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RULES COMMITTEE

FIFTH REPORT

(FOURTH LOK SABHA)

(Laid on the Table on the 9th December, 1970)

LOK SABHA SECRETARIAT
NEW DELHI

DECEMBER, 1570

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CONTENTS

		Page
1.	Personnel of the Rules Committee	(iii)
2.	Report	1
3.	Appendix I—Amendments to the Rules of Procedure and Conduct of Business in Lok Sabha (Fifth Edition) as recommended by the Rules Committee	5
4.	Appendix II—Notes by Shri Madhu Limaye dated the 11th and 25th May, 1970	6
5.	Appendix III—Note by Shrimati Jayaben Shah dated the 4th December, 1970	18
6.	Appendix IV—Note by Shri J. M. Lobo Prabhu dated the 7th December, 1970	19
7.	Appendix V—Minutes dated the 23rd November and 4th December, 1970	22
8.	Appendix VI—Letter No. D-1548/51 dated the 15th May, 1951 from the Speaker, Lok Sabha (Shri G. V. Mavalankar) to Attorney-General (Shri M. C. Setalvad)	26
9.	Appendix VII—Letter dated the 18th May, 1951 from the Attorney-General (Shri M. C. Setalvad) to the Speaker, Lok Sabha (Shri G. V. Mavalankar) .	37
10.	Appendix VIII—Extract of Minutes of sitting of the Rules Committee held on the 14th April, 1953	40
11.	Appendix IX—Note of the Ministry of Law dated the 30th June, 1955 .	41
12.	Appendix X—Extracts of Minutes of sitting of the Rules Committee held on the 28th November, 1955	43
13.	Appendix XI—Extracts of Minutes of sitting of the Rules Committee held on the 17th April, 1956	45
14.	Appendix XII—Extracts of Minutes of sitting of the Rules Committee held on the 24th April, 1956	51

PERSONNEL OF THE RULES COMMITTEE
(1970-71)

1. Dr. G. S. Dhillon—*Chairman*
2. Shri Nathu Ram Ahirwar
*3. Shri K. Hanumanthaiya
4. Shri S. Kandappan
5. Shri Amiya Kumar Kisku
6. Shri Madhu Limaye
7. Shri J. M. Lobo Prabhu
8. Shri G. S. Mishra
*9. Shri Nath Pai
10. Shri K. Raghuramaiah
11. Shrimati Sushila Rohatgi
12. Shri V. Sambasivam
**12. Shrimati Jayaben Shah
14. Shri R. Umanath
@15. *Vacant.*

SECRETARIAT

1. Shri S. L. Shakdher—*Secretary.*
2. Shri P. K Patnaik—*Joint Secretary.*
3. Shri B. K. Mukherjee—*Deputy Secretary.*
4. Shri J. R. Kapur—*Under Secretary.*

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* Nominated on 29-7-1970 *Vice* Shri P. Govinda Menon died.

** Nominated on 20-5-1970 *Vice* Dr. Sushila Nayar resigned from the Committee w.e.f. 18-5-1970.

@ *Vice* Shri Narayan Swaroop Sharma resigned from the Committee w.e.f. 27-11-1970.

FIFTH REPORT OF THE RULES COMMITTEE

(FOURTH LOK SABHA)

On the 8th May, 1970, Shri Madhu Limaye, M.P., raised in the House a matter under rule 377 regarding the *vires* of rules 155, 157 and 158 of the Rules of Procedure and Conduct of Business in Lok Sabha. The main points made by him were:—

(i) Article 368 lays down the procedure for amendment of the Constitution. According to that Article a Constitution Amendment Bill requires special majority to be *passed*. There is no mention of special majority at the previous stages of the passing of the Bill, such as introduction, consideration, reference to Select Committee, etc.;

(ii) According to Article 100(1), all questions, save as otherwise provided in the Constitution, are decided by a simple majority in the House; and

(iii) The matter might be considered by the Rules Committee so that a decision could be taken about the *vires* of rules 155, 157 and 158 with reference to Articles 100, 118 and 368 of the Constitution.

2. The Rules Committee accordingly considered this matter at their sittings* held on the 18th May, 11th, 18th and 23rd November and 4th December, 1970. The Committee considered and adopted their report on the 4th December, 1970.

3. The recommendations of the Committee are contained in this their Fifth Report which the Committee authorise to be laid on the Table of the House.

4. With regard to the amendments proposed in Appendix I to this Report, the observations of the Committee are contained in the succeeding paragraphs.

5. The Committee find that the question of the majority required at the various stages of a Bill seeking to amend the Constitution first arose in May 1951, at the time of the consideration of the Constitution (First Amendment) Bill, 1951. Shri G. V. Mavalankar,

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* Minutes of the sitting held on the 18th May, 1970 were laid on the Table on the 20th May, 1970.

Minutes of the sittings held on the 11th and 18th November, 1970, were laid on the Table on the 26th November, 1970.

Minutes of the sittings held on the 23rd November and 4th December, 1970, are appended to this Report. (*See* Appendix V)

the then Speaker of Lok Sabha, referred the matter for opinion to the then Attorney-General of India, Shri M. C. Setalvad. Shri G. V. Mavalankar's letter dated the 15th May, 1951 and the Attorney-General's reply thereto dated the 18th May, 1951, are reproduced at Appendices VI and VII respectively. Particular attention may, in this connection be invited to the following concluding paragraphs in the opinion of the Attorney-General dated the 18th May, 1951:—

"(10) As to the meaning of the words 'when the Bill is passed in each House' in Article 368, it appears to me that the expression 'passed' has, I think, reference to the passing of the Bill at the final stage. The expressions 'the introduction of a Bill' and 'when the Bill is passed' have to be understood in reference to the practice and procedure usual in Houses of Parliament. Though various clauses of a Bill may be voted upon at different stages and 'passed', the Bill as a whole is 'passed' only when the voting takes place at the final stage. The majority insisted upon by article 368 is, therefore, I think, applicable only to the voting at the final stage.

(11) As a matter of the true interpretation of article 368, I think that the view put forward in the last paragraph* is the correct view.

(12) However, I agree that it is better to err on the safer side and take the stricter view insisting on the requisite majority at all stages of the passage of the Bill."

6. The Committee also find that the rules corresponding to the present rules 155 to 159 of the Rules of Procedure and Conduct of Business in Lok Sabha were first framed in 1953. Relevant extracts from the minutes of the sitting of the Rules Committee held on the 14th April, 1953, when those rules were adopted by the Rules Committee, are reproduced at Appendix VIII.

7. On the 30th June, 1955, the Ministry of Law forwarded to the Rules Committee a note approved by the Minister of Legal Affairs (*See* Appendix IX) stating that the provision for special majority in clauses (i) to (iv) of the then rule 169 (present rule 157) was not in accordance with articles 100(1) and 368 of the Constitution. The matter was then considered by the Rules Committee at their sitting held on the 28th November, 1955. Relevant extracts from the minutes of that sitting of the Rules Committee are reproduced at Appendix X. At this sitting, the Rules Committee decided that

* *See* Para (10) of the Opinion reproduced above.

the Short Title, the Enacting Formula and the Long Title of a Bill seeking to amend the Constitution need be adopted by a simple majority only.

8. On the 23rd February, 1956, the then Minister of Legal Affairs in a communication addressed to the Speaker, Lok Sabha requested for the reconsideration of rules 167 to 169 (present rules 155 to 157) (Annexure 'A' of Appendix XI). This question was again considered by the Rules Committee at their sitting held on the 17th April, 1956, at which sitting the Attorney-General (Shri M. C. Setalvad) was also present by invitation and on the 24th April, 1956. Relevant extracts from the minutes of those two sittings of the Rules Committee are reproduced at Appendices XI and XII respectively. At these sittings the Rules Committee decided that the provision in the rules requiring special majority for a motion for circulation of a Bill seeking to amend the Constitution or for a motion for reference of such a Bill to a Select|Joint Committee be deleted.

9. From the history of these rules, when they were first made or subsequently amended, the Committee find that the then Rules Committees of the House were aware of the legal interpretation of the Constitution, which was never in doubt. Those Committees had, nevertheless, desired that the special majority should be provided for at the different stages of a Bill seeking to amend the Constitution with a view to ensure that the principle of such a Bill should also be accepted by the House by the special majority (*i.e.*, when the motion that the Bill be taken into consideration is carried) and also that the members should have procedural clarity when they pass different matters grouped together in the different clauses of a Bill by special majority separately.

10. The Committee have given careful and deep consideration to all aspects of the matter. The Committee have come to the conclusion that in accordance with the provisions of articles 100(1) and 368 of the Constitution and their correct legal interpretation, special majority for Bills seeking to amend the Constitution should be required only at the final stage of passing the Bill when the motion in respect of such a Bill is "that the Bill, or the Bill as amended, as the case may be, be passed."

The Committee are aware that in the case of omnibus Bills involving amendment of various articles on different aspects or subjects of the Constitution, mambers might be divided on the different provisions on different lines. In such a case, if voting by a special majority is taken only at the last stage of passing the Bill, the position of members might become anomalous and

their vote may not reflect their true views on the different provisions contained in the Bill. To obviate such contingencies, the Committee recommend that in future each Bill seeking to amend the Constitution should deal with a single aspect or subject of the Constitution.

11. The Committee have accordingly decided to recommend deletion of the present rules 155 and 156 and consequent changes in rules 157 and 158.

12. Three members of the Committee, namely, Shri Madhu Limaye, Shrimati Jayaben Shah and Shri J. M. Lobo Prabhu have given separate notes, which are appended to this Report (*See* Appendices II to IV).

13. The Committee recommend that the draft amendments to the Rules of Procedure and Conduct of Business in Lok Sabha (Fifth Edition) shown in Appendix I may be made.

NEW DELHI;
the 4th December, 1970.

G. S. DHILLON,
Chairman,
Rules Committee.

APPENDIX I

(*See* paras 4 and 13 of the Report)

Amendments to the Rules of Procedure and Conduct of Business in Lok Sabha (Fifth Edition) as recommended by the Rules Committee.

Rules 155 and 156

1. Rules 155 and 156 shall be omitted.

Rule 157

2. For rule 157, the following shall be substituted, namely:—

157(1). *Voting on motion to pass the Bill.*—If the motion in respect of a Bill seeking to amend the Constitution is that the Bill, or the Bill as amended, as the case may be, be passed, the motion shall be deemed to have been carried if it is passed by a majority of the total membership of the House and by a majority of not less than two-thirds of the members present and voting.

