COMMONWEALTH PARLIAMENTS

–A Commemorative Souvenir

37th Commonwealth Parliamentary Conference

New Delhi September 1991

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LOK SABHA SECRETARIAT, NEW DELHI

Published for the Indian Parliamentary Group
(India Branch of the C.P.A.)
New Delhi-110001

Published under Rule 382 of the Rules of
Procedure and Conduct of Business in Lok Sabha

Price: Rs. 500

Lok Sabha Secretariat
First Published: 1991

Published by Lok Sabha Secretariat
Parliament House, New Delhi

Printed by Thomson Press (India) Limited
K-13, Connaught Circus, New Delhi-110001

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DR. SHANKER DAYAL SHARMA

सभापति, राज्य सभा
संसद् भवन, नई दिल्ली
CHAIRMAN
RAJYA SABHA
PARLIAMENT HOUSE
NEW DELHI

5 September 1991

14 Bhadra, 1913 (Saka)

INTRODUCTION

Dr. S. Radhakrishnan, the great philosopher and the first Chairman of the Rajya Sabha, speaking about the Commonwealth, had observed:

> "When we talk about the Commonwealth, we are reminded of certain ideals which bind the peoples of the Commonwealth together. The nations which are members are fully free, absolutely independent. They share no allegiance, but they share loyalty to ideals. They have a common spirit of compromise, getting things adjusted by mutual discussion and agreement. So far as the ideals of Commonwealth are concerned, they insist on the extension of democratic principles to all peoples who belong to the Commonwealth wherever they may be."

Democratic ethos, traditions, values, norms and above all the democratic way of life have become the mainstay of Commonwealth countries and, indeed, represent a global urge of all humanity. Since its very inception the Commonwealth Parliamentary Association has done signal service in espousing the cause of democracy, parliamentary traditions, Rule of Law, individual liberty and human dignity.

The Commonwealth is a unique association of sovereign states. Its methodology is of consultation, consensus and cooperation. Its strength is the spirit of mutual understanding and accommodation. Members who congregate for the pursuit of the common weal have a varied background - geographical, ethnic, cultural, economic and political. Nonetheless they share a common tradition and have a singular desire to pursue democratic means to achieve the welfare and happiness of their peoples.

India, the venue of the 37th Commonwealth Parliamentary Conference, had witnessed the flowering of democratic values and

institutions from very ancient times. Her philosophical traditions also strengthened commitment to democratic ideals and representative institutions. Structures in the form of Sabhas, Samitis, Janpadas, Village Panchayats, Gram Sabhas, and Gram Sanghas, elected monarchies and republics, represented the democratic instinct of the people of India. These institutions were guided by meticulously designed procedures and time-honoured practices.

Today the institution of Parliament itself has become such a momentous body that it has transcended its conventional role of a law-making agency to become a multifunctional organ. The concept of the Welfare State with commitment to political, social and economic upliftment of the individual, has best been served by the institution of Parliamentary Democracy. Increasingly the people regard representative bodies as the best guarantee for their welfare. As the highest forum of democracy and the supreme body representing the people of the nation, Parliament concerns itself with the whole ambit of social activity.

Parliament becomes the medium through which the people's sovereignty is exerted. Through periodic elections people choose their representatives, who, in turn, express and reflect popular urges and aspirations in Parliament. It is in the august forum of Parliament that the pulsating vibrations of political life throughout the nation are fully felt.

A major challenge faced by democratic institutions in the present day world is the threat posed by terrorism. The modus operandi of terrorists aims at stifling the democratic process. Terrorism and its many disguises threaten the very roots of the democratic ethos. The assassination of our late Prime Minister, Shri Rajiv Gandhi, has highlighted the fact that enemies of democracy can deal devastating blows with the immediate intention of bringing about chaos.

There are other factors and forces which pose no immediate threat to democracy but are potent with serious consequences. Chronic poverty and appalling socio-economic disabilities do not augur well for democracy. Endemic conditions of frustration and resentment can jeopardize any system. If democratic institutions and the democratic way of life are to be sustained, the masses in poor nations will have to be helped overcome conditions of hunger and want. Such positive economic change can occur only if economic and technological inputs reach developing countries in adequate measure.

It is in the context of promoting and safeguarding the parliamentary and democratic traditions that the Commonwealth Parliamentary Conference assumes a role of far-reaching importance.

The commonalities that bind the Commonwealth together are faith in Parliamentary tradition, Rule of Law, dignity and liberty of the individual, ideals of universal peace and prosperity, elimination of all forms of colonial domination and racial segregation and the progressive removal of wide disparities among nations.

With such lofty and enlightening ideals as its beacon light the Commonwealth Parliamentary Conference has rightly been described as "the chief bulwark and protagonist of parliamentary democracy in the Commonwealth". By convening annual conferences, periodic meetings of its constituent members and technical staff, arranging symposia, seminars on topical issues, organising exchange of visits, disseminating information on parliamentary practice and procedure through periodicals and above all fostering friendship among its members, the Commonwealth Parliamentary Conference has infused a sense of fellowship and, community feeling. The interchange and cross-fertilisation of ideas pave the way for creating an awareness among the participants about the vital need for strengthening the foundations of democracy. This maintains and nourishes an ambience for a viable democratic polity with extensive participation of people in the decision making process.

The Commonwealth Parliamentary Association epitomising the vast Commonwealth has exerted a strong appeal transcending national barriers. The forum of Commonwealth Parliamentary Conference unlike many other international bodies is not bound down by rigid norms, rules and regulations. The delegates and representatives who participate in this Conference, value the ease of communication and informality and flexibility in the process of discussion. This enables them to exchange freely their view points and their opinions. It generates a sense of friendship and understanding.

In the present juncture, as we witness the spread of democracy, the role of such Parliamentary Conferences should be to give further impetus to the cause of democracy. Whenever there is suppression of democracy and civil rights the influential role of Commonwealth Parliamentary Conference could be more effective. This Conference should help more and more people to recognize the lethal threat that Terrorism poses to human rights, human dignity and the democratic process.

The scope of the deliberations of such a Conference includes discussion on the problems faced by democracies in the Commonwealth and several other issues concerning the world at large. I am sure, the deliberations in the Conference will throw new insights into the process of parliamentary democracy and help strengthen the foundations and atmosphere for growth of democratic institutions. Our goal has been to utilise the values of freedom for the amelioration and emancipation of the common man. I am sure that this Conference will reinforce this idea and advance in its tasks with redoubled vigour.

On the occasion of the 37th Commonwealth Parliamentary Conference, this souvenir contains articles and write-ups by very distinguished and experienced minds from different Commonwealth countries. It is a kaleidoscopic presentation of various aspects of the functioning of legislative institutions. I have no doubt that it will serve as a valuable and informative guide to stimulate discussion on constitutional and parliamentary matters. I commend the efforts of all who have produced this work.

S D. Sharma

(Dr. Shanker Dayal Sharma)

PRIME MINISTER

FOREWORD

I am very happy that the Indian Branch and the State Branches of the Commonwealth Parliamentary Association have the honour to host the 37th Commonwealth Parliamentary Conference in New Delhi.

The Conference will bring together parliamentarians and legislators from over 40 countries, members of the wider community of the Commonwealth. They will come from different continents and will represent many races, cultures and socio-economic systems. The delegates themselves will represent a wide spectrum of political opinion as they come from many different political parties. But they will all share a commitment to democracy, political pluralism and faith in one of the vital institutions of democratic polity, namely the Parliament. A functioning Parliament in itself also implies values of tolerance, accommodation and a spirit of cooperation.

India is privileged to be hosting the Commonwealth Parliamentary Conference for the third time. Not only is India the world's most populous democracy, but our own commitment to democratic norms and parliamentary institutions is firm, deeprooted and widely held. The strength and resilience of our political and parliamentary system have been tested and well proven, specially during the turbulent periods in our public and political life.

I am happy to learn that the Lok Sabha Secretariat will be bringing out a Souvenir to commemorate the occasion of the 37th Commonwealth Parliamentary Conference. I understand that the volume will include

articles on constitutional and parliamentary issues of interest; functioning of Commonwealth Parliaments and a special section on the Indian Parliament and Legislatures. Enhanced public awareness and interest in the functioning of parliamentary institutions is vital for the health of democracy. I, therefore, find it eminently befitting that such a Souvenir is being brought out on this occasion. I do hope that the Souvenir will enjoy a wide circulation and readership, and will evoke much interest.

P. V. Narasimha Rao

(P.V. Narasimha Rao)

New Delhi
September 4, 1991

SPEAKER,
LOK SABHA,
PARLIAMENT HOUSE,
NEW DELHI-110001

PREFACE

For the third time in about four and a half decades, India has the privilege of hosting the Annual Commonwealth Parliamentary Conference. Earlier in 1957 and again in 1975, we have had the opportunity to successfully host the Commonwealth Parliamentary Conference.

For India, Membership in this multi-racial, multi-lingual, multi-cultural and multi-religious association of sovereign nations - the Commonwealth of Nations - is strictly in conformity with our age old vision of a global society. After Independence, Jawaharlal Nehru, our first Prime Minister and the architect of modern India, conceived for the Commonwealth a role of a formidable force on the side of peace. For us, more than anything else, the Commonwealth is an essay in international understanding and cooperation. Our Association with the Commonwealth is based on our firm belief that the fate of all nations is inextricably linked - we either flourish together or perish together.

Our great saints, philosophers and leaders had envisioned of a society that is in harmony with itself and its environs; of a world that believes in peaceful co-existence. Such a community is ultimately possible not by specific political arrangements or economic alliances alone, but by an understanding of the cultures of the different peoples and by sharing each other's problems and experiences at different levels.

The Commonwealth has the unique distinction of being a grouping of nations from all the continents, tolerating differences, accommodating diversities at critical junctures, acting as one unit without the tag of a 'bloc' with the negative connotations of the word attached to it. It is because of its lasting relevance to all the peoples that this unique grouping survives even as we see other 'blocs' collapsing.

Being a member of the Commonwealth Parliamentary Association helps us to share the glorious traditions of Parliamentary democracy in its entirety. The Annual Conferences of eminent Parliamentarians from the Commonwealth community, provide us with opportunities to think together and view things in a broader perspective with a view to evolving a consensus on issues and problems confronting us.

Each Parliamentary Conference is an affirmative action in itself attesting to the continuing relevance of this important Parliamentary Forum in narrowing diversities, in taking us closer to the idea of a global society and in making this earth a better place to live in.

The Commemorative Souvenir conceived by the Indian Parliamentary Group (IPG) which functions as the India Branch to mark the 37th Commonwealth Parliamentary Conference being held in New Delhi, is a token of our appreciation of the role the CPA plays in sustaining and perpetuating parliamentary democracy today. It also manifests the interest Commonwealth Parliamentarians have in sharing their rich experiences in the working of Parliamentary Democracy. The wide response we received to our request for articles and other relevant information from members of the CPA amply testifies to the commitment each member country has to the cause of democracy. Besides other things, over 85 articles that constitute this Souvenir are reflective of the current thoughts on the Parliamentary and Constitutional fronts in the Commonwealth countries.

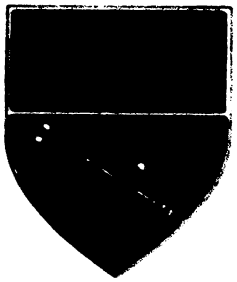
With a view to add to the aesthetic value and beauty of this volume, we thought it appropriate to include some select paintings of India's cultural heritage from our collections in the National Museum at New Delhi. Each painting, besides throwing light on our rich cultural heritage, also reveals that in this dynamic and transcient world of ours, there are aspects that do not conform to the dialectics of change. The message of the paintings is eternal and universal, transcending all barriers of time, thus making them immortal assets of humanity.

The India Branch and the State Branches of the CPA express their profound gratitude to all the contributors to this volume. This souvenir, I am sure, will be of interest to all those interested in the working of contemporary democratic institutions.

A special word of appreciation is due to the printers of this Souvenir, Thomson Press India Ltd., for the excellent job they have done in the shortest possible time; to Dr.R.C. Sharma, Director General and Dr.(Mrs.) Daljeet, Deputy Keeper of the National Museum for helping us in selecting the paintings and providing the background write up; to Shri R.K. Datta Gupta for providing us with excellent transparencis of these paintings and the staff members and all those who have contributed towards the publication of this Souvenir.

New Delhi,
10-9-1991

(Shivraj V. Patil)
10/9/1991



CPA 80th Anniversary
18 July 1991

CHAIRMAN'S MESSAGE

As we enter our 80th year there are some very encouraging signs for that flower we call democracy, marred alas by a tragedy.

The encouraging signs are in South Africa and in Eastern Europe; the tragedy occurred in India.

We all mourn the senseless assassination, in the midst of an election, of former Indian Prime Minister Rajiv Gandhi who was murdered as was his mother before him.

Our sympathy goes to his family and to the whole subcontinent of India, the world's largest democracy, as it seeks a new leader.

The position of South Africa looks encouraging, and I am about to lead a CPA mission of eight Members of your Executive Committee to that country on behalf of our Association.

It is indeed fitting that in our 80th year, one of our inaugural members from 1911 is making moves that could see it return to the fold.

President de Klerk deserves all the support we can give him in his efforts to dismantle apartheid.

Our mission will seek meetings with leaders of all major South African political parties, and others, to identify areas in which concrete advice and assistance can be helpful in establishing an electoral and parliamentary system that takes account of all interests.

The future of South Africa will also be one of the principal subjects discussed at the 37th Commonwealth Parliamentary Conference to be held in New Delhi in late September.

Make no mistake about it: President de Klerk is serious in his attempts to bring equality to the black people of his country.

I think we can all look forward to the day when there will no longer be

black South Africans and white South Africans — there will only be South Africans.

As for Eastern Europe. We are all familiar with mighty changes that have taken place there in the past two years as undemocratic governments have been toppled. Whether they will all become democratic governments remains to be seen.

But it seems that our most cherished principle in the Commonwealth, that of democratic government based on a universal franchise, is likely to spread rather than contract.

HON. CLIVE GRIFFITHS, MLC
CHAIRMAN

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MESSAGES

BUCKINGHAM PALACE

Message

The Speaker,
Lok Sabha.

Thank you for your letter of 9th May informing me of the arrangements for the Thirty-seventh Annual Conference of the Commonwealth Parliamentary Association to be held in India this September.

I was most grateful to receive your kind message commemorating the Meeting. I hope that the Conference will prove to be of benefit to all the participants and lead to greater understanding of the very special contribution the Commonwealth makes in so many different areas. I send my best wishes to you all for a happy and successful occasion.

ELIZABETH R.

September, 1991.

सत्यमेव जयते

राष्ट्रपति
भारत गणतंत्र

PRESIDENT
REPUBLIC OF INDIA

Message

On the occasion of the 37th Commonwealth Parliamentary Conference, it gives me great pleasure to extend my cordial greetings to the distinguished Parliamentarians who are participating in it. Parliament is an unique institution devised by man to ensure that the State exists not only for the protection of life but also for the creation of a good life. The experiences of Parliamentarians hailing from different political and cultural traditions will be of immense value in developing sound and healthy practices that will enhance the importance of Parliaments as the bastion of democracy.

I send my best wishes for the success of this creative inter-action among the participating legislators.

(R. VENKATARAMAN)

New Delhi,
March 21, 1991

PRIME MINISTER
AUSTRALIA

Message

The Australian Government fully endorses the aims and aspirations of the Commonwealth Parliamentary Association and congratulates it on the crucial role it has played this century in the maintenance and strengthening of parliamentary democracy within the commonwealth.

Through its efforts to further the institution of democracy, the Association has also laid the basis for a wider understanding between individual member nations of the Commonwealth, and for closer relations between its leaders.

It gives me great pleasure, therefore, to offer my support and very best wishes for the success of the 37th Commonwealth Parliamentary Conference and for the Association's ongoing pursuit of the democratic ideal.

(R.J.L. HAWKE)

PRIME MINISTER
COMMONWEALTH OF THE BAHAMAS

Message

It is a matter of great pride that the very real privilege and honour were extended to me to greet my distinguished colleagues in this unique family on the happy occasion of the Thirty-seventh Commonwealth Parliamentary Conference. The present schedule of meetings holds historical significance for The Bahamas because for the first time, one of Her eminent sons, The Honourable Darrell Rolle, Minister of National Security, will sit as Vice President.

This assembly of independent states is pledged to the objectives of consulting widely and acting together in the lofty service of human development, international understanding and global peace in our modern, interdependent world. Our citizens derive satisfaction from sharing in the work of strengthening our bonds, promoting the virtues of democracy through parliamentary institutions and spreading the benefits of thorough debate, discussion and friendly co-operation. I am confident that, in these circumstances of extremely high expectations, every national delegate will honour his or her obligation to strengthen the fellowship and foster a genuine spirit of community which arise naturally not only from the demands of a shared international existence, but also as prerequisites for meetings that will be prolific of new ideas and fruitful discussions.

Diversity of cultures moulds the Commonwealth into the only heterogeneous group outside the United Nations which forms a complete microcosm of the world community by bringing leaders together from geographical regions which are at varying stages of economic and social development. Paradoxically, the interpenetration of these differences through our relationships accumulate at a source of power that activates the vital principle of equality in partnership as we employ the shared

heritage of the English language to speak freely and informally in charting a common future. Such links constitute the linchpin in a peculiar spirit of friendship among a family of equals which recognizes Queen Elizabeth II as its symbolic Head.

I do hope and pray that, through the continued blessings of Almighty God, the Commonwealth Parliamentary Association would remain an exemplary model in demonstrating how nations can and should maintain cordial relationships. Accordingly, I extend my warmest, best wishes for a stimulating, productive and rewarding Conference and for great success in the forward-looking endeavours of each country.

(LYNDEN PINDLING)

Office of the Prime Minister,
Nassau.

ACTING PRESIDENT
PEOPLE'S REPUBLIC OF BANGLADESH

Message

I am happy to learn that the Thirty-seventh Commonwealth Parliamentary Conference is going to be held in New Delhi in September this year. Our participation in this meeting following the recently held Parliamentary election is a matter of particular significance. The opportunity that it will provide to the members of our Parliament to interact with their colleagues from other Commonwealth countries will be valuable in strengthening our democratic process.

Commonwealth is one of the first international organisations of which Bangladesh became a member. Since then we have consistently supported all moves to strengthen the Commonwealth as an instrument for promoting understanding among member States who are bound together by shared history and sustained by common outlook and perception on many matters of common interests.

The Commonwealth Parliamentary Union is a key body of elected representatives of people and the law makers of our group of nations. The deliberations of the meeting and the contact and interaction that it will make possible will, I am sure, help promote the values and ideals which bind us together. I wish the Conference all success.

(JUSTICE SHAHABUDDIN AHMED)

Dhaka
22 May, 1991.

PRIME MINISTER
BARBADOS

Message

The Indian Branches of the Commonwealth Parliamentary Association have once again demonstrated their commitment to the ideals and practices of the Association, by undertaking to host the Thirty-seventh Commonwealth Parliamentary Conference of Members from Small Countries. The Barbados branch had this honour and pleasure but two years ago in 1989, when we celebrated the 350th Anniversary of our Parliament. Our awareness of the importance of these Conferences to the Commonwealth was fortified by that experience and our commitment to the ideals of parliamentary democracy re-inforced.

The agenda for the Eleventh Conference of Members from Small Countries and for the Thirty-seventh Commonwealth Parliamentary Conference reflect several of the principal concerns of the Commonwealth. The themes of the Small Countries Conference highlight the practical role which may be played by small states in responding to new challenges and thereby exerting a positive influence on the course of events. The initiative taken by the Working Capital Fund just 10 years ago in Fiji to finance the Conference on an on-going basis has been fully justified.

The wider global perspective of the Commonwealth agenda also reinforces the view that commitment, consultation and co-operation among Commonwealth Countries constitute important pathways in the quest for lasting solutions to global problems. It is a most vital contribution to democracy and development that parliamentarians from across the Commonwealth can meet periodically to discuss such issues as global security through the United Nations, the nature of reforms in South Africa, the global dimensions of the drug problem, and enhanced food production and consumption.

Delegates and observers to the Conferences will have excellent opportunities to visit various CPA Branches on the sub-continent as part of the official conference programmes and to see and share various aspects of India's society, traditions and culture. These are integral aspects of CPA visits and offer considerable scope for developing greater knowledge and awareness of each other and of our collective experiences.

It is my sincere hope that this year's CPA Conference will be outstandingly successful. I extend felicitations to the Indian Federal and State Branches of the CPA, and to all Branches of the CPA attending the Conference.

(L. ERSKINE SANDIFORD)

PRIME MINISTER
BELIZE

Message

Congratulations and gratitude to the people and government of the Republic of India for hosting the 37th Commonwealth Parliamentary Conference in New Delhi in September of 1991.

CPA Conferences have been occasions when parliamentarians of the Commonwealth meet to discuss matters of concern and interest not only to the Commonwealth but to the world.

May this 37th Conference be of great help to the Commonwealth in facing the profound changes that are taking place in today's world.

I pray God's blessing on the work of the Conference.

(GEORGE PRICE)

Belmopan
Cayo District.

PRESIDENT
REPUBLIC OF BOTSWANA

Message

It gives me great honour and pleasure to send you this message of goodwill and success on this very important occasion of the 37th Commonwealth Parliamentary Association Conference due to take place in your great country in September 1991. I recognise the fact that it will be the third time now since 1937 that this Conference will be held in India. This signifies the confidence which other members of the Commonwealth have in and the high esteem with which they hold your country.

Mr. Speaker,

As you may be aware, Botswana is an active member of the Africa Region Commonwealth Parliamentary Association Committee. This demonstrates our unwavering and ardent support for those principles and ideal of democracy, social justice, human equality, the role of law and respect for fundamental human rights as enshrined in the United Nations Charter. My country like yours, highly cherishes these principles and ideals for which the Commonwealth stands and promotes among its members and worldwide. Like your country, these principles and ideals are enshrined in our constitution.

The meeting of the Commonwealth Parliamentary Association could not have come at a more opportune time in the history of the world. Great political and socio-economic changes are taking place around the world. Pluralistic democracy and human freedom are gathering momentum. In a word, the voice of the people whether in Eastern Europe, Asia, the Latin America or Africa is making itself heard with greater clarity.

At its Summit in Kuala Lumpur, the Commonwealth Summit renewed its commitment to the promotion of democracy among its members by agreeing to set-up an election monitoring and advisory service. It is

gratifying to note that this has already started operating and has received praise from the beneficiaries.

I hope that the New Delhi meeting may wish to address some of these developments to which I have referred and suggest ways of how Commonwealth parliaments and other interested legislatures may respond. The cumulative experience of the commonwealth family has never been so relevant in shaping a new world order.

As recently as July, 1991, Botswana together with other members of the Commonwealth Parliamentary Association Committee, took part in a fact finding mission to South Africa. This visit took place at a crucial time in the history of South Africa and the region as a whole. Major developments are unfolding in South Africa and we hope that the point of the irreversibility of the situation will be reached sooner than later. It is also my earnest hope that the findings of the Commonwealth Parliamentary Association during its visit to South Africa shall enhance the course of your deliberations greatly.

Mr. Speaker,

I would like, in conclusion, to wish the forthcoming 37th Session of the Commonwealth Parliamentary Association great success and fruitful deliberations.

(Q.K.J. MASIRE)

GOVERNOR GENERAL
CANADA

Message

As Governor General of Canada, it is a great honour to extend my warmest greetings to the delegates attending the thirty-seventh Commonwealth Parliamentary Conference in New Delhi.

The people of Canada have been well served by the parliamentary government which they have fostered. It is a tangible example of the fundamental Canadian value of compromise through negotiation—an ideal which has been, and continues to be, central to the development of Canada. Parliament has been home to the great debates which have defined Canada, both as a nation and as a society. Through the chambers of Parliament, Canada has sought to achieve a balance between the diverse needs of its regions and its national aspirations and policies. The result has been a unique style of government into which has been woven the threads of representation by population and accommodation of the regional reality of Canada.

Canadians have also derived tremendous benefits from our nation's participation in the Commonwealth. The citizens of Canada are proud to be a part of the Commonwealth, as it is a valued example of international friendship and cooperation. Canada depends on harmonious international relationships—relationships which are in many ways personified by our association with the Commonwealth—to achieve its goals, both at home and abroad. That the Commonwealth, as well as the parliamentary democracies which flourish under its aegis, continues to thrive is a reflection not only of its emotional value, but also of its political and social worth.

On behalf of the people of Canada, I am pleased to offer the participants in this important conference my best wishes for engaging discussions and thought-provoking debates.

(RAMON JOHN HNATYSHYN)

PRIME MINISTER
CANADA

Message

On behalf of the Parliament of Canada. I am pleased to extend my most sincere congratulations and best wishes to the Parliament of India on the occasion of holding this important Commonwealth Parliamentary Conference. I express the sincere hope that your deliberations will be fruitful.

(BRIAN MULRONEY)

OTTAWA
1991.

PRESIDENT
REPUBLIC OF CYPRUS

Message

It is my pleasure and privilege to reaffirm on behalf of the Government and the people of Cyprus, on the occasion of the 37th Commonwealth Parliamentary Conference, our deep commitment to the noble ideals and values cherished by the Commonwealth family.

Cyprus, being a member of the Commonwealth ever since its independence, has a profound sense of its importance and an abiding faith in its role in our contemporary interdependent world. We are also confident about its future contribution towards meeting the challenges of the new era in world affairs.

I express my sincere appreciation for the important role of the Commonwealth Parliamentarians, through their Conferences, in promoting the Commonwealth principles, notably "the right of all Commonwealth citizens to participate by means of free and democratic political processes in framing the society in which they live."

I feel particularly happy that friendly India is hosting for the third time now the Commonwealth Parliamentary Conference. This privilege and honour is a worthy acknowledgment of India's leading role in furthering Commonwealth's lofty ideals and contributing to its present outstanding image.

I avail myself of this opportunity to express our people's thanks and gratitude for the Commonwealth's increased interest in, and solidarity with our struggle for a just and viable solution to the long overdue problem of Cyprus. I am confident that the work of the Conference will prove constructive and fruitful. I convey my very best wishes for its success.

(GEORGE VASSILIOU)

PRESIDENT
THE COMMONWEALTH OF DOMINICA

Message

On behalf of the People of the Commonwealth of Dominica, I am pleased to convey good wishes for the success of the 37th Commonwealth Parliamentary Conference to be held in New Delhi in September this year.

It is important to observe that while Member nations of the Commonwealth on occasions disagree and may have conflicting interests, the basic fact remains that they meet as friends who try to understand and accommodate each other.

Please accept my own personal good wishes for a successful Conference.

(CLARENCE A. SEIGNORET)

PRESIDENT
REPUBLIC OF GAMBIA

Message

I count it a particular privilege and a great honour to have been invited to give this message of good wishes for the success of the Conference for publication in the Commemorative Souvenir, marking the 37th Commonwealth Parliamentary Conference in New Delhi, India. I am indeed very proud that one of the Commonwealth's greatest satisfactions was its role in Namibia's eventual triumph in achieving Independence over a year ago. The current resurgence of democracy in the different parts of the globe will no doubt figure prominently in your deliberations. I am sure that you will all derive great personal benefit from the exchange of views on the Commonwealth's future directions.

The current changes in the international scene created new opportunities, new hopes, new aspirations and new challenges for the Commonwealth. Therefore, there is obviously great significance and intrinsic value for the entire Commonwealth in the important role which the Commonwealth Parliamentary Association performs and will perform in the years that lie ahead. This political organ is crucial to any democratic system of government as it serves as a guarantor of our democratic system of government which is open, participatory and representative. The international cry for similar systems is tangible evidence of the significance and importance of such a democratic institution which has been the hallmark of the Gambia since the attainment of Independence.

I shall like to conclude by saying that you are your brothers keeper and the custodians of the practices of this great Commonwealth of Nations traditions of democracy.

I wish you all a very fruitful and rewarding conference.

(DAWDA KAIRABA JAWARA)

PRESIDENT
REPUBLIC OF GUYANA

Message

I wish, first of all, on behalf of the Government and people of Guyana, to extend sincere congratulations on the occasion of the 37th Commonwealth Parliamentary Association Conference. I note with satisfaction that this is the second occasion within two decades that your Branch has hosted such a Conference.

Let me also take this opportunity to express our deep sorrow over the fact that during the same period your Branch lost by assassination two of its Vice Presidents and world renowned leaders — former Prime Ministers, Mrs. Indira Gandhi and Shri Rajiv Gandhi. Their adherence to the system of parliamentary democracy in such a vast and populous country served as a beacon for the small democracies of the world and won the admiration of all those who believe in the democratic process.

The Commonwealth which emerged from the old British Empire has evolved into a free and voluntary association of multiracial, sovereign and equal states, bound together by certain characteristics, of which the use of the English Language as a *LINGUA FRANCA* is not the least important.

The evolution of this new Commonwealth, particularly during the years commencing from 1949, owes its dynamism mainly to your country's accession to independence in 1947, coupled with its bold decision to adopt a republican constitution. It is generally accepted that the Commonwealth, of which the Parliamentary Association is but one expression, is held together by many factors. There can be no doubt that the personal relations and friendships brought about by meetings of the CPA are among the most powerful and durable of the bonds that cement this unique institution: they bridge the gap between cultures, peoples and continents.

Guyana has been associated with the Commonwealth Parliamentary

Association as an affiliated Branch to the United Kingdom Branch since 1939, while we were still a Colony. With the attainment of Independence in 1966, the Guyana Branch became a Main Branch of the Association, subscribing to the ideals of parliamentary democracy as practised in the member states of the Commonwealth.

Guyana's delegates and the majority of the delegates to the 37th Plenary Conference come from Commonwealth countries which followed India into independence. At the time of gaining our political independence, we all started with Constitutions which consisted of common constitutional building blocks, the only difference being the manner in which they were ordered. In our efforts to respond appropriately to changed and changing conditions—wider and better opportunities for education, rapid advances in technology, changes in social relations and value systems—we all underlook significant changes to our constitutions and in many cases rewrote them completely.

The end result is that we have all reached a point where there is no drab uniformity in our political structures and procedures. However, notwithstanding our diversities, we have invariably found common ground in a shared heritage of parliamentary institutions, a heritage which compels our parliamentarians to meet periodically to debate issues which transcend national borders.

This annual conference of parliamentarians has become a permanent part of the fabric of the Commonwealth. The sincerity and depth of discussions and debates at these conferences enhance our understanding of the problems and issues which face us as members of the Commonwealth and citizens of the world and estimate us to work for their resolution. There are other advantages: such meetings create an occasion for colleagues from the Parliaments of the Commonwealth to get to know each other on a personal basis and to establish firm friendships.

I hope that your deliberations will result in the strengthening of parliamentary democracy and the further enrichment of the finest values and traditions of the Commonwealth.

(H.D. HOYTE)

Office of the President
August 12, 1991

ACTING GOVERNOR-GENERAL
JAMAICA

Message

I deem it a great honour and profound pleasure to have been afforded the opportunity to send a message on the occasion of the 37th plenary Conference of the Commonwealth Parliamentary Association being held in New Delhi from the 22nd to the 28th September 1991.

This year marks the Eightieth Anniversary of the Association and during this period the Association has not only developed an outstanding and enviable record of understanding and co-operation among Commonwealth's Parliaments, but has maintained a firm commitment to the development of parliamentary democracy and the rule of law.

In a very real way Jamaica's motto "out of many one people" epitomises the structure, growth and basic characteristics of the Commonwealth's Parliaments.

The 37th Conference should be of particular interest and significance, for since the 36th Conference at Harare in 1990 some fundamental changes and developments have taken place in the world and the Commonwealth.

The political changes in Eastern Europe cannot be ignored, it impacts favourably on our commitment and faith in democracy and the principles of pluralism.

I also note with much pleasure that a fact-find mission of eight senior Commonwealth Parliamentarians will visit South Africa to determine how the Commonwealth's 110 Parliaments and Legislatures can assist the country to establish a fully representative democratic system.

On behalf of the Jamaica Branch of the Commonwealth Parliamentary Association, the people and government of Jamaica, may I convey sincere greetings to all the participants at the Conference, and also my best wishes for the success of its deliberations.

(EDWARD W ZACCA)

PRESIDENT
REPUBLIC OF MALAWI

Message

It is my pleasure to extend to you and to the distinguished participants my sincere greetings on this occasion of the 37th Commonwealth Parliamentary Conference.

