policies behind individual Demands, though they are not subject to its vote. From 1964, there had been persistent demand from the members of the Council that they should have an opportunity to discuss the policies governing individual Demands, as the Appropriation Bill was considered by the Legislative Council also. The demand, of course, has been conceded and the Rules of Procedure of the Tamil Nadu Legislative Council have been amended to that effect in 1972. The practice now followed is that the policy governing each Demand is outlined in a Policy Note which is printed and placed on the Table of the House. The discussion on the Policy Note takes place on a Motion by the Minister concerned and after the Minister's reply the Motion is treated as 'talked out'.

In the foregoing paragraphs, a brief account of the origin and growth in Tamil Nadu, of the Legislature in general, and the Legislative Council in particular, has been given. As is well understood, democracy is rule of the people, by the people, and for the people and sovereignty in a democratic set-up resides in the people. Modern States are vast in size and contain a population which is at once numerous and scattered, with interests which are as diverse as they are, sometimes, conflicting. And for all people to participate direct in the actual functioning of Government is well-nigh impossible. The reasons are obvious. It is here that the legislatures play an important role in influencing and regulating the work of the Government. Parliamentary institutions have come to stay in our country and the legislative bodies have given a good account of themselves not only in performing their normal "legislative" functions but also in helping to build sound parliamentary traditions. Madras being one of the first three Presidencies, as they were then called, where the experiment of "Legislative Councils" was tried, the Tamil Nadu Council feels legitimately proud that it has been given to it to make a wholesome contribution to the development of Parliamentary Democracy in India.

December 29, 1976

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The Second Chamber in State Legislatures

HIPHEI*

When the Constitution came into force on the 26th January 1950, provision was made in article 168 for having two Houses of Legislature in six States, namely, Bihar, Bombay, Madras, Punjab, Uttar Pradesh and West Bengal. This article also provides that where there are two Houses of Legislature in a State, one shall be known as the Legislative Council and the other as the Legislative Assembly. Article 169 says that Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.

Since 1950, Legislative Councils have been created in some States, while such Councils have been abolished in some other States. Briefly, the State of Mysore (formerly a Part B State and now renamed as Karnataka with effect from January 14, 1969) was created by the States Reorganisation Act, 1956 and was given a Legislative Council. By the Legislative Councils Act, 1957, the State of Andhra

*Shri Hiphei is the Deputy Speaker of the Mizoram Legislative Assembly.

Pradesh (which comprised certain districts taken out from the State of Madras and adding thereto some districts from the then State of Hyderabad) was given a Legislative Council. The State of Bombay was bifurcated into two States, namely, Maharashtra and Gujarat, by the Bombay Reorganisation Act, 1960. This Act also gave a Legislative Council to the State of Maharashtra. Under the Constitution of Jammu and Kashmir which came into force on January 26, 1957, the State of Jammu and Kashmir has also a Legislative Council.

The Legislative Councils in West Bengal and Punjab were abolished with effect from August 1, 1969 and January 7, 1970 by the West Bengal Legislative Council (Abolition) Act, 1969 and the Punjab Legislative Council (Abolition) Act, 1969, respectively.

Thus, at present, Legislative Councils exist in seven States, namely, Andhra Pradesh, Bihar, Tamil Nadu, Maharashtra, Karnataka, Uttar Pradesh and Jammu and Kashmir.

The allocation of seats in these Legislative Councils is as follows :

		No. of Seats
(1) Andhra Pradesh	. .	90
(2) Bihar	. .	96
(3) Tamil Nadu	. .	63
(4) Maharashtra	. .	78
(5) Karnataka	. .	63
(6) Uttar Pradesh	. .	108
(7) Jammu and Kashmir	. .	36

These Councils are composed of members elected by electorates consisting of (*a*) members of local bodies, such as, municipalities and district boards, (*b*) graduates of three years' standing residing in the State, (*c*) persons engaged for at least three years in educational institutions within the State, not lower in standard than secondary schools, (*d*) members of the Legislative Assembly of the State, and (*e*) persons nominated by the Governor from persons having special knowledge or practical experience in respect of such matters as literature, science, art, cooperative movement and social services. The proportion in which such persons are to be elected/nominated is laid down in article 171 of the Constitution. For Jammu and Kashmir Legislative Council also, the Constitution of that State prescribes proportion of elected and nominated seats applicable to the Council.