(2) All other motions in respect of such a Bill shall be decided by a majority of members present and voting in the same manner as in the case of any other Bill."

Rule 158

3. For sub-rule (1) of rule 158, the following shall be substituted, namely:—

"(1) Voting on the motion referred to in sub-rule (1) of rule 157 shall be by division".

APPENDIX II

Notes by Shri Madhu Limaye, Dated the 11th and 25th May, 1970

I

On 28th April, 1970, my Constitution Amendment Bill seeking to abolish the constitutional guarantee given to the ICS Officers under Article 314 of the Constitution was put to vote at the consideration stage. The Bill secured more than 9|10th majority, with 213 voting for and 21 voting against. However, under Rules 157 and 158, the Speaker announced that the Bill had been defeated because while it received the support of a vast majority of the Members present and voting in the House, this number was less than half the total membership of the House.

I think the result and the ruling of the Speaker will have to be reconsidered in the light of the following weighty arguments:

1. The House derives its power to frame its rules of procedure or standing orders under Article 118 of the Constitution. But this power is subject to the provisions of the Constitution.

2. Now it is obvious that all laws passed by Parliament and the legislatures of rules made by Parliament under Article 118, and by the legislatures under the corresponding Article 208, must conform to the Constitution, and that if they contravene any of the provisions of the Constitution they must be struck down. The provisions of the Constitution must take precedence over the laws passed by the legislatures or the rules made by them for the conduct of business.

3. Under Article 100(1) it is stated:

> "100. Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.—(1) Save as otherwise provided in this Constitution, *all questions* at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Chairman or Speaker.
>
> The Chairman or Speaker, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes."

4. The procedure for amending the Constitution is to be found in Article 368 and this Article requires that a Constitution Amendment Bill be '*passed* in each House by the majority of the total membership of that House and by a majority of not less than 2|3rd of the members of the House present and voting."

5. The legislative process has various stages. The first stage is called the introduction stage. The second stage, known as the first reading, is the consideration stage. At the third stage there is clause-by-clause consideration (second reading), and the fourth stage is the motion that the Bill be passed, and this is known as the third reading of the Bill.

6. The term used with regard to the various stages|motions in relation to the legislative process are constitutional terms and not terms which have only procedural validity. From the enclosed Table (1) it will be seen that the terms "introduction|consideration|passing" have been used in the Constitution in regard to the various stages of the Bill and have the same meaning as they have in the Rules of Procedure for the conduct of business in Lok Sabha.

7. Three other expressions are found in the Constitution, *viz.* "bills originating in one or the other House|moving of the Bills|amendments agreed to". It remains to define these terms and fix their meaning. There can be no doubt that the term "originate" is equivalent to the "introduction" stage. Similarly amendments agreed to must be equated with the fourth stage of the Bill (third reading). The expression "move the Bill" must be equated primarily with "moving the Motion for consideration", although it cannot be said that the subsequent stages of the Bill are *definitely* excluded from the term "move the Bill". As far as the expression "passing the Bill" is concerned there is absolutely no room for doubt or confusion. It means the final stage of the Bill (third reading).

8. The Constitution, however, does not mention 'clause-by-clause consideration" and the question arises whether the expressions "moving the Bill" or "passing the Bill" should not be so interpreted as to include "clause-by-clause consideration" also. At the "clause-by-clause consideration" stage, the question put is that clause or schedule so and so "do stand part of the Bill", and, therefore, it can be said with some justification that the House is passing a part of the Bill, *viz.*, the clause or schedule concerned.

9. The expression used in Article 368 may be said to include "clause-by-clause consideration" in so far as the House votes on the question that a particular clause or schedule should stand part of

the Bill. But by no stretch of imagination can this article be interpreted as including, within the scope of the required Special Majority, the second stage of the Bill known as "consideration stage" (also called the first reading of the Bill).

10. In Rule 74, which relates to motion after the introduction of a Bill, it is clearly stated that at the second stage four motions can be made in regard to the Bill, *viz.*,

(i) that it be taken into consideration; or

(ii) that it be referred to a Select Committee of the House; or

(iii) that it be referred to a Joint Committee of the Mouses with the concurrence of the Council; or

(iv) that it be circulated for the purpose of eliciting opinion thereon.

11. From the Report of the Rules Committee (1956) it is clear that in the beginning, all four second stage motions required Special Majorities according to the Rules of Procedure. However, three motions, *viz.*, (ii), (iii) and (iv) were taken out of the area of the Special Majority mentioned in Article 368. Now there is absolutely no basis for making any distinction between these three second stage motions, and the remaining two Motions *i.e.*, (1) that the Bill be taken into consideration and (2) that the Bill, as reported by the Select Committee or Joint Committee, be taken into consideration.

12. Rule 75 says that when any of the four motions, referred to in Rule 74 are taken up "the principle of the Bill and its provisions may be discussed generally but the details of the Bill shall not be discussed further than is necessary to explain its principle." At this stage, the same Rule directs that no amendments may be moved except the substitute amendments with regard to reference to the Select Committee or Joint Committee or motion for circulation. It will thus be seen that the character of the four motions mentioned in Rule 74 and the scope of the discussion thereon is the same. Why then should Special Majorities be required for some second stage motions and not for others? [*Vide* Table (2).] The Rules of Procedure must strictly conform to the Constitution, and whenever the Rules borrow expressions from the Constitution their meaning ought not to be varied. The constitutional meaning must prevail.

13. The Constitution clearly requires that *all questions* other than the one mentioned in Article 368 are to be passed by a simple majority, and Article 368 has no relevance as far as, perhaps, the

first three but definitely the first two stages of the Constitution Amendment Bill are concerned. In 1951, the opinion of the Attorney General was sought by the then Speaker, Mr. Mavalankar. The Attorney General stated:

> "The expression 'when the Bill is passed in each House' has reference to the passing of the Bill at the final stage. The majority insisted upon by Article 368 is, therefore, applicable only to the voting at the final stage. It is, however, better to err on the safer side and take stricter view insisting on the requisite majority at all stages of the passage of the Bill."

14. Now, my question is why should Parliament and this House "err" when there is a clear and mandatory provision of Article 100 that *all* questions, except the one mentioned in Article 368, should be decided by a simple majority? Article 368 neither speaks of introduction nor consideration nor reference to the Joint Committee or the Select Committee nor consideration of the Report of the Joint Committee or Select Committee nor clause-by-clause consideration. It only speaks of *passing* the Bill, and this clearly means the third reading of the Bill.

15. I, therefore, feel that the Speaker, taking into account all the aspects of the matter, should declare the relevant Rules 155, 157 and 158 *ultra vires* of the provisions of Articles (100 and 368 of the Constitution and revise his ruling by declaring that the consideration motion has been passed and that the House may proceed with the third stage, that is clause-by-clause consideration of the Bill (second reading).

16. Since this question involves legal and constitutional questions of overriding importance Article 122(1) is irrelevant. This is not a mere procedural matter. If the Speaker is unable to give a ruling on his own, he may request the President to invoke the advisory jurisdiction of the Supreme Court under Article 143. I understand that in the *Shankeri Prasad Case* the Court had opined that Parliament could be expected to follow as far as practicable the procedures laid down in Article 368.

17. If the Speaker does not wish to reconsider the ruling on his own or move the President for obtaining the advisory opinion of the Supreme Court, I should be allowed to move the High Court under Article 226 and, if necessary, thereafter the Supreme Court with a view to obtaining a final ruling on the validity of Rules 155, 157 and 158 in the light of Articles 118, 100 and 368.

18. In view of the above, the Rules Committee must, I feel, rigorously and strictly examine the points raised by me and interpret them in the light of the various constitutional provisions. In these matters there should be no question of any indefiniteness, doubt or confusion nor any question of "erring on these safe side".

19. It should be remembered further that the decision in the *Golaknath Case*, has taken the fundamental rights out of the amendatory power of Parliament by the Supreme Court. It has, therefore, become difficult to remove the more reactionary features that characterise Part II of the Constitution. But there are other parts of the Constitution where changes are urgently necessary in order to remove the privileges of the ICS and the ex-Rulers of Indian States as also reservation for the Anglo-Indians. There is need also for the re-definition of Governors' role and a reconsideration of the subjects in the Union, State and Concurrent Lists and addition of new Lists in regard to local bodies with a view to making the concept of the four-pillar State a reality. In the changed political context where no party enjoys an absolute majority in Parliament, let alone a two thirds majority, we should not create unnecessary procedural difficulties which would block the passage of urgently required constitutional amendments, especially when these procedural obstacles militate against the letter and spirit of the Constitution. There is much to be laid in favour of decisions which will make constitutional amendments, except in relation to basic personal freedoms, more facile rather than more difficult.

NEW DELHI;
May 11, 1970.

MADHU LIMAYE

TABLE (1)

Terms used in the Constitution in regard to Stages and Motions relating to Bills

Article 107(1)

A Bill other than a Mony Bill or a Financial Bill may originate in either House. A Bill may be introduced.

Article 107(2)

Speaks of legal fiction: "deemed to have been passed" by both Houses.

Agreed to by both Houses with or without amendment.

Article 107(3) (4) *and* (5)

Pending Bills not to lapse on prorogation.

Pending Bills in Lok Sabha to lapse on dissolution.

Article 108(1)

Speaks of passing.

Speaks of rejection by one or the other House.

Final disagreement among the two Houses.

Article 108(4)

Speaks of passing of a Bill at a joint sitting.

Article 108(5)

Also speaks of passing.

Article 109(1)

Speaks of introduction; again, in the sense of originating.

Article 109(2)

Rajya Sabha cannot reject or pass a money Bill or a Financial Bill but can only recommend amendments to the Bill.

Article 109(3)

Legal fiction that the Bill shall be deemed to have been passed by the two Houses with or without the recommendations of Rajya Sabha after being disposed off by Lok Sabha.

Article 111

Speaks of passing and presentation to the President for assent.

It also speaks of the Bill being passed again with or without amendments suggested by the President after which the President shall not withhold assent.

Article 114(1)

Speaks of early introduction of the Appropriation Bill in Lok Sabha.

Article 117

Money Bills or Financial Bills under Article 110 not to be introduced or moved in Lok Sabha except on President's recommendation.

It also speaks of moving the Bill (equivalent to moving the motion for consideration and subsequent stages).

Article 117(3)

This speaks of enactment of the Bill.

It also speaks of passing.

It also speaks clearly of consideration on the recommendation of President.

(There are similar provisions in respect of the States).

Article 368

It speaks of initiating amendment of the Constitution by introduction of a Bill in either House.