We, in Malawi, take great pride in the many contributions that the Commonwealth has made over the years toward peace, social justice and economic progress not only among its member nations, but in the world at large as well.

While the future poses new challenges and opportunities for the Commonwealth, I have no doubt that through its well-tested tradition of a "Community in diversity", it will continue to fulfil its role in a changing world community.

I wish the participants to the 37th Commonwealth Parliamentary Conference every success in their deliberations.

(DR. H. KAMUZU BANDA)

Message

My participation at a Commonwealth Parliamentary Conference held in Canada, convinced me of the great value of such meetings, which are probably the most important link between the Parliamentarians of the former British Empire. The looseness of the discussions and the absence of firm political commitments allow of a much wider freedom of expression, while sowing valuable seeds of ideas and initiatives likely to bear fruit later.

I expect that Malta will be represented at the 37th Commonwealth Parliamentary Conference in New Delhi, the seat of the largest democracy in the world.

I am confident that the conference will prove another landmark in the process of forging and consolidating the ties between our governments and our people and will no doubt bear important political influence in the challenging times ahead.

Good luck and God Bless.

(CENSU TABONE)

23 May, 1991.

THE PRIME MINISTER
MALTA

Message

The Commonwealth Parliamentary Association, through its members, has been directly involved with the development of the Commonwealth from its inception to the present time. It has been promoting parliamentary democracy, strengthening democratic institutions and fostering understanding and friendship between the parliaments of the Commonwealth since 1911.

The convening of a Commonwealth Parliamentary Conference can, therefore, be described as the "raison d'etre" of the CPA because it provides an ideal forum where the representatives of the people of the Commowealth can meet to exchange concerns and experiences. It is, intrinsically, an event that gathers parliamentarians representing shades of political opinion from all sides, coming from different nations, but having common bonds of history, language, parliamentary democracy and a wide spectrum of common interests.

Malta is proud of the fact that over the years, it has contributed towards the development of the CPA as an organisation that promotes parliamentary democracy and strengthens democratic institutions. We look on the CPA as one special tool which helps us all to find a common way in an imperfect world, to re-discover the values that come with respect for the rule of law and individual rights and freedoms.

The fact that the 37th CPA Conference is being held in India is, in my opinion, of significance. India was itself a founder member of the new, post-war, multiracial Commonwealth and was one of the first to adopt a Constitution that includes a declaration of fundamental rights, with powers of judicial review — an example that was taken up by several other countries, including Malta in its 1964 Independence Constitution.

As such, India represents an ideal setting for a meeting of parliamentarians whose main aim is to pursue the positive values of parliamentary democracy and to promote those common ideals that can and will make this a better world to live in.

It is with a spirit of mutual understanding and respect, and with the knowledge that we share the privilege of being able to exchange opinions and experiences in friendship that I take this opportunity to send my best wishes for a successful outcome of the Conference.

(EDWARD FENECH-ADAMI)

29 April, 1991.

PRIME MINISTER
MAURITIUS

Message

It gives me great pleasure to send a message of good luck to the Parliamentarians of the Commonwealth who will assemble at New Delhi for the 37th Commonwealth Parliamentary Conference.

Mauritius has been fortunate to be amongst those countries of the Commonwealth where parliamentary tradition has been alive for more than a century. Indeed, our first elected Members were sworn in as far back as 1886. As such, this country has always shown interest in the activities of the Empire Parliamentary Association — as the Commonwealth Parliamentary Association was then called — since its foundation in 1911. That long association has gone a long way towards enriching our concept of parliamentary democracy. Hence, I have no hesitation in saying that, in a world of conflicting ideologies and constant tensions, it is imperative that parliamentarians, irrespective of party affiliations, should be able to meet to share experiences and discuss common problems. For the thriving of this most valuable exercise, the Commonwealth Parliamentary Association has proved that it stands, up to now, as a forum of unique dimension.

I am also happy that India has, for the third time, agreed to host such a conference. The occasion will give to this great country the opportunity of showing again, in a most sensible way, how far the elements which have contributed throughout the ages to the wonders of its civilisation, have rested on that basic spirit of mutual tolerance without which parliamentary democracy cannot exist.

I send to all participants my best wishes for a happy and successful conference.

(ANEROOD JUGNAUTH)

PRESIDENT
REPUBLIC OF NAMIBIA

Message

On the occasion of the 37th Commonwealth Parliamentary Conference, I have the honour to extend to you, on behalf of the Government of the Republic of Namibia, the world's youngest democracy, our warm felicitations and good wishes for the success in your deliberations.

Ever since its independence and beyond, India, the land of great men and women with the calibre of Mahatma Gandhi, Jawaharlal Nehru and Indira Gandhi, has persistently maintained a permanent position in the forefront of the struggle to chart the course of human emancipation from hunger, disease, ignorance and degradation. This principled consistency has won India respect and admiration of the world at large and the Third World in particular. That, is evident in India being chosen for the third time to play host to this august gathering of the Commonwealth Parliamentarians.

In these challenging time of socio-economic imbalances between South and North, our peoples constantly look at such gatherings of their prominent representatives with great expectations. It is therefore my earnest wish that your Conference would come out with resolutions and recommendations conducive to broader benefits for mankind.

(SAM NUJOMA)

State House, Windhoek
24 April, 1991.

GOVERNOR-GENERAL
NEW ZEALAND

Message

Dear Mr Speaker,

I am happy to respond to the invitation that you extended to me in your letter of 1 May 1991.

I welcome this opportunity to send greetings and good wishes from New Zealand to India, and to you personally, on the occasion of the 37th Commonwealth Parliamentary Conference.

Delegates gathered in New Delhi from diverse parts of the globe this September will bring a variety of perspectives and experience to the subjects under discussion. At the same time, there will be an opportunity through participation in Conference activities for delegates to renew links between legislatures of the Commonwealth at institutional and personal levels, and to affirm the distinctive values of the parliamentary heritage and other shared ideals.

I wish you and all parliamentary representatives attending a successful and productive Conference.

(DAME CATHERINE TIZARD)

Government House
Wellington
10 June, 1991.

PRIME MINISTER
NEW ZEALAND

Message

Thank you for your letter of 15 March.

It is with much pleasure that I convey the good wishes of the New Zealand Government to you and the people of India as you host the 37th Commonwealth Parliamentary Conference. The annual Commonwealth Parliamentary Conference provides a unique forum for parliamentarians from around the commonwealth to share in their common experience of Westminster — style political systems. They are able to enter into valuable dialogue on a range of important international issues and, at a personal level, form lasting friendships.

I wish you every success for the conference and look forward to following its progress.

(R.T. HON. J.B. BOLGER)

Wellington, New Zeland
27 May, 1991.

Message

I am very pleased to see that the 37th Commonwealth Conference will be held in New Delhi India this year.

The conference will give the opportunity to the representatives from the Commonwealth Countries to express views and opinions on matters of political, social and economic significance of their countries. Thus it can be seen in this light that the Commonwealth Parliamentary Association through its active role in organising such annual conference has contributed a lot in terms of helping those countries specially the small countries to make their voices heard on the International size. This healthy development certainly augurs well for the Commonwealth as it helps to pave the way to better understanding and good relationship among the member countries.

May I take this occasion to commend the Commonwealth Parliamentary Association for a job well done. In the same view I wish also to assure you of my Government's continued support for the Association activities. So in conclusion I wish you a happy and successful conference.

(TUN DATUK HAJI MOHAMMAD SAID BIN KERUAK)

Kota Kinabalu
August, 1991.

PRESIDENT
REPUBLIC OF SEYCHELLES

Message

I would like to send my best wishes for the success of the 37th Commonwealth Parliament Conference and I am confident that the conference will be most beneficial to all participants and especially to the parliaments of the Commonwealth Countries.

(FRANCE ALBERT RENE)

Victoria
26 April, 1991.

PRESIDENT
REPUBLIC OF SIERRA LEONE

Message

It gives me particular pleasure to extend my very best wishes to the 37th Commonwealth Parliamentary Conference in New Delhi, India. Indeed it is appropriate for this Conference to be held in India, the largest democracy in the world and a State that has always lived up to the principles of parliamentary democracy ever since its independence in 1947.

The 1990's have ushered in a refreshing political climate in many parts of the world but particularly so in Eastern Europe and Africa. It is no surprise that the single party system of Government is giving way to political pluralism, which is the basis of the Westminster Parliamentary system, which many States inherited on achieving nationhood.

Sierra Leone at the moment, is also in the process of transition from a single to a multi-party system, and judged from the enthusiasm of the people for this change, the nation is poised to experience an exciting political future.

The Commonwealth Parliamentary Association can always count on the support of Sierra Leone to make it the dynamic Organisation that it has been over the years. I wish all participants to this Conference every success and may the principles of parliamentary democracy grow stronger and stronger in the years ahead.

(MAJOR-GENERAL DR. JOSEPH SAIDU MOMOH)

PRESIDENT
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Message

I am happy that the 37th Commonwealth Parliamentary Conference is being held in India. India is our closest neighbour. She is the largest democracy in the world. For us, Parliamentary Democracy is not an end in itself. It is the means through which we are going to build a better tomorrow for our people. We have complete faith in its efficacy.

Commonwealth Parliamentary Conferences are gatherings of like-minded people. They are people who share the ideals of Parliamentary Democracy. India and Sri Lanka have held aloft the banner of Parliamentary Democracy for several decades. We have done so amidst many trials and tribulations. We take just pride in that achievement. We are also happy to see the triumphant march of democracy throughout the world today.

However, we should not be complacent. There is a continuing need to improve and adapt our Parliamentary Systems and Parliamentary Procedures to meet the challenges of the day. In particular, Parliamentary Procedures of a more leisurely bygone era should be changed to meet the need for speedy action in the social and economic fronts. New institutional mechanisms should be evolved for harmonising the conflicting claims of different interests groups.

In this context, conferences of this nature assume considerable importance. At these conferences practitioners of Parliamentary Democracy can share their experiences. They can collectively reflect on the problems that need urgent solutions.

I wish to congratulate the Indian Branch of the Commonwealth Parliamentary Association for having been selected to host this conference. It is a deserving tribute to India's unswerving commitment to

Parliamentary Democracy. I would like to extend my greetings and good wishes to the delegates from the Commonwealth Parliaments. I wish the 37th Commonwealth Parliamentary Conference all success.

(RANASINGHE PREMADASA)

Colombo
27 June, 1991

GOVERNOR-GENERAL
FEDERATION OF ST. CHRISTOPHER AND NEVIS

Message

It is a pleasure indeed to send this brief message of goodwill on the occasion of the 37th Commonwealth Parliamentary Conference to be held in your country in September.

Permit me the observation that the hosting by India of this Conference for the third time in a comparatively short span of time surely reflects the esteem enjoyed by your vibrant and alluring nation among the forty-nine member body, and worldwide of course.

The fascinating diversity of your peoples, their traditions, languages and culture, your variegated landscapes, are possibly unsurpassed anywhere in the Commonwealth. These factors undoubtedly play a part in securing for you this esteem and attraction — not to mention the prideful fact of being the world's most populous democracy.

Your steady advancement in every field of discipline and learning over the past decades, such as the arts and sciences, in agricultural and industrial technology, irrefutably bespeaks the timely blossoming of your vast potential.

Despite the serious agenda involved I am sure that the overseas participants, bringing to you something from their own backgrounds and experiences, in turn cannot fail to come away regaled and refreshed by a truly eclectic feast of the senses, and intellect, that India offers.

On behalf of the people of this Federation I send you best regards, and wish the Conference every success, in behalf of our shared democratic ideals.

(SIR CLEMENT ARRINDELL)

Government House
St. Kitts, West Indies
May, 1991.

PRIME MINISTER
TRINIDAD AND TOBAGO

Message

On behalf of the Government and people of the Republic of Trinidad and Tobago I would like to extend greetings and best wishes to the Executive of the Commonwealth Parliamentary Association and all delegates on the occasion of the 37th Commonwealth Parliamentary Conference that is being held in India.

This Conference would serve as a forum for the free and full exchange of ideas by delegates who have had their own experiences in parliamentary life.

The development of parliamentary government stands out as one of the great and unique contributions of the Commonwealth. It is an area that is a rich source for research and comment.

This souvenir is a fitting tribute to the continuing evolution of all features of parliamentary government and would contribute greatly to a fuller and deeper understanding of parliaments in the Commonwealth.

I would like to commend the publishers of this souvenir and to extend to the Executive of the Commonwealth Parliamentary Association and to all delegates my best wishes for a successful Conference.

(A.N.R. ROBINSON)

PRIME MINISTER
UNITED KINGDOM

Message

I welcome this opportunity as Chairman of the United Kingdom Branch of the Commonwealth Parliamentary Association, to send you best wishes for the 37th Annual Commonwealth Parliamentary Conference. The Conference provides an invaluable opportunity for members from different Commonwealth countries to meet and exchange ideas.

I hope that valuable links will be forged between members of different legislatures during this conference. As members of parliamentary democracies we are all responsible for upholding and nurturing the institutions of democracy and good government. Constructive discussion has always been a strength of the Commonwealth. Past conferences have helped to promote and reaffirm the principles which lie behind parliamentary democracy. I wish you every success in continuing this excellent tradition.

(JOHN MAJOR)

10, Downing Street
London SWIA 2AA
June 1991.

PRESIDENT
REPUBLIC OF ZIMBABWE

Fraternal Greetings

On behalf of the people and Government of Zimbabwe, I feel greatly honoured to have this opportunity to convey greetings to the Commonwealth Parliamentary Association on the occasion of its Thirty-Seventh Conference which is taking place in New Delhi, India. I wish this important Conference all success.

The Conference is taking place at a time when the people of India in particular and the international community in general are still mourning the tragic death of former Prime Minister, Rajiv Gandhi, an internationally acknowledged statesman and champion of the ideals of freedom and democracy. That the 37th Conference is taking place here in India despite its tragic and irreplaceable loss perpetrated by forces which seek to change the course of events by undemocratic means is a tribute to this great nations's dedication to the practice and defence of democracy.

I welcome this opportunity to be associated with this important forum. The issues the Conference will address, although complex, need to be tackled as a matter of the highest international priority, especially at the inter-parliamentary level.

I have been privileged to visit India as well as a number of countries of our Commonwealth and, as a result, I have become familiar with some of the problems which our countries, governments and parliaments are grappling with. More importantly, I have been impressed by the desire on the part of our diverse peoples to work out solutions to these problems or to share ideas and experiences. Despite religious, racial and cultural differences which, in some cases, create serious social tensions domestically and across national frontiers, our strong sense of association, deriving from our shared experiences and our common inheritance of the ideals and

practice of parliamentary democracy, impels us to collaborate in the search for a better life for all our peoples.

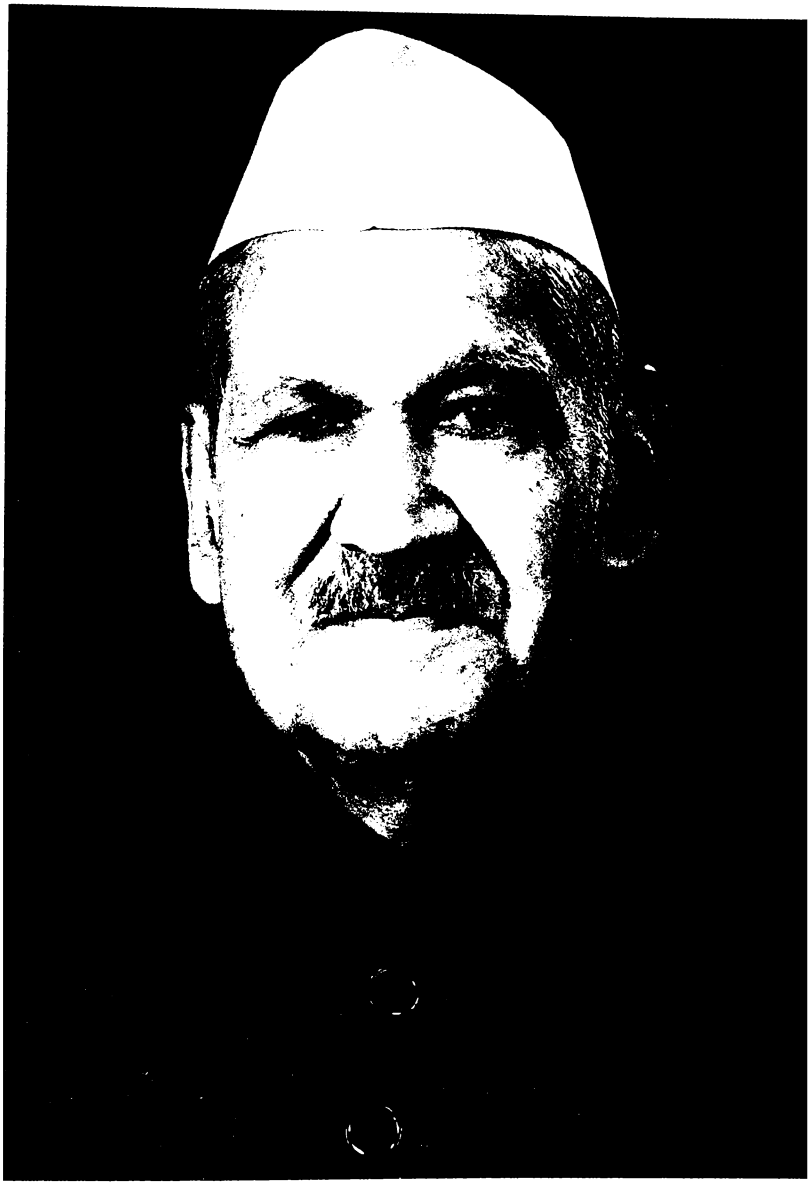
I trust that the Conference in New Delhi, through its deliberations and recommendations, will lead to greater mutual understanding and that it will help promote peaceful co-existence and the resolution of problems through dialogue both within the context of the Commonwealth and beyond.

I wish the Indian Branch and the State Branches of the Commonwealth Parliamentary Association in India and all other participating Branches a successful Conference.

(ROBERT GABRIEL MUGABE)

Zimbabwe
19 July, 1991.

R. Venkataraman
President



Shanker Dayal Sharma
Vice President

P.V. Narasimha Rao
Prime Minister

Shivraj V. Patil
Speaker, Lok Sabha

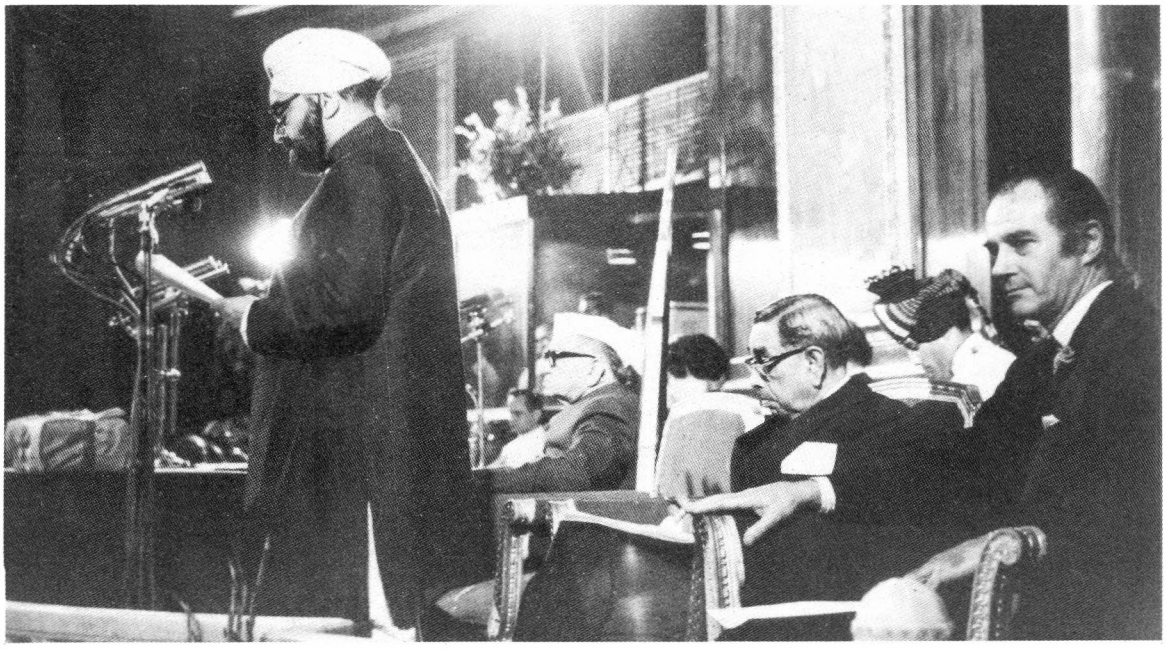
Dr. Mrs. Najma Heptulla
Dy. Chairman, Rajya Sabha

S. Mallikarjunaiah

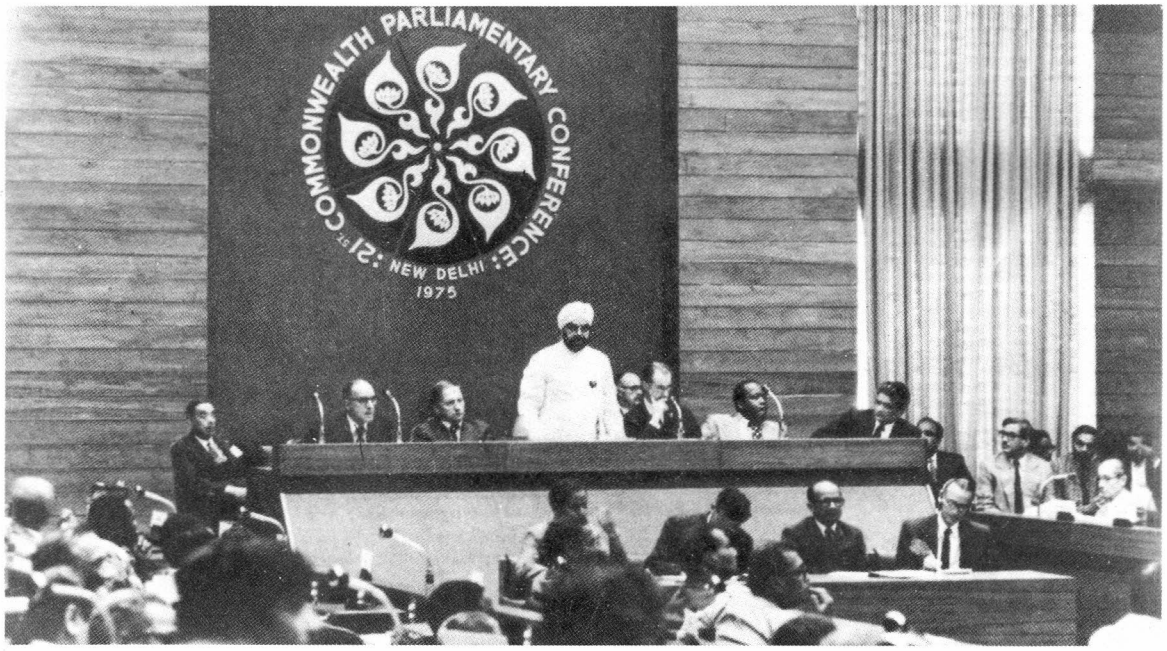
Dy. Speaker, Lok Sabha

A view of the Commonwealth Parliamentary Association Conference held at Vigyan Bhawan in December 1957.

Vice President, Dr. S. Radhakrishnan, speaking at the Banquet given by him in Honour of the Delegates to the Commonwealth Parliamentary Conference on 5 December, 1957.



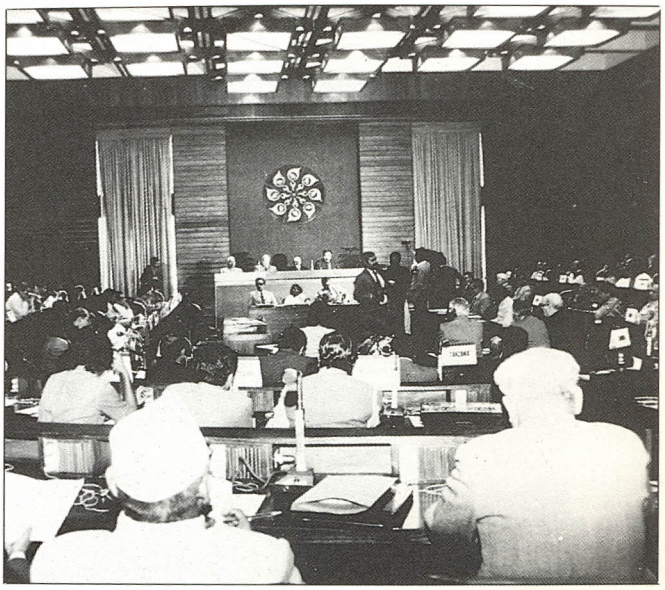
Speaker of Lok Sabha and the President of the Commonwealth Parliamentary Association (CPA) Dr. G.S. Dhillon, welcoming the delegates at the Inaugural Function of the 21st Comonwealth Parliamentary Conference in the Central Hall of Parliament House on 28 October, 1975.



Speaker of Lok Sabha and the President of the Commonwealth Parliamentary Association (CPA) Dr. G.S. Dhillon presiding over the plenary session of the 21st Commonwealth Parliamentary Conference in Committee Room (Main) of Sansadiya Soudh, New Delhi.

The Secretary General, Mr. S.S. Ramphal, addressing the Commonwealth Parliamentary Conference on 29 October, 1975 at Parliament House Annexe, New Delhi.

A view of the Inaugural Session of the Second CPA Regional Seminar on Parliamentary Practice and Procedure held in New Delhi in January 1982.



Inaugural Session of the Third CPA Regional Seminar in New Delhi on 21 January, 1984.

PART ONE

COMMONWEALTH SECTION

The Commonwealth Parliamentary Association

David Tonkin*

In 1911, Members from the House of Lords and the House of Commons invited the Dominion Parliaments of Australia, Canada, Newfoundland, New Zealand and South Africa, to send parliamentary delegations to Britain to celebrate the coronation of King George V.

The visit was a great success. Members found that they had a great deal in common: they shared English as a common language and the Westminster system of parliamentary democracy as the basis for their own Parliaments. With these common bonds, they found they were able to communicate with great ease and fluency, sharing their experiences and learning from each other.

As the days went by and they came to know each other better, they developed a closer understanding of each other's circumstances and points of view. From their fellowship and understanding came tolerance and mutual respect and, eventually, close friendship, even though they did not always agree on detailed policies.

On 18 July 1911, before they left for home, Members agreed that an Empire Parliamentary Association should be established to preserve and foster this new and most valuable relationship between the Parliamentarians of what was to become the Commonwealth. Thus was formed the Parliamentary Association which, from that time, was to play such a major role in establishing the links and bonds which unite the Commonwealth today.

As the Empire was replaced by the Commonwealth, membership of the Association steadily increased. More and more countries became independent and autonomous, but chose to remain within the Commonwealth of Nations and to adopt the Westminster system of parliamentary democracy as the basis for their Legislatures. Today, there are more than 120 Member Parliaments in the Commonwealth Parliamentary Association (CPA), representing more than 10,000 individual Parliamentarians.

One of the main aims of the Association is to promote and strengthen parliamentary democracy and democratic institutions, and this is done through parliamentary seminars and educational programmes at Branch, Regional and Commonwealth levels. As in 1911, Members find that by exchanging details of procedures and comparing experiences, they learn more about the parliamentary process and the underlying principles of parliamentary democracy.

They also learn more about each other and all the things they have in common, and this is the other main objective of the Association. By providing opportunities for the Parliamentarians of the Commonwealth to come together to share their views and experiences and to know each other better, the CPA promotes the understanding, tolerance, mutual respect and friendship which are fundamental to membership of the Commonwealth family.

These essential elements of the Commonwealth spirit cut across all barriers of creed, colour, culture or condition and unite the people of the Commonwealth as members of one family of nations. By conducting the plenary conference, the various Regional Conferences and the Branch functions each year, the CPA makes it possible for Commonwealth Parliamentarians to come together in this spirit.

Those who are unable to attend may still share in its activities through the various publications of the Association, The Parliamentarian, newsletters, books and the reports on parliamentary matters which are published from time to time. Members who are travelling to other member countries are also encouraged to visit other Legislatures to meet their fellow CPA Members.

The CPA Secretariat in London has a Parliamentary Information and Reference Centre which provides Members and Parliaments with information on parliamentary matters which is often not available elsewhere.

As the parliamentary wing of the Commonwealth, the Association plays a major role in strengthening and supporting democratic institutions in its member countries and elsewhere. The extent of the experience residing in its combined Membership is matched only by the strength of the commitment and desire to be of service to other Parliamentarians and Legislatures.

Nowhere is this desire to promote and advance the understanding of parliamentary democracy and its institutions more highly developed than in India. As one of the oldest Branches, established in 1927, India has constantly supported the principles of parliamentary government, in spite of difficulties which have arisen from time to time. In recent years, particularly, it has taken a leading role in educating members (from both the Union and State Legislatures), parliamentary officials (including many from other countries) and members of the public about all aspects of the parliamentary process.

The comprehensive range of courses available through the Lok Sabha Bureau of Parliamentary Studies and Training is most highly regarded and it is a great credit to the Parliament of India that such excellent arrangements have

*Hon. David Tonkin, Secretary-General, Commonwealth Parliamentary Association.

been made to promote an understanding of parliamentary democracy in the wider community.

It is most appropriate, then, that the CPA is once again returning to New Delhi, this time for the 37th Commonwealth Parliamentary Conference. Previous Conferences held in 1957 and 1975 were most successful and there is every reason to believe that this Conference will be equally so.

No one knows better than the staff at the CPA Secretariat how much planning and work is involved in arranging a CPA Plenary Conference and we thank everyone who has contributed to the preparations.

We count ourselves greatly privileged to be attending the 37th Commonwealth Parliamentary Conference in India, a bastion of parliamentary democracy and democratic government and an example to the rest of the world.

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Commonwealth means for us complete independence and informal association, sharing of ideals, though not of allegiance, of purposes though not of loyalties, common discussions which lead to better understanding of our problems and not binding decisions which restrict the independence of the member states. ***—Dr. Radhakrishnan***

The Reference of Bills to Committees in the Australian Senate

Kerry W. Sibraa*

Since 24 August 1990, the Australian Senate has made use of new procedures designed to provide for the more frequent consideration of bills by Senate committees. Although a comprehensive system of legislative and general purpose standing committees was established in the Senate in 1970, over the past twenty years fewer bills have been referred to standing committees than had initially been expected. In fact, prior to the introduction of new procedures, only fifty-nine bills (of which sixteen were a package of related company law reform bills and six were private Senators' bills) were referred to committees, generally by means of amendment to, or immediately after, the second reading motion. These figures should be seen in the context of a chamber which passes approximately two hundred bills per year.

There are various reasons for this reluctance to refer bills to committees for scrutiny, particularly the heavy workload of committees interested in inquiring into more general issues of controversy and the reluctance of successive governments to expose their legislative proposals to the detailed inquisitorial scrutiny, often involving expert witnesses, in which committees by their nature engage.

However, in August 1988, shortly after the Senate moved into the new Parliament House, and in a mood of renewed optimism about the potential value of legislative scrutiny by committees, the Senate established a select committee to investigate the procedures needed to refer more bills to committees. The Select Committee on Legislation Procedures reported unanimously on 1 December 1988 and recommended that more bills should be referred to standing committees on the recommendation of a proposed Selection of Bills Committee. The Select Committee also recommended that standing committees considering proposed legislation should meet on a special committee day during sitting weeks to facilitate their despatch of business without unduly interfering with the operations or time of the chamber. Consideration of the Select Committee's proposals was repeatedly postponed throughout most of 1989, both because of pressure of other business and because of continued government reservations about the implications for legislative quality and timetabling of the proposed system of regular and extensive committee scrutiny of bills. The Select Committee report was eventually debated in August and in more detail in December 1989 when a number of resolutions was moved to provide for the reference of bills to standing committees.

A Selection of Bills Committee comprising eight Senators (including the various party Whips responsible for legislative programming matters) was established to consider all bills introduced into the Senate or received from the House of Representatives, other than the appropriation bills which are referred to estimates committees. With respect to each bill, the Selection of Bills Committee was required to recommend whether it should be referred to a named standing committee at any particular stage in its passage through the Senate, for report back to the chamber by a specific date. Without need for notice, a motion could be moved adopting a report of the Selection of Bills Committee in which case a recommended bill would stand referred to a standing committee. Further consideration of that bill in the chamber would then be postponed and become an order of the day for the day on which the standing committee reports.