In India, we have a bicameral system in the Parliament and in seven of the 22 States. The question whether the Upper Houses in the States have their utility is debatable. The arguments in support of these institutions may be summed up thus : (*a*) the Upper House gives representation to the special interests in the State, (*b*) it functions as a revising Chamber, (*c*) it is a safeguard against hasty legislation by the Lower House, (*d*) it consists of seasoned and experienced people, and (*e*) it has made valuable suggestions on matters of public importance during debates in the

House, which are profitably utilised by the Government in the implementation of its policies and programme.

The critics of the bicameral system point out that the Upper Chamber is (*a*) a superfluous institution and a burden on the public exchequer, (*b*) it has not made any significant contribution as a revising Chamber or as a delaying Chamber, (*c*) there is repetition of various matters that are raised in the Lower House, (*d*) it has no power to vote demands for grants or to amend Money Bills and certain categories of Financial Bills, (*e*) 15 out of 22 States have only one Chamber, *i.e.*, Legislative Assembly and the absence of the Upper House has not adversely affected the governance of those States and two of the States chose to abolish the Legislative Councils a few years back, and (*f*) the members defeated in elections to the Lower House are often brought in as members of the Upper House.

The Legislative Councils existed in some provinces even under the Government of India Act, 1935. After Independence, we have had the experience of working of Legislative Councils for over quarter of a century. Article 171(3) of the Constitution which relates to the composition of the Legislative Councils has remained unchanged since the Constitution came into force. I feel that it will be useful to examine whether the composition of these Councils needs any change in the light of past experience so that they may become more effective in the future. Another suggestion which I would like to make is that the Legislative Councils can be assigned some special functions under the Constitution so that they have a definite role to play in the discharge of their functions.

February 22, 1977

Part Six

Statistical Data Relating to the Activities of the Rajya Sabha

Statistical Data relating to the Activities of the Rajya Sabha

FUNCTIONARIES OF THE RAJYA SABHA

CHAIRMEN

1. Dr. Sarvepalli Radhakrishnan
   May 1952 to May 1962
2. Dr. Zakir Husain
   May 1962 to May 1967
3. Shri Varahagiri Venkata Giri
   May 1967 to May 1969
4. Dr. Gopal Swarup Pathak
   August 1969 to August 1974
5. Shri Basappa Danappa Jatti
   Since August 1974*

DEPUTY CHAIRMEN

1. Shri S. V. Krishnamoorthy Rao
   May 1952 to March 1962
2. Shrimati Violet Alva
   April 1962 to November 1969

*Shri Jatti has been acting as the President of India since February 11, 1977, consequent on the demise of President Fakhruddin Ali Ahmed.

3. Shri Bhaurao Dewaji Khobaragade
December 1969 to April 1972
4. Shri Godey Murahari
April 1972 to March 1977
5. Shri Ram Niwas Mirdha
Since March 1977

LEADERS OF THE HOUSE

1. Shri N. Gopalaswami Ayyangar
May 1952 to February 1953
2. Shri Charu Chandra Biswas
February 1953 to November 1954
3. Shri Lal Bahadur Shastri
November 1954 to March 1955
4. Shri Govind Ballabh Pant
March 1955 to February 1961
5. Hafiz Mohammad Ibrahim
February 1961 to August 1963
6. Shri Yeshwantrao Balwantrao Chavan
August to December 1963
7. Shri Jaisukhlal Hathi
February-March 1964
8. Shri Mahomadali Currim Chagla
March 1964 to November 1967
9. Shri Jaisukhlal Hathi
November 1967 to November 1969
10. Shri Kodardas Kalidas Shah
November 1969 to May 1971
11. Shri Uma Shankar Dikshit
May 1971 to December 1975
12. Shri Kamlapati Tripathi
December 1975 to March 1977
13. Shri Lal K. Advani
Since March 1977

SECRETARIES/SECRETARIES-GENERAL

1. Dr. Bhagirath Nath Kaul
April-May 1952
2. Shri Sudhindra Nath Mukerjee
May 1952 to October 1963
3. Shri Bhabendra Nath Banerjee
October 1963 to April 1976
4. Shri Shrikanth Shamraj Bhalerao
Since April 1976