It also speaks of the Bill being passed by a Special Majority.

It also speaks of presentation of the Bill for assent upon its passage by a Special Majority.

The proviso requires ratification by the State legislatures in respect of certain articles before presentation of the Bill for assent.

Article 61(2) (b)

Speaks of a Special Majority—two-third of the total Membership of the House for the impeachment of the President.

Article 124(4)

Speaks of a Special Majority similar to the one mentioned in Article 368 for the removal of a judge of the Supreme Court.

Article 94(c)

Also speaks of a Special Majority—majority of all the then Members of the House for the removal of the Speaker.

Article 274(1)

This speaks of introduction of tax Bills in which States are interested only on the recommendation of the President.

It also speaks of these Bills being moved in either House only on the recommendation of President.

Article 304

Speaks of Bills, imposing restrictions on trade, to be introduced in State Legislatures only with previous Presidential sanction.

It also speaks of moving such a Bill only with the President's previous sanction.

TABLE (2)

Rules of Procedure relating to Amendment of the Constitution

Under the existing rules, the following motions do not require a Special Majority:—

1. Motion for leave to introduce the Bill under Rule 72;
2. Motion that the Bill be referred to a Select Committee under Rule 74(ii);
3. Motion that the Bill be referred to a Joint Committee of the two Houses under Rule 74(iii);
4. Motion that the Bill be circulated for the purpose of eliciting public opinion under Rule 74(iv);
5. Motion for leave to withdraw the Bill under Rule 110;
6. Amendment to clauses or schedule of the Constitution Amendment Bill under Rule 156.

Following motions require a Special Majority under the Rules:

1. Motion for consideration under Rule 157(i);
2. Motion for consideration of the J.P.C. or Select Committee Report under Rule 157(ii);
3. Voting on clauses or schedules or clauses or schedules as amended under Rule 155;
4. Motion that the Bill be passed or Motion that the Bill as amended be passed under Rule 157(iii).

NOTE: Earlier, the motion that the Bill be referred to J.P.C. or Select Committee also required a Special Majority. Motion for circulation also required a Special Majority. But the rules relating to these Motions are amended in 1956. The reasoning for distinguishing three second stage motions from other motions at the same stage is curious.

II

In determining the meaning of the words used in Article 368 and 100(1) of the Constitution of India it would be worthwhile to take a close look at the procedure and practices of Lok Sabha. This is necessary in order to interpret the expressions *"When the Bill is passed"* in Article 368 and *"all questions"* in Article 100(1).

2. Chapter X of the Rules of Procedure of Lok Sabha is devoted to Legislation. Section (1) deals with the bills originating in Lok Sabha. Sub-section (a) of this Section is entitled "Introduction and

Publication of Bills". Sub-section (b) concerns "Motions after introduction of Bills". Sub-section (c) deals with "Procedure after presentation of Report of Select Committee and J.P.C." Sub-section (d) relates to "Amendments to clauses etc.". And, finally, sub-section (e) is entitled "Passing of Bills".

3. It will thus be seen that "introduction" and "passing of bills" are treated as two distinct stages in the passage of the Bill. There is a vital difference between the techincal and legal term "Passing of a Bill" and the term "Passage of a Bill" used in the popular sense. The popular expression—expression of general use—"Passage of a Bill" comprehends all the stages right from the introduction stage to the final Presidential assent. But "Passing the Bill" is a technical, procedural and legal term, and it means the passing of the motion relating to the third reading of the Bill, and in view of the provisions of Article 107 also includes agreement of the two Houses with or without amendments. "Passing of a Bill" does not, however, include withholding or giving a Presidential assent to a Bill passed agreed to by both Houses of Parliament.

4. It remains to define the meaning of the expression "all questions". The technical, procedural and legal meaning of this expression is to be found in Rule 364 of the Rules of Procedure of Lok Sabha. This rule is as under:—

> "A matter requiring the decision of the House shall be decided by a question put by the Speaker on a motion made by a member".

5. The rules of procedure make a subtle distinction between putting the question and taking the sense of the House. Rule 339 brings this out very clearly. The Rule in terms says:

> "(1) A member who has made a motion may withdraw the same by leave of the House.
>
> (2) The leave shall be signified not upon question but by the Speaker taking the pleasure of the House. The Speaker shall ask: 'Is it your pleasure that the motion be withdrawn?' If no one dissents, the Speaker shall say: 'The motion is by leave withdrawn'. But if any dissentient voice be heard or a member rises to continue the debate, the Speaker shall forthwith put the motion:
>
> Provided that if an amendment has been proposed to a motion, the original motion shall not be withdrawn until the amendment has been disposed of."

6. Taking the sense of the House thus does not involve putting the question by the Speaker on a motion before the House. It is also provided in the Rules that if a motion combines two or more propositions, the Speaker may treat them as separate questions, and, accordingly, put them separately.

7. Rule 72 relating to the introduction of the Bill uses the expression "put the question". So do Rules 85(2), 88, 90, 91 and 92. By implication Rule 93 would mean that the consideration motion, too, involves putting the question by the Speaker. The motion that the Bill be passed also involves putting the question by the Speaker at the end of the debate. Similarly, Rule 100 says that the amendment suggested by the other House may also be put as a question in such manner as the Speaker thinks convenient. Rule 111, relating to the withdrawal of Bills, also involves moving of a motion and putting the question thereon. Further, Rule 133 provides for putting the question on amendments recommended by the President in a manner which the Speaker thinks convenient.

8. If this interpretation of the word "question" used in Article 100(1), read with the above Rules, is juxtaposed with the expression used in Article 368 "when the Bill is passed", read with sub-section (e) of Section 1 of Chapter X of the Rules of Procedure, it will become absolutely clear that the special majority enjoined by Article 368 relates only to the motion mentioned in sub-section (e) of Chapter X plus motions relating to agreement mentioned in Article 107 of the Constitution.

9. In interpreting the meaning of the expression "all questions" and "passing a Bill", Article 117, relating to the Union, and corresponding article 207 in regard to the States proves to be valuable. It would be interesting to compare clause (1) of Article 117 with its clause (3). The vital difference between these two clauses is that the President's recommendation is a condition precedent to the introduction of a Bill which comes under Clause (1); but a Bill which falls under Clause (3) can be introduced without the recommendation and it would be quite in order if that recommendation is obtained before moving the motion for consideration of the Bill. That is to say, in the case of a Bill falling exclusively under clause (3) no motion upto the stage of the motion for consideration can be ruled out of order on the ground that the President's sanction has not so far been obtained. These two articles (117 and 207) in the Constitution clearly and unambiguously fix the difference between the expressions "introducing a Bill", "consideration of a Bill" and "passing a Bill."

10. The Joint Select Committee on Indian Constitutional Reforms recognised the distinctive legislative procedure evolved in Indian legislative bodies. It had recommended that certain legislative proposals should require the prior sanction of the Governor and the Governor-General and the Governor-General and Governor should have discretionary power in the matter of giving assent to the Bills after they had been passed. Section 42 in its relation to the Federal Legislature and the corresponding Section 87 in regard to the provinces in the Government of India Act gave effect in this recommendation by requiring that no bill in the nature of a money bill should be introduced without the prior sanction of the Governor-General and bill involving expenditure should not be passed unless the Governor-General had recommended consideration of the Bill. As in the case of many other articles, Article 117 of our Constitution is closely modelled on Section 42 of the Government of India Act. The Government of India Act as well as our Constitution recognises the various distinctive stages of the legislative process; and it would not be proper, therefore, to ignore the historical background and the constitutional provisions while interpreting the expression, "when the Bill is passed" in Article 368.

11. This problem can be examined from another angle also. Assuming that the Constitution-makers had suggested amendment of the Constitution not through the instrumentality of legislation but by way of a resolution incorporating the amendment there would have been no need to go through the various motions such as, "motion seeking leave to introduce the Bill", "motion that the bill be considered" etc. It would have sufficed to move the resolution in terms of the procedure laid down in the Rules of Procedure. If the proposed amendment of the Constitution had been of an omnibus character involving several subjects and several articles it would have been quite all right to treat amendments to the various articles incorporated in the resolution as different propositions and questions could have been put separately on each one of them as provided for in Rule 365 which says:

> "When a motion has been made, the Speaker shall proposed the question for consideration, and put it for the decision of the House. If a motion embodies two or more separate propositions, those propositions may be proposed by the Speaker as separate questions."

12. That the Constitution-makers suggested the instrumentality of a bill for amending the Constitution is only accidental. The purpose could as well have been served by substituting the words "moving of the resolution" and "when the resolution is passed".

Thus it will be seen that the important thing is the actual putting of the question in regard to the "passing" of the bill and not questions on the earlier stages of the Bill.

13. It is a settled principle of constitutional interpretation that expressions used in the Constitution must be strictly, truly and rigorously interpreted, that we should go by the plain meaning of the words and expressions used, and that the various provisions should as far as possible be reconciled so that effect can be given to all the provisions of the Constitution. The interpretation of Article 100(1) and 368 offered by me meets all these requirements and establishes harmony between the various provisions of the Constitution.

NEW DELHI; .. MADHU LIMAYE

May 25, 1970.

APPENDIX III

Note by Shrimati Jayaben Shah, Dated the 4th December, 1970

All constitutional amendments make a departure from the existting position and any amendment of the Constitution is a serious matter requiring careful consideration of all the aspects. The proposal for the amendment of the Rules 155, 157 and 158 of the Rules of Procedure and Conduct of Business in the Lok Sabha in the context of the provisions contained in Articles 100(1) and 368 of the Constitution, has to be considered carefully. If the special majority is enforced only at the final stage of a Bill, there is every possibility that Members would not be taking adequate interest in the earlier stages in as much as those stages would not require the special majority. To enable Members to take sustained interest in all the stages of the passing of the Bill, it is necessary that special majority should be enforced at least at the stage of consideration of the Bill and also at the stage of the consideration of the main clause. Keeping in view the present political situation, I do not think it advisable that any far-reaching changes should be effected in the existing rules relating to the amendment of the Constitution.

NEW DELHI;
December 4, 1970.