Standing committees considering bills have no power actually to make amendments, but they may recommend amendments to the chamber, or in the case of non-amendable money bills, they may recommend to the Senate that the House of Representatives be requested to make the appropriate amendments. Standing committee reports are considered along with their respective bills when the latter are called on for debate.

A motion for the adoption of a standing committee report has the effect of amending a bill in line with any amendments recommended by the relevant standing committee that previously considered it. A motion to adopt a standing committee report may not be moved if amendments other than those recommended by the standing committee have been circulated in the Senate before the motion is moved. This procedure triggers a traditional committee of the whole stage on the particular bill and represents a safety mechanism for non-government Senators who feel that a standing committee has not given them an adequate opportunity to air their concerns and alternative proposals. If a bill is amended as a result of the adoption of a standing committee report it is still open to a Minister who objects to such amendments to move that further consideration of the bill be postponed or even that the bill be not further proceeded with. The Senate may also

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resolve that a bill be referred back to a committee for further consideration and report within a particular time.

Neither the Select Committee report nor the subsequent Senate resolutions established any particular procedures to be followed by the Selection of Bills Committee or by standing committees in considering bills. It was anticipated that the deliberations and recommendations of the Selection of Bills Committee would be influenced by the political parties' or Senators' public or private expressions of interest in detailed committee examination of particular bills. The Selection of Bills Committee is unique in the Senate in that it is the only committee on which the government of the day is not in a majority and it is, therefore, better able to reflect the consensus views of the whole chamber.

When the principal resolutions were passed in 1989 it was considered that committees would adopt for themselves such internal procedures as would facilitate their consideration of the bills referred to them. A number of committees adopted resolutions that required bills to be dealt with strictly in accordance with procedures similar to those followed in the committee of the whole debate in the Senate. Other committees followed a less rigid and more confident approach which relied more on the good sense and goodwill of committee members and other Senators attending the proceedings than on adherence to rules. There is some evidence that the latter committees' proceedings were less acrimonious and more productive in obtaining and evaluating evidence about the implications of proposed legislation.

Under their usual powers the standing committees can call for evidence and hold public hearings. During the 1990 budget sittings when the new "bills to committees" procedures were first used, eighteen bills (out of eighty-five debated by the Senate) were referred to six of the standing committees (out of eight in all). Fridays of sitting weeks, which previously had been Senate sitting days, were given up to committees considering bills, while the preceding Thursday evenings, previously non-sitting evenings, were given over to chamber debates. These eighteen referred bills were eventually subject to committee of the whole debates of varying duration. All were eventually passed by the Senate, several with major amendments arising from both government and non-government parties. In the case of all bills considered the committees' proceedings were held in public and were attended by a relevant Senate Minister accompanied by senior officials responsible for administering those matters dealt with in the proposed legislation. On most occasions, committees also invited other witnesses to attend and give evidence, particularly persons with expertise in the subject matter dealt with by the bill.

All public proceedings were recorded by Hansard whose documents were then available to inform Senators' contributions on the second reading or committee of the whole stages of the debate on the bill when the committee eventually reported.

It is, of course, too early in the piece to produce a realistic evaluation of the impact of the Senate's new approach to legislative scrutiny. In potential, however, it represents a major reform of the legislative process. By removing some of the consideration of bills from the structured theatre of the chamber to small, public, committee environments, open to expert witnesses and the general public, the process of law-making has been made more accessible and in some senses more democratic in its operation. There are few who doubt that the reputations of the Senate's flagship committee, the Standing Committee on Legal and Constitutional Affairs, its chair and members, and the Minister for Justice, Senator the Hon. M.C. Tate who dealt with some of the most controversial and significant of the bills considered by the committees, have all risen considerably in the estimation of the numerous expert witnesses from whom that committee took evidence in frank, informal, public, and occasionally televised, proceedings. On most committees key representative groups were given generous opportunities to express their point of view, in public parliamentary proceedings, about a number of important issues arising in proposed legislation, paritcularly matters affecting personal rights and freedoms.

On the other hand it is fair to say, however, that committee consideration of bills imposes additional burdens on the time of the members of a relatively small chamber of seventy-six Senators with a particularly comprehensive and busy committee system. This is all the more so if the duration and quality of debate on bills in the chamber after standing committee consideration of them is not, in the main, appreciably shorter and more informal than might otherwise have been expected.

It will require a longer settling-in period before such trends can confidently be identified though so far the omens are reasonably positive. In the meantime, however, Senate committees considering bills have demonstrated the resilience and flexibility of the Senate's persistence in attempting to enhance the performance of its traditional and effective role as a house of legislative review.

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Australia's House of Representatives: Some Personal Observations

Leo Mc Leay*

I welcome the opportunity to make a contribution to this commemoration volume, and I congratulate the India national and state branches on their initiative in this matter.

Much has been written on Australia's Federal Parliament and on the House of Representatives. Nevertheless it may be of more interest to readers of this collection if, rather than providing a condensed description of the House, I present a short overview and offer some personal observations on a few particular aspects.

To gain some appreciation of the modern House of Representatives, it is necessary to understand something of Australia's constitutional framework. Unlike Great Britain, but like the Union of India and the majority of Commonwealth nations, we in Australia have a detailed written constitution. Our constitution (technically an Act of the British Parliament), came into operation on 9 May 1901. It:

> followed a process of widespread consideration and consultation within the previous separate colonies (but there was no revolution or armed struggle for independence);
>
> embodied a federal compact under which the various colonies became states within a federal system;
>
> created a bicameral federal legislature; and, although reflecting many of the features of Westminster, also drew on other models, especially the US model (see, for example, the great powers given to the Senate);
>
> conferred strictly limited legislative powers on the federal Parliament.

The House of Representatives is, to use the hackneyed phrase, the people's House, a popularly elected House comprised (currently) of 148 Members from electorates of approximately equal numbers of voters. Our Members are still elected for maximum terms of three years, as they have been since 1901, proposals for constitutional change to extend the term to four years having been rejected. Members are elected by a system of preferential voting; and one unusual feature of our electoral arrangements is that voting is compulsory.

Much has changed in the operation of the Federal Parliament since 1901, and there has been a great increase in the scope of federal government activity. It will probably surprise no reader to learn that Members of the House, collectively, are often disparaged, typically in rather vague terms. Nevertheless, I think it is significant that there does not seem to have been any serious fundamental questioning of whether the House itself has a place at all in the scheme of things.

(The Senate, in contrast, has not been spared this sort of questioning. Indeed, for many years, the Australian Labor Party, Australia's oldest political party, had the abolition of the Senate as a party policy).

The House of Representatives, as an institution, has a fundamental and unquestioned role as the source of the executive Government of the nation. It has many other roles, of course, but this is the most important and distinctive one. Every sitting day the majority of Ministers, including the Prime Minister, are present in the House. While they owe their positions to their majority support in the House and while party discipline will ensure that in all ordinary circumstances their tenure is at least technically secure, they are answerable to the House and their policies and actions are tested and criticised in it. All this occurs under the scrutiny of intense media interest.

Individual Members have never had to search for a role or a purpose. Whether they represent safe or marginal seats, they all face significant demands from their electorates. This is a role that would be familiar to many fellow Parliamentarians. Our Members' 'Canberra' role, another major role, has several facets—they participate in proceedings in the House, they are involved in committee work, and they contribute to their party decision making processes.

Although the Government, by definition, has a majority in the House, and although more than half of the time of the House is spent considering Government legislation, significant opportunities are given to private Members. Every sitting Thursday, between 10.00 a.m and 2.00 p.m, the House deals with petitions, reports from parliamentary committees and debates on them, motions and bills sponsored by private Members, and has a grievance debate. One particularly popular innovation is a procedure, which is followed every sitting Thursday between 1.45 p.m and 2.00 p.m, during which Members may speak for a

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period not exceeding 90 seconds each on any matter of interest or concern to them. Initially, there was some scepticism as to whether such limited opportunities would be of any use but Members have in fact made great use of the procedure and it is now well entrenched.

A significant development occurred in 1987 when, for the first time, the House established a comprehensive system of committees. While committees had been used since the earliest years, and especially during the 1970's and 1980's, it was not until 1987 that a committee structure which spanned the full breadth of federal government activity was created. This move followed agitation over several years by concerned Members, and officers, that Members did not have sufficient opportunities to come to grips with, and make a contribution on, many important matters of government policy and administration.

The approach Members of the House have generally taken to their committee work has, in my view, reflected something of the sense of realism and practicality of the House itself. We have seen committees try to conduct sharp, well focussed inquiries so that they could present reports while issues were still 'live' and which contained precise and practical recommendations. An indication of the scope and nature of our committee operations is shown by the listing of inquiries at the time of writing subjects under investigation range from the Australian film industry and customer complaints against Telecom (our national telephone operation) to the issues of genetically modified organisms, our business migration program and Australia's relations with Papua New Guinea.

Turning to the future, it is often remarked that we will see an increasing volatility in the electorate and an erosion of the dominance of the traditional major parties. I believe that demands and pressures on individual Members from the community will increase, especially in times of economic difficulty. The House must accommodate such developments. I am reassured, from its history to date, that the House will adapt to the demands that will be made of it. It will continue to perform its constitutional functions, and it will remain the pre-eminent forum in our nation. The committee system may evolve further, but committees will remain: Members will not relinquish willingly the opportunities it has provided for them to become involved in the realities of modern government.

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Features of the Australian House of Representatives

A.R. Browning*

Composition

Under the Constitution the House of Representatives must be, as nearly as practicable, twice the size of the Senate. The numbers chosen in each State must be in proportion to population, provided that no original State shall have less than 5 Members (the 6 existing States are all original States). The present number of Members representing each State and Territory is: New South Wales 51, Victoria 38, Queensland 24, South Australia 13, Western Australia 14, Tasmania 5, Australian Capital Territory 2, Northern Territory 1-148 in all.

Duration

The life of every House of Representatives is limited to 3 years from its first meeting, but the House may be dissolved sooner by the Governor-General.

Elections

All Australian citizens of 18 years and over are eligible to vote. British subjects who were on the electoral roll on 25 January 1984 are also eligible. Enrolment and voting are compulsory and unwarranted abstention is punishable by a fine.

Members of the House of Representatives are elected to represent single-member constituencies under the system of preferential voting.

Distribution of Seats

The following table shows the distribution of seats by political party following the general elections of 24 March 1990. 10 Members of the House of Representatives are women.

Political Group		Number of Seats
Australian Labour Party	Government party	78
Liberal Party	Opposition parties	55
National Party of Australia	in coalition	14
Independent		1
	Total	148

Sittings

The yearly sittings of the Parliament are divided into two main sitting periods—the Autumn sitting usually from February to June, and Budget or Spring sittings, from August to December. Within these periods the Parliament normally sits for 2 weeks in succession followed by a non-sitting period of 2 weeks.

The House sits for an average of about 650 hours each year (not including suspensions of sittings for meal breaks), spread over about 65 sitting days (18 sitting weeks).

The Presiding Officer

The Presiding Officer of the House of Representatives, the Speaker, is elected by ballot of Members of the House, as is his or her deputy, the Chairman of Committees. The Speaker is in charge of the conduct of business, presiding over the sittings of the House, and acts as its spokesperson. He or she is, alone or jointly with the President of the Senate, responsible for the administration of the parliamentary departments.

The Speaker or deputy may be relieved temporarily in the Chair by one of a panel of 10 Deputy Chairmen who are appointed by the Speaker.

The Speaker does not vote in division unless the numbers are equal and he or she then has a casting vote.

Routine of business

From 2 p.m. each day (the House meets at 2 p.m. on Mondays and Tuesdays)

Questions without notice
Presentation of papers
Ministerial statements
Discussion of matter of public importance
Notices and orders of the day (government business)
Adjournment debate

Wednesday mornings (from 10 a.m.)

Notices and orders of the day (government business)

*Mr. A.R. Browning, Clerk, House of Representatives, Australia.

The House usually sits until 11 p.m. (8 p.m. on some Wednesdays).

House of Representatives Committees

The work of the House is complemented by a comprehensive system of House and joint committees. The work of Members on parliamentary committees is increasing and the value of this work both to the nation and to the House is increasingly being recognised.

The all-party composition of most committees and their propensity to operate across party lines are important and valued features of the system.

The committees of the current House of Representative are:

Domestic or internal committees

Procedure
Privileges
Members' Interests
Selection
Publications
Library
House

Usually meet jointly with an equivalent Senate committee

General purpose standing committees

Aboriginal Affairs
Community Affairs
Employment, Education and Training
Environment, Recreation and the Arts
Finance and Public Administration
Industry, Science and Technology
Legal and Constitutional Affairs
Transport, Communications and Infrastructure

Standing committee

Long Term Strategies

Select committees

Select committees may be created for a specific purpose as the need arises

Joint statutory or standing committees [composed of both Members and Senators]

Australian Capital Territory
Australian Security Intelligence Organization
Broadcasting of Parliamentary Proceedings
Electoral Matters
Foreign Affairs, Defence and Trade
Migration Regulations
National Crime Authority
Public Accounts
Public Works

Legislation

Legislative powers

Under Australia's Constitution the Federal Parliament can make laws on certain matters only. These include: international and inter-state trade; foreign affairs; defence; immigration; taxation; banking; insurance; marriage and divorce; currency and weights and measures; post and telecommunications and invalid and old age pensions. The Australian States retain legislative powers over many areas.

In some respects the legislative powers of the two Houses are not equal. In matters relating to the collection or expenditure of public money the Constitution gives a pre-eminent role to the House of Representatives—the House of Government. Appropriation bills and bills imposing taxation cannot originate in the Senate. The Senate may not amend bills imposing taxation and certain appropriation bills, or amend any bills so as to increase any proposed charge or burden on the people. In all other respects the Houses have equal powers.

Public, private and private Members' bills

In the House of Representatives all bills are regarded as public bills. The House does not recognise the concept of private bills, that is, a bill for the particular interest or benefit of a person or persons, public company, corporation or local authority.

Private Members' bills are bills introduced by Members other than Ministers. Any Member of the House may introduce a bill and new arrangements adopted in 1988 have provided increased opportunity for private Members to do so. Nevertheless private Members' bills remain a very small minority of bills introduced—perhaps half a dozen may be introduced each year in contrast to about 200 government bills. Few private Members' bills are passed into law.

Special types of bill

Additional or slightly different procedures apply to financial legislation—appropriation and supply bills and taxation bills and to proposals to make changes to the Constitution—constitution alteration bills.

The Budget cycle

Appropriation and supply bills are passed regularly each financial year to appropriate money from the Consolidated Revenue Fund to provide funds for government and

parliamentary expenditure. The annual appropriation cycle is as follows:

1 July: Start of the financial year—until the year's appropriation bills are passed, interim expenditure is authorised by the Supply Acts passed in the preceding financial year (see below)

Late August: The Budget—introduction of the main appropriation bills which appropriate money for expenditure by the Government and the Parliament for the current financial year. Appropriation Bill (No. 1) covers expenditure for ordinary annual government services (administrative expenses, salaries, etc.); Appropriation Bill (No. 2) covers capital expenditure (public works, purchase of sites, etc.); and Appropriation (Parliamentary Departments) Bill covers expenditure for the Parliament.

April: Additional or supplementary estimates—Inevitably some departments will need more funds than those appropriated by the main appropriation bills. Appropriation Bill (No. 3) [administrative expenditure], Appropriation Bill (No. 4) [capital expenditure], and Appropriation (Parliamentary Departments) Bill (No. 2) [expenditure for the Parliament] provide additional funds for the current financial year.

April/May: Supply bills—The authority to spend money provided by the annual Appropriation Acts ends at the end of the financial year on 30 June. Supply Bill (no. 1) [administrative expenditure], Supply Bill (No. 2) [capital expenditure], and Supply (Parliamentary Departments) Bill [expenditure for the Parliament] provide interim funding until the next year's main appropriation bills are enacted. The amounts provided are usually sufficient to cover the first 5 months of the financial year, that is, from 1 July to 30 November.

April/May: 'May statement'—Supplementary economic statements may be made to the House at any time. In recent years it has frequently been the practice for the Treasurer to make a statement at this time. Measures then announced can be effective from the start of the next financial year.

30 June: End of financial year.

Procedural innovations

In 1985 the House of Representatives appointed a Standing Committee on Procedure, its terms of reference requiring it to inquire into and report upon the practice and procedures of the House generally with a view to making recommendations for their improvement or change and the development of new procedures. By the end of 1990 the Procedure Committee had presented eleven reports recommending a number of significant procedural changes, several of which gained the acceptance of the House. It has begun a major review of the standing orders of the House.

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Computer Networking: The Trend of the 90's in a Parliamentary Context

K.R. Rozzoli*

There seems little doubt that computer networking is going to be the trend of the 90's. As the *Economist* recently put it (August 25, 1990)

> Firms spent the 1980's putting computers on almost every desk. They will spend the 1990's trying to link them together.

The American magazine *Business Week* in a special report on networking in November 1990 further explained the concept thus

> Mainframe computers did it all—calculating, storing data, sending messages to terminals, managing data bases, and communicating with other mainframes. And they did it all in one box... But powerful microchips—in personal computers and in servers—make it possible to break up all those functions and assign them to low-cost specialized machines on a network. This way, the network becomes the computer.

To put these developments in context

> it is necessary to understand the nature of previous constraints. Before, there was no satisfactory way of moving data, programming demanded specialised skills and the microprocessing chip that is the heart of every P.C. had yet to be conceived (*Australian Business*, February 21, 1990).

The result of those constraints was two decades of totally centralised computing, with massive and costly mainframes supporting terminals with no in-built computing power. Everything was housed in clinical computer rooms overseen by specialised data entry and programming staff. The hardware was clumsy and slow compared with even a thousand dollar computer of today. These systems nevertheless transformed corporate operations. Recent technological changes, however, have produced an ability to link computer facilities. There has been a gradual change from previous practices which resulted in a multiplicity of computing 'islands', each substantially isolated from the other unless both hardware and software were identical. It is user pressure which has forced the rapid development of the new technology and the emergence of new equipment which allowed users to talk to each other. Personal computers became available which rivalled in complexity all but the latest mainframes with no queuing for access. Much progress has also been made in "gateway" technology.

Obviously, if Members of Parliament are to continue to carry out their traditional role as law makers and watchdogs over bureaucracy and executive in an increasingly complex world, they need to have available the latest information technology. It is indeed to the advantage of the proper functioning of democracy that adequate information resources be provided to the Opposition, Government back benchers and Parliamentary committees. The recent Fitzgerald Inquiry in its report into corrupt activities in Queensland makes the point well

> Without information about Government activities and research staff to properly assess it, the opposition party or parties have no basis on which to review or criticize the activities. Without information, there can be no accountability. It follows that in an atmosphere of secrecy or inadequate information, corruption flourishes. Wherever secrecy exists, there will be people who are prepared to manipulate it.

This alone makes networking-technology worthy of further consideration. In the current economic climate, however, cooperative sharing of information resources by networking between Parliaments is an even more attractive concept. As full cost recovery becomes a general principle for all Parliamentary and government printing and the volume of such material produced increases, Parliaments and in particular Parliamentary Libraries are being increasingly pushed towards collection rationalisation. Being able to access electronically such material from other Parliaments should be part of this process and will significantly alleviate these pressures. The financial aspects of entering into a network system can be put into proper perspective by balancing them against the costs of the printing and acquisition of hard copy and the volume of space necessary to provide storage for hard copy material. Added to these problems is the cost of manual retrieval of information as

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against more efficient electronic retrieval from data bases. Once the basis of networking is established there is an almost unlimited capacity to tap into reciprocal data bases, admittedly at a cost, however at a cost infinitely lower than that necessary to establish and maintain complete and freestanding collections for each Parliament.

In sum, technological advances and the trend to more effective use of existing resources mean that the time is now most apposite to look at resource sharing through the creation of automated networks of Parliaments. The European Parliament and other Parliaments in Europe, which I recently had the privilege of visiting, are developing large data bases and hope in future to arrange for reciprocal access to these resources. The United States has gone one step further and data bases containing information from the Federal and State legislatures are commercially available. *Legislate*, for example, provides information from Congress. It tracks House of Representatives and Senate bills until they die or get passed, keeps tabs on the voting records of individual members and compiles a legislative history of bills. Current and future committee schedules are included, as is a full text of the *Congressional Record*. *Legislate* cross-indexes *Washington Post* stories to members of Congress and bill numbers. Bills are also indexed by subject. An index to the *Federal Register* and active bills is put online by noon. Another service, *State Net*, offers summaries of bills moving through the legislatures in all 50 states. For Californians, the State where *State Net* is produced, it offers a more complete service that includes a full-text bill service, committee analysis, and campaign contribution data.

The concept of a Parliamentary network, of course, is a broad one and many specific issues need to be addressed and defined. Some examples are: does a network imply common hardware and software, what type of communications system is appropriate (e.g. dial-up by 'phone line, X-25 or Ethernet are just a few possibilities), is data also or exclusively to be exchanged by disk or possible in future by CD-ROM, how is usage to be controlled and monitored? To try and provide some insight into these issues, I would like to tell you about what we in N.S.W. are trying to do in cooperation with other Australian Parliaments.

The concept of a computer network of Parliamentary Libraries was first raised by the Commonwealth and Queensland at a Conference of Parliamentary Librarians in Canberra in 1980. The network proposal was discussed subsequently with approval by Presiding Officers at a Conference in Wellington, New Zealand, in March 1981. The network idea was then accepted in principle by the Chairmen of Library Committees of most Australian Parliaments at a meeting in Melbourne later that year.

An Automation Sub-Committee of Parliamentary Libraries was set up in 1982 to explore the network concept further and met a number of times. In June 1984 the Presiding Officers and their Librarians met to discuss the possibility of formally establishing a computer network. The meeting in a significant development, agreed to set up an Inter-Parliamentary Network Committee to expedite communication of data on a Parliament-to-Parliament basis, thus broadening the original concept of the network from one of Libraries only.

This Committee met twice (Melbourne in 1985 and Perth in 1986). In June last year at a Conference of Presiding Officers and Clerks in Perth I raised again the issue of a Parliamentary network and the response from those present was overwhelmingly favourable.

Most Australian Parliaments have now or will shortly have significant amounts of data to be shared. In the N.S.W. Parliament, for example, the Library is in the process of putting all its data onto computer using the BRS-SEARCH software. Work has also commenced on a Parliamentary data base that will ultimately make the full text of Parliamentary publications from N.S.W. available on-line. Turning to specifics, by "network" I mean each Parliament giving an undertaking to make available to other participating Parliaments access to data bases of Parliamentary material (as opposed to internal administrative files) if and when they become available. The kind of data to be included would be, for example:

Hansard
Library files
Parliamentary Papers
Registers of Bills
Business Papers
Standing Orders
Precedents and Rulings
Lists of Members
Committee reports

Within this framework, each Parliament would be free to develop systems to meet its own needs. Each Parliament can thus retain the base of its own autonomous operations, that is, its own Hansard, statutes, Parliamentary papers and other such records, with no Parliament acting as the central storage point. This means that each Parliament can determine its own policies and retain its own character while drawing strength and economy from other Parliaments but in no way inhibiting its own autonomy.

The majority of Australian Parliaments have responded positively to this concept and we are in the process of experimenting with communications between data bases and trialing exchange of data by disk. My colleagues in the Victorian Parliament have also proposed the adoption of a uniform Parliamentary standard for CD-ROM's, a concept we are pursuing.

Once exchange of data begins on a regular basis, a further issue arises: a mechanism for controlling and monitoring the use made of each Parliament's data needs to

be developed. Some form of accountability needs to be built into the system to avoid overuse and to ensure that the burden is borne as equally as possible between all participants. What could happen in practice might be that the Parliaments would exchange information but with a record of the information sought by each Parliament cross-charged against material made available to that Parliament. Depending on usage, accounts could be rendered monthly, quarterly or annually. A further refinement may be that each Parliament could agree to supply information free up to a certain figure and then charge over and above that. The capacity to monitor and charge would be particularly important if the utilisation of Parliamentary services by outside organisations were to come about. I believe there is a substantial market for our information in the business and education world and enquiries through one Parliament may involve accessing material through the network from other Parliaments. It is reasonable in such a case that the Parliament with whom the enquires are initiated should charge their customer, but it is equally unreasonable in this situation that another Parliament should supply information to the first Parliament free of charge. It therefore becomes necessary to establish and maintain a proper system of monitoring and accounting. With correct marketing, particularly of access to Parliamentary material, acts, subordinate legislation, annual reports, committee reports and so on, significant recoveries can be made towards Parliamentary costs.

I believe that the N.S.W. and other Australian Parliaments are now launched on a course that will enable us to use advances in information technology to make M.P.s better informed at reduced cost. The question arises, why stop there? I hope that I am not being unrealistic in hoping to see soon movement towards sharing Parliamentary information on a Commonwealthwide and perhaps eventually global basis.

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The Commonwealth is itself a symbol of the transformation of an imperial hierarchy into a fellowship of equals. ***—Indira Gandhi***

The Parliament of New South Wales

Russel D. Grove*

New South Wales is a sovereign State within the Commonwealth of Australia and the Parliament of New South Wales may legislate for the peace, welfare and good government of the State in all matters not specifically reserved to the Commonwealth Parliament.

As a result the deliberations of the Parliament are taken up by what are described as the "bread and butter" issues of society, such as, health, hospitals, schools and further education, roads, traffic, public transport, police, bridges, energy and water supply, national parks, agriculture and fisheries, local government, community services, the courts and law enforcement.

The New South Wales Legislature—the mother of self-government in Australia, consists of the Governor, representing the Crown; the Legislative Assembly and the Legislative Council. Together they exercise the legislative functions of Parliament.

The Legislative Assembly or "lower house " consists of representatives elected by the people. The State is divided into one hundred and nine electorates with one member representing each electorate. Each electorate though varying vastly in area is made up of approximately 35,000 voters.

Elections must be held every four years or at a lesser period at the discretion of the Government and with the consent of the Governor. Both enrolment and voting are compulsory for all persons over 18 years of age. When the results of an election are known, the Governor commissions the leader of the party or parties commanding a majority to form a Government. The leader of the Government is known as the Premier.

The Speaker is the presiding officer of the Assembly and is elected under the Constitution Act, 1902, at the beginning of each new Parliament by the members from among themselves.

At the moment, 3 years through the 49th Parliament, the Legislative Assembly consists of 39 Members representing the Liberal Party and 20 Members representing the National Party who together form a coalition Government led by Premier Nick Greiner. The balance is made up of 43 members representing the Australian Labor Party being the official Opposition and 7 Independent Members. In 1990 the Legislative Assembly had 55 sitting days.

Of Constitutional interest, the Parliament in 1990 voted to reduce the size of the Legislative Assembly from 109 to 99 electorates with effect from the next election due by May 1992 at the latest. This action fulfilled a promise of the new Government to reduce the Assembly to the size it was prior to the increase by the former Labor Government at the last election held in March 1988.

The Legislative Council or "upper house", sometimes referred to as a "House of Review", consists of forty-five members elected by the people on a state wide basis for the duration of three parliaments, this is up to 12 years with fifteen members retiring at periodic elections held at the same time as general elections for the Legislative Assembly.

The President is the presiding officer of the council and is elected by members of the Council from among themselves. The President may take part in debate in the Council.

The Legislative Council is made up of 21 Members representing the Australian labor Party, 12 representing the Liberal Party, 7 representing the National Party, 3 representing the Call to Australia and 2 representing the Australian Democrats. Partly because the Government does not have a majority in the Legislative Council the Council sat for 72 days in 1990.

Contributing to the Legislative Council sitting for longer than the Assembly was the consideration in Committee of the Whole for 3 weeks of a package of industrial arbitration legislation.

With regard to this legislation the Legislative Council for the first time ever, took advantage of a provision of the Constitution which enables any Minister who is a Member of the Legislative Assembly, with the consent of the council, to sit in the Council for the purpose only of explaining the provisions of any Bills relating to any department administered by the Minister. The Minister may take part in debate in the Council on Such Bills only in Committee of the Whole House. The Minister concerned in this case left the Assembly Chamber after Question Time to take a place in the Council Chamber on many days when both the Assembly and Council met and on a good deal more Council sitting days when the Assembly was in recess!

Under this provision of the Constitution a Minister from the Legislative Assembly may not vote in the Council nor is it lawful for more than one Minister from the Legislative Assembly to sit in the Council at any one time.

Archives and the Parliament: Archives are records and the making and keeping of records are very important in Parliaments and to parliamentary officials. The Standing

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Orders of every legislature in the world would have at least one section relating to the record-keeping. The sections in the New South Wales Parliament are as follows:

> Legislative Assembly: (Chapter VI)-"52. Every Vote and Proceeding of the House shall be recorded by the Clerk of the Assembly, and the Votes and Proceedings of the House... shall be the Journals of the House.
> 53. The custody of the Votes and Proceedings, Records and all documents whatsoever laid before the House, shall be in the Clerk..."
>
> Legislative Council: (Part IV)-"16. Every Vote and Proceeding of the House shall be recorded by the Clerk, and the Minutes of the Votes and Proceedings...shall be the Journals of the House.
> 17. The custody of the Minutes of Proceedings, Records and all Documents whatsoever laid before the House, shall be in Clerk..."

However these Chamber records are only a part of the entire mass of parliamentary records, from which our archives are selected. The other records of Parliament relate to the administration of the various ancillary offices and departments which all rotate around the myriad needs of Members—such as the library, 'Hansard', refreshment facilities and the management of the fabric of the building in which the Parliament sits. The records of these offices, as well as the important Chamber records, are all grist to the archivist and records manager's mill.

What are *archives?*: The easiest way to answer this question is to give the official definition as it appears in the New South Wales Parliament's 'Archives Policy':

> Archives are the non-current records of an organisation, institution, or individual, selected for permanent preservation because of their legal, evidential, administrative, institutional, historical, or cultural values.

The three important elements of this definition are that archives are 1) organisational records; 2) non-current, and 3)selected for permanent preservation. They are *selected non-current records.*

Since "records" is such a broad category, a definition is also necessary. The Archives Policy' defines them as

> documents (including any manuscript, holograph [a handwritten copy], or printed material) or artefacts (including sound recordings, coded storage devices, magnetic tapes or discs, microforms, photographic prints or negatives, films, maps, plans, models, paintings, or any other pictorial or graphic work) which are or have been used, created, or kept by any person in the course of official duties.

The important element in this description is that a record may be anything which is used *in the course of official duties.* The very broadness of this description when combined with the bulk and quantity of records produced by any organisation means that choices and decisions have to be made when considering what to keep permanently.

Archives and the Archivist: Since archives are records that have been selected for permanent preservation they may be and are usually regarded as the corporate memory of their institution. Parliamentary records have an enhanced role in this respect: they are not only the corporate memory of the Parliament as an institution, a part of them are also part of the nation's memory. The Tabled Papers have an ancient history: they were the harbinger of the modern doctrine of freedom of information. The act of tabling documents makes them the property of the people, any one of whom may inspect them either in printed from or in the original (unless the House ordains otherwise—however, restriction by Standing Order makes these papers no less public; and they are still part of the institution's memory.)

Archivists are employed to take care of this memory: to act in the physical and moral defence of the archives. Archives come in many shapes, sizes and formats such as bundles of correspondence files, bound volumes of every size, photographs, maps, plans, tape recordings, videos, cassettes, posters, and computer tapes. Because archives are the corporate memory of an institution, they are now being seen as an essential component of the management information required for decision-making, complementing the work of other information professionals. Because of this, archivists are ideally suited to take command of the whole records-management field which comprises the whole life cycle of the record.

The role of the archivist is to ensure that vital records are identified and preserved; to provide information for research, administrative, legal and other purposes; to curate and mount exhibitions using the archives; to optimise records management operations; to ensure the correct environmental conditions for the storage of the records; and to facilitate consistency, uniformity and impartiality in the procedures and conditions adopted for the management and use of the records.

Parliamentary records and archives: Parliamentary officers deal with potential archives every day and often do not realise it. The very papers handled in the Chamber, the papers tabled by governments and even the letters received and written in the course of normal administration are all potential archives. Given that Parliaments as institutions are meant to last indefinitely (or even forever—however long that may be) and create or accumulate records every

day; and given that governments are generally parsimonious with money where legislatures are concerned; and that space for the storage of records is a perennial problem in all offices all over the world, the question or even problem of records and archives management becomes more acute every day.