STATEMENT I

Part A—**Dates of Commencement and Termination and Duration of the Sessions of the Rajya Sabha from 1952 to 1977**

Session		*Date of commencement*	*Date of termination*	*Duration (days)*	*Total No of days on which sittings were held*
1st	Part I	13.5.52	31.5.52	19	13
	Part II	14.7.52	14.8 52	32	25
2nd		24.11.52	22.12.52	29	22
3rd	Part I	11.2.53	9.3.53	27	19
	Part II	25.3.53	16.5.53	53	31
4th		24.8.53	23.9.53	31	24
5th		23.11.53	24.12.53	32	24
6th	Part I	15.2.54	18.3.54	32	22
	Part II	19.4.54	19.5.54	31	24
7th		23.8.54	30.9.54	39	29
8th		25.11.54	24.12.54	30	24
9th		21.2.55	4.5.55	73	50
10th		16.8 55	1.10.55	47	35
11th		21.11.55	24.12.55	34	26
12th		15.2.56	16.3.56	30	23
13th		23.4.56	31.5.56	38	29
14th		30.7.56	13.9.56	46	35
15th		19.11.56	22.12.56	34	27
16th		18.3.57	29.3.57	12	10
17th		13.5.57	1.6.57	20	17
18th		12.8.57	14.9.57	34	23
19th		18.11.57	24.12.57	37	28
20th		10.2.58	14.3.58	33	23
21st		22.4.58	10.5.58	19	16
22nd		18.8.58	27.9.58	41	30
23rd		24.11.58	24.12.58	31	22
24th		9.2.59	13.3 59	33	26
25th		20 4.59	8.5.59	19	15
26th		10.8.59	11.9.59	33	24
27th		23.11.59	22.12.59	31	22
28th		8.2.60	11.3.60	32	25
29th		6.4.60	29.4.60	24	18
30th		8.8.60	9.9.60	33	24
31st		28.11.60	23.12.60	26	20
32nd		14.2.61	18.3.61	33	24

Session		Date of commencement	Date of termination	Duration (days)	Total No. of days on which sittings were held
33rd		27.3.61	30.3.61	4	4
34th		19 4.61	5.5.61	17	13
35th		14.8.61	8.9.61	26	19
36th		27.11.61	15.12.61	19	15
37th		12.3.62	30.3.62	19	13
38th		17.4.62	11.5.62	25	18
39th		14.6 62	26.6.62	13	11
40th		6.8.62	7.9.62	33	23
41st	Part I	8.11.62	12.12.62	35	31
	Part II	21.1.63	25.1.63	5	
42nd		18.2 63	20.3.63	31	22
43rd		22.4.63	11.5 63	20	17
44th		13.8.63	21.9.63	40	29
45th		18.11.63	23.12.63	36	27
46th		10.2.64	17.3.64	36	27
47th		21.4.64	8.5.64	18	14
48th		27.5.64	6.6.64	11	8
49th		7.9.64	3.10.64	27	20
50th		16.11.64	24.12.64	39	28
51st		17.2.65	31.3.65	43	29
52nd		3.5.65	14.5.65	12	10
53rd		16.8.65	24.9.65	39	29
54th		3.11.65	11.12.65	39	28
55th		14.2.66	7.4.66	53	36
56th		3.5.66	19.5.66	17	13
57th		25.7.66	10 9.66	48	35
58th		7.11.66	10.12.66	34	25
59th		18.3.67	11.4.67	25	17
60th		22.5 67	25.6.67	34	25
61st		24.7.67	18.8.67	26	30
62nd		20.11.67	27.12.67	38	28
63rd		12.3.68	28.3.68	45	33
64th		29.4 68	13.5.68	15	12
65th		22.7.68	31.8.68	41	28
66th		18.11.68	28.12.68	39	30
67th		17.2.69	31.3.69	43	30
68th		28.4.69	19.5.69	22	17
69th		21.7.69	29.8.69	40	28
70th		17.11.69	24.12.69	38	27
71st		20.2.70	4.4.70	44	29
72nd		27.4.70	23.5.70	27	20
73rd		27.7.70	7.9.70	43	30
74th		9.11.70	18.12.70	40	28