JAYABEN SHAH

APPENDIX IV

Note by Shri J. M. Lobo Prabhu, Dated the 7th December, 1970

I do not agree to the recommendations contained in the Fifth Report of the Rules Committee for the following reasons:—

(1) Since 1951, the Speaker and the Rules Committee of Parliament have considered the provisions of Article 368 of the Constitution. Shri Mavalankar in his note of May 15, 1951 recorded "If the object of voting a particular majority for the amendment is kept in view, it stands more to reason that each stage and each clause or even a sub-clause for the matter of that, must be passed by a requisite majority. Unless this done, it will be defeating the very purpose of Article 368.... It may appear I am getting too technical but keeping the main purpose of Article 368 and also keeping in view its object, as stated by the Hon'ble Dr. Ambedkar and its character, that it is a fundamental document, one cannot be too technical.... Every clause being a separate amendment has to be considered and passed as an amendment to the Constitution and therefore there has to be a requisite majority at each stage in the case of each distinct amendment".

In 1953, the Rules Committee approved "the procedure laid down by the Speaker when the Constitution (Final Amendment) Bill was under consideration."

In 1955, the Rules Committee "came to the conclusion that the Second Reading was a process in the passing of a Bill and as such the provisions of rule 169* should continue as such."

In 1956, the Rules Committee excluded from the special majority motions for circulation and for reference to Joint Select Committees, as they did not commit the House to the Principle of the Bill. It was noted "some members felt that the spirit behind Article 368 was that no Bill seeking to amend the Constitution should be passed otherwise than by a special majority and that implied that all the effective stages leading to the passage of the Bill should be subjected to special majority."

*Corresponding to present rule 157.

The Law Ministry has tended to take the view that only the final passing of the Bill requires the special majority, though the Attorney General, Shri Setalvad agreed that "it was better to err on the safer side and take the stricter view insisting on the requisite majority at all stages of the passage of the Bill". The Law Minister the late Shri Govinda Menon stated in Parliament that in amending the Constitution, the House is legislating under its constituent power and that Article 368 is a code by itself not affected by Article 100.

(2) Against this body of opinion for over twenty years, Shri Madhu Limaye has contended that terms "introduction| consideration|and passing are distinct and passing is only used in the final stage. Accordingly Article 368 can only relate to the final passing". Unfortunately he has not observed this distinction because he concedes. "The expression used in Article 368 may be said to include 'clause by clause consideration' in so far as the House votes on the question that a particular clause or schedule should stand part of the Bill. But by no stretch of imagination can this article be interpreted as including within the scope of the required Special majority the second stage of the Bill known as the "consideration stage". This disposes the whole argument that "passing" is a technical term and must be confined only to the Third Stage when the Bill is passed. If it can apply to the second reading, it can as well apply to the first stage of consideration.

(3) My arguments have been first that "passing" in Article 368 has to be related to "majority", that is to voting at any stage. If this majority is specifically defined, it comes under the exemption allowed in Article 100. Therefore whenever members vote the special majority should exist, even though it has been dispensed with for those stages when the House does not commit itself to the principle of the Bill as when the House votes for reference to Select Committee or for circulation. Secondly constitutional amendment being very important, not only has every stage to be carefully considered but has to be approved by more than a simple total say of 26 votes, as the case may well be. It will be a premium on the indifference of members that they are not called upon to be present except once at the end. Thirdly, it will waste the time and toil of the House if majority is only tested at the end. It should be tested as soon as the House commits itself to the

principles of the Bill. And lastly, if as stated to avoid confusion, each Bill should deal with a single aspect, the very multiplicity of Bills required for each clause would require assembling repeatedly of special majorities, even if they are for the final stage only.

(4) Shri Nath Pai while supporting the change has agreed with me that "there will be practical difficulties in dealing with a Bill containing more than one clause seeking to amend several articles of the Constitution (he meant, I presume, connected articles) and also if the Bill was rejected at the final stage, the House would have made a superfluous effort in considering the earlier stages."

In these circumstances, the position accepted for 21 years may be allowed to continue as nothing has arisen which has affected the needs of legislation or the rights of the House.

NEW DELHI;
December 7, 1970.

J. M. LOBO PRABHU.

APPENDIX V

(*See* para 2 of Report)

Minutes dated the 23rd November and 4th December, 1970

Minutes of the sitting of the Rules Committee held on Monday, the 23rd November, 1970.

The Committee sat from 16.00 to 16.50 hours.

PRESENT

Dr. G. S. Dhillon—*Chairman.*

MEMBERS

2. Shri Nathu Ram Ahirwar
3. Shri Madhu Limaye
4. Shri J. M. Lobo Prabhu
5. Shri G. S. Mishra
6. Shri Nath Pai
7. Shri K. Raghuramaiah.

SECRETARIAT

Shri S. L. Shakdher—*Secretary.*

Shri B. K. Mukerjee—*Deputy Secretary*

Shri J. R. Kapoor—*Under Secretary.*

2. The Commitee resumed discussion on Memorandum No. 34 regarding rules 155, 157 and 158 of the Rules of the Procedure and Conduct of Business in Lok Sabha in the context of the provisions contained in articles 100(1) and 368 of the Constitution.

3. Shri J. M. Lobo Prabhu opposed any change to be made in the present voting procedure relating to the Bills seeking to amend the Constitution. He felt that the present procedure had been followed since the coming into force of the Constitution and there should be strongest possible reasons if any change was desired in the present rules. He added that the word "passed" used in article 368 of the Constitution meant that a Bill seeking to amend the Constitution should be passed by the special majority of the House mentioned

in that article at all its stages. The amendment of the Constitution was a serious matter and special majority for its passing should be insisted upon at all its stages. If a special majority was required only at the third reading stage of the Bill, he apprehended that members of the House might not give serious attention to the earlier stages of the Bill. Moreover, if, in a particular case, the Bill failed to secure the requisite special majority for the motion to pass the Bill, the time of the House taken in considering the earlier stages of the Bill would have been spent infructuously.

When Shri Madhu Limaye pointed out that special majority was not required for introduction of a Bill seeking to amend the Constitution and that the special majority for circulation of such a Bill or for reference of such a Bill to a Select or Joint Committee, provided for in the rules earlier, had been dispensed with later, Shri Lobo Prabhu said that special majority should be needed at all such stages of a Bill seeking to amend the Constitution.

4. Shri Madhu Limaye stated that the word "passed" used in article 368 of the Constitution was a term of art. and it meant only the passing of the Bill at the third reading stage. Shri Madhu Limaye drew attention to the provisions of articles 107 and 117 of the Constitution and said that the Constitution itself had made a distinction between the introduction, consideration and passing of a Bill. When the Constitution-makers used the word "passed" in article 368 of the Constitution, they were aware that "passing of a Bill" meant passing of the Bill at the final stage.

5. Shri K. Raghuramaiah said that special majority for the earlier stages of a Bill seeking to amend the Constitution before the final passing was provided for by way of abundant caution. The strict interpretation of the law required the special majority only at the final passing stage. He also stated that Shri Hanumanthaiya, Law Minister had at the previous sitting of the Committee made it clear that according to legal interpretation special majority was required at the last stage only.

6. Shri Nath Pai felt that although a strict legal interpretation of article 368 of the Constitution would require the special majority only at the stage of final passing of the Bill, there would be practical difficulties in dealing with a Bill containing more than one clauses seeking to amend several articles of the Constitution and also if the Bill was rejected at the final passing stage, the House would have made a superfluous effort in considering the earlier stages.

7. The Committee perused the earlier history of these rules and noted that when the rules were first made or subsequently amended, the then Committees of the House were aware of the legal interpretation of the Constitution, which was never in doubt, but had nevertheless desired that the special majority should be provided at different stages to ensure that the principle of a Bill should also be accepted by the special majority (*i.e.*, when the motion that the Bill be taken into consideration is carried) and also the members should have procedural clarity whereby they passed different matters lumped together in one Bill by special majority separately.

8. The Committee after taking all factors into consideration, decided that in accordance with the provisions of articles 100 and 368 of the Constitution and their correct legal interpretation, special majority for Bills seeking to amend the Constitution should be required only at the final stage of passing the Bill when the motion in respect of such a Bill is "that the Bill, or the Bill as amended, as the case may be, be passed."

Nonetheless the Committee appreciated that in the case of minibus Bills involving amendment of various articles on different aspects or subjects of the Constitution, members might be divided on the different provisions on different lines. In such a case, if voting by a special majority was taken only at the last stage, the position of the members would become anomalous and their vote would not reflect their true views on the different provisions. To obviate such contingencies, the Committee decided to recommend that in future each Bill seeking to amend the Constitution should deal with a single aspect or subject of the Constitution.

Shri J. M. Lobo Prabhu, however, disagreed with the proposed changes.

9. The Committee directed that a draft Report containing the necessary amendments to the revelant rules in the light of the above decision of the Committee might be prepared and placed before the Committee.

The Committee then adjourned.

Minutes of the Sitting of the Rules Committee held on Friday, the 4th December, 1970

The Committee sat from 16.00 to 16.45 hours.

PRESENT

Dr. G. S. Dhillon—*Chairman.*

MEMBERS

2. Shri K. Hanumanthaiya
3. Shri Madhu Limaye
4. Shri J. M. Lobo Prabhu
5. Shri G. S. Mishra
6. Shri Nath Pai
7. Shri K. Raghuramaiah
8. Shrimati Sushila Rohatgi
9. Shrimati Jayaben Shah.

SECRETARIAT

Shri S. L. Shakdher—*Secretary.*

Shri B. K. Mukerjee—*Deputy Secretary.*

Shri J. R. Kapur—*Under Secretary.*

2. The Committee took up for consideration their draft Fifth Report and the suggestions made by Sarvashri Madhu Limaye and J. M. Lobo Prabhu in respect thereof.

3. Shrimati Jayaben Shah opposed the amendments proposed by the Committee and suggested that the present rules relating to the procedure to be followed in passing the Bills seeking to amend the Constitution should not be changed. The Committee decided not to re-open the decisions already taken by them and incorporated in the draft report.

4. The Committee agreed with the suggestion of Shri Madhu Limaye that his two notes dated the 11th and 25th May, 1970, submitted to the Committee be appended to their report.

5. The Committee considered the suggestions made by Shri J. M. Lobo Prabhu for making certain additions to the draft Report of the Committee. The Committee decided that Shri J. M. Lobo Prabhu might submit a separate note which should be appended to the Report of the Committee.

6. The Commitee decided that any member wishing to submit a separate note for being appended to the Report of the Committee might do so by Monday, the 7th December, 1970.

7. Subject to the above decisions, the Committee approved their draft Fifth Report and authorised the Chairman to have it laid on the Table of the House.

The Committee then adjourned.