On the other hand Parliaments are obliged under their Standing Orders and by a moral obligation to the people they represent to keep the records thus accumulated so that they may be referred to (for whatever reason) at a later date. The reasons why people want to look at the archives are manifold and often have nothing to do with the reason for the original creation of the record. One of the most popular types of archives in the New South Wales Parliament is the petition—and not just the text, although this too can also be popular. It is the signatures which are sought after and valuable today. Genealogists look for evidence of their ancestors; historians look for information about particular people, or particular types of people or do historical demographic surveys. In fact the most heavy user groups of the Parliamentary Archives are historians and genealogists; however other people also look at the records for their own particular purposes, such as the community worker looking for (publicly available) evidence on the extent of prostitution in her community (in the archives of the Select Committee on Prostitution); or the former Chairman of a Select Committee who wishes to write a history of that Committee's work (the Select Committee on the Western Division of New South Wales).

The New South Wales Parliamentary Archives is the only legislative archives in Australia and one of a small number of legislative archives in the world. The archives of the legislature are treated separately from the archives of the executive government because the theory is, under the Westminster system, Parliament is an institution 'sui generis', and constitutionally stands apart from the executive and judicial branches of government. Because of this the New South Wales Parliament is not a "public office" under the terms of the (New South Wales) Archives Act 1960 and thus the records cannot be transferred to the State Archives.

Because of this, and the importance of the records, the Presiding Officers of the New South Wales Parliament have approved an 'Archives Policy'* which commits their Parliament to preserve its archival heritage and places the archives in the care of a professionally qualified archivist, who is responsible to both the Clerk of the Parliaments and the Clerk of the Legislative Assembly. Other Parliaments have made archival arrangements with the Archives Offices of their executive government, but this means that these Parliaments do not get the specialist and undivided attention which a parliamentary archivist can give.

Until quite recently the supervision and care of the Chamber records and archives was delegated from the Clerks of each House to a more junior officer; and the records and archives of each of the ancillary departments were not particularly cared for at all; their survival was dependent upon whim or luck. However since 1975, when a disastrous flood damaged many of the Assembly records, the officers of this Parliament have slowly come to the realisation that a specialised officer was not only necessary to care for the valuable archives of the institution, but also that a records management specialist is needed to oversee the vast plethora of records created and used every day in a large institution.

A description of the parliamentary records: All legislative records the world over, and especially in Commonwealth countries which share the common heritage of the Westminster system, share common characteristics. The records of the New South Wales Parliament-indeed of any Parliament-are the actual documentary evidence of the legislative activity of the Parliament and the administration which services that activity.

The Parliamentary records consequently fall into a number of distinct categories. Firstly, there are the records of the House (or both Houses, if the legislature is bicameral), which are divided into the categories of Chamber and Office records. Secondly, there are the records of the various Standing, Sessional and Select Committees, which are a combination of the types of records to be found in Chamber and Office. Finally there are the ancillary and support departments of Parliament.

The Chamber records are the actual Parliamentary records, originating from the legislative activities of each House of Parliament. Chamber records in any House include the Tabled Papers, which are comprised of the actual documents tabled by the Government. If they are ordered to be printed, the printed copies are bound into the Joint Volumes of the 'Parliamentary Papers'. Papers not ordered to be printed may be inspected by Members and, unless otherwise ordered, by other persons. The 'Votes and Proceedings of the Legislative Assembly' and the 'Journals of the Legislative Council' are the official permanent record of proceedings in each House. They are printed and an official set is kept by the respective Clerk of each House.

Office records are the housekeeping or day-to-day records essential for the administration of the offices of Parliament. These records include correspondence, financial and staff records, and control records such as indexes and registers. A combination of office and chamber records is to be found in the records of the various Standing, Sessional and Select Committees of the two Houses.

The New South Wales Parliamentary Archives follows

*Reproduced at the end of the article

normal archival practice (called the principle of provenance) and defines the records by those divisions within the establishment which are separate record-keeping entities. They are, in the case of the New South Wales Parliament, the Legislative Assembly (both Office and Chamber), the Legislative Council (also both Office and Chamber), the Library, the Reporting Staff ('Hansard'), Food and Beverage Services, Building Services, Engineering, Accounts, Archives, Education and Community Relations, Systems Development (*i.e.* computers); and each Standing and Select Committee is regarded as a separate section, with its own independent record keeping system, whereas the Sessional Committees (Library, House, and Printing) are integrated with the records of other offices. The other archive groups are the first Legislative Council of New South Wales (1824-1856), which was the predecessor of the present Parliament; and the New South Wales Branch of the Commonwealth Parliamentary Association. There are then thirteen permanent archives groups (only one of which is a closed or non-growth group—the rest keep on growing), with usually a few extra groups to contend with. These actually may as well be permanent as the Standing Committees such as the Public Accounts Committee and the Committee on Road Safety (called 'Staysafe') tend to last indefinitely.

Access: The archival records of the New South Wales Parliament are available to the public. Access to Chamber records is governed by Standing Orders; that is, they are open to Members of (this) Parliament and, unless otherwise ordered, to members of the public. Access to other records is open twenty-five years from the last date on the record, unless otherwise specified. This may mean that a record is publicly available immediately from the time it is archived; or else that it is a restricted record, and may be seen only after a certain time has elapsed. This time may be anything from fifty to one hundred or more years. Records are restricted for privacy reasons, or (usually in the case of Tabled Papers or Select Committee records) they have been submitted to Parliament on the proviso that they are not made public. However even these records will probably be opened to public inspection after about one hundred years, as everyone concerned in the case would be dead by then.

The Parliamentary Archivist: The New South Wales Parliamentary Archivist is not employed by Parliament, but is on the establishment of the Archives Authority of New South Wales (known there as the Senior Archivist—Parliament House) and is permanently seconded to Parliament; however it is planned to eventually place the Archivist on the Parliamentary establishment. The position was created in 1980 after a series of consultations between the Legislative Assembly, the Public Service Board and the Archives Office of New South Wales. These talks resulted from the disastrous flood of 1975 which damaged a large number of the old and valuable records, the oldest of which dated from 1824. The position was then created at the end of 1980, and attached to the Legislative Assembly. In 1985 the position was made responsible for the archives of the whole parliamentary establishment, and is now responsible to the Presiding Officers through the Clerk of the Parliaments (Legislative Council) and the Clerk of the Legislative Assembly for the Care and custody of all the archives of Parliament.

Disposal Procedure: The theoretical position is that no person on the Parliamentary establishment may 'destroy, disperse or otherwise dispose of' any record of Parliament except on the recommendation of the Parliamentary Archivist. Naturally in a large organisation with only one archivist this may not always be adhered to, but that is the policy. When records are to be disposed of, the Archivist is contacted and the records are taken away, thus freeing up valuable space of current records. They are then processed as archives or a 'Disposal Recommendation' is then made to the Departmental Head if the records are to be destroyed. It must be understood very clearly that the Archives Section is first and foremost an administrative tool for the rest of the Parliamentary establishment. It is there to make the administration of the records and archives easier. Under the expert eye of the Archivist the various parliamentary departments may rid themselves of the accumulated detritus of the years and free up space to be used for current needs. The archivist will then examine these records and decide, after careful consultation, what will be kept. Under the terms of the Archives Policy the Archivist may decide alone what may be kept, but can only recommend destruction; the Clerks of the Houses have the final decision (separately or jointly). This ensures that the permanently valuable records may be used long after their original purpose and that those records with only a short-term usefulness do not take up valuable space after their useful life is over.

Finding Aids: Apart from the published Guides (which have been distributed to the various State and University Libraries throughout Australia, as well as to each House of Parliament and Parliamentary Library in the country), there are a number of documentation systems which control the intellectual access to the parliamentary records in archival custody. These are the Accession Register; the Register of Parliamentary Record Series; the Register of Documents (a "Document" for the purposes of the NSW Parliamentary Archives is a record which does not fit into any other category, or is a single example of its type); the Register of Plans (which includes both maps and plans); and the Register of Pictures (which includes photographs, drawings, and paintings). There are three published Guides—the 'Guide to the Archives of the Legislative Assembly', the 'Guide to the Archives of the Parliamentary Standing Committee on Public Works,

1888-1930'. and the 'Guide to the Archives of the Parliamentary Library, 1840-1990'; and unpublished versions (as yet unfinished) of the guides to the archives of the first Legislative Council, 1824-1855, and to Related Records in Other Institutions, are available to be consulted at the Parliamentary Archives.

Conservation: Because archives are valuable they have to be physically preserved. The older archives are surprisingly those generally in the best shape, usually because the quality of the paper 150 years ago was so much better than it has been since. However disasters have struck; the effects of the flooding of 1975 are still felt. Basic conservation measures are taken, such as properly wrapping and boxing the records and keeping them in (as far as is possible) controlled atmospheres. The Parliament has also made funds available for the purchase of conservation stores and to pay the fees of free-lance conservators. The conservators clean, de-acidify and mend the archives sent to them, which are sent according to a priority list.

Conclusion: The appointment of an archivist who would exclusively care for the archives of Parliament was a step in the right direction when it was first made. However the goal of an integrated records and archives management unit has not yet been reached, though it is a stated objective of the New South Wales Parliament in its draft Corporate Plan.

An archives and records management unit is not an expensive luxury nor a frippery designed to mollify the heritage lobby; it is an integral part of the efficient management and administration of any institution. It may be likened to the digestive system in that it gets rid of waste products and keeps that which is necessary. It has been recognised as a necessary adjunct to government by the New South Wales Government, which has increased the budget and staff of the New South Wales State Archives at a time when it has cut down on nearly every other government activity.

Every Parliament needs at least one archivist; to those who may question the expense it can be said that the money spent in not having a records expert to oversee the creation-to-disposal cycle will be greater than that 'saved', considering the cost of valuable wasted space and paper and of re-creating useful records because the old ones have been stored in an unlabelled box or mistakenly destroyed. Apart from this it is our responsibility to transmit the heritage of our archives to future generations.

The archives policy

As approved by the President of the Legislative Council (9.1.1989) and the Speaker of the Legislative Assembly (20.12.1988)

1. The Parliament of New South Wales will preserve the archival records of the Legislative Council, the Legislative Assembly, and the associated administrative and service departments connected with them
2. The archival records of the New South Wales Parliament will be in the care of the Parliamentary Archivist
3. Archival records will be selected for their legal, evidential, administrative, institutional, historical, and cultural values
4. No records will be destroyed, dispersed, or otherwise disposed of, without referral to the Parliamentary Archivist. To ensure that before any records are disposed of, the person in charge of the department or section in whose custody, or under whose control the records are, will notify the Parliamentary Archivist on the requisite form , of the intention to dispose of such records, and in this notification to specify the nature of the records
   Definitions of archives and records, for these purposes, are appended to the end of this policy
5. Access to nonrestricted archival records will be permitted to approved researchers
6. The Parliamentary Archivist will prepare Records Disposal Schedules, in order to dispose of records in a controlled and systematic manner
7. The Parliamentary Arhivist will prepare Disposal Recommendations for those records referred to the Parliamentary Archivist in accordance with Paragraph 4 and Paragraph 7.
   The Parliamentary Archivist will inspect and appraise these records; and if in his or her opinion they ought not to be retained as an archive of Parliament, then a Recommendation for destruction will be made through the appropriate Officer to the Clerk of the Parliaments and/or the Clerk of the Legislative Assembly
8. Records donated to Parliament from private sources will be treated in the same way as Parliamentary records
9. The Parliamentary Archivist will ensure the compilation of finding aids to the archives
10. The Parliamentary Archivist will supervise conservation services and facilities to ensure the permanent preservation of the archives, in accordance with Paragraph 1
11. The Parliamentary Archivist will be a professionally qualified archivist
12. The Parliamentary Archivist will be responsible to the Clerk of the Parliaments and the Clerk of the Legislative Assembly, to whom an annual report will be furnished on the operations of the Parliamentary Archives
13. Nothing in the foregoing paragraphs shall prejudice the authority of the Presiding Officers of Parliament

Addendum: Definitions

Archives

Archives are the non-current records of an organisation, institution, or individual, selected for permanent preservation because of the legal, evidential, administrative, institutional, historical, or cultural values;

Records

Records are documents (including any manuscript, holograph, or printed material) or artefacts (including sound recording, coded storage devices, magnetic tapes or discs, microforms, photographic prints or negatives, films, maps, plans, models, paintings, or any other pictorial or graphic work) which are or have been used, created, or kept by any person in the course of official duties;

Semi-current records

Semi-current records are those records required infrequently in the conduct of current business.

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Although democracy perhaps flounders in the search for new patterns and styles, new rules and discipline, all deductions having been made, it has done less harm and more good than any other form of government.

—Sir David Stuart Beattie

Queensland Parliament
The Speaker's perception of change

Demetrios Fouras*

The necessity for the authority and immunity of Parliament has now become a vital issue in eastern bloc and some Latin American countries. In these countries, for many years, Parliament has either been suppressed or has been seen as an Institution uncritically endorsing legislation proposed from outside by a dominant and exclusively armed Party. Such Parliamentary systems have clearly produced serious weaknesses in the economies of those countries alongside of the suppression of dissent and creative and critical discussion.

Paradoxically, in certain countries where parliaments elected by universal suffrage have been in existence for generations and where freedom of speech is not in doubt, concern has been expressed about a declining respect for Parliament by sections of the public. It is fair to say that there is a great deal of cynicism about the operation of Australian Parliaments, considerable criticism of their effectiveness and sometimes very derogatory comments about the proceedings and behaviour of members of Parliament.

Parliament must have the respect and support of the wider community to ensure its continued relevance, otherwise Governments of all colours and all political persuasions will ignore its deliberations. Chifley, a great Australian Prime Minister, saw Parliament as the fulcrum of our democratic process when he said:

> "Honourable Members should not forget that in the life of a democracy it is important that the public should respect, not necessarily a party, but the Parliament. Everything we do to destroy that respect deals a death-blow at democracy itself."

In my first statement on my election as Speaker, I said:

> "It is easy for Parliament to degenerate into an expensive sham, meeting irregularly, being abused by the Government and used for petty political point scoring by the Opposition.
>
> Governments are elected to Govern, but they must accept that there are limits to their power.
>
> There is a need to balance the right of a Government to govern with the rights of both the opposition and the members of the Parliament.
>
> A fundamental role of the Parliament is to be a check on the power of the executive, that is to hold the Government accountable.
>
> The office of the Speaker has a great tradition. In many ways it is the fulcrum of Parliamentary democracy and I am greatly honoured to occupy the position.
>
> I will be most alert to my responsibility to protect the dignity and authority of the House.

The speaker of the Long Parliament in 1642 when confronted by the King Said:

> 'My eyes are the eyes of the House,
> My ears are the ears of the House,
> My mouth is the mouth of the House,
> Sire, I can only speak as the House directs me.'
>
> This quote underlines the duality of the speaker's role. A Speaker is both the voice and the servant of the Parliament."

It is my view that not only the community at large but even some members of Parliament lack awareness of the several facets of the role of Parliament. Certainly the great majority of the general public, if asked, "What does Parliament do?" would respond that "Parliament makes laws". While this is true, it is not the complete answer and this can mislead people to thinking that Parliament is not working or not working properly when it is carrying out other functions beside enacting legislation.

Consequently whilst Parliament has power to make laws for the "peace, welfare and good government" of the State it has other functions which could be summarised as:

(a) providing Government
(b) examining Government
(c) granting supply, and
(d) representing the people.

*Hon. Demetrios Fouras, Speaker, Legislative Assembly, Queensland, Australia.

These functions are addressed by a number of procedures including debates, motions, questions, petitions etc. There are three major annual Parliamentary debates based on tradition and constitutional law. They are Address-in-Reply, the Budget and the Estimates debates. Through the debates, Parliament acts as the "watchdog" of the people's rights.

Whilst one must not underestimate the necessity and importance for the Parliament to pass legislation, it is my view that at times, too much emphasis is placed on this activity to the exclusion of the other equally important roles of Parliament. Legislatures, particularly those in Australia, apparently become overloaded with programmes of Bill consideration and handling which are far in excess of those undertaken by, for example, the Parliament at Westminster and this must have an impact both on how closely Parliament is able to scrutinise the bills placed before it and on how adequately Parliament can perform its other function.

One process that would reduce the excessive time given to Legislation would be that of setting up Legislative Committees as in New Zealand. These Select Committees have the authority to call for public submissions, hold public hearings, question departmental officers and seek the help of consultants and researchers in their endeavours to optimise the effectiveness of Legislation. New Zealand, like Queensland, has a unicameral system and it may be advantageous in a Parliamentary sense that we should consider setting up Legislative Committees in Queensland.

A recent debate on Industrial Relations Legislation resulted in 35 members speaking. The Standing Orders allowed 30 minutes speech time for a bill and I make no apology, having sat through that debate, in stating that although the speeches were relevant they became tedious and repetitive. It became simply a matter of two groups with diametrically different political perspectives laboriously pushing two different barrows. I am aware that in some Legislatures the number of Members that may speak on a Bill is restricted by Agreements of the Party Whips.

As a result of the current review of Standing Orders, speech times for Bills has been reduced to twenty minutes. It is my firm view that this could be reduced even further and such reductions would definitely enhance the quality of debate.

Until recently, the skills and diversity of backgrounds of Members of the Legislative Assembly were rarely utilised through the Committee process. The appointment of Select Committees to enquire into specific matters such as the current Ambulance and Travel safe Committees was a rare event. The major advantage of the Committee system is that Members can look at issues objectively, in particular those that do not have a strong ideological base. That is, Members need not continue to wear their blue, green or red coats. In a true Parliamentary sense these Committees should be chaired by Opposition Members rather than Government backbenchers.

"What are the most essential ingredients to enable Parliament to carry out its functions?"

First of all, the Parliament needs the recognition and support to the Crown and the Judicial/Legal system. At the same time the Parliament must maintain separations from these Institutions to the maximum extent possible. There must be a clear demarcation between the role of Parliament and that of the Crown, carried out in this state through the Executive Government, and similarly there needs to be maintained a distinct separation between the institution which passes the law and those which enforce it and deal with the law breakers.

It is, of course, an essential feature of our system of cabinet government which was inherited from Britain that members of the cabinet and the ministry as a whole actually sit in Parliament and that the support of Parliament is a precondition for the formation of a stable government. Accordingly it is simply not possible in our system of parliamentary government to maintain a separation of the legislative and executive branches of government in the same manner as underlies the constitution of the United States of America. To put it bluntly, in Britain and Australia the Parliament endeavours to scrutinise the activities of Ministers of the Crown when all of those Ministers are also themselves Members of the Parliament.

Absolutely fundamental to the carrying out of its several roles, including the discovery of corruption or gross inefficiency in any arm of Government, is the immunity (or parliamentary privilege) which the Parliament, and each Member has from any legal form of legal action or intimidation over what is said and done within Parliament. This immunity was recognised in British law over 300 years ago and is still one of the most powerful weapons in Parliament's armoury. Together with a number of other immunities and protection, the freedom of speech in Parliament has become so integral with the workings of the institution that it is difficult to imagine a true Parliament operating without it.

There is a clear need for Members of Parliament to be reminded that with their undoubted rights, privileges and immunities in relation to freedom of speech, comes a corresponding and undoubted responsibility to use that freedom responsibly. The Clerk of the House of Commons acknowledged this when he said. "The privilege of freedom of speech is an important element of the work of Parliament. However, because of the immunity it confers, its misuse can have serious effects." Privilege should not offer a sanctuary for irresponsible behaviour.

Some Legislatures have allowed private citizens the Right of Reply to what they considered was abuse of

Parliamentary privilege in Parliaments that have been referred to as "Coward's Castles." This approach has created as many problems as it has attempted to solve.

The most serious criticism of the Westminster system, particularly during the 20th century, has been the development of a situation where the real power inherent in Parliament has been moved on further, past the main body of Members and into the hands of either the Executive or the hierarchy of political parties or both. This situation is further exacerbated in small parliaments where there are proportionally fewer Members who are not also Ministers of State, and the tendency is for the size of ministries to keep on expanding. All this in turn is putting a new twist onto the parliamentary system which makes it somewhat difficult, to hold the view any longer that Parliament is still the supreme authority in the land.

The Speaker of the Victorian Parliament, Dr. Ken Coghill recently called for reforms of the Victorian Parliament to ensure that it operated in the public interest. He said: *"We only have to look back at recent history in Australia to see the undermining of basic and essential democratic principles by government going too far and totally dominating Parliament, reducing Parliament to a mere rubber stamp for government action, and masking autocratic decision-making."*

This concern and criticism had been taken much further by a former minister of the NSW government, Rodney Cavalier, who stated that *"while the Parliament is sovereign, subject only to the Constitution of the State and Commonwealth, while it is everything in the scheme of things—according to constitutional theory—often in realpolitik it is less than nothing."* It need not be so. Parliament can fulfil its major functions.

Commissioner Tony Fitzgerald in Chapter 3 of his Report of the Commission of Inquiry argued that *"It is much less likely that a pattern of misconduct will occur in the Government's public administration if the political processes of public debate and opposition are allowed to operate and the objectives of the Parliamentary system are honestly pursued. Fitzgerald also cautioned that Parliament can easily be prevented from properly performing its role by being denied time and resources. Any government may use its dominance in the Parliament and its control of public resources to stifle and neuter effective criticism by the Opposition."*

There is no doubt that parliamentary democracy could be and often is undermined if the balance of power swings too far in favour of the executive arm of government at the expense of Parliament.

There is currently an ongoing review of the Standing Orders of the Queensland Parliament. Apart from agreeing on a decrease in the speech times as mentioned earlier, the Committee has already agreed to an additional Adjournment Debate, a Special Public Importance Debate on Wednesdays and a Public Interest Debate on Tuesdays besides a debate on all Departmental Estimates against the past practice of the Government to select only six Departments for Parliamentary scrutiny during that Estimates Debate.

I started this article by stating that there is a great deal of cynicism about the operation of Parliament, considerable criticism of its effectiveness and sometimes very derogatory comments made about the proceedings and behaviour of members of Parliament.

There is no doubt that the role of Parliament can be and has been trivialised by a poor standard of debate, low standards of personal conduct and just as importantly because at times, the media concentrates on controversy and conflict at the expense of the proper functions of Parliament. However, I must stress that it is doubtful whether there really ever was a **Golden Age of Parliament** and even if there was it would have been in an era when the representative basis of many nineteenth century Parliaments, with their more restricted franchise, was much narrower than that which pertains today. All in all, accusations of wrong doing and gross inefficiency have been part of the political scene for a long time.

When I was first elected Speaker, I equated the process of decision making to that of calling a football game. One has to call it the way they see it which in effect means that sometimes one would get it wrong. However, calling it any other way would mean that one may never get it right. Moreover, it also means that the referee is influenced by neither the players nor the crowd.

Having now joined the ranks of the referees, and continuing the football analogies, the Parliamentary game is only as good as the collective will of the players and their willingness to play the game and the skills they bring to the playing field. Any game consisting of innumerable dropped ball, stiff arms and foul language would provide disappointing football. It is not the referee who has the major say but the players and, moreover, playing the ball should be the preferred option to playing the referee.

Recently there have been calls to implement a Code of Conduct for Members of Parliament. It is my firm view that a Code of Conduct already exists and rests totally with the upholding of Standing Orders that have withstood the test of time. Contradicting or criticising the Speaker or dissenting from his rulings should only be expressed through the proper Parliamentary forum, that is, through a Substantive Motion of Censure or Dissent. It does nothing for the Authority of the Parliament that when the Speaker names a Member for contempt or breach of Parliamentary Privilege the House divides on that issue on party lines.

It is arguable that *"educating the public"* is also a prime function of Parliament. There is no doubt that an informed debate about issues of regional or national importance in Parliament, with its wide diversity of membership, can bring such issues to prominence.

The public at large are often unaware of the significance

of parliamentary procedures and view Parliament as simply a forum where colourful theatre and poor standards of behaviour can be witnessed. It is a serious concern that too little is done to educate young people and the public about the importance of Parliament and about its procedures and mechanisms. An informed public is certainly needed; a cynical public is not. It is important that we should all have a better understanding of the institution of Parliament, how it works and how they are able to gain access to both Parliament, their Members and their Government. Public awareness programmes should be implemented so that more people can understand, for example,

the process of legislation and when, where and how it can be influenced;

how pressure groups can lobby for either new legislation or changes to both proposed or existing legislation;

the use of parliamentary questions and petitions;

parliament's role of keeping a check on the Executive;

the roles of Cabinet and Ministers;

the importance of supply and the need of Parliament's approval of the Government's planned expenditure; and

the Governor's role in the appointment of Government and the Executive Council.

Many commentators have regretted that wit and humour is rarely exhibited in Australian Parliaments. It may be that in the era of the 30 second television grab and the replacing of campaigning from the back of a truck in front of a pub has had a lot to do with Parliaments not only becoming adversarial but lacking humour.

My favourite Speaker's story relates to the reason that the Speaker says prayers and nods to both the Government and Opposition at the beginning of each sitting. Asked why this was done, the reply was that having looked at the Government and looked at the Opposition, the Speaker was praying for the People.

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The Commonwealth is itself a symbol of the transformation of an imperial hierarchy into a fellowship of equals. ***—Indira Gandhi***

Why The Westminster System?

Ken. Coghill*

The system of parliamentary government prevailing amongst Commonwealth Parliaments has great strength, which should be explained and promoted strongly and widely, especially when democracy is spreading as a principle on which to base government.

Our system, often called the Westminster system, shares features with systems used in some non-Commonwealth countries and its central principles should not be thought of as limited to the Commonwealth.

The features of our system include:

the "Parliament", which consists of the Head of State (Monarch or President) and the House or Houses of Parliament (i.e. may be unicameral or bicameral); (For example see Victoria's Constitution Act 1975);

Members of Parliament are elected at periodic general elections, usually in single member constituencies. Many upper houses have multi-member seats.

Members of Parliament are regarded as representatives rather than instructed delegates of their constituents;

the rights of the minority in the Chamber are protected;

the timing of general elections is usually at the initiative of the head of government, subject to provisions for a maximum term;

to practise, Members of the Executive Government are formally appointed by the Head of State on the recommendation of the party leader who has or appears to have the support of the majority of Members of the House of Parliament (Lower House, if bicameral);

the Executive Government is constituted from Members of Parliament, subject to certain rights of non-Members to remain or be appointed for limited periods;

the Executive Government is accountable to the Parliament, and may only expend money appropriated by the Parliament;

the Parliament is the ultimate or "transcendant" authority, and its powers cannot be supplanted by citizen-initiated referenda, citizen-initiated recall of elected members, etc.

the freedom of speech, debates and proceedings of parliament is secured against any questioning in any court or place outside of Parliament.

Origins

These principles derive from Britain's "Glorious Revolution" of 1688 and the subsequent Bill of Rights (1689). The application of these principles has evolved in different ways in different Parliaments and even between Houses in bicameral Parliaments, but their basic features have withstood the tests of time and other challenges. Although we refer to the Westminster *system*, political practices, if they are to endure, have to evolve rather than be imposed.

Recorded debate on the philosophical principles underpinning political structures have been with us from at least the 5th Century B.C. in Athens. Aristotle classified political regimes according to three types: monarchy, aristocracy and democracy. He described the ideal political type, as the 'polity', which was a mixture of aristocracy and democracy. The aristocratic part of the mixture lay in wisdom or knowledge, that was blended with the democratic so that a citizen culture could prevail.

The Hellenistic Greeks believed that only direct representation was truly democratic, and that to vote for someone else to represent the interests of the majority was inherently oligarchical. For this reason, the Greeks chose their Executive Council (Boule) from the general assembly (Ecclesia) by lot and not by election, and it was eligible to operate for one year only. The ancient Greek notion of the Boule, is today the modern Greek word for parliament. It serves as an early example of a political mechanism created to accommodate the needs of its citizens.

The British Parliament, in its own way, evolved historically and without any preconceived theoretical foundations. This prime political structure evolved on the basis of practical considerations rather than any deliberative doctrine. As one writer in this field has put it:

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> The British Parliament has always been an eminently practical institution composed of practical men. Parliament has never been a seminar of distinguished political philosophers intent on perfecting a planned and logical parliamentary system.*

Any discussion on the strength and durability of the British Parliament has to include a comparison with the constitution of the USA and its doctrine of the separation of powers. In the USA the Head of State (President or State Governor), is elected separately, has executive authority and appoints the Executive Government. The Executive Government is quite deliberately separated from the legislature.

During the period in the 18th Century that historians have termed "The Age of Reason", a growing confidence among intellectuals and political philosophers in the possible perfectibility of man gave rise to theoretical abstractions about political power. One of the most notable political theorists of the period was Montesquieu (1689–1755).

In effect an early sociologist, Montesquieu in his *L'Esprit des Lois* (Spirit of the Laws, 1748) sought to apply scientific principles to political theory by arguing that the characteristics of any given society are inextricably bound up with its environment. He is best known for his thoughts on constitutional theory and for his study of English constitutional monarchy. In his *L'Esprit des Lois* he sought to analyse the British Constitution.

His conclusion had a seminal impact on the political thinking of both the American and French revolutionaries of the late 18th Century, and was subsequently embodied in the U.S. Constitution and in the French Declaration of the Rights of Man. Montesquieu was concerned with the problem of power, and believed that this could best be contained in any well ordered society through a strict separation of the legislative, executive and judicial function. He wrote:

> If the legislative power is united with the executive power in the hands of one person or any body of officials, there can be no liberty, nor can there be any liberty if the power to judge is not separated from the legislative and executive powers.

Although this ideal was perceived as an interpretation of the British constitutional monarchy, in practice it was a theoretical and neat over-simplification of reality.

Such a strict separation of powers was never part of the evolution of the British constitution. Indeed, a strict application of the separation of powers has within it the potential for political paralysis.

The constitutional separation of powers in this way makes each arm of government the exclusive judge of its own competence, e.g. the Congress cannot intervene in the deliberations of the U.S. Supreme Court, but nor is the Executive responsible to it. In this way it has an even greater power for arbitrariness. As Pollard puts it in describing the American system:

> Within the Executive sphere in the USA, the President can do what he likes for his prescribed four years; no popular agitation, no vote of censure by the legislature can drive him from office. He can be impeached for crime but not for his policy. Neither Legislature nor Executive can correct an interpretation of the law by the supreme court, however violent or opposed to the public conscience it may be.**

This constitutional position has not changed since 1926 although the resignation of President Nixon shows that the Legislature need not be totally ineffective in this respect.

There is an absence of that mutual responsibility and control which has proved a better safeguard of liberty in Britain than has the separation of powers in the United States, although the role of the U.S. Congress in the budget process provides it with some potential for influence.

The British Bill of Rights of 1689, although the product of very specific battles with autocratic monarchy, and therefore not the product of constitutional theory in any abstract sense, had the effect of controlling arbitrary or autocratic action by one arm of government by establishing the key role of parliamentary consent.

The Act of Settlement in 1701, which deprived the Monarch of the power to dismiss judges, who henceforth could only be removed from office by the consent of both Houses of Parliament, again provided, through practical evolution, further safeguards in the exercise of power.

The susbsequent evolution of the Westminster System ensured that members of the executive came to be a collective Cabinet, whose members are Members of Parliament (subject to certain rights of non-Members to remain or be appointed for limited periods e.g. to remain in a caretaker capacity following electoral defeat). Note also the opportunity for life peers to be created in the British House of Lords.

Parliament and the Executive

This integration of the executive and the legislature is one of the great strengths of the Westminster System. The 19th Century political analyst Bagehot described the

*D. Menhennet and J. Palmer, "Parliament in Perspective" Nov. 1967.

**A.F. Pollard, *The Evolution of Parliament* 1926.

"efficient secret... the close union, the nearly complete fusion of the executive and legislative powers" through the cabinet. He said the cabinet was "a combining committee—a *hyphen* which joins, a *buckle* which fastens, the legislative part of the state to the executive part of the state".*

The reasons for this strength as a major contributing factor to the relative stability of Westminster system of governments bears close examination.

Inherent in the executive being derived from the legislature is that the executive must have the support of a majority in the legislature on major legislation, principally budget bills. This does not necessarily require that the Members of the political party or group from which the executive is constituted be in a majority in their own right, but it does require that they can attract sufficient support to defeat any want of confidence motion and to pass legislation necessary for the operations of government.