Session	Date of commencement	Date of termination	Duration (days)	Total No. of days on which sittings were held
75th	23.3.71	7.4.71	16	13
76th	24.5.71	25.6.71	33	25
77th	19.7.71	14.8.71	27	20
78th	15.11.71	24.12 71	40	31
79th	13.3.72	14.4.72	33	25
80th	8.5.72	3.6.72	27	21
81st	31.7.72	4.9.72	36	25
82nd	13.11 72	23.12.72	41	30
83rd	19.2.73	31.3 73	41	30
84th	30.4.73	19.5.73	20	14
85th	23.7.73	4.9.73	44	29
86th	12.11.73	24.12.73	43	32
87th	18.2.74	26.3.74	37	25
88th	22.4.74	14.5.74	23	16
89th	22 7.74	11.9.74	52	40
90th	11.11.74	21.12.74	41	28
91st	17.2.75	26.3.75	38	28
92nd	25.4.75	14.5.75	20	14
93rd	21.7.75	9.8.75	20	16
94th	5.1.76	6.2.76	33	23
95th	8.3.76	3.4.76	27	20
96th	10.5.76	28.5.76	19	14
97th	10.8.76	3.9.76	25	18
98th	3.11.76	15.11.76	13	9
99th	28.2.77	1.3.77	2	2
100th	28.3.77	11.4.77	15	10

Part B—**Number and Duration of Sessions and Duration of Sittings of the Rajya Sabha**

Year	No. of Sessions held	Duration (days)	Duration of sittings
1952-61	36	1214	3828* hrs. 52 mts.
1962-71	42	1349	6294 ,, 05 ,,
1972-76	20	633	2736 ,, 35 ,,
1977**	2	17	60 ,, 43 ,,

*Does not include figures for the years 1952, 1953 and 1954.

**The figures relate to the 99th and 100th Sessions held in February-March and March-April respectively.

STATEMENT II

Membership of the Rajya Sabha (1952-1976)

Year	*Total number of seats (Figures include 12 Members nominated by the President)*
1952	216[1]
1954	219[2]
1956	232[3]
1958	232
1960	236[4]
1962	236
1964	238[5]
1966	240[6]
1968	240
1970	240
1972	243[7]
1974	243
1976	244[8]

1. As initially provided in the Constitution.
2. Increase of 3 seats by the Andhra State Act, 1953 (30 of 1953).
3. (i) Increase of 1 seat by the States Re-organisation Act, 1956 (37 of 1956).
   (ii) Increase of 3 seats by the Bihar and West Bengal (Transfer of Territories) Act, 1956 (40 of 1956).
   (iii) Increase of 9 seats by the Constitution (Seventh Amendment) Act, 1956.
4. (i) Increase of 1 seat by the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959 (56 of 1959).
   (ii) Increase of 3 seats by the Bombay Re-organisation Act, 1960 (11 of 1960).
5. (i) Increase of 1 seat by the State of Nagaland Act, 1962 (27 of 1962).
   (ii) Increase of 1 seat by the Constitution (Fourteenth Amendment) Act, 1962.
6. Increase of 2 seats by the Punjab Re-organisation Act, 1966 (31 of 1966).
7. Increase of 3 seats by the North-Eastern Areas (Re-organisation) Act, 1971 (81 of 1971).
8. Increase of 1 seat by the Constitution (Thirty-sixth Amendment) Act, 1975.

STATEMENT III

Women Members in the Rajya Sabha (1952-1976)

Year	*Total number of seats*	*Women Members*	*Percentage*
1952	216	15	6.9
1954	219	17	7.8
1956	232	20	8.6
1958	232	22	9.5
1960	236	24	10.2
1962	236	18	7.6
1964	238	21	8.8
1966	240	23	9.6
1968	240	22	9 2
1970	240	14	5.8
1972	243	18	7.4
1974	243	17	7.0
1976	244	24	9.8

STATEMENT IV

Age, Education and Occupation of Members of the Rajya Sabha in 1952 and 1976

Part A—AGE GROUPS

Age group	*No. of Members in the age group (Figures in brackets indicate the number of women members included in each group)*	
	1952	*1976*
30-35 years	25 (3)	12 (3)
36-40 ,,	15 (2)	6
41-45 ,,	32 (4)	26 (3)
46-50 ,,	33 (1)	41 (3)
51-55 ,,	24 (4)	54 (8)
56-60 ,,	35	43 (4)
61-65 ,,	20	27 (2)
66-70 ,,	7	14 (1)
71-75 ,,	7	6
76-80 ,,	2 (1)	1
81-85 ,,	Nil	1
86-90 ,,	Nil	Nil
Above 90 years	Nil	Nil
Particulars not available	16	5
Number of seats vacant	..	8
Total	216 (15)	244 (24)