APPENDIX VI

(*See* para 5 of the Report)

I. Interpretation of Article 368 of teh Constitution Re: Special procedure for Passing of Bills seeking to Amend Constitution. Constitution Amendment Bill

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Letter No. D-1548|51, dated May 15, 1951 from Speaker, Lok Sabha (Shri G. V. Mavalankar) to Attorney-General (Shri M. C. Setalvad).

You know the Constitution (First Amendment) Bill was introduced in Parliament two days back. What I am myself concerned with at the moment is the procedure to be followed in respect of the motions and their disposal, concerning that Bill.

In this connection, I have written an exhaustive note, setting forth my views, and I shall be grateful if you will kindly let me know your opinion as to whether the position taken by me in the note is a correct one. I need not write more as the points are set out in the note itself.

My Note in original as also the copy of the Parliament Secretariat note may kindly be returned along with your opinion.

Note recorded by Secretary (Shri M. N. Kaul) on May 11, 1951.

Constitution Amendment Bill

Now that the Constitution Amendment Bill will be introduced tomorrow certain procedural matters arising out of the provisions of article 368 of the Constitution require consideration. For the time being, till the new Parliament comes into existence, Article 368 has been adopted as follows:

> "And amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in Parliament, and when the Bill is passed by a majority of the total membership of Parliament and by a majority of not less than two-thirds of the members of Parliament present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill....".

The proviso is not material for the discussion of matters that arise in the case of the present Bill.

2. It is clear that the Constitution shall stand amended in accordance with the terms of the Bill on the following conditions being satisfied.

(i) That the Bill is passed by a majority of the total membership of Parliament, and

(ii) by a majority of not less than two-thirds of the members of Parliament present and voting.

Before the Bill is presented to the President for his assent it must be certified by the Speaker as having been passed by Parliament, and for the purpose of this certificate both the above conditions must be fulfilled.

3. Two questions of construction of Article 368 arise for consideration.

(i) What is the meaning to be attached to the words "total membership of Parliament"?

Parliament at present consists of 325 members. Assuming that 10 seats are vacant on the day that the voting takes place, the question for consideration is whether the total membership of Parliament within the meaning of Article 368 would be 325 or 315.

It is obvious that the plain words of the Constitution must be construed as such, read in conjunction with other relevant articles of the Constitution.

In Article 81 it is stated that the House of the People shall consist of not more than 500 members..... This provision has not yet come into force, as the present Parliament has been constituted on the same basis, subject to necessary modifications, as the old Constituent Assembly of India. The question for consideration is whether the total membership of the House means the number, of which the House is composed or the actual membership for the time being, that is on the date of voting.

There is one important aspect of the matter which has to be borne in mind. If the words are clear and there is no room for ambiguity in construction, then effect must be given to the words in the light of the "internal dictionary" of the meaning of the words disclosed by the various articles of the Constitution, as the articles have to be read as a whole so as to make construction uniform in all parts as far as practicable. Where, however, it is arguable and more than

one construction of words can be legitimately placed, it is permissible to take aspects of the matter also into account, which may throw light and illustrate the construction of the article in question. Now the general consideration that I have in mind is this. I will illustrate the position by reference to the procedure in the House of Commons.

The King on the advice of the Cabinet settles the question of dissolution. On dissolution the writs are issued by the executive authority under the Crown. Once the House of Commons has been constituted as a result of the General Election casual vacancies, that arise from time to time, are filled by writs issued under the authority of the Speaker. That is obviously to ensure that the Executive Government of the day do not for political motives delay the filling up of seats in Parliament.

In the Indian Constitution the power to issue writs in respect of casual vacancies is not vested in the Speaker but is vested in authorities constituted under the Constitution, and not independent in the same sense in which the Speaker is. If, therefore, as a matter of fact, and in the background of actual power to issue writs for filling casual vacancies a possibility of political motives may come into play and in some contingency in the future, where for one reason or other there may, at a particular time, be a number of vacancies, the authorities under the Constitution may be persuaded to delay the issue of writs or the actual holding of elections in the days thereafter. This aspect of the matter becomes vital, where, for instance, the voting on the Amendment of the Constitution, is expected to be carried or lost by a narrow majority. When political excitements are high, as are bound to happen in years to come, the actual canvassing will be brisk and calculations will be worked out neatly, and in that event political pressure may be used to delay filling up of casual vacancies.

In this view of the matter and assuming that the words are not clear beyond doubt, it is possible to take the view that the total membership of the House means the number of members of which the House consists.

(ii) Another question that arises for consideration is whether a point can be taken in the Courts in regard to the construction by the Speaker, of the words "majority of the total membership of Parliament". In this connection, attention is invited to Article 122(1) which states that the validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure. It is true that under Article 122 the

jurisdiction of the Court it prima facie barred, but the final construction of this very article has to be given by the Courts themselves. That is to say that the Supreme Court will, in the ultimate analysis, determine whether an alleged irregularity of procedure comes within the ambit of Article 122. It may be argued before the Supreme Court that compliance with the provisions of Article 368 is a matter of fundamental consequence, which it is mandatory for the Legislature to fulfil as interpreted by the Courts. In other words, the irregularities of procedure contemplated in Article 122 are irregularities that may arise out of the Rules of Procedure framed by Parliament under Article 118 and may also include incidental matters of procedure dealt with in the Constitution which relates to a fundamental matter as the amendment of the Constitution itself. In such a case, it may be arguable that strict compliance with Article 368 as interpreted by the Courts is enjoined and, if not followed, would render the particular amendment or amendments *ultra vires*.

4. In regard to one of the matters referred to above, I may give reference to the voting strength of the Government in England today. I know that the British Constitution is quite different from ours so far as matters relating to interpretation of the Constitution and fundamental rights are concerned. My point in referring to this matter is that the Government of the day in England today hangs on a very narrow majority. Suppose a similar situation arises in India at a future date and it may happen as a matter of fact that five or more seats may be vacant, writs are not issue and the elections are delayed, because the Government feel that they may not win those seats and in the meantime they may carry through an important amendment of the Constitution by a bare majority of the total membership of the House plus, of course, the necessary two-thirds of members present and voting.

5. The other point of construction of article 368 relates to the construction of the word "passed" in the following words in the article namely that "the Bill is passed by a majority etc...." If we construed these words in the light of our Rules of Procedure it is apparent that the word "passed" refers to what we call the third reading stage, when a motion is made that the Bill (or as amended) be passed.

6. There is, however, one important aspect of the matter, of which one cannot lose sight. Amendments of the Constitution arouse great controversies which vibrate through the length and breadth of the country. They are issues of a fundamental character.

7. If the Government bring forward a Bill amending only one Article of the Constitution, no difficulty arises but if the Constitution Amendment Bill seeks to amend, say 5 or 6 provisions of the Constitution, complications are bound to arise when the motion that the Bill be passed is to be voted upon. There may be members in the House, who may be perfectly prepared to accept four out of six amendments, but may be hotly opposed to the passage of two. Such members have no option but to vote against the whole Bill and throw it out, because that is the only way in which they can give vent to their desire to reject the two amendments to which only they are opposed.

8. Such a contingency can only be avoided by the Government after sensing the opinion of the House, withdrawing the Bill and bringing in a number of separate Bills on which voting can take place separately.

9. The position is this. The clauses can be passed by a simple majority as in the case of other Bills but the special provisions of Article 368 come into play not for the intermediate stages but only for the final stage, when the motion that the Bill be passed is voted upon. The construction of Article 368 can, in the light of what I have said above, be agitated before the Supreme Court. That possibility can never be ruled out under a written constitution. I am, however, on a careful consideration of the matter, satisfied with the word "passed" in rticle 368 is a term of art in relation to the Rules of Procedure and must be construed in relation to these Rules. It must have been the intention of the Constituent Assembly of India when they used the words "passed" that it had reference to the Rules of Procedure of Parliament as always understood in India and in the House of Commons from which the Indian procedure has been mainly borrowed.

10. If, however, the matter can be taken to the Court, they are perfectly entitled to describe the word "passed" as a term of art in relation to the Rules of Procedure, or they may give it an ordinary dictionary meaning in the sense that every motion that is passed in respect of the Bill from the time of its introduction down to its actual passage must be voted upon in strict compliance with the provisions of Article 368. I for one am not prepared to dogmatize as to the line that the Courts may take, particularly since I have read the decisions of some of the Courts which have held that Article 19(1)(a) of the Constitution is so comprehensive as not to render a person culpable even if he advocates murder and other crimes of violence.

11. One fundamental difficulty that arises in the construction of the word "passed" is this. I will explain what I have in mind by using the analogy of what is known as the doctrine of "tacking" in the case of Money Bills in the Parliament of U.K. if the word "passed" is construed to apply to the final motion that is made in the House, the Government of the day who command a majority in the House can resort to what I have called the doctrine of "tacking", and they may by these tactics defeat the object of Article 368 in this way. On the second reading stage when the clauses are taken up, they may have all the clauses passed by simple majorities. They may have voting power in accordance with the provisions of Article 368 in respect of say, four clauses of the Bill, but not the remaining two. The position of those opposed to the remaining two clauses becomes very difficult. They are in effect driven, if they so choose, to throw out the whole Bill at the last stage of passing because they are opposed to two clauses in the Bill. The political dilemma may not always be easy to resolve and those who are opposed to the remaining two clauses may tone down their opposition, because they would not like the remaining four to be thrown out. It, therefore, seems to me that by the process of "tacking", the Government may so contrive matters as to defeat the real purpose of Article 368 in respect of certain provisions in the Constitution Amendment Bill.

12. Of course, one way of getting rid of these difficulties is that the Rules of Procedure should provide that amendment of each article of the Constitution will be dealt with by a separate Bill. If that is adopted, the particular difficulty to which I have referred to above will disappear. I consider that such a rule of procedure is necessary in order to give effect to the intentions of the Constitution-makers as embodied in Article 368.

13. Subject to the important considerations I have pointed out above, I feel that the word "passed" used in the Constitution has reference to the final motion that is placed before the House. Any other construction would, apart from anything else, make the whole procedure so rigid and complicated as to amount almost to blocking the process of legislation in respect of this matter. I cannot conceive that the Constituent Assembly could have any such idea in its mind.

Note Recorded by Speaker (Shri G. V. Mavalankar) on May 13, 1951

THE CONSTITUTION (AMENDMENT) BILL, 1951

THE PROCEDURAL PART

Article 368 of the Constitution requires that an amendment of the Constitution may be initiated only:

(a) by the introduction of a Bill, and

(b) when the Bill is passed by a majority of the total membership of Parliament, and by a majority of not less than 2|3rd members of Parliament present and voting.