There is therefore a strong incentive for the establishment and maintenance of stable majorities which has stimulated the development of political party unity and cohesion. The latter is sometimes described as party discipline, with a false connotation of enforced compliance with decisions by the party. In my observation party discipline is no more and no less than action in accordance with decisions made through a democratic process by the Members of Parliament involved.

The development of the role of parties has had a valuable consequence going beyond and complementing the maintenance of stable voting blocs and with that stable government. Political parties are generally comprised of members united by similar underlying philosophies and political objectives. In modern political parties, members work together and with their party organisations to develop and refine comprehensive policy platforms for judgement by the electorate at general elections.

In the Westminster system the electorate is generally able to choose between platforms which include integrated policy proposals affecting the range of government activities, reflecting priorities based value systems. It is not restricted to choices between candidates representing or subject to the undue influence of pressure groups and parochial interests, at the expense of a comprehensive approach to government. Nor is there concentration on the personalities of candidates at the expense of the broad policy positions which they represent although modern campaigning in countries like Australia has focussed more attention on political party leaders.

A further consequence is that political fund-raising tends to be (at least in Australia) through the political party organisations rather than by or on behalf of individual candidates. This has the effect of reducing the incentive and opportunity to corrupt activities by MPs.

The executive, being able to depend on majority support in the legislature for its policy program, is able to implement a comprehensive and cohesive program. It is not subject to the vagaries of a legislature which does not accept its policy program, its legislative objectives or its budget priorities. It does not face the paralysis which arises from a deadlock between its objectives and a legislature which does not share them.

Except under extraordinary circumstances it does not face the paralysis which arises from the inability of the legislature to form stable voting blocs around any comprehensive and cohesive budget or other program of government acitivity. Nor does it face the paralysis which arises from the legislature being comprised of individual Members joining in shifting alliances reflecting sensitivities to pressure groups and parochial, interests, rather than the common good for which the legislature as a whole should be responsible, and for which the executive must be responsible.

Citizen Initiated Referendum

Recognition of the supremacy of the Parliament as the ultimate or "transcendant" authority has had another consequence which has contributed to its stability. The Citizen Initiated Referendum (CIR) has been consistently regarded as incompatible with the very basis of the Westminster system. There does not appear to be any Commonwealth Parliament which can have its laws revoked, or can have laws introduced against its will, by a referendum which is not initiated by the Parliament but rather by citizens.

The existence of CIR would be a reversion from the modern concept of Members being the trustees of their constituents towards the outdated and discredited concept of members as mere delegates, subject to instruction and recall a concept that was deemed inappropriate even as early as 1826 when Edmund Burke declared in his address to the electors of Bristol that:

> "Parliament is not a congress of ambassadors from different and hostile interests. It is a deliberative assembly of one nation where not local prejudice ought to guide but the general good."

The absence of provision for CIR preserves the authority of the Parliament and ensures that the comprehensive and cohesive program of the Parliament and the executive is not undermined by piecemeal actions. In particular, there is reduced opportunity for vested interests to mount superficially attractive campaigns which, if successful, distort overall priorities and destabilise efforts to govern for

*Contributed by SCTC Branch, Lok Sabha Secretariat.

the common good. Similarly, there is no opportunity for Members to use CIR as a vehicle for promoting either themselves personally, or policy positions for which they have been unwilling or unable to obtain majority support in the Parliament or both. These uses of CIR have characterised its use where provision for it exists.

Other models

In reviewing the qualities of the Westminster system as a mechanism that supports a relatively stable political culture, it is useful to compare it with other systems.

In France, before the Fifth Republic, which was established in June 1958 under De Gaulle, the presence of a multiple party system made effective government very difficult. De Gaulle's revision of the Constitution was based on re-constitution of the authority of the state under the leadership of a strong executive, and "rationalization" of the legislature so that it was no longer in a position to dominate the executive as it had done in previous Republics.

The need to assert, through a revised Constitution, the pre-eminence of a strong executive *vis-a-vis* a limited legislature, reflected the turbulent socio-political history of France both before and after the Revolution of 1789. The governmental machinery of the Fourth Republic before De Gaulle was characterized by divisiveness and instability, and was based on a constitution that had placed supreme power in the legislature—notably in the Lower House or National Assembly. The Prime Minister and his Cabinet governed only as long as they commanded majority support in the Assembly. The President of the Republic was elected by both houses of the legislature and, was like the British Monarch, essentially a titular Head of State.

> "Prime Ministers came and went with disturbing frequency as the majorities shifted back and forth in the Assembly. During the 12 years of the Fourth Republic, 20 Cabinets formed and dissolved, an average of one every 7 months."*

The French Fifth Republic sought to rid itself of the fragmentation that arose from the plethora of weak political parties by asserting the role of the executive. In some ways the French system is a hybrid of both the Presidential and the Cabinet systems. The French system comprises a President with a Prime Minister and Cabinet whose status is defined by political majorities in the Assembly. The President, however, is elected independently of the Assembly. The 1958 Constitution established the familiar forms of the parliamentary system—the bi-cameral legislature, a Cabinet and Prime Minister in charge of policy direction and responsible to the lower chamber which is invested with the right to censure and overthrow the Prime Minister and Cabinet. But, in contrast to the previous Republic, it delegated broader powers to the Chief of State (President) and placed serious limitations on the legislature. The President retains a power of initiatives in foreign affairs and defence.

The Japanese system, introduced during the period of Allied occupation following World War II, has many similarities to the Westminster system. The Emperor is Head of State but has no governing power. Legislative power is vested in the bicameral Diet, from which the Cabinet is derived and to which it is responsible.

Electoral systems

Most European Parliaments, other than in Britain and France, have unicameral or lower houses elected by some form of proportional representation, or a combination of single member constituencies and proportional representation. The use of the proportional representation electoral system is regarded by some analysts as a major feature distinguishing these legislatures from the Westminster system. This claim appears to be related to an assertion that the former does not produce a two party system and stable government, whereas the latter does. However, closer examination casts doubt on this analysis.

Britain had a short period of minority government with more than two parties represented in the House of Commons, (1974). Germany has effectively had a two party system (Social Democratic Party: Christian Democratic Union-led coalition), using a combined system in which the threshold requiring five per cent of the aggregate vote to achieve party representation has excluded small minority parties from the legislature.

Is proportional representation which does not produce a two party system necessarily a less effective parliamentary system?

The Danish Folketing is elected by proportional representation with a two per cent threshold. Since the 1960s there have been only minority governments in Denmark, and during that time the Folketing has established an ascendancy over the executive which would be the envy of many parliamentary traditionalists. For example, its Market Committee receives reports from Ministers on all agenda items before European (Community) Council meetings and has authority to veto the position the Minister proposes to take.

Conversely, the periods of relative instability of the Israeli government derived from the Knesset are well known. The Knesset is elected by proportional representation with a threshold of only one per cent, enabling

*C. Macridis and R.E. Ward (ed), *Modern Political Systems* (New Jersey, 1968).

representation by very small minority parties, which have been able to wield disproportionate influence by exercising the balance of power between the major parties. However, the Netherlands, with an even smaller threshold of only 0.67 per cent, has enjoyed relatively stable government. Its system of technocratic consensus is very different from the Westminster model.

It would seem that the stability of government in a parliamentary system is determined by a much more complex range of factors than whether it produces a simple two party system.

Architecture

A further interesting feature typical of Commonwealth parliaments is the seating arrangements within the chambers. In possibly no other decision-making forum, are the members seated in parallel rows of seats facing each other with their chairman at one end, between the rows.

The seating arrangement at the British House of Commons appears to be a mere historical accident, arising from the fact that it once met in a church using choir pews.

In almost every non-Commonwealth legislature, seats are arranged in part-circle rows facing the Chair, and in some cases there is also a podium located in front of the Chair from which Members address the Chamber. It has been argued that these physical arrangements remove some of the adversorial nature of legislative chambers. They are more conducive to reconciling differences and the achievement of consensus, which many regard as preferable to decision-making that relies simply on the weight of numbers.

Business management

A procedural feature common in non-Commonwealth parliaments but found in few Commonwealth Parliaments (e.g. India's Lok Sabha) is the formal programming of debates. The programming of debate, by the Speaker acting on his own authority after consultation or through a representative committee, allows debates to be set down for particular times and limited to specified periods. In some well-developed systems, the periods for debate are divided between the parties on some recognised basis, with each party then determining the order and speaking times of their individual Members according to their own procedures. Traditionalists will point out that such a system compromises the rights of individual Members.

However, such a system recognises the reality of political parties in which Members willingly and voluntarily give loyalty to their parties, and in return derive certain advantages. The system has the advantage of enabling much more orderly and predictable processing of parliamentary business.

Conclusion

As a system that has evolved over the centuries, the Westminster parliamentary model has proved itself an adaptable, practical and durable form of government.

As the Blackwell Encyclopaedia describes it:

> "...the Westminster model itself is not a static entity but was evolved to meet changing conditions. The Westminster model of the constitutional theorists must be distinguished from government as this has evolved at Westminster and still more from the practice of government in Commonwealth countries."*

The way in which the essential features of the Westminster system have been modified to better fit the specificities of a wide range of countries, both within the Commonwealth and outside the Commonwealth, bears testimony to its flexibility. This endurance over time and in different contexts qualifies the Westminster system as a classic which Aristotle might approve. As inheritors of a system that has served us well, we should promote it to those who are reviewing or establishing democratic systems of government elsewhere.

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*Blackwell *op.cit*

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Committees as part of the Parliamentary Process

Clive E. Griffiths*

The Legislative Council has over the years increased the number of Standing Committees having various responsibility for aspects of the Parliamentary process. The Council now has 5 Standing Committees which assist the House to either investigate the activities of the Executive or participate in the legislative process. Two of these Committees have been in operation for some years whilst the other three were only established in 1989.

The Committees which already existed are the Standing Committee on Government Agencies which was established in 1982 and the Joint Legislative Assembly/ Legislative Council Standing Committee on Delegated Legislation which was established in 1987.

The newly established Committees are the:
Standing Committee on Legislation;
Standing Committee on Constitutional Affairs and Statutes Revision; and
Standing Committee on Estimates and Financial operations.

The roles and functions of all these Committees are as follows:

Standing Committee on Government Agencies

The committee consists of 6 members and its functions are to examine the purpose, finance, accountability, extent, nature, administrative control and methods of State Government agencies, including statutary corporations, primary produce boards, regulatory and quasi—judicial bodies, trustees of Government agencies, advisory committees and local and regional bodies (excluding municipal authorities) that are the subject of legislation of the Parliament of Western Australia.

Joint Standing Committee on Delegated Legislation

The committee consists of 6 members of each House and its role is the scrutiny of subordinate legislation and to recommend, where necessary, the disallowance by Parliament of subordinate legislation.

Standing Committee on Legislation

The committee consists of 5 members and its functions are to consider and report on any Bills referred to it by the House. Bills originating in either House, other than those which the Council may not amend, may be referred to the committee after their second reding or during any subsequent stage by motion without notice. A referral by the House includes a recommittal.

Standing Committee on Constitutional Affairs and States Revision

The committee consists of 3 members and its functions are to consider and report on what written laws of the State and spent or obsolete Acts of Parliament might be repealed from to time; what amendments of a technical or drafting time nature might be made to the statute book; the form and availability of written laws and their publication; any petition (All petitions stand referred to the committee after their presentation to the House); and any matter of a constitutional or legal nature referred to it by the House.

Standing Committee on Estimates and Financial Operations.

The committee consists of 5 members and its functions are to consider and report on—

(a) the estimates of expenditure laid before the Council each year, and
(b) any matter relating to the financial administration of the State.

Some observations on the operations of Committees

The operation of Committees requires members to undertake their various roles as members of Parliament in a slightly different way. In considering the operation of committees we need to consider what are the functions of Parliament and accordingly the way in which a member of Parliament contributes to those functions.

In 1989 I had the privilege of serving on the Parliamentary Standards Committee which was established by the Government to inquire into and report on a large number of specific Terms of Reference but which generally

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related to parliamentary conduct and standards.

In its Report the Parliamentary Standards Committee summarised Parliaments functions as:

(a) providing Government;
(b) examining Government;
(c) granting supply; and
(d) representing the people.

Parliament and its members can seek to exercise their responsibilities through debate in the Chamber however the greater use of Committees has introduced a forum which can allow discussion rather than debate. Furthermore the committee system allows for greater public participation in the Parliamentary process.

The Committee process also has a positive effect upon the members expertise and ability to deal with their parliamentary responsibilities. This aspect was expressed in the Report of the Commission of Inquiry which investigated allegations of misconduct and corruption in Queensland when Commissioner Tony Fitzgerald said:

> There is a need to consider introducing a comprehensive system of Parliamentary Committees to enhance the ability of Parliament to monitor the efficiency of Government. Parliamentary Committees enhance the skills of backbenchers of all parties and increase their experience in and familiarity with public administration, as well as reinforcing their sense of purpose and appreciation of their independent Parliamentary role and responsibility.

Committees have undoubtedly become, and will continue to be, a valuable part of the way in which the Parliament, and its members, undertake their responsibilities.

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Bermuda—Geography, Capsule History and Government

James E. Smith*

Geography

Bermuda is the name given to an isolated chain of small islands approximately 3,000 miles from Europe and 600 miles from North America, (latitude 32° 18′ north and longitude 64° 46′ west). The principal islands, upon which practically all the population lives, are connected by a series of bridges and are about 22 miles long with an average width of between a half and one mile.

Until 1940 the aggregate, area of these islands was 19.34 square miles. In that year, the United States Government, operating under the authority of a Land Lease Agreement with Great Britain, reclaimed 1.25 square miles of land by uniting and enlarging some of the islands with material dredged from the surrounding sea, thereby increasing the land area to 20.59 square miles.

The climate, salubrious and mild throughout most of the year, is perhaps Bermuda's major geographical asset, characterised by long periods of bright sunshine and small seasonal variations of temperature. In contrast to the North American mainland to the West, the colony is frost-free, the annual maximum mean and minimum temperatures averaging 89.8°F., 70.2°F., and 47°F. respectively. Precipitation is distributed fairly equably throughout the year. The annual average of 57.64 inches is generally adequate for local agriculture and normal domestic and other purposes. Most buildings are dependent on rain water caught on the roofs and stored in underground tanks.

Bermuda is generously endowed by nature with a colourful variety of trees, plants and flowers which grow luxuriantly throughout the year, but, as with many heavily populated areas, the colony's natural scenic beauty and green lushness is threatened by a growing population, urbanisation, and what is often misconstrued as progress.

The housing requirements of a bourgeoning population (approximately 60,000), coupled with the expansion of the tourist industry and a rapidly expanding exempted company business, have encroached so rapidly on the steadily diminishing arable land that almost all of the food consumed in Bermuda has to be imported from other countries. Agriculture on the limited land area available is of an extremely intensive type, consisting of small holdings, worked by local farmers and Portuguese from the Azores, who come to Bermuda under contract for this purpose.

The capital, Hamilton, was given that distinction in 1815, succeeding St. George's, the colony's first settlement and capital. Most of the Government administrative buildings are located in the capital, along with the sessions House, which houses the House of Assembly Chamber and offices and the Supreme Court, and the Cabinet Building, which houses the Secretary to the Cabinet, his stall and the Senate Chamber.

Capsule History

The exact date of Bermuda's discovery involves some conjecture, but the evidence strongly suggests that a Juan di Bermude, (after whom the islands were named) arrived fortuitously in 1503 and returned in 1515 to explore, with a view to possible settlement.

Bermuda was actually settled by the English in the early 1600's after a ship, commanded by an Admiral Sir George Semers, carrying settlers and suppliers to the newly-established colony of Virginia was shipwrecked off the coast in 1609.

The early settlers landing in Bermuda represented a mixed bag, coming from various walks of life, including in their numbers white indentured servants, apprentices and Blacks. The first Blacks were not initially classified as slaves, but the heinous system of black enslavement soon became an established feature of colonial life in Bermuda. Other groups introduced into the colony during its early days included captured North American Indians and Irish and Scottish prisoners-of-war sent out during the Cromwellian regime in England.

For many years the colony was run by a London-based company, the Somers Island Company, whose original objectives were to develop a profitable agricultural economy based on the growing of tobacco and other products. The experiment failed abysmally, and Bermudians were forced to look to the sea for their livelihood, establishing in 1678 the foundations of a very lucrative salt-making industry at Turks Islands to the South, which in turn stimulated a brisk and generally successful trade between Bermuda, the West India's and the eastern seaboard of North America.

The colony's association with the Somers Island Company, unpalatable and contentious for the most part, was

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terminated in 1684, and Bermuda entered a new era under the direct control of the British Government.

During the 1700s Bermudians became more and more dependent on seafaring activities, supplementing the salt-making industry and the carrying trade with privateering activities and a ship-building industry, which, though fickle and subject to external influences, proved to be extremely popular and profitable throughout most of the eighteenth century. Against this backdrop of trade and commerce, agriculture continued to decline at an alarming rate, resulting in extreme distress and near-starvation conditions when trade was in the doldrums or when food supplies were late in reaching the island.

The first half of the 19th century witnessed the loss of the salt trade to the Bahamas Government, a catastrophic decline in the carrying trade, the virtual demise of the ship building industry and the emanicipation of the slaves in 1834, by which time the black population enjoyed a slight numerical superiority over the white community. After 1840 there were serious and sustained attempts to revive agriculture, which, among other things, resulted in the arrival, on a regular basis, of Portuguese agricultural workers, the descendants of whom are now a very significant proportion of Bermuda's resident population. During the American Civil War (1861-65), Bermuda enjoyed a fleeting period of prosperity when St. George's, the former capital of the colony, became an entrepot for goods coming from, and destined, for, the Confederate States of the South.

The end of the nineteenth century saw the beginnings of a tourist trade which gathered strength and momentum through the years, particularly after World War II, and the advent of commercial airline flights. This trend has intensified to the extent that for many years Bermuda's economic future has been inextricably linked to tourism. Another vitally important revenue earner is the exempted company business which has grown phenomenally over the past two decades. These two, tourism and the exempted company business, are now irrefutably the twin pillars of Bermuda's economy.

Government

Bermuda's first Parliament met in St. Georges, the colony's first capital, on Ist August, 1670, and has been in continuous existence since then.

The colony's original constitution remained basically unchanged until modern times. The first Governors were sent out by the Somers Islands Company, but since 1684 the Governors have been appointed and controlled. The House of Assembly, elected on a limited franchise based on property ownership, could pass legislation, but the Governor reserved the right to veto any laws passed by the House. However, he could not force the legislature to pass laws of his choosing or to agree to taxes and expenditure for projects with which they disagreed.

The first significant change to the then status quo came in 1888 when the Governor's Council was supplemented by an Executive Council and Legislative Council, the latter of which became the second chamber of the Legislature.

The executive firm of Government now consisted of the Governor and the Executive Council, which, included Senior Civil Servants (mostly from England) as ex officio members and five or six elected members of the House of Assembly, appointed by the Government in his discretion. The Governor still retained the right of veto and, though he could seek the advice of the Council about legislature he was not obliged to accept it. The Legislature, now bi-cameral, consisted of the House of Assembly with a complement of thirty-six members, four from each of the nine parishes into which the colony was divided, and the Legislative Council, which had as ex officio members Senior Civil Servants (again mainly English) and other nominated members appointed at the discretion of the Governor.

Responsible self-government was finally realised in the 1960's when a groundswell of political ferment paved the way for dramatic and far-reaching constitutional changes.

In May 1963, Bermuda's first political party, the Progressive Labour Party, was formed, and in the following year the United Bermuda Party emerged. A Joint Select Committee Report in 1965 led to the holding of a Constitutional Conference on London, which in turn gave birth to the Bermuda Consititution Order, providing for internal self-government. The new constitution was to come into effect following the election of 1968, the first in the islands history to be conducted on party lines and the first to be based on universal adult suffrage for persons over the age of twenty-one.*

The Government under the Constitution of 1968

Under the Constitution, Bermuda now enjoys a responsible form of Government where the initiative for managing the affairs of the colony has effectively passed from the English Governor and his influential Civil Servants to the elected representatives of the Bermudian people. The Governor's Role has changed to being more the ceremonial head of the

*Throughout history, members of the House of Assembly had been elected by the very few who could meet the freehold voting qualifications. It is significant that when the slaves were emancipated in 1834, the property qualifications were increased to ensure the monopoly of the Government by a minority of the weather whites. Property qualifications continued, with amendments, until 1963, when "The Parliamentary Election Act" was passed, enfranchising everyone over the age of twenty five, while guaranteeing the privilege of property-owners by reserving for them an extra, or plus, vote. In January 1966, this Act was amended to eliminate the plus vote and to enfranchise everyone over the age of twenty-one. Woman had been given the vote in 1944 and in 1989 the voting age was lowered to eighteen.

colony rather than the effective administrator of it, but he still retains responsibility for external affairs, defence, internal security and the police, areas on which he is nevertheless constitutionally obliged to consult with the Government.

The Legislature

The Legislature comprises the House of Assembly, The Lower House, consisting of forty members of Parliament (two from each of twenty electoral constituencies) with a Speaker and Deputy Speaker elected from amongst the Member and the Senate, The Upper House, which consists of eleven senators—five appointed by the Governor on the advice of the Premier, three appointed by the Governor on the advice of the Opposition Leader and three Independents appointed by the Governor acting in his discretion.

Both Houses can introduce and pass legislation but the usual sequence is for the House of Assembly to initiate and pass a law before sending it to the Senate for approval, after which the Governor as the Queen's representative, signs it into statute. The Senate, presided over by a President and Vice-President elected from amongst the Senators themselves, cannot initiate money bills, but does have the power to delay the passage of a money bill for a period of two months, at which time the bill in question is automatically presented to the Governor for his official assent.

The Executive

The Premier is the head of the Government. The unique position of authority engaged by him is derived from his ability to command a majority in the House of Assembly and his sole right to appoint and discharge Cabinet Members.

The Premier, in addition to being responsible for speaking in the House of Assembly on reserved subjects, presides over the Cabinet, exercises a general supervision over Government Departments, and approves important departmental decisions where reference to Cabinet is not required. The Premier also makes recommendations to the Governor for appointments to various boards and statutory commissions, as well as for appointments to high judicial offices such as the Chief Justice, other Judges and Lord Justices of Appeal.

The Cabinet is composed of no less than seven but usually thirteen (the maximum, according to the Constitution) Ministers personally selected by the Premier. The Cabinet's primary function is to determine Government policies and to exercise a general supervision of all Government departments in the implementation of these policies. Ministers have a collective responsibility for Government Policy as well as an individual responsibility to Parliament for the manner in which their departments function. As the political head of his or her department, the Minister is answerable for all its acts and omissions and, as a Member of Parliament, is available to answer questions relating to his or her Ministry.

A Governor's Council is also provided for in the Constitution, consisting of the Governor as Chairman, the Premier and not less than two or three other Ministers appointed by the Governor in writing after consulting with the Premier. The main function of the Governor's Council is to consider those matters for which the Governor is responsible under the Constitution—namely external affairs, defence, internal security and the Police.

Judiciary

The Judicial Department is responsible for the administration of justice, including all matters concerned with the Court of Appeal, Supreme Court Magistrates Court, Adoption and Special Courts, Provost Marshal General, Bailiff and Collecting Sources. The Registrar of the Supreme Court is the Chief Administrative Officer and is responsible to the Chief Justice. The Attorney General is the Chief legal advisor to the Government. The department is responsible for giving legal advice to all departments of Government; for legislative drafting; instituting and directing all prosecutions and preparing contracts, legal instruments, etc.

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The Theory of the Supremacy and Independence of Parliament: A Case Study of Botswana

C.T. Mompei*

In almost all Commonwealth countries, the authority of the state is divided into three categories, viz., Legislative, Executive and Judicial. In this "separation of powers", the Legislature or Parliament or National Assembly (as is commonly referred to in Botswana) occupies a pivotal position. Michael Ameller argues that "Parliament lays down basic principles which the Executive has to apply and which the judiciary has to use as its frame of reference". This implies that the legislature takes precedence over the other two.

Legislative Powers of Botswana Parliament

According to Section 86 of the Constitution of Botswana, "Parliament shall have power to make laws for the peace, order and good Government of Botswana." In other words, the making of the laws is entirely the business of Parliament. Botswana Parliament is composed of the President ("as an ex-officio member who has the right to speak and vote"), 34 Elected Members, 4 Specially Elected Members and the Attorney General who is the principal legal adviser who has no right to vote.

In the concept of democracy, it is implicit that the initiative in law-making should rest with the Legislature but in actual fact this right is exercised by the Executive. This is quite understandable because the Executive is best acquainted with the needs of the country. It is the Executive through the Attorney General's Chambers in Botswana which is better equipped than individual Members of Parliament to draft Bills that are legally acceptable. It is the Ministers who always introduce Bills in our Parliament. Members of the backbench also have the right to present their Bills but they do so through the procedure of a motion. The procedural practices of how a Bill is presented in Parliament and how it becomes an Act are similar to the practices in most other Commonwealth countries. For instance, in Botswana, presentation of a Bill is always preceded by a request by the Minister (or author of the Bill) for leave to introduce it after the title indicating its purpose has been placed on the Order Paper. The Bill passes through its varied stages (i.e., First Reading, Second Reading, Committee Stage, Third and Final Reading) until it is finally passed and thereafter has to be assented to by the President. If the President withholds his assent to a bill, that Bill shall be returned to Parliament.

Budget

Apart from legislation, other powers and functions of Parliament include control of finance and the scrutiny of the bureaucracy. Budget or the Annual Financial Statement is viewed as an instrument of policy in Botswana because it can bring about a radical distribution to the national income and strongly influence the economic and social structure of the country. Since it spells out with detailed facts and figures the Government's programme of action, it is just and proper for the Executive to work out all the implications of the programme. In other words, since the Government, through the executive has the accurate picture of the needs of various services and of the amount of revenue likely to be available, it is not surprising that, Ministers and in the case of the Budget, Minister of Finance and Development Planning is charged with the responsibility of accessing the cost of running the public service and tries to make a fair distribution of the resources.

The budget, as already stated, is presented by the Minister of Finance and Development Planning and after one clear day, it is discussed in two stages. The first stage is the general discussion when only the broad outlines of Budget and the principles and policies underlying it are discussed. This discussion is for 6 days. The second stage is the presentation of Appropriation Bill which seeks to appropriate money from the Consolidated Fund and the Development Fund for the ensuing financial year. Botswana's financial year commences from 1st April of each year to 31st March of the following year.

The detailed discussion of this Bill is called Committee of Supply which lasts for 14 days and individual Ministries are alloted specific times within which debates on "their requirements" are held. There is no expenditure in excess of the sums authorised by Parliament that can be incurred without the sanctions of Parliament. Whenever there is a need to incur extra expenditure a Supplementary Estimates entitled "Supplementary Appropriation Bill" has to be presented to Parliament. It should be noted that in Botswana, Defence Budget forms part of the general budget.

Committee Systems

As stated earlier, Parliament has powers to scrutinise the

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bureaucracy. Botswana Parliament has Committees which are appointed to deal with specific items of business requiring detailed or expert consideration. In Botswana there are about ten Parliamentary Committees—namely, Public Accounts Committees, Committee of Selection, House Committee, Finance Committee, Standing Orders Committee, Committee on Subsidiary Legislation, Committee on Government Assurances and Motions Passed by the National Assembly, Committee of Privileges, Law Reform Committee, Committee of National Assembly Staff and Parliamentary Structure Committee.

These Parliamentary Committees are purely advisory in character and have limited powers. For instance, in accordance with Section 92 of the Standing Orders, "No Select Committee, other than Finance Committee or Public Accounts Committee, shall exercise its power to send for persons, papers and records, unless it has been specifically permitted to do so by order of the Assembly." These Committees, however, have the right to meet at such times and such places as they may determine provided they do not sit during a Sitting of Parliament. Another feature of Botswana Parliamentary Committee is that, "Every Select Committee shall be so constituted as to ensure as far as is possible that the balance of parties in the Assembly is reflected in the Committee." This is in conformity with Botswana's democratic principles. In Botswana the motion of delegated legislation is highly prevalent. The main objective of delegated legislation is to invest the Government with the real power to make rules and regulations on behalf of Parliament. The powers of delegated legislation are stipulated in the Statutory Instruments Act No. 21 of 1984 which reads "An Act to provide for the making, publication and operation of subsidiary legislation and for matters connected therewith." It is interpreted as a "proclamation, regulation, rule of court, order bye-law or other instrument made, directly or indirectly, under any enactment and having legislative effect." The delegation of powers to the Executive can be considered a threat to the supremacy of Parliament, particularly if the Government tends to abuse the power, but fortunately in Botswana, the delegation of legislation has so far not caused any problem.

It can thus be realised that Government is by no means the agent that implements legislation enacted by Parliament but it is rather a dominating authority in formative stages of legislation.

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The House of Representatives of the Republic of Cyprus

Takis Hadjioannou*

Powers of the House

The Legislative power of the Republic is exercised by the House of Representatives in all matters except certain matters connected with education, personal and religious status which are reserved to the Communal Chambers.

Since Cyprus has a presidential system, Members of the Government may not be Members of the House of Representatives. The two offices are incompatible, and if a Member of the House is appointed by the President to become a Minister, he must relinquish his seat in the House. The President and Vice-President of the Republic may address the House personally or by message, or convey their views to the House through the Ministers. The Ministers may follow the proceedings of the House or of any committee of the House, and may make a statement to the House or to any Committee of the House on any subject within their competence.

Ministers are not constitutionally bound to appear before the House or before any committee of the House at the request of the House. In practice, however, no Minister has declined to do so when requested by the President of the House or by the chairman of a committee.

The term of office of the President of the Republic is, of course, constitutionally determined. Ministers hold office during his pleasure and the House, under the principle of separation of powers which permeates the Cyprus constitution, has no power to determine the length of the term of office of the Government, just as the Government has no influence over the length of the life of the House.

The President of the Republic and the Vice-president have the right to final veto on any law passed by the House which concerns certain specified issues of foreign affairs, defence and security. This power may be exercised either jointly by the President and Vice-President or separately.

As far as other types of legislation are concerned, the President and the Vice-President jointly or separately have only delaying power. They may return a law or other decision to the House. In such a case the House must again pronounce on the law within fifteen days or, if it concerns the budget, within 30 days. If the House persists in its decision then the President and Vice-President are bound to promulgate the law or decision in question by publishing it in the normal way in the gazette of the Republic.

Term of office

The term of office of the House of Representatives is five years. A general election must be held on the second Sunday of the month immediately preceding the month in which the term of office of the outgoing House expires. The outgoing House continues in office until the newly elected House assumes office, but during this time the outgoing House does not have the power to make any laws or to take any decisions on any matter, unless it is a case of exceptional or unforeseen circumstances. These circumstances would have to be specifically stated in any law or decision approved during this time.

The House may dissolve itself by its own decision before its term of office expires. Such a decision must also specify the date of the general elections which must not be less than 30 or more than 40 days from the date of the dissolution decision and must also specify the first meeting of the newly elected House which must not be later than fifteen days after the general elections.

Members' immunity

Some reference ought to be made to the arrangements for immunity for members of the Cyprus House of Representatives. Representatives have immunity from civil or criminal proceedings in respect of anything which they may say, or in the way that they cast their vote, in the House. A representative may not be arrested or imprisoned without leave of the Supreme Court as long as he continues to be Representative, unless the Representative in question is taken in the act of committing specified grave offences.

Membership of the House

The House has 80 seats. According to the constitution, 56 Representatives are elected by the Greek-Cypriot community and 24 by the Turkish-Cypriot community, separately, from amongst their members respectively, by universal suffrage of adults over the age of 21, by direct and secret ballots which should be held on the same day for both communities.

It is an unfortunate and highly detrimental fact for the well-being of the people of Cyprus that since 1964, when

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Turkish aggression against Cyprus took an overt form, Turkish-Cypriot Members have not attended the House, nor have elections been held according to the constitutional provisions among the Turkish-Cypriot community. Also the Turkish-Cypriot Vice-President and the Turkish-Cypriot Ministers and officials withdrew from the Government.

Despite the fact that this abnormality has now lasted for twenty five years, the House has maintained the seats allocated to the Turkish-Cypriot community vacant, these remaining at the disposal of Turkish-Cypriot Representatives once they are elected according to the constitutional provisions.