Part B—EDUCATIONAL BACKGROUND

Sl No.	*Category*	*No. of Members in the category (Figures in the brackets indicate the number of women members included in each category)*	
		1952	*1976*
1.	Under Matriculates	10 (1)	Nil
2.	Matriculates/Higher Secondary or Intermediate Certificate Holders	27 (3)	47 (3)
3.	Graduates	50 (4)	49 (10)
4.	Post Graduates (including technical qualifications)	78 (4)	108 (5)
5.	Doctoral degree or other high academic qualification holders	35 (3)	18 (3)
6.	Particulars not available	16	14 (3)
	Number of seats vacant	..	8
	Total	216 (15)	244 (24)

Part C—OCCUPATION GROUPS

Occupations	*No. of Members in each Occupation Group (Figures in brackets indicate the number of women members included in each group)*	
	1952	*1976*
Cultivators and Land holders	25	45 (2)
Political and Social Workers	28 (7)	52 (15)
Lawyers	49 (1)	56 (4)
Businessmen and Industrialists	28	18
Teachers and Educationists	26 (3)	23 (3)
Journalists and Writers	21 (2)	18
Civil Service	3	10
Military Service	2	Nil
Medical Practitioners	10	2
Engineers and Technologists	1	Nil
Former Rulers	5 (1)	Nil
Industrial Workers	2	Nil
Trade Unionists and Labour Leaders	10	7
Artists	2 (1)	2
Particulars not available	4	3
Number of seats vacant	..	8
Total	216 (15)	244 (24)

STATEMENT V

Notices of Calling Attention of Ministers, to Matters of Urgent Public Importance under rule 180

Year	*No. of Notices received*	*Admitted*	*Raised in the House*
*1964-71	7016	535	535
1972-76	4892	272	272

*Calling Attention procedure was introduced in September 1964 after the adoption of the revised Rules of Procedure and Conduct of Business in the Rajya Sabha on the 2nd June 1964.

STATEMENT VI

Short Duration Discussions
(*under Rule* 176)

Year	*No. of Notices received*	*Admitted*	*Discussed*
*1964-71	348	82	50
1972-76	177	51	38

*Short Duration Discussion was introduced in September 1964 after the adoption of the revised Rules of Procedure and Conduct of Business in the Rajya Sabha on the 2nd June 1964.

STATEMENT VII

Resolutions Discussed in the Rajya Sabha

Part A (i)—GOVERNMENT RESOLUTIONS

Year	*No. of Notices received*	*Discussed*	*Adopted*
1952-61	18	18	16
1962-71	14	14	14
1972-76	15	15	15

Part A (ii)—PROCLAMATIONS UNDER ARTICLES 352 AND 356 OF THE CONSTITUTION

Year	*No. of Notices received*			*Discussed*	*Adopted*
	Under article 352	*Under article 356*	*Total*		
1952-61	..	8	8	8	8
1962-71	2	26	28	28	28
1972-76	1	15	16	16	16

Part B (i)—PRIVATE MEMBERS' RESOLUTIONS

Year	*Admitted*	*Discussed*	*Adopted*
1952-61	745	89	6
1962-71	1423	67	3
1972-76	154	30	Nil

Part B (ii)—STATUTORY RESOLUTIONS (Private Members)

Year	*Admitted*	*Discussed*	*Adopted*
1952-61	1	1	Nil
1962-71	28	26	Nil
1972-76	29	26	Nil

STATEMENT VIII

Analytical Chart regarding Bills in the Rajya Sabha

Part A—GOVERNMENT BILLS

	From 1952 to 1961	*From 1962 to 1971*	*From 1972 to 1976*
1. Number of sittings during which Bills were introduced or considered	620	663	330
2. Number of Bills introduced	115	129	106
3. Number of Bills circulated for eliciting opinion thereon	4	Nil	Nil
4. Number of Bills referred to Select Committees of the Rajya Sabha	3	2	Nil
5. Number of Bills referred to Joint Committees of the Houses	12	19	6
6. Number of Bills considered	646	619	391
7. Number of Bills withdrawn	3	4	2
8. Number of Bills negatived	Nil	1	Nil
9. Number of Bills passed	643	614	391