2. Two questions arise for consideration, namely:

(i) What is meant by the expression "total membership". Does it mean the total number of members inclusive of vacancies, or does it mean persons, who are actually continuing as members on a particular date on which the vote is taken;

(ii) What is meant by the expression "The Bill is passed". At what point or stage during the course of the passage of the Bill, the requisite majority is essential. Is it necessary that the Consideration Motion, each clause of the Bill and the Third Reading of the Motion are required to be passed by a majority of total membership and a majority of two-thirds, or, it is only the final stage of the motion, namely, the Third Reading, that has to be passed by a majority of the total membership and a majority of two-thirds present and voting?

3. Unfortunately the wording of the Constitution interpreted in U.S.A. is different from the wording we have; and, while the foreign precedents are important and a possible guide in interpreting the words in our Constitution, I think, we must go upon the wording of our Constitution.

4. It seems, during the course of the passage of this Article 368 (Article 304 in the draft Constitution), there was no discussion on the specific points, that have now arisen for consideration. In fact, that aspect of the question was not at all present to the mind of members, who took part in the debate. It is difficult to say whether the Drafting Committee of the Constitution had these particular aspects in mind.

5. In the circumstances, we have no material outside the wording of the Constitution to aid us to know definitely the intention of the framers, and we must, therefore go by the wording as it stands, and interpret the plain meaning thereof. However, the following from

the speech of the Hon'ble Dr. B. R. Ambedkar may serve as some guide:—

> "I should begin by telling the House that the Canadian Constitution does not contain any provision for the amendment of the Canadian Constitution. Although Canada today is a Dominion, is a sovereign State with all the attributes of sovereignty and power to alter the Constitution, the Canadians have not thought it fit to introduce a clause even now, permitting the Canadian Parliament to amend their Constitution. It has also to be remembered that the Canadian Constitution was forged as early as 1867 and there is not the slightest doubt about it in the mind of anybody who has read the different books on the Canadian Constitution that there has been a great deal of discontent over the various clauses in the Canadian Constitution and even on the interpretation given by the Privy Council on the provisions of the Canadian Constitution; none-the-less the Canadian people have not thought fit to employ the powers that have been given to them to introduce a clause relating to the amendment of the Constitution."
>
> (*C.A. Debates* 17-9-49, *page* 1659)

6. The Irish Constitution provides for a simple majority in both Houses to alter or repeal any part of the Constitution. But it is further provided that the Constitution is submitted to the people in referendum and approved by the people by majority. The same is the condition with the Swiss Constitution. The procedure in the Australian Constitution is more elaborate, and also requires a referendum to the people.

7. Coming to our own Constitution and refusing to accept the position that, the Constitution should be open to be amended by a simple majority, Dr. B. R. Ambedkar observed as follows:—

> "The Constitution is a fundamental document. It is a document which defines the position and power of the three organs of the State—the executive, the judiciary and the legislature. It also defines the powers of the executive and the powers of the Legislature as against the citizens, as we have done in our Chapter dealing with Fundamental Rights. In fact, the purpose of a Constitution is not merely to create the organs of the State but to limit their authority because if no limitation was imposed upon the authority of the organs, there will be complete tyranny and complete oppression."
>
> (*C.A. Debates* 17.9.49, *page* 1662)

8. It is, therefore, clear that, while it is agreed on all hands that, a Constitution may and should be altered, whenever a change therein is desired, it must be ensured that the amendments have a substantial support of all the various sections of the legislature. This means that the interpretation of the wording has to be strict, and in cases of doubt should lean on requiring a stricter test for its passing.

9. Now we have a number of Articles in the Constitution, which lay down specific majorities for decision on certain matters. Unfortunately, the language used in these different Articles is not uniform, but I believe, one can get some clues for interpretation of the words "total membership" occurring in Article 368. The same words "total membership" occur in Article 124(4) as regards the removal of Judges. The question of irremovability of Judges may in a sense be placed on a par with unwillingness to amend the Constitution. It is important for securing complete independence of the judiciary. Thus Articles 124(4) and 368 are the only Articles which use the expression "total membership".

10. I believe, we get some clue to the interpretation of the words "total membership" from the wording of Article 94(c) and Proviso (b) of Article 217 dealing with the removal of the Speaker or the Deputy Speaker. The words used are:

> ".....by a Resolution of the House of the People passed by a majority of all the then Members of the House."

There could be no doubt about the interpretation of this expression. This means that, there has to be a mojority of "live membership" and not "latent membership", or, in other words, a majority of "members chosen and living" as the expression is used by the American writers. This is made apply clear by prefixing the words "the then" to the word "members".

11. The question is, if it was the intention of the Constitution to have two-thirds of the "live membership or of the members chosen and living", there was nothing to prevent them from using the wording in Article 94(c) and Proviso (b) to Article 217. It, therefore, appears that the words "total membership" used in Articles 124(4) and 368 mean the entire membership, which goes to compose the House at the time of the amendment, i.e., it includes vacancies also.

12. Article 100(2) says:

> "Either House of Parliament shall have power to act notwithstanding any vacancy in the membership thereof."

Obviously, here the expression "membership" means the totality of members, inclusive of vacancies. If this were not so, there was no occasion for the provision. Therefore, the expression "membership" of Parliament or House, when used in the Constitution, means the entire number of members inclusive of vacancies.

13. Article 100(3) speaks of total number of members of the House, while dealing with the question of a quorum; and Article 108(b), while dealing with the question of joint sessions, speaks of "total number of members of both Houses of Parliament present and voting." The wording in these two Articles, whatever be their meaning, does not afford a clear guide to the interpretation of the term "membership".

14. The question we have next to consider is: What is meant by the expression "passed"? Here, we are dealing with the specific provision of the Constitution itself, and the point arises because the Constitution provides that the amendment has to be initiated by the introduction of a Bill, and it is, therefore, that the question arises as to whether this Bill will require a majority at all stages, or only at the final stage.

15. If the object of voting a particular majority for the amendment of the Constitution is kept in view, it stands more to reason that each stage and each clause or even a sub-clause for the matter of that, must be passed by a requisite majority. Unless this is done.....it will be defeating the very purpose of Article 368. A Bill may easily group more than one amendment together and may get them through by a simple majority, and have the requisite majority only at last stage.

16. It may appear that I am perhaps getting too technical. But keeping the main purpose of Article 368 in view and keeping also in view its object, as stated by the Hon'ble Dr. Ambedkar and its character, that it is a fundamental document, one cannot be too technical. The article speaks of "an amendment" using the word in singular. It will be conceded that the occasions of amendments are visualised to be far and few, and, therefore, a Bill was considered necessary for every such amendment. If that is a correct reading of the intention, then it follows that merely because a Bill chooses to group together a number of amendments, it cannot follow that it is only the group that has to be passed at the final stage with the requisite majority. Every clause being a separate amendment of

the Constitution, has to be considered and passed as an amendment of the Constitution, and, therefore, there has to be a requisite majority at each stage in the case of each distinct amendment.

17. My interpretation of the words "total membership" and "passed" may perhaps appear to be strict. But in a matter of such moment, as the amendment of the Constitution, which affects the entire nation, it is better to err on the safer side and to see that no point is likely to be raised in any further judicial proceedings that the Constitution (Amendment) Act, is a nullity because of defective procedure adopted. I know, the validity of proceedings in the Parliament cannot be challenged in a Court of Law. But I am afraid, it may be open to argue that a particular measure is inoperative at law for non-compliance with the provisions of the Constitution. In measures of this type it is not use taking any risks.

APPENDIX VII

(*See* para 5 of the Report)

Letter dated May 18, 1951 *from Attorney-General (Shri M. C. Setalvad) to Speaker, Lok Sabha (Shri G. V. Mavalankar)*

I enclose herewith my opinion in the matter.

I agree with the view you have taken.

Opinion of Attorney-General (Shri M. C. Setalvad), dated May 18, 1951.

The first question for consideration is the meaning of the expression "by a majority of the total membership of that House" in article 368 of the Constitution.

2. The Constitution uses in reference to the nature of the majority required three different kinds of expressions. First, we have the expression "by a majority of the total membership of that House" which is used in article 368 and also in article 124(4). Secondly, we have in article 94(c) the expression "by a majority of all the then members of the House". Finally, we have the expression "a majority of votes of the members present and voting". See article 100(1).

3. I am omitting from consideration the expression "1|10th of the total number of members of the House" found in article 100(3) in regard to the quorum needed to constitute a meeting of either House of Parliament, and, the expression "by a majority of the total number of members of both Houses present and voting" to be found in article 108(4) in regard to the joint sitting of the two Houses as these relate to different subject matters.

4. The three expressions mentioned in para 2 denote by their language, in my view, a type of majority which is less and less strict as we go down from the first type to the third type mentioned in that paragraph.

5. In the first case it has to be a majority "of the total membership of that House". Each House would have, having regard to the provisions of articles 19 and 80, a constitution consisting of a certain "total membership". The majority firstly mentioned in article 368 is to be a majority of this 'total membership'. It may be that some seats out of this "total membership" may for the time being be vacant or unfilled. Even so such vacant or unfilled seats

would still constitute a part of the "total membership" so that in calculating the majority these vacant or unfilled seats will have to be taken into account. The majority has not to be merely a majority of the members present and voting but a majority of the total number of members who for the time being should constitute the House.

6. The second kind of majority mentioned in para 2 is evidently of a less strict character. It is a majority of "all the then members" of the House. In other words, though the total membership may consist, say of 200 members half a dozen seats thereout may for one reason or other be vacant or unfilled. If so, "all the then members" would be 200 minus these six so that the majority will have to be a majority out of the remaining 194 members.

. The third kind of majority mentioned in paragraph 2 is the ordinary majority of the members present and voting. This would appear to be the common kind of majority and the least strict of the three kinds mentioned in para 2 above.

8. The interpretation mentioned above of the relevant part of article 368 clearly results from the use of the expression "the total membership of that House." It is not the actual number of members existing at a given point of time which has to be considered but "the membership" meaning the totality of the members that should exist whether they in fact do exist or not. This aspect is emphasised by the use of the words "the total" and also by the omission of the qualifying words "present and voting" which are to be found used in the same sentence.

9. I would not, in construing the relevant portion of article 368, consider either the provisions of or the practice under other constitutions for two reasons. First, the language of our Constitution is so clear that it would appear to be unnecessary to try and derive assistance from the provisions of other constitutions. Secondly, the language used in article 368 has no parallel in any other constitutions and very little assistance is therefore derived from a consideration of how things are or have been done under constitutions using a very different phraseology.