The electoral law at the moment provides for a proportional representation system. The number of seats in each constituency has been determined by law. The constituencies coincide with the administrative districts. Each elector may vote for a party or an independent candidate, without having the possibility of selecting candidates from different parties. The parliamentary seats are then distributed according to the electoral strength of each party.

Candidates for election to the House must be citizens of the Republic, must have attained the age of 25, must not have been convicted of any offence involving moral turpitude or dishonesty, and must not be incapacitated for reasons of mental health. A seat becomes vacant if its occupant dies, resigns, becomes disqualified due to conviction for an offence falling under the disqualifying categories or upon a Representative becoming the holder of the office of Minister, member of a municipal council, member of the security forces of the Republic, or of any public or municipal office.

The President of the House is Greek-Cypriot and is elected by the Representatives elected by the Greek-Cypriot community and a Vice-President is constitutionally provided for, who would be a Turkish-Cypriot and would be elected by the Representatives of the Turkish-Cypriot community.

In case of temporary absence of the President or Vice-President of the House, their functions are performed by the eldest Representative of the respective community unless the Representatives of the respective community decide otherwise.

The current Members of the House were elected at general elections held on 8 December, 1985. Five parties are represented in the House—The Democratic Rally Party with 19 seats, the Democratic Party with 16 seats, the AKEL Party with 10 seats, the EDEK Socialist Party with 6 seats and the ADESOK Party with 5 seats constitute the present House.

Procedure of the House

The ordinary session of the House of Representatives lasts for a period beginning in September and ending in July of the following year. The meetings of the House take place once a week, usually on Thursdays. The meetings of the House are open to the public and verbatim records of its debates are published. Extensive extracts of the debates are broadcast by radio.

The House is in quorum when at least one third of the total number of its Members are present. The laws and the decisions of the House are passed by a simple majority vote of the Representatives present and voting.

Agenda

The agenda must be distributed to the Representatives at least 24 hours prior to the meeting. The procedure of the House may perhaps best be outlined by explaining the agenda of an ordinary meeting.

The agenda of a normal meeting of the House consists of the following chapters:

Chapter A: Legislation
Chapter B: Introduction of Bills and Documents
Chapter C: Questions and Answers
Chapter D: Subjects tabled by Representatives

Chapter A: Legislation

Legislation is the first Chapter of any ordinary meeting of the House. Every bill on being introduced in the House is referred by the President for examination by the appropriate Committee of the House. The introduction of the bill in the House is a formal stage, intended only to give the House notice that the bill has been introduced. This is considered to be the first reading of the bill.

With the exception of those bills which are declared to be of an urgent nature by a majority of the Representatives, no bill which has passed the Committee stage may be debated in the House before the lapse of 48 hours after it has been distributed to the Representatives together with the report of the Committee.

A Committee, when considering any bill referred to it, examines all memoranda, appeals, recommendations and suggestions submitted on the subject before it by any organization or corporate body or by any citizen. The Committee also considers all proposals for amendments of bills put forward by Representatives.

A Committee may, during its deliberations, hear any person or any representative of any organization on any matter relating to the subject of a bill or a decision before it. Any member of the Committee may question such persons for the purpose of elucidating any statement made by him or for the purpose of obtaining further information. But members of the Committee do not enter into discussion when any person other than the members of the Committee is present. This rule may be waived in cases of government experts who may be called to assist the Committee on any

technical matter deliberated by the Committee.

When the Committee completes its deliberation on any bill referred to it, it prepares a report for distribution to the Representatives.

The Report usually contains the following:

(a) The main provisions, in a summary form, of the bill;
(b) The amendments suggested by the Committee, if any, and the reasons for such amendments;
(c) The texts of all amendments, recommended by members of the Committee;
(d) The observations of the Committee on the bill before it and any recommendations as to points which the Committee wishes the House to consider or convey to the Government.

Where the Committee has not decided unanimously on a bill, the fact is stated in the report and the points on which there is a divergence of opinion are indicated, as well as the positions taken by the majority and the minority.

Any Representative or Representatives of a Committee who find themselves in disagreement with the decision of the Committee, or any part of it, may address the House and explain their views.

When the Committee reports back to the House, the latter considers the bill and the report of the Committee and debates the bill, first on issues raised by the bill as a whole and then clause by clause. This is considered to be the second reading of the bill. At this stage verbal alternations are allowed, or, on the House so deciding, the bill may be referred for further consideration to one or more Committees.

The final stage in the House is the third reading when the House considers the bill as a whole and whether it should or should not become a law.

A law of the House comes into force on its publication in the official Gazette of the Republic unless another date is provided for by such a law.

Chapter B: Introduction of Bills and Document

Both Representatives and Ministers have the right to introduce Bills in the House. Representatives are limited only in one way in their ability to introduce bills to the House. This is that they are constitutionally inhibited from introducing any bill which relates to an increase in budgetary expenditure. The budget is introduced in the House by the Minister of Finance at least three months before the day fixed by law for the commencement of the financial year. If the budget has not been adopted by the House by the first day of the financial year to which it relates, the House may, by a resolution, authorize the meeting of any expenditure required by the Government for periods not exceeding one month at a time or two months in aggregate, from the consolidated fund. Such authorizations may not exceed the sums voted for each service for an equivalent period during the preceding financial year.

During the financial year the Government may, if necessary, introduce a supplementary budget for the approval of the House. In this case, as well as in the case of the budget, the House may approve or refuse its approval to any expenditure proposed, but it may not vote an increase in the amount of expenditure, or an alternation in the destination of expenditure.

Chapter C: Questions and Answers

Questions and Answers are the third Chapter of the agenda. The questions of Representatives and the answers of Ministers to whom they were directed are read by the Clerks of the House.

Questions of Representatives must conform to the standing orders on questions and must be brief and shall not contain any offensive expressions. Questions are sent by Representatives to the office of the House and when it is established that they are in conformity with the standing order on questions they are conveyed to the relevant ministry. Questions are read in the House by the Clerk together with the Answer.

Chapter D: Subjects tabled by Representatives

During Chapter D, discussion of a general nature takes place on topics tabled by the Representatives with the approval of the House or that arise from a question which has not been answered, or from a reply received from the appropriate Minister which is unsatisfactory. It has prevailed that a Representative may register a subject for debate without this being put before the majority of the House for approval, if the subject arises from a question.

Closure of a meeting

After the end of each meeting the agenda of the next meeting is announced. The agenda is established with the consent of the House. Any Member of the House may move any addition or amendment to such an agenda. Such a motion is decided upon by the House.

Speeches of Representatives

Speeches in the House are made from the rostrum of the House and are addressed to the House. Points of order may be raised by a Representative from his seat. Interruption of the speech by a Representative, personal attacks, and abuse are prohibited.

Voting

Voting in the House is by raising of the hand. The Clerks of the House are responsible for the counting of the votes.

Voting does not take place on each of the topics by counting the votes unless there is an objection. Usually the President asks whether there is an objection to the voting of an article or another issue. When there is no objection the article is approved.

Functions of Clerks

The Clerks of the House are Representatives appointed by the President of the House. Their functions consist of determining whether there is a quorum, counting the votes, reading the Questions and the Answers, reading the articles and the short title of bills, and reading the titles of the bills that have been introduced or other documents. They also keep a register of the Members present at each meeting of the House.

Parliamentary Committees

The parliamentary committees are set up by the Committee of Selection which consists of the President of the House as chairman, the Vice-President of the House as vice-chairman, and eight other members elected by the House. While appointing the members of the parliamentary committees, the Committee of Selection also appoints, the Chairman of each committee as well as the member who will be replacing him in case of his temporary absence or incapacity. The committees of the House are representative in the sense that political parties are adequately represented on them in proportion to the total number of their seats in the House.

The parliamentary committees of the House generally correspond to the Ministries of the Government and are set up to consider every bill or private bill or any other particular matter that may be referred to them by the House. On the completion of its deliberations every Committee prepares a report and sees to its immediate distribution to all Members of the House.

Ministers can be present at the debates of the Committees of the House and express their views; the Committees themselves have a right to summon any interested party, authority, organization, society, association, trade union, person or corporate body to give information and evidence or to express and explain an opinion or view on any bill or subject under consideration.

The decisions of the Committees are taken by majority. In case of equality of votes the chairman or the member deputising for him has a second or casting vote. Any disagreement by a member of the Committee and the reasons thereof can be briefly entered, at his request, in the report of the Committee.

The minutes of the proceedings of the Committee are kept in a summary form and copies of them are distributed to all members of the committee. The quorum of the Committees consist of at least one half of the total number of their members.

International Relations of the House

The House of Representatives is active in establishing and promoting relations with other national parliaments and international parliamentary organizations. At the bilateral level, relations with national parliaments are promoted through exchanges of parliamentary delegations and other visits by individual members of Parliaments. In certain cases these relations are further enhanced through the establishment of bilateral parliamentary friendship groups.

The House of Representatives has also established relations with international parliamentary organizations. The House is a member parliament of the Inter-Parliamentary Union, the Parliamentary Assembly of the Council of Europe and the Commonwealth Parliamentary Association. There is also a House Delegation for Relations with the European Parliament which has established a corresponding Delegation for Relations with Cyprus.

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Electing the Speaker by Secret Ballot A Speaker's Perspective

John A. Fraser*

The Canadian House of Commons has been blessed with a long succession of impartial Speakers. Only once in our history has the Speaker ever been the object of a motion of censure. However, shocking as it may appear, I think it is accurate to state that, until quite recently, this characteristic impartiality was achieved by successive Speakers not because our practices ensured the political independence of the Speaker, but rather in spite of the fact that they did not.

One of the impediments to the complete political independence of the Speaker was the manner in which Speakers were selected. From Confederation until 1986 Canadian Speakers were elected by the House of Commons upon the nomination of the Prime Minister. Although the candidates so nominated were usually acceptable to all Members, and although since the mid-1950s the nomination was usually seconded by the Leader of the Opposition, there have been cases where the Opposition had some reservations about the choice of the Speaker. Furthermore, as a nominee of the Prime Minister, the Speaker was always vulnerable to criticism by some Members whenever a ruling was made in the Government's favour. The very process by which the Speaker was selected had the potential to put the Speaker's impartiality in doubt.

Two reform committees in the early 1980s, both intent on strengthening the role of the Private Member, addressed this aspect of the Chair's vulnerability and recommended that the election of a Speaker be conducted by secret ballot. The Government responded favourably to the recommendation and the Standing Orders were amended accordingly in 1985. The *selection* of a Speaker had been turned into the *election* of a Speaker.

It is my belief that the new method of electing Speakers strengthens the impartiality of the Speaker by removing the Government's apparent control over the selection process. Furthermore, the secret ballot process, designed to give all Private Members the chance to become Speaker and to ensure that the Member elected truly represented the choice of the House, also had the effect of endowing the new Speaker, right from the commencement of his office, with a good measure of the trust and confidence so essential to the exercise of his mandate.

On September 30, 1986, the House of Commons met at three o'clock in the afternoon to elect a new Speaker for the first time by secret ballot. Every Member of the House was eligible to be a candidate except Cabinet Members, Party Leaders and Members who had notified the Chair in writing that they did not wish to be on the ballot. Thus, when the balloting started there were thirty-nine candidates on the ballot. Eleven hours and eleven ballots later, at close to two o'clock in the morning of October 1, 1986, I was greatly honoured to assume the Chair as Speaker.

Unfortunately, the historic and symbolic significance of the first election of a Speaker by secret ballot was, in some quarters, overshadowed by the novelty of the election process and news stories about Members of Parliament voting until the early hours of the morning until one candidate won a clear majority. Most coverage centred on the electoral process and the number of candidates. However, although some commentators criticized the process because it appeared drawn out and confusing, there were already indications, on election night, that the new process was having the desired effect on the attitudes of Members towards the parliamentary process.

One of the most talked about aspects of the election was the air of camaraderie which existed among Members of Parliament that night. Canadians who were able to watch the televised proceedings, witnessed the unfamiliar sight of Members chatting with one another in the centre aisle of the House while waiting for the ballot results. The Prime Minister was seen talking with the Leader of the Opposition and Members from all parties joined in the discussion. It was perhaps fitting that an election process which sought to enforce the impartiality of the Speakership should be inaugurated by such a demonstration of good will among Parliamentarians. They were electing one of *their own* to regulate their debates in the House and to protect their privileges and they realized that it was in their interest to support and participate in the process.

I can assure you that the significance of that first election was never far from my mind during the remaining two years of that Parliament. I was even more conscious of it when upon dissolution on October 1, 1988, I had to seek re-election in my constituency of Vancouver South. I had indicated that if returned in my riding, I would seek re-election as Speaker of the House of Commons once Parliament reconvened. My immediate problem then, the cause of much soul searching on my part, was how does an incumbent Speaker seek re-election as a Member of

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Parliament. Unfortunately, the reform committees which did such a commendable job of dealing with the election of the Speaker in the Chamber, had not addressed this problem.

I felt that were I to conduct a partisan campaign, I would be betraying the trust of *all* Members from *all* parties who elected me as Speaker; yet, I was reluctant to deprive my constituents of full participation in the electoral process.

In the end, while retaining my political affiliation, I opted to run a non-partisan election campaign based on my local record as an MP and as Speaker of the House of Commons. I was grateful to have the wisdom of this decision confirmed, first, by the voters in Vancouver South and, later, by the Members of the House of Commons who again elected me their Speaker at the opening of the Thirty-fourth Parliament.

I hasten to add that my second election as Speaker was not the marathon affair that the first one was. This time there was only one ballot and the whole procedure was completed in a little more than one hour on December 12, 1988.

As I listened to the kind messages of congratulations and support delivered by the Prime Minister and the Opposition Leaders immediately after my assumption of the Speaker's Chair, I was particularly struck by one comment made by the Hon. Edward Broadbent, then Leader of the New Democratic Party. He noted that while the Members of the House may, perhaps, have voted for me the first time on faith, they had voted, the second time, on the basis of reputation. I could not help but think that the manner of my selection had made the building of that reputation much easier than it might otherwise have been. I am grateful to have been able to honour the long tradition of the impartiality of the Speakership and I am thankful that the House of Commons by adopting the secret ballot procedure for electing its presiding officer has considerably facilitated my task in gaining the confidence and trust of my peers.

Now, perhaps, we can claim that the traditional impartiality of the Canadian Speakership is secured, not in spite of the selection process but rather, in large measure, because of it.

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Two cheers for democracy: one because it admits variety and two because it permits criticism. ***—E.M. Forster***

Electing the Speaker by Secret Ballot

Robert Marleau*

In Canada, the permanence of the Speakership in the House of Commons, and the choice of incumbent by election, are guaranteed not only by tradition and practice but also by the Constitution. The election of a Speaker is the first item of business at the opening of the first session of each Parliament, or when an incumbent resigns. The Speaker used to be simply appointed by the government in power, but now he or she is chosen freely by all Members of Parliament.

From Confederation until 1986, the ritual of choosing a Speaker altered very little. The Clerk of the House of Commons presided over the process, during which the Prime Minister made a short statement about the importance of the office of Speaker and put forward a Member's name. Until the early 1950s, this motion was seconded by a senior Cabinet Minister, after which it was usually seconded by the Leader of the Opposition. The other leaders spoke briefly, and if no other Member was proposed, the Clerk put the motion to the House and declared the new Speaker elected. The latter was then escorted to the Speaker's chair by the mover and seconder of the motion.

Events in the 1970s showed that a majority of Members wanted to remove the Speaker's appointment from the exclusive control of the Prime Minister.[1] The choice of a Speaker by the traditional method was one of the questions that attracted the attention of two successive House committees mandated to re-think certain aspects of parliamentary procedure. In 1982, the Special Committee on Standing Orders and Procedure, chaired by Thomas Lefebvre, argued that the House should have a say in choosing candidates to the Speakership:

> "The Speaker belongs to the House, not to the Government or the Opposition. Although the servant of the House, the Speaker is expected to show leadership in promoting and safeguarding the interests of the House and its members....Although the Speaker once elected has always become the true representative of the House of Commons, the Prime Minister under our practice has always exercised a very strong influence over the initial choice of candidate."[2]

In 1984, when the new Conservative government came to power, it made parliamentary reform a priority, announcing the creation of a Special Committee, on the Reform of the House of Commons, chaired by The Honourable James McGrath. The Committee considered and approved a certain number of the Lefebvre Committee's proposals, including the election of the Speaker by secret ballot. The House in turn accepted the recommendation, while making a few significant amendments to the method: for example, the idea of scrutineers was rejected, and it was decided that results would be announced after each ballot in alphabetical order rather than in order of number of votes received. The Standing Orders covering the new procedure were adopted on an interim basis on June 27, 1985, and permanently in June 1987.

The Practice

In Canada the proceedings of the House of Commons are televised, and so is the election of a new Speaker (apart from the counting of the ballots, which takes place in another room). However, the Standing Orders prohibit any debate and no question of privilege may be entertained. The rules also stipulate that the election of a Speaker cannot be treated as a question of confidence in the government.

One of the changes brought in by the new system is that the Clerk of the House no longer presides over the election. This role is now entrusted either to the outgoing Speaker or to the Member with the most seniority. The Member in the Chair has however the same right to vote as does any other Member. He or she is vested with all the powers of the Chair except that of casting a deciding vote and the power to rule on questions of privilege.

The Clerk has the responsibility of drawing up beforehand a list of the Members who do not wish their names to stand. All Members, with the exception of Cabinet Ministers and Party leaders, are entitled to stand for the Speakership. Members who wish to withdraw their names must so inform the Clerk, in writing, no later than 6:00 p.m. on the day before the vote.

The Clerk is also responsible for ensuring that ballots are distributed to the Members, who then print the name of their preferred candidate on the ballot and place it in a special box on the Table. The Clerk then proceeds to count them to see if one candidate has a majority of the votes. The number of votes received by each candidate must not be revealed by the Clerk, who under the Standing Orders must

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destroy the ballots once he or she is satisfied that they have been correctly counted.

After each round, the name or names of the Members having received the fewest votes, and of those having received five per cent or less of the total number of votes cast, are removed from the list of candidates. A candidate may withdraw his or her name, but if he or she does so before the second ballot a reason is given. Voting continues until one Member has received a majority of the votes cast. Once elected, the Speaker remains in office until a new Speaker is elected, normally when Parliament is recalled following a general election.

A memorable election

The Members of our House of Commons have used the new procedure twice now. On the first occasion, on September 30, 1986, the outgoing Speaker, John Bosley, presided over the election of the Honourable John Fraser, who became the thirty-second Speaker of the Canadian House of Commons. In many respects, this first experience will remain a memorable one in the annals of Canadian parliamentary reform.[3]

At the start of the sitting, Speaker Bosley explained the procedure and read out the names of the thirty-nine candidates whose names appeared on the first ballot. The Members left their seats and went to the lobbies, returning by the two doors located on either side of the Speaker's chair. Each Member received a ballot, and at the same time his or her name was crossed off the voters' list. They voted in portable booths installed on either side of the Clerk's Table. Once all Members had voted, Speaker Bosley placed his ballot in the box. The sitting was suspended while the Clerk left the Chamber to count the ballots. Once he had finished, the bells rang for five minutes to signal the resumption of the sitting and the proclamation of the results. Since the time taken by each round of voting ranged between 45 and 80 minutes and there were eleven ballots, the whole process, which began at three in the afternoon, did not end until eleven hours later. The Honourable John Fraser, the first Speaker to be elected by his peers, was escorted to the Chair by the outgoing Speaker.

Speaker Fraser was elected to a second term on December 12, 1988, but this time on the first ballot. His re-election ushered in the beginning of the 34th Parliament which followed the general election of November 21, 1988. Speaker Fraser had run a non-partisan campaign in his home riding, relying on his experience as Speaker to win the votes of the residents of Vancouver South, in British Columbia. Twelve candidates allowed their names to stand for the Speakership, although five, claiming that they were on the list by mistake, tried unsuccessfully to withdraw before the vote began. Under the rules, it is not permissible to withdraw one's name unless the Clerk has been informed in writing before the deadline set in the Standing Orders. The most senior Member in the Commons, Marcel Prud'homme, presided over the election and escorted Speaker Fraser to his Chair.

The reform of the procedures for electing a Speaker was without a doubt one of the most radical in Canadian parliamentary history. In many ways it has helped to enhance the Speaker's role and give it greater authority. The presence of an impartial person, dedicated to seeing that procedural rules are respected equally by all, and to protecting the privileges of all Members, is essential for the safeguarding of Parliament's liberties. Members can now participate in this election process, and freely elect the Speaker of their choice. Election to the Chair is undoubtedly the greatest tribute that a Member can receive from his or her peers.

END NOTES

1. On October 29, 1971, a private Member's bill that would have created a special riding for the Speaker was debated in the House. In 1968, Speaker Lucien Lamoureux resigned from his Party to run as an independent. He campaigned successfully in this capacity again in 1972, serving a total of three terms. His successor, Speaker James Jerome, became in 1979, the first Speaker to remain in office after a change of government in a general election.
2. Canada. Parliament. House of Commons. Special Committee on Standing Orders and Procedure, *Fourth Report*, December 3, 1982, pp. 12:3-4.
3. The following two articles can be consulted for more extensive details on this election:
   (i) Laundy, Philip; "Electing a Speaker-Canadian Style", *The Table: The Journal of Clerks At—The—Table in Commonwealth Parliaments*, London, 1987, vol. LV. pp. 42-50.
   (ii) Levy, Gary; "A Night to Remember: the First Election of a Speaker by Secret Ballot", *Canadian Parliamentary Review*,Ottawa, Winter 1986-87, Vol. 9, No. 4, pp. 10-14.

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Canada: Historical Background and Evolution of its Political System

Alain Lafleur*

Historical Background

It is believed that Canada's earliest inhabitants came across the Bering land bridge from Asia around 15,000 years ago. These people were the ancestors of Canada's native (Inuit and Indian) population. The earliest-known European settlers of Canada were the Vikings, who established a short-lived colony in Newfoundland about a thousand years ago. In 1534, Jacques Cartier landed at Gaspé and immediately took possession of the land in the name of France. From then on, the colony of New France prospered, from the time of the first permanent European settlement, Quebec, founded by Samuel de Champlain in 1608, to the Conquest of the colony by the British in 1759.

In 1774, the British, faced with the difficulties of governing New France's large and rapidly growing population, passed the Quebec Act, which recognized the French legal code and the federal system and granted legal status to the Roman Catholic church. In 1791, frictions between English-speaking and French-speaking Canadians led the British to pass the *Constitutional Act* that divided Canada into two provinces: Upper and Lower Canada. Both provinces were granted a legislature, each with its own Legislature Council and House of Assembly. This also meant that, for the first time, a representative government would represent the aspirations of the population of each regional territory.

Following the rebellion of 1837-38 and the ensuing recommendations of Lord Durham (1839), the British government passed the *Union Act* of 1841, which sanctioned the reunification of the two provinces into a single entity with a single representative and responsible government. The real power and influence continued to reside in the Governor General and his executive council, which represented the British monarchy in the colony.

At the start of the 1860s, however, the two linguistic communities started to question the Union Act of 1841. English Canadians were no longer satisfied with the principle of equal representation for the two groups in the legislature and wanted proportional representation. On the other side, French Canadians favoured a more autonomous government for each, feeling that this was the minimum needed for the proper development of French Canadians, their language, their religion and their culture.

To try and maintain a form of union between the two groups, many conferences, particularly the 1864 Charlottetown conference, took place. Many proposals were put forward, including confederacy. It was with the *British North America Act* of 1867 that Canada in its present form was finally born. The federal form allowed each group a certain degree of autonomy while a central government remained responsible for national affairs that concerned both communities.

Under the *B.N.A. Act*, the political system was a parliamentary one, representative and responsible, with a bicameral Parliament (Senate and House of Commons). The Act also clearly defined the separation of legislative, executive and judicial powers. In 1867, four provinces formed the federation: Quebec, Ontario, New Brunswick and Nova Scotia. Manitoba joined in 1870, British Columbia in 1871, Prince Edward Island in 1873, Alberta and Saskatchewan in 1905 and Newfoundland—Labrador in 1949.

Even though Canada had gained more autonomy in 1867 with the *B.N.A. Act*, it needed still more in order to continue its development and to pass legislation without having to refer it to London. In 1931, finally, the *Statute of Westminster* was passed and the Canadian Parliament gained the right to repeal any British bill that was already a Canadian bill. The Statute also established the right of the Canadian Parliament to legislate in affairs of an extra-territorial nature. In 1949, an amendment to the *B.N.A. Act* gave authority to the Canadian Parliament to amend the Constitution of Canada, though it could not change the balance of powers between the federal government and the provinces.

With the *Constitution Act* of 1982, the Canadian Constitution was finally patriated. Even though the authority of Westminster over Canadian affairs had been more symbolic than real, the Canadian Parliament wanted total sovereignty and official control over Canadian affairs. As the Constitution was patriated, a Charter of Rights and Freedoms was incorporated in it. At the same time, an amending formula was added, stipulating that any constitutional amendment would need the approval of atleast seven provinces representing at least 50% of the Canadian population.

Political System

Canada is a federal parliamentary state. Under the *Constitu-*

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tion Act of 1982, the executive is vested in the Crown and is exercised by a Governor General appointed by the Queen on the recommendation of the Prime Minister of Canada. The Governor General exercises executive powers on the advice of the Cabinet, which is made up of Ministers of the Government, chosen by the Prime Minister and responsible to the Parliament of Canada. Although no reference to the Cabinet is to be found in the *Constitution Act*, it is the body in which executive power is vested. Its members are normally elected members of the House of Commons, although Senators can also be appointed to the Cabinet.

The legislative power in the area of federal jurisdiction is vested in a Parliament, consisting of a Senate and a House of Commons. The Senate comprises 104 members who are nominated by the Governor General on the recommendation of the Prime Minister, on the basis of regional representation. They represent the ten Canadian provinces: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland-Labrador and the two territories under federal jurisdiction, the North-West Territories and Yukon. Senators are obliged to retire on reaching the age of 75. The House of Commons consists of 295 members elected by universal adult suffrage for single-member constituencies. A Parliament may last no longer than five years. Provincial legislatures are also elected on the basis of universal adult suffrage for single-member constituencies, and may not last longer than five years.

The Parliament of Canada has exclusive legislative power in certain specified matters, which include external affairs, the regulation of trade and commerce, defence, banking, Indian affairs, currency and monetary policy, citizenship, etc... It also has the general power to make laws for the peace, order and good government of Canada. Exclusive provincial powers include education, municipal affairs and institutions and the administration of justice in the province. There are also a number of concurrent powers, shared by the provincial and federal governments, that include agriculture, immigration, communications, transport and various other areas of social policy.

Current Political Conditions

On 4 September 1984, the Progressive Conservative Party, led by Brian Mulroney, won the federal election, ending more than twenty years of Liberal Party rule, for sixteen years under Pierre E. Trudeau, except for a brief interlude in 1979, when Conservatives, led by Joe Clark formed a minority government. The Conservatives won 211 of the 284 seats in the House of Commons in 1984, while the Liberals of John Turner retained only 40 seats and the New Democratic Party, led by Ed Broadbent, won 30 seats. In the November 1988 federal election, the Conservatives under Brian Mulroney were re-elected with 168 seats in the House of Commons, out of a total of 295. With 83 seats, the Liberals regained part of what they had lost in 1984, and the New Democratic Party won a total of 43 seats. In a by-election, the New Reform Party of Canada, a western-based party advocating changes in federal-provincial relations and institutions, won a seat in the House of Commons for the first time.

Since September 1984, two major issues, have dominated Canadian politics in Canada: the constitutional debate and bilateral commercial relations between Canada and the United States.

In June 1987, negotiations for the reintegration of the province of Quebec into the constitutional family culminated in the Meech Lake Accord. This would have granted certain powers to the provinces, especially regarding immigration policies and constitutional amendments affecting the province of Quebec, and would have recognized Quebec as a "distinct society" within Canada. The constitutional amending formula and the spending power of the federal government were also dealt with in the Accord. All legislatures, provincial and federal, had to ratify the Accord within three years. Only two provinces, New Brunswick and Manitoba, had not ratified it by the June 1990 deadline. After the withdrawal of support for the Accord by the province of Newfoundland-Labrador in April 1990, the Accord failed to be adopted, even after last minute negotiations.

During the 1988 federal electoral campaign, one of the major issues was the Free Trade Agreement, signed by Canada and the United States, and due to be ratified by the Canadian Parliament before the end of the year. This accord liberalized trade between the two countries and provided for lowering or complete removal of customs tariffs and protective trade barriers. Pro free-trade organizations and groups against the agreement opposed each other on this issue, causing the three major political parties to take up positions. In a few weeks, almost all the debate was concentrated on this issue, which was seen by many as a "giant step" in the direction of more economic, social and eventually political integration with the United States. The Free-Trade Agreement was finally adopted a few days before it was due to come into force on 1 January 1989, after the Conservative government of Brian Mulroney had been returned to power on 21 November 1988.

The Canadian Parliament

Wolfgang Koerner*

Introduction

Constitutionally, Canada was founded in 1867, by the union of three of the British North American colonies. The instrument of union was the British North America Act, 1867; and Imperial Act of the British Parliament. In contradistinction to the American colonies, there was no serious consideration given to the question of completely severing the Imperial connection nor of abandoning traditional forms of British constitutional practice.[1] The ultimate aim was to found a transcontinental nation "in the form of a constitutional monarchy under the British Crown."[2] The monarchical principle was never seriously challenged and a model based upon the American precedent was not to be considered. In the words of Sir John A. Macdonald, Canada's first Prime Minister and chief architect of its Constitution, the new union was one which was to ensure "British laws, British connection, and British freedom."[3] The importance of the British connection was also stressed by the French Canadian proponents of Confederation. They believed that it was the British crown and British parliamentary institutions that would continue to afford French Canadians those rights necessary for their cultural survival. Of paramount importance to their cultural survival was the continuance of the Catholic clergy in Lower Canada and this was something Britain had permitted. There was also no desire on the part of the French Canadian elite to further the cause of "republican democracy" and an adherence to monarchical principles was one way of staving off any such trend. According to Sir George Etienne Cartier, a leading French Canadian proponent of Confederation, the French Canadians understood that "if they had their institutions, their language and their religion intact... it was precisely because of their adherence to the British Crown."[4] Whereas the Americans had sought purely "democratic" institutions the principle behind the federal program, according to Cartier, was that of perpetuating the "monarchical element."[5]

For both Macdonald and Cartier, the monarchy was an important part of tradition and beyond partisan politics. In light of the latter consideration it would be able to provide the appropriate symbolic vehicle behind which disparate elements could unite. Macdonald considered the absence of such a non-partisan unifying symbol to be a serious drawback of the American system. The president, although being both the symbolic and political head of the state, could really never be more than the "successful leader of a party." He could never be looked up to by all as the "head and front of the nation" because partisan politics dictated that in reality he was only the representatives of a part of the nation. The monarchical principle, Macdonald believed, provided for a different set of circumstances. Here one had a sovereign "who is placed above the reign of party—to whom all parties look up—who is not elevated by the action of one part nor depressed by the action of another, who is the common head and sovereign of all."[6] In Canada, the symbolic role of the sovereign was then to be exercised by the Governor General.