(*Statement viii Continued*)

Part B—PRIVATE MEMBERS' BILLS

	From 1952 to 1961	*From 1962 to 1971*	*From 1972 to 1976*
1. Number of sittings during which Bills were introduced or considered	43	65	32
2. Number of Bills introduced	67	143	92
3. Number of Bills circulated for eliciting opinion thereon			Nil
4. Number of Bills referred to Select Committees of the Rajya Sabha	Nil	1	Nil
5. Number of Bills referred to Joint Committees of the Houses	2	1	Nil
6. Number of Bills considered	32	86	55
7. Number of Bills withdrawn	27	21	28
8. Number of Bills negatived	16	10	9
9. Number of Bills passed	10	4	Nil

STATEMENT IX

Notices of Questions, Short Notice Questions and Half-an-hour Discussions

Part A—STARRED AND UNSTARRED QUESTIONS

Years	*No. of sittings during which question time was allotted*	*Total No. of Notices of Starred and Unstarred Questions received*	*Starred Questions*				*Unstarred Questions*	
			Notices received	*Admitted*	*Admitted as Unstarred*	*Questions reached for oral answers*	*Notices received*	*Admitted*
1952 to 1961	689	51784	43866	18401	6570	13735	7918	5014
1962 to 1971	879	124340	113690	25263*	3318	40328	10650	5380+
1972 to 1976	381	92310	87649	10928	20069	1996	4661	2286

*Includes 4 Short Notice Questions admitted as Starred Questions in 1967.
+Includes 1 Short Notice Question admitted as Unstarred Question in 1968.

(*Statement IX Continued*)

Part B—SHORT NOTICE QUESTIONS

Years	*Notices received*	*Answered*
1952 to 1961	676	140
1962 to 1971	1887*	192
1972 to 1976	394	19

*The figures include 4 notices of Short Notice Questions admitted as Starred Questions in 1967 and 1 notice of Short Notice Question admitted as Unstarred Question in 1968.

Part C—HALF-AN-HOUR DISCUSSIONS

Years	*Notices received*	*Notices discussed*
1952 to 1961	129	19
1962 to 1971	449	69
1972 to 1976	198	34

STATEMENT X

Time taken by the Rajya Sabha on various items of business during 1972-1976

Items of business	*Time taken in hours and minutes*	*Percentage to the total time taken on various items of business*
BILLS		
(*a*) Government Bills	814.58	29.78
(*b*) Private Members' Bills	57.24	2.10
BUDGET		
(*a*) Railway Budget	47.27	1.73
(*b*) General Budget	78.25	2.86
CALLING ATTENTION NOTICES	236.23	8.64
DISCUSSIONS		
(*a*) Half-an-Hour Discussion	26.34	0.97
(*b*) Short Duration Discussion	251.56	9.20
MOTIONS		
(*a*) Private Members' Motions	15 36	0.57
(*b*) Government Motions	151.04	5.52
PRESIDENT'S ADDRESS	67.28	2.47
QUESTIONS (INCLUDING SHORT NOTICE QUESTIONS)	372.05	13.60
RESOLUTIONS		
(*a*) Private Members' Resolutions	111.43	4.08
(*b*) Government Resolutions	62.14	2.27
STATEMENTS BY MINISTERS	32.53	1.20
MISCELLANEOUS	427.01	16.09

STATEMENT XI

Activities of the Committees of the Rajya Sabha and Joint Committees of the Houses on Bills originating in the Rajya Sabha during 1952-1976

Part A—STANDING COMMITTEES

Name of the Committee	*Years*	*No. of sittings held*	*No. of Reports presented*
(*i*) Committee on Petitions	1952-1961	13	13
	1962-1971	105	16
	1972-1976	119	21
(*ii*) Committee on Rules	1952-1961	13	5
	1962-1971	14[1]	1[2]
	1972-1976	2	1
(*iii*) Committee of Privileges	1952-1961	9[3]	4[4]
	1962-1971	27	11
	1972-1976	10	2
(*iv*) Committee on Subordinate Legislation[5]	1964-1971	33	13
	1972-1976	73	9
(*v*) Committee on Government Assurances[6]	1972-1976	84	7

[1]The figures include the 11 sittings held by the Committee appointed to recommend draft rules of procedure under clause (1) of article 118 of the Constitution, on a resolution adopted by the House on February 7, 1962.