10. As to the meaning of the words "when the bill is passed in each House" in article 368, it appears to me that the expression "passed" has, I think, reference to the passing of the Bill at the final stage. The expression "the introduction of a Bill" and "when the Bill is passed" have to be understood in reference to the practice and procedure usual in Houses of Parliament. Though various

clauses of a Bill may be voted upon at different stages and "passed", the Bill as a whole is "passed" only when the voting takes place at the final stage. The majority insisted upon by article 368 is, therefore, I think, applicable only to the voting at the final stage.

11. As a matter of the true interpretation of article 368, I think that the view put forward in the last paragraph is the correct view.

12. However, I agree that it is better to err on the safer side and take the stricter view insisting on the requisite majority at all stages of the passage of the Bill.

APPENDIX VIII

(*See* para 6 of the Report)

EXTRACT OF MINUTES OF SITTING OF RULES COMMITTEE HELD ON 14-4-1953

18. New Rules 157A to 157F (item 15)—Article 368 of the Constitution provided that an amendment of the Constitution might be initiated only by the introduction of a Bill in either House of Parliament. It then proceeded to lay down certain special conditions as to the majority required for the passing of such a Bill in either House, and when the amending Bill related to a particular provision of the Constitution, the article stipulated the concurrence of the majority of State Legislatures. The article did not lay down the procedure in detail for the introduction and consideration of such Bills in either House of Parliament.

Regarding the consideration and passing of Bills amending the Constitution the Speaker had already laid down the procedure when the Constitution (First Amendment) Bill was under consideration.

It was pointed out that the proposed new rules only laid down the procedure for the introduction and voting on clauses of a Bill seeking to amend the Constitution, in accordance with the procedure already laid down by the Speaker, at the same time keeping in view the relevant provisions of the Constitution. The new chapter was also meant to bring together at one place all the rules relating to the subject.

As regards the proposed new rule 157A which was a suggestion by the Law Minister, a question was raised whether this rule was necessary in view of the fact that the Constitution did not make any restrictive provision in respect of Bills amending the Constitution at the introduction stage. After further discussion it was decided to drop the proposed new Rule 157A.

Subject to the deletion of Rule 157A the Committee adopted all the proposed new rules regarding Bills seeking to amend the Constitution, which constituted the new Chapter XA of the Rules of Procedure.

APPENDIX IX

(*See* para 7 of the Report)

MINISTRY OF LAW

Chapter XII of the Rules of Procedure and Conduct of Business in the House of the People lays down special voting procedure in regard to Bills seeking to amend the Constitution. Rule 167 provides for putting each clause or schedule of the Bill to the vote of the House separately and prescribes the special majority (namely, a majority of the total membership of the House and not less than two-thirds of the members present and voting). Under Rule 168 amendments to clauses or schedules are decided by a simple majority. Rules 169 prescribes the special majority for the five different types of motions that are possible in the case of such Bills.

2. Attention is invited to clause (1) of article 100 of the Constitution, under which "save as otherwise provided in the Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting". The relevant contrary provisions is that contained in article 368. It states that "an amendment of the Constitution may be initiated only by the introduction of the 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 present and voting it shall be presented to the President for his assent". It is arguable, therefore, that only the final motion for the passing of the Bill requires the special majority, and all other motions and questions in respect of the Bill should be determinable by a simple majority under article 100(1). It is, however, possible to justify the validity of Rule 167 on the ground that where the Bill contains several amendments of the Constitution embodied in the different clauses and schedules of the Bill, it is proper that the Rules should prescribe the special majority in respect of each clause or schedule. So far as Rule 169 is concerned, it seems to me that the special majority for motions (i) to (iv) cannot be justified under articles 100(1) and 368 of the Constitution. Moreover, from the practical point of view, the Rule in this form has led to considerable and unnecessary delays in the consideration and passing of the Constitution amendment Bills.

3. I think, therefore, that we should request the Lok Sabha Secretariat to take steps for the amendment of Rule 169 on the following lines:—

169(1) If the motion in respect of such Bill is that it be passed, the motion shall be deemed to have been carried only if it is passed by a majority of the total membership of the House and by a majority of not less than two-thirds of the members present and voting.

(2) All other motions in respect of such Bill shall be decided by a majority of members present and voting in the same manner as in the case of any other Bill.

K. V. K. SUNDARAM,
30-6-1955
Special Secretary.

H. V. PATASKAR
30-6-1955.

APPENDIX X

(*See* para 7 of the Report)

EXTRACT OF MINUTES OF SITTING OF RULES COMMITTEE HELD ON 28TH NOVEMBER, 1955

12. Rule 167 (Item 12)—The rule provided for a special majority for the passing of each clause or schedule of a Bill seeking to amend the Constitution.

This was done out of abundant caution and for ensuring that every principle contained in the Bill was accepted by a special majority and this view was consistent with the spirit of the Constitution.

It was however felt that as Clause 1, the Enacting Formula and the Long Title were only formal provisions of a Bill and did not affect the Bill as such on its merit, those could be passed by a simple majority.

As in certain cases Clause 1 also made provision in regard to the commencement of the Bill, the Committee approved the proposed amendment subject to a verbal change, namely, that for the word and the figure "Clause 1", the words 'the Short Title' should be substituted.

13. Rule 169 (amendment proposed by the Government)—The Committee were apprised of the communication" received from the Government stating that the provision for special majority for motions mentioned in Clause (i) to (iv) of Rule 169 was not in accordance with Articles 100(1) and 368 of the Constitution. Moreover, from their point of view, the requirement of special majority for these motions had led to considerable and unnecessary delays in the consideration and the passing of the Constitution Amendment Bills. The Government had accordingly proposed an amendment to rule 169 on the following lines with the object of limiting the requirement of special majority to the motion 'that the Bill be passed' :—

> "169. (1) If the motion in respect of such Bill is that it be passed, the motion shall be deemed to have carried only if it is passed by a majority of not less than two-thirds of the members present and voting.

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*Reproduced in Appendix IX of this Report.

(2) All other motions in respect of such Bill shall be decided by a majority of members present and voting in the same manner as in the case of any other Bill."

The Chairman apprised the Committee that he had considered this question in 1951 in connection with the Constitution (First Amendment) Bill and had written to the Minister of Parliamentary Affairs as follows:—

"The first motion will be 'that the Bill be taken into consideration'. I am not quite clear, whether, this motion requires the majority as stated in Article 368. Undoubtedly the consideration of the motion is a stage in the passing of the Bill; and in a sense it is a preliminary to the real consideration which means, consideration clause by clause. Therefore, it can be argued with force that this motion can be passed by a simple majority. But, as a whole, Bill can be killed by defeating such a motion, a doubt is raised whether this preliminary consideration cannot be treated as part of 'passing the Bill'.

In order, therefore, that we may give no loophole for a possible argument in future, which might strike at the root of the entire Bill, I advise that this motion also should be passed by the majority required under Article 368."

The Chairman also informed the Committee that the Attorney-General whose opinion was sought in 1951, while agreeing with the Speaker, stated that "it is better to err on the safer side and take the stricter view insisting on the requisite majority at all stages of the passage of the Bill".

The Committee considered the view of the Government and their proposal and after some discussion came to the conclusion that the Second Reading was a process in the passing of a Bill and as such the provisions of rule 169 should continue as they were.

APPENDIX XI

(*See* para 8 of the Report)

EXTRACTS OF MINUTES OF RULES COMMITTEE HELD ON 17-4-1956

2. The Committee took up consideration of the procedure for voting on Bills seeking to amend the Constitution.

3. The Chairman explained that the Committee had, at their sitting held on the 28th November, 1955, considered the view of the Government regarding article 368 of the Constitution and their proposal for revision of rule 169 with the object of limiting the requirement of a majority of the total membership of the House and a majority of not less than two-thirds of the members present and voting (hereinafter called 'special majority') to the final motion in respect of the Bill, *viz.*, "that it be passed". The Committee had then come to the conclusion that the Second Reading was a process in the passage of the Bill and as such the present procedure regarding Bills seeking to amend the Constitution might continue as before.

The matter had been brought up before the Committee again in view of the communication dated the 23rd February, 1956 from the Minister of Legal Affairs (*Annexure* 'A').

The Government had reiterated their earlier view that the term 'passed' used in article 368 of the Constitution applied only to the final stage of the passage of the Bill. Accordingly, the special majority provided for in that article was not applicable to the motions at the earlier stages for which only ordinary majority as laid down in article 100(1) was required.

The Government had therefore suggested that the question of revision of rules 167 to 169 might be reconsidered by the Rules Committee.

4. The Attorney-General stated that he still held the same opinion which he had given to the Speaker in 1951 in response to a letter from the latter (*Annexure* 'B'), that according to strict interpretation of article 368, special majority provided therein was required only for voting at the final stage of the passage of the Bill and all other earlier stages required ordinary majority as laid down in article 100(1). He had then also said that although special majority was not enjoined by the Constitution so far as earlier stages

were concerned, there would be no harm if, by way of abundant caution, special majority was insisted upon at all stages of the passage of the Bill.

5. The Minister of Home Affairs while agreeing with the interpretation of article 368 by the Minister of Legal Affairs and the Attorney-General, stated that there could be only two interpretations of the term 'passed' used in article 368: either the term applied only to the final stage of the passage of the Bill or it covered all the stages from the motion for leave to introduce the Bill to the final motion "that it be passed". If the latter interpretation held good, special majority should be required even for the motion for leave to introduce the Bill, or for the disposal of amendments or for the passage of such formal provisions of the Bill as the Short Title, the Enacting Formula and the Long Title, which the Rules did not provide. According to him, 'passing of the Bill' in terms of article 368 meant the adoption of that motion in respect of it which resulted in the final adoption of the Bill by the House.

He, however, agreed with the view that in case of omnibus Bills which contained proposals for amendment of more than one article of the Constitution dealing with different subjects or aspects thereof, discretion might be vested in the Speaker to require special majority for a particular clause or group of clauses of the Bill so as to ensure that, where necessary, members expressed their opinion on different provisions of the Bill in an unambiguous way.

6. Some members felt that the spirit behind article 368 was that no Bill seeking to amend the Constitution should be passed otherwise than by a special majority and that implied that all the effective stages leading to the passage of the Bill should be subjected to special majority. It was contended that, by a reference of a Bill to a Select Joint Committee, the House committed itself to the principles of the Bill and therefore the principle of the Bill should be accepted not by a simple majority but by a special majority, as that was an important stage in the passage of the Bill. If the special majority was not forthcoming at that stage, it would not serve any purpose to spend the time of the House and the Committee in carrying the Bill through subsequent stages when it was liable to be thrown out at the final stage, on account of its principle being unacceptable to the special majority.