With modifications and due consideration to local circumstances the "privileges of the Lords" could also be transplanted. A replica of the British Upper House was not possible for in the colonies there was no landed aristocracy, there were no "men of large territorial positions—no class separated from the mass of the people". The best practical solution and the one most "in accordance with the British system" that circumstances would permit was to confer the power of appointment on the crown and to make appointments tenable for life. Thus, the creation of a Senate would provide, not only for regional representation, but also for an effective check on the Lower House, particularly in those instances where the latter might exhibit too much democratic or egalitarian exuberance. In the worlds of Macdonald:

> It would be of no value whatever were it a mere chamber for registering the decrees of the Lower House. It must be an independent House, having a free action of its own, for it is only valuable as being a regulatory body, calmly considering the legislation initiated by the popular branch, and preventing any hasty or ill considered legislation which may come from that body...[7]

The principle of a representative assembly based upon British precedent would also require some adjustment. Although many preferred the British model of a legislative union the necessity of appeasing "provincial" demands precluded such a move and the best that could be hoped for was a federal union. Due consideration would have to be given to Upper Canada's desire for representation by population, Quebec's demands for cultural autonomy and the desire of the Maritime provinces to retain a certain level

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of political identity. A federal union emerged as the logical choice. Such an arrangement would provide for equitable representation in the national parliament, allow Quebec to see to its cultural matters and grant the Maritimes enough local power to retain their political identity. While certain concessions may have been made there was little doubt that the central authority was to be the dominant one and that the overriding interest was to be the national interest.[8]

The desire to maintain close ties with Britain meant that Canada did not become fully independent in 1867; although it did become self-governing. Independence "came as a result of an evolutionary process which continued well into the twentieth century." This process was the consequence of changes in the law of the British Commonwealth and public international law and "relied heavily on custom, usage and convention as sources of law." While there is no precise date of independence, it is generally agreed that the process of evolution was completed by the time of the enactment of the Statute of Westminster, 1931, which granted full autonomy to the Dominions.[9] However, despite the Statute of Westminster, Canada did not yet have the ultimate right to amend its constitution, nor did its constitution contain a Bill of Rights. These matters were finally corrected by the Canada Act 1982, and the Constitution Act 1982. Today, Canada has both a "Charter of Rights and Freedoms" and a "locally-based, autonomous, self-operating constitutional amendment machinery."[10]

The Canadian Charter is a departure from "traditional' British constitutional practice in that the British notion of civil liberty found its source "not in any positive law but in an absence of positive law." The individual was free to act as he chose as long as his actions were not prohibited by law. Thus, freedom of speech was "the freedom to say what one pleased within the limits prescribed by the laws of sedition, defamation, fraud, contempt of court and other laws restraining speech." Furthermore, the doctrine of parliamentary sovereignty meant that in Britain "those unregulated residues of individual liberty had no constitutional protection." Liberty was protected by political tradition and by the precepts of common law. The principle of parliamentary sovereignty also became part of Canadian constitutional practice. The "Canadian Parliament and Legislatures, provided they stayed within the limits imposed by the scheme of federalism, received powers 'plenary and ample' as those of the United Kingdom Parliament."[11]

However, in pointing to the principle of parliamentary sovereignty and the absence of a bill of rights, one is not intimating that civil liberties have not been well respected in Canada. Indeed, civil liberties had traditionally been well tended to by democratic institutions and an independent judiciary that imposed upon government "a set of restrictions, compendiously known as the rule of law, which precluded unauthorized or arbitrary action in derogation of individual rights." As in Britain, doctrines of common law tended to prefer individual rights and freedoms when they came into conflict with state interests. But in the end, the fact remained that "if a statute plainly took away a civil liberty there was no redress for the injured citizen."[12] Under the Constitutional Act, Canadians now enjoy "certain rights and freedoms" which have a supra-legislative force, since Article 52 establishes for the first time the primacy of the Canadian Constitution over all legislation.[13]

The Legislature

The Canadian Parliament is a bicameral legislature with an elected lower house and an appointed upper chamber. The House of Commons has 295 members elected for a maximum of five years and apportioned among the provinces roughly according to population. However, other criteria are also included in the seat allocation process. No province can have fewer seats in the House than members in the Senate, and, in order to protect the French Canadian minority, the province of Quebec is assigned a given number of seats (75 seats in the Representation Act of 1974) which then serves as the base point from which other provincial seat allocations are computed. Thus, the membership structure of the House is territorially based around the provincial units, with population the main basis in assigning provincial seat totals.

Members of the Senate are appointed by the Governor General on the advice of the Prime Minister. Originally appointed for life, senators are now required to retire at the age of seventy-five. A senator must live in the province he or she represents and, in order to be eligible for membership, every potential appointee must own debt-free real property, in his or her province or residence, worth at least $4,000. Senate seats are apportioned on a "regional-provincial" basis with Quebec and Ontario receiving 24 seats each, the four western provinces (Manitoba, Saskatchewan, Alberta and British Columbia) receiving 6 each, the three Maritime Provinces 24 (Nova Scotia 10, New Brunswick 10, Prince Edward Island 4), Newfoundland 6 and the North West Territories and Yukon 1 each; making for a total of 104. The Constitution also permits the appointment of additional senators. Four or eight senators may be appointed representing equally the four divisions of Canada (the West, Ontario, Quebec and the Atlantic.) This provision is intended to meet the problem of a deadlock between the two Houses and to ensure, in such instances, that the will of the elected House prevails. The first time this provision was used was in the recent stalemate over the new goods and services tax.

While the Senate can still be said to perform a variety of useful functions, major legislation emanates exclusively from the lower chamber. Thus, the key part of Parliament is the elected House of Commons. The House is divided into

government and opposition sides with the Government enjoying the support of a majority of the members. The leader of the largest party is appointed Prime Minister and the electrorate votes more on the basis of party and party leaders than on the objective merit of the opposing candidates in constituencies. The Prime Minister selects his Cabinet from among the members of Parliament in his party and these ministers, in turn, become the administrative and political heads of the various government departments. The system is one of *responsible* government. That is, the Prime Minister and his Cabinet sit in Parliament where they answer questions, propose legislation, and defend their departments against opposition attacks. Ministers are responsible to Parliament for administration and policy. A government retains power until it is defeated, either in an election or in a vote of confidence in the House. Given the rigid nature of party discipline defeat in the House is virtually impossible unless the Government is in a minority situation. With a majority in the House the government can effectively control Parliament.

The most important office of the House of Commons is the speakership. The main function of the Speaker is to preside over the debates in the House of Commons. Prior to 1986 the Speaker was, in effect, chosen by the Prime Minister even though it has always been constitutionally clear that the Speaker was an officer of the House, selected by the House itself and not by the Cabinet. Today, the Speaker is elected by secret ballot; granting proper legitimacy to his role as presiding officer.

Party Whips are appointed by the parties to represent their respective interests in the Striking Committee (which assigns individual MPs to committees), and to maintain party discipline. Arrangements between parties, such as the limitation of debate and the agenda for the sitting day, are sometimes worked out through the Whips. The House Leaders of the vaious parties are responsible for the overall in-House conduct of their own MPs, and consequently for the overall flow of business through the House. The Government House Leader is a member of the Cabinet, and with his office is responsible for seeing that the business of the Government gets through the House as quickly as possible.

Today the role of the Senate is essentially fourfold: legislative, investigative, regional, and representative of minorities and other special interests. With respect to its legislative function, the Senate has the same powers as the House of Commons except that financial legislation must originate in the Commons. While the Senate has the "Formal" authority to veto legislation of the House of Commons, this power is seldom used and increasingly difficult to legitimate given the norms of "popular" democracy. The number of Government bills initiated in the Senate is very limited and today the upper chamber usually restricts its role to that of "review". However, almost all private bills are introduced in the Senate; thereby easing the legislative burden of the Commons. Private bills, to be distinguished from Private Members' Public Bills, confer particular powers or benefits on an individual or body or persons, including corporations or charitable organizations.

In recent years, important contributions have been made by the Senate through its investigative work. Done in its special and standing committees this work usually entails well publicized inquiries into major social and economic issues. Also, in addition to scrutinizing and amending Government legislation, Senate committees often acquire a mandate to pre-study the subject matter of legislation currently before the Commons, or an issue requiring Government legislation in the near future. The chairmanship of committees is reviewed at the beginning of every Parliament by the Government Leader, the Deputy Leader and the Whip. The government, opposition and other membership proportions are suggested and settled between the government and opposition leaders.

The regional role of the Senate is less significant than it once was with the need for regional protection being provided by cabinet representation and Federal-Provincial First Ministers Conferences. Yet, regional representation can still be an important function with respect to regions that are under represented, by a given party in the Commons, or not represented at all. Recently, the Senate has also focused its attention on several disadvantages of the minority groups in Canada. Various Senate studies have produced reports on the aged, Canada's poor retirement age policies, and childhood influences as causes of criminal behaviour.

The Speaker of the Senate is appointed by the Governor General on the recommendation of the Prime Minister. While it is the Speaker's duty to rule on points of order, the rulings of the Senate Speaker are subject to appeal and may be overturned by a vote of the Senate. In the Commons, the rulings of the Speaker are subject neither to debate nor to appeal. Whereas the Commons Standing Orders specifically demand the neutrality of the Speaker, the Senate rules have no such restrictions. The Speaker may leave the Chair to participate in the debate and may even vote. However, these rules were formulated during the early days of self-government when the Speaker was not expected to be neutral and was considered an important ally of the Prime Minister. In more recent times, Speakers have worked to make the office totally neutral and have not exercised the right to participate in debate or to vote.

Political officers of the Senate include the Leader of the Government, Leader of the Opposition, Deputy Leaders of the Government and Opposition, Whips, and Cabinet Ministers. The Government Leader in the Senate performs the dual role of a representative of the Government in the Senate and of the Senate in the Cabinet. The Leader's duties as a representative of the Government

include dealing with questions during Question Period, sponsoring Government legislation, and generally, initiating Government business in the Chamber. The Leader of the Government is an ex-officio member of all Senate standing committees and, as such, traditionally nominates committee chairmen and confers with them on committee business. The Leader of the Opposition in the Senate is selected by the Leader of the Opposition in the Commons, with the advice of the Senate party caucus. His duties consist of a combination of Opposition Leader and House Leader in that he leads the opposition in debate, co-ordinates the daily activities of the Opposition and confers with the Government Leader on Senate business. Deputy Leaders of the Government and Opposition are appointed by the respective party leaders in the Commons and are here to assist the Senate Leaders in preparing and expediting the Senate's business. The function of party Whips in the Senate, as in the Commons, is to keep members informed of Senate business, the schedule in the Chamber and in committees and to ensure quorum. Senators may, from time to time, also be appointed to the Cabinet. However, since 1935 there have only been a few instances of a senator being appointed to a major portfolio.

The Legislative Process[14]

Legislation introduced in the House goes through six basic stages: first reading, second reading, committee stage, third reading, consideration by the Senate, and royal assent. In most cases, first reading, third reading, and royal assent have become mere formalities; the important steps being second reading and committee stage.

The first stage consists of presentation of the bill by the Minister responsible. He describes briefly its objectives and content, and moves that the bill be read a first time, which makes it possible to print the bill, give it a number and distribute it to all MPs.

Debate on the principle of the bill begins when the responsible Minister moves that it be read a second time. Amendments may not be moved by the Opposition at this time; the opportunity for amendments comes at the third stage, i.e. consideration by committee. It is possible to refer the bill to Committee of the Whole; this procedure, which was used in December 1988 during the debate on the free trade legislation, speeds up the process leading to the final vote by the House of Commons. Usually, though, a bill is submitted to the appropriate legislative committee, where it is analyzed clause by clause. It is easier in committee for parliamentarians to express their approval or disapproval of the bill's contents. The committee may then propose technical amendments, or amendments to the details of the bill, but not to its principle, which was accepted by the House at second reading.

The bill and any amendments proposed by the committee are then returned to the House, at what is known as report stage. This gives parliamentarians who are not members of that particular committee a chance to speak on the bill. There is a 48-hour period between the presentation of the committee's report and its consideration by the House, which allows parliamentarians the 24 hours they need to give notice of their intention to move an amendment. An MP is then given 10 minutes to argue on behalf of his proposed amendment. Once deliberations at report stage are concluded, a motion is made "that the bill (with any amendments) be concurred in."[15]

Once third reading has begun, "the insistence of the Opposition parties"[16] can bring about prolonged debate before the final vote. After the bill is passed, it is sent to the Senate, where it goes through the same procedure, including three readings and referral to committee. Senators participate in the process mainly during this final segment of the legislative process.

The subject-matter of a bill may be studied by a Senate committee while the House of Commons is still considering the bill. This "pre-study" mechanism makes it possible to speed up the legislative process while still allowing the Senate enough time to weigh every bill in detail.

In accordance with constitutional tradition, the Upper House has the power to amend or reject a bill sent to it by the Commons. Since the early years of this century, the Senate has used the latter option on 14 occasions.[17] A bill on penitentiaries tabled in 1938 and another on the Bank of Canada (1961) were rejected by the Senators. Most of the bills that suffered this fate were not of overriding importance and [their defeat] did not directly affect the government's program.[18] A decision by the majority in the Senate to vote against a bill [passed by] the Commons is exceptional; it also terminates all debate on the measure. In general, members of the Upper House prefer to propose substantive amendments.

During the 33rd Parliament, the Senate's opposition to certain government bills brought out very clearly the Upper House's real power within the legislative structure. The Senate can delay final passage of a bill that originated in the Commons by holding hearings in committee that make it easier to analyze the measure in depth. In 1987, profound disiagreements between the two Houses were the causes of long delays in the consideration of Bill C-22, on pharmaceutical patents.

Persistent wrangling between the two Houses over a bill can be resolved by invoking a rare procedure called a "conference." Provided for under Standing Order SO) 77, it has been used several times since 1867. Holding a free conference of represenatives of the Senats and the House of Commons represents a last-ditch effort to resolve a persistent impasse between the two Houses. Eight such conferences have been held since 1925; five led to settlements, in two cases bills were abondoned when the

government of the day refused to abide by the conference's recommendations, and one bill was withdrawn following a stalemate.

During the second session of the 33rd Parliament, there was some discussion of resorting to a conference to smooth the way to passage of the amended *Patent Act* (C-22) and *Immigration Act* (C-84). The many amendments moved by the Senate in both cases, and the considerable delays that followed, led to fears that the legislative process would grind to a halt; but the final decision by members of the Upper House to approve the two controversial bills ended the impasse.

After the Senate has passed a bill, Royal Assent must be given. This stage proceeds as follows:

> (Assent) is given by the Governor General in the Queen's name, in a special ceremony held in the Senate chamber in the presence of representatives of both Houses of Parliament. The Governor General does not usually attend this ceremony; instead he sends as his "Deputy" one of the judges of the Supreme Court of Canada, appointed by commission for this purpose.
>
> In the course of this historic ceremony, the Clerk Assistant rises and reads, in English and French, the titles of the bills that are awaiting Royal Assent. The Clerk then holds up two bills in his hands and says, "In Her Majesty's name, the Honourable the Deputy of Her Excellency the Governor General doth assent to these bills". The Deputy of the Governor General then signifies his consent by a nod of the head. It is this gesture that constitutes Royal Assent, and it is at this time that the bill comes into force as law, unless there is a provision in the bill stating that it will come into force on a day to be fixed by proclamation.[19]

The fundamental principles shape the form of debates in the House of Commons. On the one hand, the government must take the steps necessary to ensure sound management of public affairs and the passage of government legislation. On the other, parliamentary tradition holds that the minority, including the opposition parties, has a right to express its point of view within the framework of the legislative process.

The government, in consultation with the Opposition parties, determines in advance the number of hours and days that must be allotted to deliberations at each stage in the process of having a bill approved. If the representatives of all parties agree, the government can introduce a motion setting forth the proposed timetable.

The Government House Leader may also, under Standing Order SO 78(2) conclude an agreement with the opposition parties regarding allotment of time at report stage and third reading. When a compromise cannot be reached, the government may present its own timetable. In the event of a systematic opposition blockade, the government may invoke closure, which limits the time allotted to debate and facilitates the rapid passage of a disputed bill.

The Role of the Committees

Since the earliest years of Confederation, the House of Commons has enjoyed the benefits of a committee system. The committees make an important contribution to Parliament: they facilitate the participation of MPs and Senators in the legislative process, allowing them to express their views on government measures. The contribution that the committee system has made to the evolution of Parliament is obvious from a number of standpoints. The consideration of bills in committee reduces the workload of the Lower House and enables the government to introduce several measures at a time. The members of Opposition parties can use this forum to question Ministers and senior public servants about the management of departments and Crown corporations. Lobby groups use the committees to argue in defence of their interests and to establish contact with the elected representatives who have influence over the decision-makers.

Following the recommendations of the McGrath Report,[20] certain changes have been made in the traditional role of the committees. Four types of committees assist the House of Commons in its operations: standing committees, joint committees, special committees and legislative committees.

Most of the standing committees are matched with a government department. They have between eight and fourteen members each and their membership reflect the proportion of parties in the House. In the current Parliament, eight-member committees consist of five Progressive Conservatives, two Liberals and one New democrat; committees with fourteen members consist of six Progressive Conservatives, four Liberals and two New Democrats.

Joint committees look at questions of concern to both MPs and Senators; two examples are the Joint Committee on Official Languages and the Standing Joint Committee for the Scrutiny of Regulations. Special committees are created in response to specific concerns of parliamentarians; in this way the McGrath Committee satisfied an urgent need which had been expressed by Members.

Legislative Committees are struck specifically for consideration of individual Bills. At the beginning of each session the Speaker appoints a minimum of ten members to act as Chairman of legislative committees. Those members, together with the Deputy Speaker and Chairman of the Committee of the Whole, the Deputy Chairman of the Committee of the Whole and the Assistant

Deputy Chairman of the Committee of the Whole, constitute the "Panel of Chairmen." Between first and second readings of a Bill, the Striking Committee prepares and presents a list of not more than 30 Members to sit on a legislative committee. If the House adopts the motion for second reading and reference to a legislative committee, the Speaker appoints a Chairman for the committee from the Panel of Chairmen. A legislative committee is empowered to examine and inquire into the bill referred to it, to hear evidence and to report the Bill back to the House with or without amendments.

Committees use the questioning of witnesses as their basic information-gathering technique. When government Bills and estimates are under consideration, Ministers (normally accompanied by their chief departmental officials) are the usual witnesses. When broad policy issues are being examined, witnesses from outside the government appear before the committee.

Committee strategy is often mapped out by their steering committees (technically, their Sub-committees on Agenda and Procedure). It is these committees that decide who the witnesses will be and whether the committee will have professional staff; they may then make the necessary arrangements. Their decisions may be highly partisan or the atmosphere may be very cooperative, depending on the matter at issue.

The various proposals for reforming the committee's organizational structure stress the need to increase the effectiveness of parliamentary institutions and the participation of ordinary parliamentarians in the decision-making process. The recent changes in the make-up of committees, and the increased powers extended to committee chairmen and members in their examination of Bills, of departmental management, and of government initiative, consolidate the position of parliamentarians within the legislative process.

Conclusion

The viability of any democratic system of government will, of course, depend upon a variety of factors. A wise government, like a wise statesman is one that can balance the disposition to preserve with the ability and willingness to improve. It is the adaptability of the parliamentary system which has gone a long way in ensuring its legitimacy. Procedural and institutional changes are both inevitable and necessary; here the Canadian parliamentary system of government has been able to successfully accommodate the precepts of tradition, required for stability, with the demands of the future, required for progress.

END NOTES

1. Peter W. Hogg, "Canada's New Charter of Rights," *The American Journal of Comparative Law*, Vol. 32, 1984, P. 283. The three colonies which united in 1867 were Canada (which became Ontario and Quebec), New Brunswick and Nova Scotia. Six more provinces joined, or were created out of federal territories later.
2. Donald Creighton, "The Use and Abuse of History," in *Towards the Discovery of Canada*, Macmillan of Canada, Toronto, 1972, p. 69.
3. P.B. Waite (Edit.), *The Confederation Debates in the Province of Canada* 1865, Carleton Library series No. 2, McLelland and Stewart Ltd., Toronto, 1963, p. 31.
4. *Parliamentary Debates on the Subject of the Confederation of the British North American Provinces*, Hunter and Rose and Company, Quebec, 1865, p. 59.
5. *Ibid.*, p. 838. While Cartier and his followers were enthusiastic supporters of the monarchical principle, there were also those who, largely arguing on behalf of the status quo, were not so trusting when it came to British and Upper Canadian motives. According to them, the rights enjoyed by the French Canadians had not been easily won and needed to be jealously guarded. Rather than viewing Britain as the magnanimous guarantor of minority rights, these rights, they felt, had to be extracted from the British, and then only when there were threatening outside forces or internal rebellion. Federalism, in turn, was seen as little more then a veiled attempt to eventually bring about a legislative union and representation by population.
6. .*Confederation Debates*, p. 33. In part, the suspicion of republican democracy was motivated by the spectre of the American Civil War.
7. *Ibid.*, p. 35–36
8. While the views of Macdonald held the day there were also criticisms of the Confederation proposed by other than French Canadians, the most eloquent of which was offered by Christopher Dunkin. Although Dunkin shared Macdonald's basic ideological outlook, he felt the agreement to have been a rather hasty compromise. By trying to arrive at an expedient compromise the framers had granted the provinces certain prerogatives but had at the same time left the overall "style and rank" of the state that was to be created in "most delightful ambiguity". The "game of all things to all men," Dunkin observed, "is a game that cannot be played with success in the long run." See, *Confederation Debates*, p. 483–497.
9. Hogg, p. 283; William R. Lederman, "Canadian Constitutional Amending Procedures: 1867–1982, "*The American Journal of Comparative Law*, Vol. 32, 1984, p. 339; J.R. Mallory, *The Structure of Canadian Government*, Macmillan, Toronto, 1971, p. 339.
10. Edward McWhinney, "The Constitutional Patriation Project, 1980–1982," *The American Journal of Comparative Law*, Vol. 32, 1984, p. 241. It was at Canada's request largely due to provincial pressure, that the amending power was kept at Westminster. Otherwise, the power to amend the BNA Act would have been conferred on the Parliament of Canada alone. The decision on the amending procedure was then postponed and left to be settled by the long process of negotiation between the federal government and the provinces. See, Mallory, p. 374. However, it should also be noted that convention had always dictated that the Parliament of the United Kingdom would not amend the BNA Act without an express request by Canada. This convention recognized before the turn of the century was affirmed by the Statute of Westminster in 1931. See, Richard J. Van Loon and Michael S. Whittington, *The Canadian Political System: Environment, Structure and Process*, 3rd Edit., McGraw-Hill Ryerson Limited, Toronto, 1981, p. 192.
11. Hogg, p. 285. The sovereignty of Parliament has been defined as the power to make or unmake any law whatever. As Hogg argues, "in the United Kingdom there were, and perhaps still are, no limits on

legislative power. No constitutent instrument is protected from ordinary legislative change... Judicial review of legislation is therefore unheard of in the United Kingdom." With the accession of the U.K. to the European Community, the question does, however, arise as to whether or not the British Parliament is subject to European Community Law.

12. *Ibid.*
13. Gil Rémillard, "The Constitution Act, 1982: An Unfinished Compromise," *The American Journal of Comparative Law*, Vol. 32, 1984, p. 271. Article 52(1) states that, "The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect." For a good discussion of the process by which constitutional change came to Canada in 1980–82 and the relevant criteria of law and politics against which that process and its results may be judged, see Richard S. Kay, "The Creation of Constitutions in Canada and the United States," *Canada-United States Law Journal*, Vol. 7, 1984, p. 111–163
14. The following section is taken from, Luc Fortin, *The Legislative Process*, Background Paper 151-E, Library of Parliament, 1989, pp. 5–10.
15. House of Commons, Table Research Branch, *Precis of Procedure*, 1987, p. 128.
16. Robert J. Jackson, Doreen Jackson and Nicolas Baxter-Moore, *Politics in Canada: Culture, Institutions, Behaviour and Public Policy*, Prentice Hall, Scarborough, 1986, p. 306
17. F.A. Kunz, *The Modern Senate of Canada*, 1925–1963, University of Toronto Press, Toronto, 1965, p. 349.
18. *Ibid.*, p. 351.
19. Raymond L. du Plessis, QC, *The Law-Making Process*, the Senate of Canada, revised notes, February 1988, pp. 10–11.
20. Canada, House of Commons, *Special Committee on the Reform of the House of Commons, Report*, Ottawa, June 1985.

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We join the Commonwealth obviously because we think it is beneficial to us and to certain causes in the world that we wish to advance. The other countries of the Commonwealth want us to remain, because they think it is beneficial to them. It is mutually understood that it is to the advantage of the nations in the Commonwealth and, therefore, they join.

—Jawaharlal Nehru

Senate Reform: Recent History and Current Prospects

Jack Stilborn*

The issue of Senate reform is not new to Canada. Indeed recent proposals (such as the 1985 Report of the Alberta Select Special Committee on Upper House Reform, which is the basis for the current "triple e" reform movement) are but the latest additions to a tradition of public discussion which dates at least to 1874. In the year—just seven years after adoption of the British North America Act (B.N.A. Act)—the House of Commons heard a proposal that it consider amending the constitution to allow each province to choose Senators. Proposals, focusing either on the limitation of terms of appointment (appointments were originally for life) or on abolition of the body, appeared regularly during ensuing years, and in 1909 the Senate itself first debated reform. A proposal that terms be limited to seven years, and that two-thirds of Senators be elected, was rejected.[1]

Beginning in the 1960's, however, the issue of Senate reform began to be pursued with new urgency, in response to developments both in Quebec and Western Canada, and evolving relationships between provincial governments and the federal government more broadly characteristic of post-war federalism in Canada. It is useful, for purposes of discussion, to distinguish three "generations" of Senate reform proposals which have emerged during the past 30 years. In what follows, these are examined in sequence, before attention turns to the current situation and immediate future of Senate reform.

First Generation Proposals

The first generation contains three proposals, all from the federal government: the government White Paper entitled *The Constitution and the People of Canada* published in 1969; Bill C-60 of 1978, which is that Paper's rather belated translation into legislative language; and the 1972 report of the Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada (Molgat-MacGuigan Committee). All these proposals share a common characteristic: *they are aimed in one way or another at involving the provinces in the selection of half of the senators*, with the other half continuing to be appointed or elected by the federal government. The 1969 White Paper confined itself to suggesting that the senators "representing the provinces" be appointed by each provincial government "with or without the approval of the legislature, according to the terms of the Constitution of each province."

Bill C-60 on constitutional reform, tabled in June 1978, was as specific and detailed as the 1969 White Paper had been vague. The proposed "House of the Federation" was to contain 118 members, half of whom would be appointed by the House of Commons after each general election and the other half appointed at that time by the Legislative Assembly of each province after each general election; each member would remain in office as long as the legislative body which designated him or her.[2] In a rather original way, the bill would have required the competent authority to appoint the members of the House according to the principle of proportionate representation. The new body would have enjoyed a suspensive veto of at least two months over all bills adopted by the Commons. The idea of a double majority, of both Francophone and Anglophone senators, for approval of all measures of linguistic significance represented another bold innovation. The bill as a whole was keenly criticized before the Supreme Court ruled that the federal Parliament could not alone institute such a wide-ranging reform.[3]

The result of public hearings held across the country, the Molgat-MacGuigan report did not go as far as the two previous initiatives: all senators would have continued to be appointed by the federal government, but half of them would have been chosen from among candidates proposed by the appropriate provincial or territorial government.[4]

All of the proposals were based on the presumed need to reorganize the Senate so that the interests of the provinces would be directly represented there, and the governments or legislative assemblies of the provinces appeared at the time to be in the best position to appoint such representatives. However, it appeared necessary to balance this sectional representation by a contingent appointed by the central government so that the interests of the country as a whole would be represented and the Senate would continue to maintain and develop the sense of Canadian unity.

Second Generation Proposals

Although a similar proposal was made in 1962,[5] we must

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attribute the sudden popularity of the West German *Bundesrat* concept to the new situation created by the election of the *Parti Québécois* in 1976. The six Canadian variations of this proposal suggested since 1978 constitute the "second generation" of Senate reform proposals.

These distinguish themselves by the very favoured role they give to the provincial governments: these proposals would empower the provincial governments to appoint all of the members of the second chamber, and make it a permanent instrument of inter-governmental coordination by introducing the provincial premiers to the very heart of the federal legislative process. It is scracely surprising to note that four of the seven proposals came from provincial sources: Ontario's Advisory Committee on Confederation and the Government of British Columbia in 1978, the Liberal opposition in Quebec in 1980 ("Beige Paper") and the Government of Alberta in 1982. But the arguments underlying the West German *Bundesrat* concept also appealed to the constitutional committee of the Canadian Bar Association and some elements of the federal Progressive Conservative Party in 1978 as well as the Task Force on Canadian Unity (Pépin-Robarts) the following year.

It would be pointless to repeat the details of these various formulas. All of them would have the members of the second chamber appointed and recalled by the provincial governments and acting on their instructions. They graded the powers of the new body according to the importance of the provincial interests at stake, reserving for it an absolute veto over the federal government's exercise of its powers to intervene in areas of provincial jurisdiction: declaratory power (section 92.10c of the Constitution), spending power, emergency power, etc... On all matters falling clearly under the jurisdiction of the central government, however, the proposed Councils would have had, at best, only a suspensive veto. Such a body would have been less the second chamber of the federal Parliament than a watchdog for provincial interests, a rampart of sectional autonomy.

The criticisms directed at the *Bundesrat* concept were numerous and certainly contributed to the relative (but perhaps temporary) disfavour into which this idea has since fallen; the political context born of the Quebec referendum of 1980, however, and the patriation of the Constitution the following year more essentially explain this unpopularity. The partisans of federal preponderance observed that the unilateral powers of the central government constitute an indispensable characteristic of Canadian federalism and allow for greater equalization of opportunities for Canadians in the least prosperous regions; subordinating the exercise of these powers to the formal consent of the provinces would impede their usage, generally to the advantage of the richest regions. It must be observed that while the *bundesrat* concept ensures that the sectoral automony of the provinces is respected, it strikes a blow at that of the central government, although it could be argued that to enable the provinces to control the central government's use of its power to encroach, is merely to re-establish a balance which is currently compromised. Finally, opponents of the concept underscore the differences between the Canadian and West German contexts: the *Bundesrat* operates in a society where the first allegiance of citizens is indisputably to the central government and falls within a Constitution which reserves for the latter almost all legislative powers, conceding to the provinces only powers to enforce the laws debated and passed in Bonn, in addition to meagre legislative powers. Though West German federalism is centralized enough to allow for a *Bundesrat*, is the same thing true of Canadian federalism?

Curiously, such a council was also the target of some partisans of the provinces who saw in it a dangerous Trojan horse. They pointed out that in federal West Germany, the importance of the powers of the *Bundesrat* has contributed not to decentralizing West German federalism but rather to centralizing it. Faced with the necessity of controlling the *Bundesrat* in order to govern effectively, the successive governments of federal West Germany strengthened their control over the regional wings of the party in power in Bonn and favoured the success in the provinces of coalitions sympathetic to their views, even if this entailed intervening, sometimes conspicuously, in the regional political process. And it is common knowledge that the decisions of the *Bundesrat* are based on partisan rather than regional considerations. This is not the first time that a reform has produced the opposite result of what was expected!

The federal government has remained cold, if not hostile, to this model. In a document made public in August 1978, it flatly rejected this idea, and the two federal parliamentary committees which subsequently studied the question came to an identical conclusion. By proclaiming the death of cooperative federalism in 1982, Prime Minister Trudeau reduced to nil the prospects for a model which requires a broad identity of views among the partners in order to function smoothly.

Third Generation Proposals

It is in this context that the advent of a "third generation" of proposals, i.e., a Senate elected directly by universal suffrage, must be understood. The promoters of this model are respondig to a wide range of motivations. Some want to revitalize the institution; they feel that only direct election will do this and that, in the absence of such a reform, the Canadian Senate will see its legitimacy atrophy and will, in the long term, be abolished. Others think that the Canadian federation is one of the most inclined in the world to intergovernmental squabbling, and that the lack of representation of regional interests in the federal Parliament

is a major reason for this state of affairs. They maintain that the House of Commons cannot really play a role of regional representation because the plurality of electoral system would favour regional polarization of the parties and entire regions of the country would in practice be excluded from the real centres of power, i.e., the government caucus and the Cabinet. Moreover, party discipline leads elected members to behave as federal party members rather than as regional representatives. Nor is the Senate in a position to play the role of regional representative owing to the partisan nature of appointments, party discipline and, in particular, the limited use it can make of its powers. With the insertion of a Council of Provincial Delegates within the federal legislative process being excluded a *priori*, there remains little but the solution of direct election. Still others see that the election of the Senate according to proportional representation might make it possible for the major parties to elect representatives even in the regions of the country where they are in a minority position; this would facilitate the formation of Cabinets more representative of the geographic diversity of the country. Finally, some favour the principle of direct election as being more democratic in their view than any of the reform options so far advanced.

In 1981, the Canada West Foundation issued a detailed proposal in this regard. It proposed a Senate composed of an identical number of members (6 or 10) from each province. Half of the Senate would be renewed at each general election, so that each senator would remain in office for two Parliaments. The basic constituency would be the province, and the election would take place under proportional representation with the single transferable vote in force in the Australian Senate and Ireland. The new body could neither overturn the government nor ratify diplomatic or judicial appointments. In compensation, it would be necessary for it to confirm appointments to some federal bodies, the use of the extraordinary preponderant powers of the federal government and, especially, constitutional amendments: in all these matters, it would enjoy an absolute veto. Over other bills, the Senate's veto could be overruled by a qualified majority in the Commons. In principle, senators would not be subject to party discipline and could not be Cabinet ministers.