[2]The figure relates to the Report presented by the Committee mentioned above to the House on November 29, 1963.

[3]The figure includes the 3 joint sittings of the Committees of Privileges of the two Houses on the question of privilege arising out of some remarks made by Shri N. C. Chatterjee, the then Member of the House of the People (Lok Sabha) about the Council of States (Rajya Sabha).

[4]The figure includes the Report of the joint sittings of the Committees of Privileges of the two Houses, presented to the Lok Sabha and the Rajya Sabha on August 23, 1954 on the above mentioned question of privilege.

[5]Constituted for the first time in September 1964.

[6]Constituted for the first time in July 1972.

Part B—**Select Committees of the Rajya Sabha and Joint Committees of the Houses on Bills originating in the Rajya Sabha**

Name of the Committee	*Date on which set up*	*No. of sittings held*	*Date on which Report presented*
(*a*) *Select Committees of the Rajya Sabha*			
1. Select Committee on the Cantonments (Amendment) Bill, 1952	6.12.1952	1	11.12.1952
2. Select Committee on the Children Bill, 1953	19.12.1953	5	18.3.1954
3. Select Committee on the Hindu Adoptions and Maintenance Bill, 1956	28.8.1956	8	19.11.1956
4. Select Committee on the Major Port Trust Bill, 1963	16.9.1963	3	19.9.1963
5. Select Committee on the Indian Penal Code (Amendment) Bill, 1963 (This was a Private Member's Bill)	19.8.1966	13	22.5.1967
6. Select Committee on the Banking Laws (Amendment) Bill, 1968	26.8.1968	4	18.11.1968
(*b*) *Joint Committees of the Houses*			
1. Joint Committee on the Special Marriage Bill, 1952	17.12.1953	6	18.3.1954
2. Joint Committee on the Hindu Marriage and Divorce Bill, 1952	13.5.1954	22	26.11.1954
3. Joint Committee on the Hindu Minority and Guardianship Bill, 1953	9.12.1954	6	16.3.1955
4. Joint Committee on the Hindu Succession Bill, 1954	25.7.1955	16	19.9.1955
5. Joint Committee on the River Boards Bill, 1955	30.9.1955	4	21.11.1955
6. Joint Committee on the Inter-State Water Disputes Bill, 1955	30.9.1955	3	21.11.1955
7. Joint Committee on the Copyright Bill, 1955	16.7.1956	13	19.11.1956
8. Joint Committee on the Public Premises (Eviction of Unauthorised Occupants) Bill, 1958	19.3.1958	8	2.5.1958
9. Joint Committee on the Cost and Works Accountants Bill, 1958	20.12.1958	6	9.2.1959
10. Joint Committee on the Prevention of Cruelty to Animals Bill, 1959	27.8.1959	13	17.2.1960
11. Joint Committee on the Orphanages and Other Charitable Homes (Supervision and Control) Bill, 1959	11.9.1959	8	30.11.1959
12. Joint Committee on the Children Bill, 1959	28.4.1960	7	22.8.1960