7. As regards the requirement of special majority for each clause of the Bill, it was held that if a Bill contained provisions relating to a single article of the Constitution or articles which were closely related or inter-dependent, there might be some justification for a vote by special majority being taken at the final stage only and dispensing with that requirement in regard to individual clauses.

In the case of omnibus Bills involving amendments of articles on different aspects or subjects of the Constitution, however, members might be divided on the different provisions on different lines. In such a case, if voting by a special majority was taken only at the last stage, the position of the members would become anomalous and their vote would not reflect their true views on the different provisions. Accordingly, in the case of omnibus Bills it was desirable to insist upon clear expression of views by a special majority on different clauses of the Bill separately.

The members also felt that instead of giving the discretion to the Speaker and placing the burden upon him to determine in each case how the voting should be taken, it would be better if it was laid down in the Rules themselves that special majority would be required on all clauses with a proviso that the Speaker might put a group of clauses together in order to save the time of the House.

8. Some members also thought that if the special majority was reserved only for the final stage of the passage of the Bill, it might happen that the whole consideration of the Bill including its consideration clause by clause could be concluded in the House even though fifty members might be present and twenty-six voting in its favour. Such a position, even theoretically, would run counter to the spirit and scheme of article 368 of the Constitution.

9. A point was raised that if the provisions of article 368 were not strictly followed, *i.e.*, if a special majority was required on a stage other than a final stage, such action might be against the provisions of article 100(1). It was considered that when there was a doubt about the interpretation of the word "passed" used in article 368, it was safer to have a special majority rather than a simple majority in the case of other effective stages.

10. The Committee were of the opinion that as the Report of the Select or Joint Committee was subsequently considered in the House and that as by a well-established convention each such Bill was always sent to the Select or Joint Committee, no special majority for reference of a Bill seeking to amend the Constitution to the Select or Joint Committee should be insisted upon. In such a case the motion for consideration of the Bill as reported by the Select or Joint Committee should, however, require a special majority.

11. As regards the motion for circulation of a Bill for eliciting public opinion, the Committee were of the view that as the House was not committed to the principle of the Bill while voting on such a motion, insistance upon special majority was not necessary.

12. The Committee also felt that the provision in the first proviso to rule 167 laying down "unanimous concurrence of the House" before the Speaker could put together to vote, the clauses of a Bill seeking to amend the Constitution, unnecessarily fettered the discretion of the Speaker which was not desirable.

13. The Committee having considered all the aspects of the matter adopted the amendments shown in *Annexure* 'C' and authorised the Chairman to lay their recommendations on the Table of the House with a Report.

ANNEXURE A

(*Vide* para 3 of Minutes)

Copy of letter dated the 23rd February, 1956 from Shri H. V. Pataskar, Minister of Legal Affairs to Shri M. Ananthasayanam Ayyangar.

Some time ago, the Law Ministry had raised the question whether, in view of the mandatory provision contained in article 100(1) of the Constitution, it was constitutionally correct for the Rules of Procedure to provide that various interim motions in connection with a Constitution Amending Bill must also get the special majority which is laid down in article 368 only for the passing of such a Bill. Our view was, and still is, that the words "when the Bill is passed in each House" which occur in article 368 refer to the final stage when, after all clauses, Schedules, the Short Title, the Enacting Formula and the Long Title have been adopted, the motion is put to the House that the Bill be passed. Even in regard to clauses, Schedules, etc. the form of motion is "that clauses such and such do form part of the Bill". It cannot be said that any such motion, much less, a motion that the Bill be taken into consideration or that it be referred to a Select Committee of the House or that it be referred to a Joint Committee of the two Houses or that it be circulated for eliciting public opinion, is a motion for which the Constitution "provides" for any majority other than a majority of votes of the members present and voting. We think, therefore, it is contrary to article 100(1) to provide for a special majority for all sorts of interim motions in respect of Constitution Amendment Bills. We have specially consulted the Attorney-General on this point and he agrees with this view.

2. I need hardly remind you of the most embarassing and awkward situation in which we found ourselves during the last session, when although the House was almost unanimously in favour of the Bill to amend article 3 of the Constitution, it could

not proceed with it, because the number of members actually voting for the reference to a Joint Committee fell short of the requisite absolute majority by three or four. You are also aware of the amount of time which has to be spent on divisions. I for one can see no justification, either theoretically or from the practical point of view, for valuable parliamentary time being spent in this way. I would therefore, request you to place the matter once again before the Rules Committee and reconsider rules 167 to 169 of the Rules of Procedure. I shall be glad to put my views before the Rules Committee also, if necessary.

ANNEXURE B

(*Vide* para 4 of the Minutes)

Extracts from Attorney-General's letter dated the 18th May, 1951 to the Speaker

As to the meaning of the words "when the Bill is passed in each House" in article 368, it appears to me that the expression "passed" has, I think, reference to the passing of the Bill at the final stage. The expressions "the introduction of a Bill" and "when the Bill is passed" have to be understood in reference to the practice and procedure usual in Houses of Parliament. Though various clauses of a Bill may be voted upon at different stages and "passed", the Bill as a whole is "passed" only when the voting takes place at the final stage. The majority insisted upon by article 368 is, therefore, I think, applicable only to the voting at the final stage.

As a matter of the true interpretation of article 368 I think that the view put forward in the last paragraph is the correct view.

However, I agree that it is better to err on the safer side and take the stricter view insisting on the requisite majority at all stages of the passage of the Bill.

ANNEXURE C

(*Vide* para 13 of the Minutes)

Amendments to Rules of Procedure and Conduct of Business in the House of the People, as recommended by the Rules Committee

Rule 167

1. In the first proviso to rule 167, the words "with the unanimous concurrence of the House" and the commas after the word "may" and before the word "put" shall be omitted.

Rule 168

2. In rule 169—

(a) in clause (i), for the word "it" the words "the Bill" shall be substituted;

(b) for clause (ii), the following shall be substituted, namely:—

"(ii) the Bill as reported by the Select Committee of the House or the Joint Committee of the Houses, as the case may be, be taken into consideration, or";

(c) clauses (iii) and (iv) shall be omitted;

(d) clause (v) shall be re-numbered as clause (iii);

(e) for clause (v) re-numbered as (iii), the following shall be substituted, namely:—

"(iii) the Bill, or the Bill as amended, as the case may be, be passed."

APPENDIX XII

(*See* para 8 of the Report)

EXTRACTS OF MINUTES OF RULES COMMITTEE HELD ON 24-4-1956

* * * * *

4. The following is the summary of the view-points of members who had given notices of amendments:

Rules 167

(i) Shri Kamath stated that he was opposed to the recommendations of the Committee in regard to rule 167 on the ground that, it was not desirable to burden the Speaker with discretionary powers with regard to putting clauses or schedules together to the vote of the House in case of Bills seeking to amend the Constitution.

(ii) Dr. Krishnaswami was of the view that the term "passed" used in article 368 of the Constitution referred not only to the passage of the Bill at the final stage but also at the clause by clause consideration stage. According to him each clause or schedule in a Constitution Amendment Bill had a distinct purpose namely to amend an article of the Constitution and as such special majority was necessary for the passage of each clause or schedule and therefore there was no scope for vesting any discretion in the Speaker for putting clauses or schedules together to the vote of the House. He thought that if special majority was not insisted upon for the passage of each clause, the amendment to the Constitution might not be held valid by the Courts of Law.

(iii) It was urged by Shri Nambiar and Shri Chowdhury that specific provision should be made in the Rules that the Speaker would put a group of clauses to the vote of the House after ascertaining the views of the House. They, however, agreed that it was not necessary to insist upon the unanimous consent of the House as that would tantamount to a veto by one member upon a course of action which was otherwise approved by the House.

Rule 168

(i) Dr. Krishnaswami expressed the view that the term "passed" used in Article 368 referred to the clause by clause consideration and the final passage of the Bill and not to the stages earlier than the

clause by clause consideration. Accordingly, he felt that rule 169 should be amended so as to require the special majority only for the motion "that it be passed" and not for the motions for reference to the Bill to Select|Joint Committee or for its circulation.

(ii). All other members who had given notices of amendments agreed that special majority was not necessary in case of circulation of the Bill for the purpose of eliciting public opinion thereon.

They, however, urged that as by referring a Bill to a Select| Joint Committee, the House committed itself to the principle of the Bill, special majority should be insisted upon at that stage.

5. The members, who had given notices of amendments and those members who had been specially invited to take part in the deliberations of the Committee, withdrew after presenting their views. The Committee then proceeded to consider whether any changes were desirable to their earlier recommendations, in the light of the view-points expressed.

Rule 167

6. With regard to Shri Kamath's point [see para 4(i) above], it was stated that discretionary power was vested in the Speaker only with a view to save the time of House and to expedite business and there was no question whatever of curtailing the power of the House.

7. As regards the view-point expressed by Dr. Krishnaswami [see para 4(ii) above], it was stated that by a well established privilege and also under the Constitution, the House was the master of its own procedure. If it interpreted the term "passed" used in article 368 in a certain sense, it was doubtful whether the Courts could call in question the validity of the proceedings in Parliament on the ground of alleged irregularity of procedure caused by such an interpretation.

8. The Committee considered that generally the practice was that when the Speaker wished to put a group of clauses together he first ascertained whether members had any objection to that course being adopted, and, if he felt that a majority of members wished the voting on several clauses to take place together, he then ordered a division to be held accordingly. In case of an important clause or when a substantial number of members asked for voting on individual clauses the Speaker generally ordered a separate division

on each such clause. The Committee, therefore, felt that the retention of the words "with the concurrence of the House", occurring in the first proviso to rule 167 would not make any substantial difference in actual practice.

The Committee, accordingly, on reconsideration decided that for the amendment to rule 167 proposed in their Second Report, the following be substituted, *viz.*:

> "In the first proviso to rule 167, the word 'unanimous' shall be omitted."

Rule 169

9. The Committee were unanimously in favour of dispensing with the requirement of special majority in the case of the motion for circulation of the Bill for the purpose of eliciting opinion thereon.

10. As regards the question whether there should be special majority at the time of reference of the Bill to Select Committee of the House or Joint Committee of the Houses, all the members except one agreed that special majority should not be insisted upon at those stages.

The Committee, therefore, came to the conclusion that their original recommendation in regard to rule 169 should stand.

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