Name of the Committee	Date on which set up	No. of sittings held	Date on which Report presented
13. Joint Committee on the Delhi Primary Education Bill, 1960	28.4.1960	7	8.8.1960
14. Joint Committee on the Indian Marine Insurance Bill, 1959	31.8.1962	6	28.2.1963
15. Joint Committee on the Limitation Bill, 1962	7.9.1962	6	20.11.1962
16. Joint Committee on the Drugs and Cosmetics (Amendment) Bill, 1963	18.9 1963	13	2.12.1963
17. Joint Committee on the Press Council Bill, 1963	30.9.1964	9	17.2.1965
18. Joint Committee on the Banaras Hindu University (Amendment) Bill, 1964	16.12.1964	13	16.8.1965
19. Joint Committee on the Jawaharlal Nehru University Bill, 1964	21.9.1965	6	3.11.1965
20. Joint Committee on the Insecticides Bill, 1964	8.11.1966	7	5.12.1966
21. Joint Committee on the Monopolies and Restrictive Trade Practices Bill, 1967	23.12.1967	29	26.2.1969
22. Joint Committee on the Delhi Rent Control (Amendment) Bill, 1964	29.3.1968	13	6.12.1968
23. Joint Committee on the Motor Vehicles (Amendment) Bill, 1965	8.5.1968	10	25.11.1968
24. Joint Committee on the Foreign Marriage Bill, 1963	29.8.1968	8	17.2.1969
25. Joint Committee on the Contempt of Courts Bill, 1968	14.12.1968	26	23.2.1970
26. Joint Committee on the Indian Medicine and Homoeopathy Central Council Bill, 1968	25.3.1969	18	17.11.1969
27. Joint Committee on the Architects Bill, 1968	16 5.1969	9	28.11.1969
28. Joint Committee on the Hire-Purchase Bill, 1968	16.5.1969	13	23.2.1970
29. Joint Committee on the Code of Civil Procedure (Amendment) Bill, 1968	16.5.1969	34	5.8.1970
30. Joint Committee on the Medical Termination of Pregnancy Bill, 1969	24.12.1969	19	9.11.1970
31. Joint Committee on the Prevention of Water Pollution Bill, 1969	4 9 1970	39	13.11.1972
32. Joint Committee on the Code of Criminal Procedure Bill, 1970	2.4.1971	44	4.12.1972
33. Joint Committee on the Advocates (Amendment) Bill, 1970	22.6.1971	19	18.12.1972

Name of the Committee	Date on which set up	No. of sittings held	Date on which Report presented
34. Joint Committee on the Homoeopathy Central Council Bill, 1971	24.5.1972	26	26 3.1973
35. Joint Committee on the Adoption of Children Bill, 1972	26.8.1972	57	20.8.1976
36. Joint Committee on the Indian Penal Code (Amendment) Bill, 1972	21.12.1972	97	29.1.1976
37. Joint Committee on the Plantations Labour (Amendment) Bill, 1973	15.5.1973	33	3.3.1975
38. Joint Committee on the Foreign Contribution (Regulation) Bill, 1973	25.3.1974	33	6.1.1976
39. Joint Committee on the Prevention of Food Adulteration (Amendment) Bill, 1974	6.9.1974	33	5.1.1976
40. Joint Committee on the Central and other Societies (Regulation) Bill, 1974	9.9.1974	51	12.8.1976

STATEMENT XII

Expenditure on the Rajya Sabha and the Rajya Sabha Secretariat from 1952-53 to 1975-76

Year	*Government expenditure (made from Revenue A/c)*	*Expenditure incurred on Rajya Sabha and Rajya Sabha Secretariat*	*Percentage of expenditure on Rajya Sabha and its Secretariat in relation to total Budget of Government of India*
	Rs.	*Rs.*	
1952-53	7,19,19,12,312	15,35,095	0.021
1953-54	7,35,34,71,516	18,52,712	0.025
1954-55	7,73,29,39,823	26,95,919	0.034
1955-56	8,46,41,88,442	29,83,963	0.035
1956-57	9,18,90,55,297	27,92,801	0.030
1957-58	11,41,06,13,864	30,19,562	0.026
1958-59	12,37,38,92,257	31,38,852	0.025
1959-60	13,40,09,63,402	32,23,010	0.024
1960-61	14,83,85,53,642	33,96,430	0 022
1961-62	16,26,63,31,383	33,61,377	0.020
1962-63	21,57,25,48,620	41,03,441	0.019
1963-64	25,85,20,79,202	39,51,240	0.015
1964-65	27,66,04,65,733	49,78,860	0.017
1965-66	30,72,66,63,143	49,61,466	0.016
1966-67	37,74,11,57,163	50,85,718	0.013
1967-68	37,61,15,31,025	56,30,154	0 015
1968-69	41,72,62,59,563	59,39,738	0.014
1969-70	45,10,13,52,445	79,64,697	0.017
1970-71	49,23,04,81,055	85,70,770	0.017
1971-72	60,68,34,15,057	93,82,782	0.015
1972-73	66,94,60,79,672	1,09,34,998	0.016
1973-74	70,68,40,45,493	1,17,38,264	0.016
1974-75	84,27,87,54,556	1,37,26,268	0.016
1975-76	95,35,69,86,000	1,63,91,187	0.017

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