Senator Roblin and Mr. Gordon Robertson added some variations to this basic model. The letter suggested that a double majority be required (Francophone and Anglophone) in order to pass linguistic measures. In June, a Green Paper from the Minister of Justice took stock of the numerous options proposed.

Following patriation of the Constitution, the debate on Senate reform began on the basis of the elective model. Senator Roblin, Deputy Leader of the Opposition in the Senate, in February 1982 made a motion along these lines, which was discussed during the following months. In April 1983, the former Clerk of the Privy Council and Secretary to the Cabinet for Federal-Provincial Relations, Gordon Robertson, defended this option in a speech which attracted considerable attention at the Conference on the *Constitution Act, 1982* held in Quebec City. Prime Minister Trudeau, at the same time, made remarks discreetly sympathetic to an elected Senate.

A. The Joint Committee

In December 1982, the two Houses of Parliament created a Joint Committee on Senate Reform. Chaired by Senator Gil Molgat and, successively, by MPs Roy MacLaren and Paul Cosgrove, the Committee supported the elective solution: "We have concluded that the Canadian Senate should be elected directly by the people of Canada."[6]

Concerned with creating a body which would effectively reflect regional viewpoints, the Committee members proposed a Senate elected by universal suffrage and the single-member plurality system. Senators would be elected for a nine-year term, with one-third of the Senate renewed every three years. The total number of senators would increase to 144: 24 for Ontario and Quebec, 6 for Prince Edward Island, 12 for each of the other provinces, 2 for the Yukon and 4 for the Northwest Territories. During the transition period leading to a fully-elected Senate, senators would be appointed for a nine-year term, with every vacancy being filled within a six-month period.

In its proposals the Committee sought, first of all, to give the Senate enough power to enable it to be effective, but not so much as to lead it to overwhelm the House of Commons. It was proposed that the Senate would have no power vis-à-vis supply bills, while exercising a suspensive veto of 120 sitting days over routine legislation (except on matters relating to languages) and a 180 days suspensive veto over constitutional amendments. Bills on language matters would need approval by majorities of both Anglophone and Francophone senators. Secondly, the proposals sought to minimize the dependance of senators on political parties by specifying that they would be elected for nine-year non-renewable terms, thus making them relatively impervious to party discipline once elected. Finally, with respect to the regional distribution of seats, the Committee increased the Western share from one quarter to one third of senators, while reducing Quebec's representation to 17% of the total (from about 23% today) and compensated for this reduction, as has been seen above, by giving Francophone senators a veto over linguistic measures.

B. The Macdonald Commission

The reformed Senate proposed in the Report of the Royal Commission on the Economic Union and Development Prospects for Canada[7] (known also as the Macdonald Commission) is similar in many ways to the model recommended by the Molgat-Cosgrove joint committee. However, the Macdonald Commission differs on two major

points: by recommending that the Senate be elected by a system of proportional representation and by rejecting the attempt to give senators a significant degree of independence of party.

The Commissioners' proposals for a reformed Senate are based on their belief that the Senate should embody the federalist principle and provide the regional representation lacking in the House of Commons. The reformed Senate must be elected, and election to the two Houses should take place at the same time. Although the Commissioners stated that in the Senate representation should be weighted in favour of the less populous regions, they rejected the idea of giving equal representation to each province or even region on the ground that "the Senate should only temper, not obstruct, representation by population."[8]

The reformed Senate would be elected by a system of proportional representation, in six-member constituencies, the number of seats (144) and their distribution being the same as in the Molgat-Cosgrove proposals. A Senate elected by proportional representation would improve regional representation in Parliament, and thus in the Cabinet and in the caucuses of all parties.

The Commissioners acknowledged that under proportional representation, the governing party would rarely have a majority of Senate seats but they argued that it was highly unlikely, either, that a non-governing party would have a majority in the Senate. They held the view that "simultaneous elections of both Houses and party organisation of elections should reduce the danger of such an impasse and of the paralysis that might follow."[9]

The reformed Senate would have a six-month suspensive veto, except in relation to legislation with linguistic significance. Passage of such legislation would require the approval of a majority of Francophone senators, as well as of the Senate as a whole.

The choice of a system of proportional representation for the election of senators was likely the most controversial element of the Commissioners' proposals concerning the reform of the Senate. Opponents of proportional representation argued that if the system were used for Senate elections, it would facilitate the emergence of purely regional parties, thus undermining the national parties which help to integrate and soften regional differences. The recommendation in favour of a Senate elected by proportional representation ran against a general unwillingness to introduce the complexities of such an electoral system into our political system.

C. The "Triple E" Senate

The "Triple E" movement calls for a reformed Senate directly elected *by the people of Canada, with equal representation by province and* with powers that allow it to be *effective.* The "Triple E" concept gained official recognition when it was endorsed in the report of the Alberta Select Special Committee on Upper House Reform published in March 1985.[10] Furthermore, the Alberta legislature unanimously adopted a resolution to approve in principle the report of the Select Special Committee on 27 May 1985. This support proved to be a national launching pad for the "Triple E" Senate option.

The Alberta Committee recommended that the Senate of Canada "should maintain as its primary purpose the objective established by the Fathers of Confederation, namely to represent the regions (i.e., provinces) in the federal decision-making process."[11] In addition, the Committee proposed that the Senate should continue to act as a body of "sober second thought." Finally, the Committee came to the conclusion that the Senate should not be a forum for intergovernmental negotiations. To fulfil that function, the Committee recommended that the requirement that First Ministers' Conferences meet on a regular basis be entrenched in the Constitution.

The Committee held the view that only a directly-elected Senate "would enjoy legitimacy and would be able to exercise fully the significant political and legislative powers necessary to make a valuable contribution to the Canadian Parliament."[12] Adhering to the majority point of view in Alberta that Canada is made up of equal partners, the Committee concluded that "only equal representation by province would afford Canadians the balanced process of federal government which they deserve."[13] Thus the proposed Senate would consist of 64 senators, six representing each province and two representing each territory. Senators would be elected on a first-past-the-post basis, the system now in use in federal and provincial elections. Senators would represent constituencies whose boundaries would be identical to provincial boundaries and would be elected for the life of two provincial legislatures. In each province, three Senators would be elected during each provincial election, with each voter being able to vote for three candidates.

The proposed Senate would have the power to initiate any legislation except a money or taxation bill. The Senate would also have the power to initiate supply resolutions relating to its own operational budget. The Senate would have the power to amend any bill and the power to veto any bill except a supply bill. The Senate would retain the existing 180-day suspensive veto over constitutional issues. The House of Commons would have the power to override a Senate veto on money or taxation bills by a simple majority. Bills, other than money or taxation bill, would require a larger majority, that is, a House of Commons vote greater in percentage terms than the Senate's vote to amend. A time limit of 90 days would be placed on the Senate when considering a money or taxation bill and a limit of 180 days would be placed on all other legislation. All changes affecting the French and English languages in Canada would be subject to a double majority

veto, that is, a majority of all senators combined with a majority of French-speaking senators or English-speaking senators, depending on the issue. Finally, non-military treaties would be subject to ratification by the reformed Senate.

The set of recommendations dealing with Senate organization is based on the belief that if the role of the Senate is to represent the regions (province's) of the country, it must be structured to represent those regional interests rather than the interests of national political parties. Therefore, the traditional opposition and government roles in the current Senate would be abolished, including the positions of Government Leader and Opposition Leader. Senators would be seated in provincial delegations, regardless of party affiliations. Each provincial delegation would select a chairman. The 10 provincial chairmen, headed by the elected Speaker of the Senate, would constitute the Senate Executive Council. This Council would determine the order of business of the Senate, appointment of committee chairmen and membership of committees. Finally, senators would not be eligible for appointments to Cabinet, since such an appointment would allow the principle of Cabinet solidarity to overrule senators' ability to be representatives for their provinces.

The Constitutional Amending Formula which now governs Senate Reform

The Constitutional amendments made in the context of repatriation in 1982 established six different formulae or means by which the *Constitution Act* may be amended.[14] These are as follows:

1. Amendments under the general procedure (Section 38);
2. Amendments which require unanimous consent (Section 41);
3. Amendments which apply to some but not all provinces (Section 43);
4. Amendments by Parliament alone (Section 44);
5. Amendments by individual Provincial Legislatures alone (Section 45); and
6. Amendments without Senate approval (Section 47).

The central formulae relating to Senate reform are number '1', the general procedure, and number '6', which addresses itself to how Parliament participates in an amendment process rather than, as do the others, setting out the nature and degree of provincial participation.

The general procedure specifies that an amendment must be approved by:

1. resolutions of the Senate and House of Commons; and
2. resolutions of the legislative assemblies of at least two-thirds of the provinces that have, in the aggregate, according to the then latest general census, at least fifty percent of the population of all the provinces.

Under the general procedure, both Houses of Parliament must approve all amendments to the Constitution. This means that Parliament, and Parliament alone, has a veto over any constitutional amendment. The role of the Senate is determined by the requirements of Section 47, which specifies that, if the Senate opposes an amendment, the amendment would fail unless the House of Commons votes again on the amendment, within 180 days, and passes it a second time. The general rationale behind this provision is that, as an appointed body, the Senate should not be in a position to block the will of the democratically-elected House of Commons and the requisite number of democratically elected provincial legislatures. A consequence of this provision is that the Senate does not possess a veto over amendments which would bring about significant reform of the Senate.

Section 42 of the amending formula is a result of many years of antecedent negotiations concerning the appropriate scope of Parliament's authority to amend the Constitution on its own. During the mid-sixties (the period during which discussions revolved around what was known as the Fulton-Favreau formula) it came to be accepted that amendments to the Constitution which might change characteristics of the national government reflecting the federal nature of Canada should not be subject to change by Parliament alone. The Senate was recognized as such an aspect of the national government, because of its original role in regional representation and the counterbalancing of representation by population.

Section 42 of the current amending formula expresses the consensus which had emerged by the mid-sixties. It requires, first of all, that the general amending procedure apply concerning a number of subjects already excluded, by previous agreement, from decision-making by Parliament acting by itself. Among these matters are the method of selecting Senators, the number of Senators to which a given province is entitled, and the residence qualification of Senators. It had been agreed at the 1964 Constitutional Conference "...that these were matters in which the provinces have a legitimate interest, and that therefore they should be expressly excluded from Parliament's unilateral amending authority."[15]

In addition, Section 42 requires provincial participation in amending the constitution with respect to a series of matters where provincial participation was not previously required. In addition to the powers of the Supreme Court, the extension of existing provinces, and creation of new provinces, provincial participation in amendments altering the powers of the Senate has been required since 1982.

It is thus now the case that in fundamental matters—the powers of the Senate, the selection of Senators, the number of Senators allocated to each province, and the residence qualification for Senators—the agreement of at least 7 provinces containing at least 50% of the population of Canada is required for constitutional amendment. Other constitutional amendments concerning the Senate may be made solely by the Parliament of Canada, under Section 44 of the *Constitution Act, 1982*, which reads:

> Subject to sections 41 and 42, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and the House of Commons.

Two examples of amendments to the Constitution made by Parliament under exclusive authority are the 1965 amendment setting the retirement age of Senators at 75 years, and the 1974 amendment establishing a new basis for setting the size of the House of Commons.

It is noteworthy, as well, that the *Constitution Act, 1982* establishes minimum and maximum time limits which govern the amendment process. A constitutional amendment cannot come into effect before at least one year has passed since it's ratification by one of the legislatures. This requirement, which can be waived if all provincial legislatures have addressed the amendment, exists to ensure that provinces will have an adequate interval during which to consider proposed amendments. Since the federal government has the veto power, it does not need a similar protection.

A maximum time limit was incorporated to prevent amendment initiatives from going on and on indefinitely, and to ensure that a decision would be made, one way or the other, while the circumstances surrounding the introduction of the amendment remain current. The maximum time for securing a specific amendment is three years from the date on which a resolution initiating the amendment process is adopted in one of the legislatures.

Recent Developments and their Implications

The failure of the two orders of government to pass the Meech Lake amendments means first of all, that the unanimity requirement which the Meech Lake amendments would have established concerning amendments changing the powers of the Senate or the method of selecting Senators will not come into effect. On the face of it, this should increase the likelihood of Senate reform, since only 7 provinces containing at least 50% of the population need now agree with a Senate reform amendment in order to make it a reality.

This constitutional reality, however, ignores political realities which have been manifest since the twenty-third of June. On Friday, 22 June, Quebec Premier Robert Bourassa responded to the federal government's announcement of the demise of the Meech Lake amendments by declaring, before the Quebec national assembly:

> English Canada must understand very clearly that no matter what is said or done, Quebec is today, and always will be, a distinct society capable of assuming its own destiny and its own development.[16]

The following day, Premier Bourassa pronounced the process of constitutional reform in Canada to be "discredited", and indicated that the province would not return to the constitutional bargaining table with the premiers of the nine other provinces, and would boycott the conference of provincial premiers scheduled for mid-August in Winnipeg. In future, he declared, Quebec would discuss constitutional issues only in bilateral talks with the federal government, and would be seeking concrete results from Ottawa in the near future in the form of enhanced powers over immigration, manpower training and communications.

Premier Bourassa's comments, against a background of rising nationalist feeling in Quebec, make it clear that constitution-making—at least to the extent that it relies upon federal-provincial conferences—is temporarily on hold if not, more durably, at an end. The Constitution, as has been seen above, permits Senate reform to proceed on the basis of the agreement of the federal Parliament and seven provinces containing at least 50% of the population. It thus permits it to proceed without the active participation or support of any particular province, including Quebec. The political consequences of any move to alter the Senate, given its role in representing the regions (including Quebec) would, however, be enormous.

They would be particularly severe if that move involved establishing a "Triple E" Senate, which would necessarily involve the reduction of Quebec's portion of Senate seats. Such a move could only be seen, from within Quebec, as evidence of general hostility elsewhere in Canada. It would be seen as an undermining of Quebec's position through the active collaboration of most of the remainder of Canada. The Meech Lake process, in contrast, involved fierce disagreement among Anglophone Canadians. Despite the ambiguity of feelings about it outside Quebec, however, its failure has widely been seen, within Quebec, as a rejection by English Canada. Senate reform, reflecting the support of the federal government and at least seven of the nine provinces outside Quebec, and reducing the representation of Quebec, would justify the most paranoid fears of Quebecers. It would likely provoke an outburst of extreme nationalism, and sheer hostility, such as Canada has not yet seen.

The reality that Senate reform, particularly of the

"Triple E" variety, is off the constitutional agenda for the time being was apparent to one of the "Triple E" Senate's most longstanding champions—Premier Don Getty of Alberta—even before Premier Bourassa's reaction to the failure of the Meech Lake amendments. Speaking to the Alberta legislature on 22 June, as the Meech Lake amendments entered their final hours of life, Premier Getty declared:

> Quebec came to the discussions in 1980 and 1981 and were rejected and felt humiliated. They then came in 1987 and obtained an agreement which now...seems to be blocked in 1990. Having made those two efforts, I do not believe there will be a third attempt—not within the lifetime of the first ministers that I have had the honor to deal with.[17]

The general perception that Senate reform, at least of the variety which has dominated discussion in recent years, is off the national agenda for the foreseeable future is supported by more recent developments. It is perhaps significant that the communique released at the close of the mid-August 1990 conference of provincial premiers dealt with a wide range of concerns but contained no mention of Senate reform, nor did Senate reform receive discernible attention at the meeting of Western premiers at the beginning of the month.

END NOTES

1. Janet Marie McCauley, The Senate of Canada: *Maintenance of a Second Chamber Through Functional Adaptability*, Doctoral Thesis (unpublished), Pennsylvania State University, May 1983, p. 53-54.
2. The representatives of the two territories would have been designated by the Governor in Council following the elections of their respective territorial councils.
3. See Re: *Authority of Parliament in Relation to the Upper House*, [1980] 1 S.C.R. 54-79, judgement rendered in December 1979.
4. The Lamontagne report of 1980 repeated this recommendation.
5. Peyton V. Lyon, "A New Idea for Senate Reform," *Canadian Commentator*, July-August 1962.
6. Canada, Parliament, *Report of the Special Joint Committee of the Senate and of the House of Commons on Senate Reform*, Queen's Printer, Ottawa, January 1984, p. 1.
7. Canada, *Royal Commission on the Economic Union and Development Prospects for Canada, Report*, Volume III, Minister of Supply and Services Canada, Ottawa, 1985.
8. *Ibid.*, p. 389.
9. *Ibid.*, p. 389-90.
10. *Strengthening Canada*, Edmonton, March 1985.
11. *Ibid.*, p. 4.
12. *Ibid.*, p. 24.
13. *Ibid.*, p. 26.
14. The following discussion is based on J. Peter Meekison, "The Amending Formula", in R.D. Olling and M.W. Westmacott, Eds., *Perspectives on Canadian Federalism*, Prentice-Hall Canada Inc., Scarborough, Ont., 1988, pp. 61 76; and Louis Massicotte and Françoise Coulombe, *Senate Reform*, Research Branch, Library of Parliament, Background Paper BP-96E, April 1988.
15. Cited in *Ibid.*, p. 71.
16. "Uncertain Futures," *Macleans*, 2 July 1990, p. 23.
17. Roy Cook, "Getty Sees End to Senate Reform, *Edmonton Journal*, 23 June 1990.

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Canada's Parliamentary Committees and Government Spending: New Expectations

Jack Stilborn*

Canadian parliamentary committees have come to be ascribed a central role in the exercise, by Parliament, of effective scrutiny and control of government expenditure. Their success in fulfilling their role may, indeed, provide a crucial test of the effectiveness of Parliament, itself, in fostering the financial accountability of governments, and in providing a mechanism, supplementary to that of elected governments, for ensuring that government spending reflects public priorities. This paper reviews some of the developments which have contributed to heightened expectations regarding committees at the federal level in Canada, and provides an assessment of the success of the committees in meeting the requirements of their enhanced role.

Background

The contemporary emphasis on parliamentary committees as the major means whereby Parliament's role in the control of spending could be effectively performed emerged in response to concerns which had arisen in the 1960s and 1970s. The nature of these concerns is apparent in the following comment, included in Commonwealth Parliamentary Association Study Group report prepared in 1980:

> Sociologists and political scientists have devoted a lot of time and paper to theories of public expenditure determination... The commonest conclusion is that the major determinant of the size of next year's budget will be that of last year. Within this, marginal changes to total spending are determined by the personalities and abilities of individual politicians pushing their own departmental cases in Cabinet discussions, rather than any form of rational planning or priorities. The role of the legislature is commonly described as largely passive and responsive both to the initiatives of the executive and of bureaucracy and to pressure from outside bodies such as specialist interest groups and lobbyists.[1]

An expression of specific concern about the Canadian Parliament's effectiveness in maintaining financial accountability, as well as exercising meaningful influence in this area, occurred in the annual report of the Auditor General for fiscal year 1975–1976. In words which were to be widely quoted in the media, and which brought new urgency to reform efforts, J.J. Macdonnell wrote:

> I am deeply concerned that Parliament—and indeed the government—has lost, or is close to losing, effective control of the public purse... Based on the study of the systems of departments, agencies and Crown corporations audited by the Auditor General, financial management and control in the Government of Canada is grossly inadequate. Furthermore, it is likely to remain so until the government takes strong, appropriate and effective measures to rectify this critically serious situation.[2]

It was in this climate that the government set up the Royal Commission on Financial Management and Accountability headed by Allen Lambert, then Chairman of the Toronto-Dominion Bank. Many of the major recommendations in Part V, "Accountability to Parliament: Closing the Loop," of the Commission's *Final Report* pertain to the granting of increased powers to a reorganized and streamlined committee system.[3]

The number and size of standing committees would be substantially reduced, except for the Public Accounts Committee which would have 20 members (p. 389). Chairmen would be elected for the life of a Parliament and would be remunerated at the level of parliamentary secretaries (p. 399). Committees would be allocated a budget sufficient to cover all their operating expenses and would each have independent authority to hire staff to serve the committee under the direction of its chairman (p. 400). Thus armed, committees would be encouraged to submit substantive reports to the House, whether or not these were debated (p. 403). Committees would have the power to recommend the partial reduction of an item of expenditure in the estimates (p. 404) and to undertake on their own initiative in-depth reviews of the impact of programs (p. 409).

The Commission's emphasis on reform of the standing committees as the appropriate means of enhancing

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Parliament's role in maintaining financial accountability and exercising expenditure control was further apparent in a series of additional recommendations relating to committees. The Commission recommended that there be smaller committees with lists of alternates and restrictions on substitutions (p. 397); and that the annual reports of all departments and Crown agencies be automatically and permanently referred to the appropriate standing committees (p. 401). The Commission recommended, as well, the establishment of a Standing Committee on Government Finance and the Economy (p. 381), to which would be automatically and permanently referred the government's annual fiscal plan outlining current revenues and expenditures as well as multi-year forecasts (what has now become Part I of the estimates). Another Lambert recommendation was that tax legislation be referred to a Committee on Government Finance and the Economy rather than continuing to be considered in Committee of the Whole (p. 407). Finally, the Lambert Commission gave important impetus to the continuing reform of the estimates in order that Parliament (and its committees, which have undertaken detailed scrutiny of the estimates since 1968) be presented with strategic overviews, detailed financial information, and a growing body of program evaluations in a form most useful to the average Member.

While some of the more radical proposals of the Lambert Commission were to be left aside or substantially modified in subsequent reform initiatives, the underlying assumptions of the Commission about Parliament and its committees were consistently accepted by various reform advocates of the early 1980s, and in subsequent reform initiatives. The underlying assumptions were, first of all, that concerns about Parliament's effectiveness in financial control and accountability were amply justified, and that a variety of factors made it unlikely that a reform merely of activities occurring within the House could, by itself, reverse this development. A second assumption was that parliamentary committees, if appropriately reformed, could at least partly negate the effects of factors such as the size and complexity of government, which impeded attempts at the scrutiny and control of spending by the House as a whole.

The Emergence of the Current Committee System

The 1982–83 House of Commons Special Committee on reform, in its *Third Report*, proposed a series of changes intended to foster continuity and the development of specialized knowledge within standing committees, and to expand the information flow from departments to committees. The resulting reforms, put into effect provisionally in December 1982, reduced the size of committees to 10–15 members in order to foster the growth of specialized expertise, heightened the continuity of membership by restricting substitutions to a list of formally designated substitutes, provided for the automatic referral of departmental and Crown corporation annual reports to the appropriate committee, and stipulated that "a comprehensive response" be provided within 120 days by the government to any committee report tabled before the House and containing such a request. The Special Committee on Standing Orders and Procedure, in addition to initiating the reforms just described, gave extensive attention to the problem of accountability, particularly as it relates to Parliament's scrutiny and oversight of government expenditures. It was proposed that the Public Accounts Committee be supplemented by three new scrutiny committees (on the fiscal framework, expenditure plans, and government corporations and agencies) and a further strengthening of the committee system, through greater functional specialization, the provision of more professional staff, and more extensive use of sub-committees was also recommended.[4] These recommendations were not, however, considered by the House prior to the dissolution of the thirty-second Parliament in 1984.

A Task Force on the Reform of the House of Commons, announced in the Speech from the Throne of 5 November 1984, was created on 5 December of that year. This seven-member special committee (Mrs. Bourgault, Messrs. Blaikie, Cooper, Ellis, Friesen, McGrath and Ouellet) was appointed to examine the powers, procedures, practices, organization and facilities of the House of Commons, bearing in mind the balance between the respective constitutional responsibilities and roles of the House of Commons and the government. The Hon. James McGrath was elected chairman of the Committee.

After tabling a first report, containing many of the recommendations described above, on 20 December 1984, the Committee continued its work during the winter and tabled a second report, containing original proposals largely relating to immediate concerns of Members and House operational matters, on 26 March 1985. In its third report, tabled later in the same year, the Committee presented recommendations which have been formative of the present committee system, and which may be seen as the culmination of a series of initiatives and contemplated initiatives extending over a number of years, all of which respond to a general and continuing concern about mechanisms of accountability, financial and otherwise, in contemporary parliamentary government. The central objective of reform, as stated in the report, was as follows:

> The purpose of reform of the House of Commons in 1985 is to restore to private members an effective legislative function, to give them a meaningful role in the formation of public policy and, in so doing, to restore the House of Commons to its rightful place in the Canadian political process.[5]

While a commitment to restore the effectiveness of the private members was recurrently expressed in segments of the report dealing with underlying objectives, the close relationship between this commitment and long-standing concerns about Parliament's effectiveness in the accountability process was readily apparent. The first of the goals stated at the outset of the section of the report dealing with committees, "to enable Members of Parliament to perform more effectively their function of scrutinizing government departments," clearly locates the reforms within what may be thought of as the modern tradition of reform driven by concerns about accountability.

It is noteworthy, and very much reflective of assumptions about the role of committees which have characterized the modern era of reform, that recommendations intended to "restore the House of Commons to its rightful place" focused centrally on the enhancement of the role of committees as a means of doing this. The McGrath Committee recommendations, subsequently adopted, including changes to the committee structure to make it more closely parallel to the departmental structure of government; enhancement of committee powers to obtain information (including the full array of governmental policy documents, draft legislation, expenditure plans, and evaluation documents); a reduction in the size of committees to, normally, seven members and the enhancement of a member's control over the selection of substitutes; furnishing committees with independent budgets and the authority to hire specialized staff; authorizing the Leader of the Opposition to designate one department's main estimates for committee review continuing beyond 31 May; and authorizing committees to review non-judicial Order-in-Council appointments or, at the discretion of the Minister except in a select number of cases, nominations for appointment. The investigative work of the standing committees, and their work in the detailed examination of departmental spending estimates, was given greater focus by the creation of legislative committees, which now undertake the clause-by-clause review of bills.

The Standing Committees

The enhanced role in the scrutiny and control of government spending ascribed to committees under post-McGrath arrangements, finds an explicit basis in the newly-revised Standing Orders of the House of Commons.

A. Mandate and Powers

The central basis for the broadened investigatory mandate of standing committees is set out in Standing Order 108:

1. Standing committees shall be severally empowered to examine and enquire into all such matters as may be referred to them by the House, to report from time to time and, except when the House otherwise orders, to send for persons, papers and records, to sit while the House is sitting, to sit during periods when the House stands adjourned, to print from day to day such papers and evidence as may be ordered by them, and to delegate to sub-committees all or any of their powers except the power to report directly to the House.
2. The standing committees... in addition to the powers granted to them pursuant to section(1) of this Standing Order and pursuant to Standing Order 81(4), be empowered to study and report on all matters relating to the mandate, management and operation of the department or departments of government which are assigned to them from time to time by the House. In general, the committees shall be severally empowered to review and report on:
   (a) the statute law relating to the department assigned to them;
   (b) the program and policy objectives of the department and its effectiveness in the implementation of same;
   (c) the immediate, medium and long-term expenditure plans and the effectiveness of implementation of same by the department;
   (d) an analysis of the relative success of the department, as measured by the results obtained as compared with its stated objectives; and
   (e) other matters, relating to the mandate, management, organization or operation of the department, as the committee deems fit.[6]

Particularly significant, in the above, are provisions (b), (c), (d) and (e) of Part (2), which attempt to ensure that the committees will receive information needed for an adequate analysis and evaluation of spending estimates, as well as departmental operations more generally. In supplement of these explicit powers of information access, the standing committees retain the authority to summon, and compel the attendance of, persons deemed to possess information relevant to their examination of matters within their jurisdiction. Among such persons are Ministers and departmental officials, as well as ordinary citizens. A witness before a committee must answer any and all questions put by the members, and produce documents as required by the committee. A witness appearing before a committee may be required to give evidence under oath, as provided in the *Senate and House of Commons Act*. An oath may be administered in any type of committee proceeding to any witness (voluntary witnesses or those compelled to attend). In the great majority of cases, witnesses are invited or ask to appear, and no formal assessment of the completeness of their evidence is undertaken.[7]

Standing committees are endowed by the current Standing Orders with the authority to review Order in Council appointments, or in some cases nominations for appointment, other than those to positions within the judicial system. Appointments now subject to review typically involve positions at the deputy minister level within the public service, as well as positions on Crown corporation boards, tribunals, agencies and commissions. In the case of someone who has received an appointment, a Minister must table the Order in Council under which the appointment is made within five sitting days of its publication in the *Canada Gazette*. It is then deemed referred to a standing committee named at the time of tabling. With regard to nominations, a Minister *may* table a certificate specifying the person nominated and it is deemed referred to a standing committee.

The standing committee which receives the referral has a maximum of 30 sitting days within which to deal with the appointment or nomination. It can call the appointee or nominee to appear before it and that person is obliged to appear for a maximum of 10 sitting days. The committee's inquiry is required to concentrate on the qualifications and competence of the appointee or nominee. The standing committees in this procedure act in an advisory capacity and may report their conclusions to the House.[8] This power to report, as is the case when it applies to broader issues of policy or administration, is bolstered by the entitlement of committees to request a comprehensive government response to their reports within 150 days.

Standing committees are, finally empowered to independently prepare budgets. These must, however, be approved by the Board of Internal Economy (which manages House spending) and involve overall amounts established by a Liaison Committee, consisting of all standing committee chairmen. Within budgetary limitations, the committees may retain the services of professional, technical and support staff.

B. Administration and Structure

At the beginning of each session of Parliament, the House appoints a committee of selection, or Striking Committee, which is made up of 7 members and normally includes the Chief Whips of the Opposition Parties, a representative of the Cabinet, and the Chief Government Whip, who acts as the chair. The Striking Committee selects the members of the Standing Committees of the House, and is required to report its selection to the House within the first 10 sitting days after its appointment, and thereafter, within the first 10 sitting days after the commencement of each session, thus ensuring that the standing committees have a full complement of members throughout the session.[9] The guiding principle employed in the selection of committee members is that each of the political parties should have representation proportional to its membership in the House. By convention, the recommendations of the party whips concerning committee assignments for party members are followed by the Striking Committee.

Within 10 days of the adoption of the Striking Committee's report by the House, the Clerk of the House is required to convene an organizational meeting of each Standing Committee for the purpose of electing a chairman and subsequently a vice-chairman. Following this, the committees may proceed with business. The Standing Orders regarding committee alternates have been changed to give members greater control over the method by which they are replaced on committees. Each member of a standing committee is required to draw up a list of not more than seven members who can be called up to replace the member but not to become permanent members of a committee. This list must be completed within five days of the organizational meeting of the committee and be filed with the committee clerk.[10]

As a result of changes made on 5 April 1989, when the number of standing committees was reduced from 26 to 19 and the size of most committees was increased from 7 to 14 members, the structure of the standing committees is less closely parallel to the departmental structure of government than was the case between 1986 and 1988. The current structure, however, still generally provides the committees with discrete administrative objects whose operations can be readily scrutinized (notably in the review of departmental spending estimates) and with a set of policy concerns having sufficient coherence to enable the development, by committee members, of specialized knowledge. Since 9 October 1989, when one of the broadly-scoped committees was split into two committees, there have been 20 Standing Committees, as follows:[11]

1. Aboriginal Affairs (8 members);
2. Agriculture (14 members);
3. Communications and Culture (14 members);
4. Consumer and Corporate Affairs and Government Operations (14 members);
5. Privileges, and Elections (8 members);
6. Energy, Mines and Resources (8 members);
7. Environment (14 members);
8. External Affairs and International Trade (14 members);
9. Finance (14 members);
10. Forestry and Fisheries (14 members);
11. Health and Welfare, Social Affairs, Seniors and the Status of Women (14 members);
12. Human Rights and the Status of Disabled Persons (14 members);
13. Industry, Science and Technology, Regional and Northern Development (14 members);
14. Justice and the Solicitor General (14 members);
15. Labour, Employment and Immigration (14 members);

Radha and Krishna playing hide and seek. (A folio of Bihari Sat Sai) Mewar, Rajasthan, early 18th Century

Courtesy: National Museum

Worship of Sri Nathji, Nathdwara, early 19th Century

Courtesy: National Museum

Krishna waiting for Radha in a bower. (A folio from Keshvadasa Rasikapriya) Bundi, Raj. *circa* AD 1700 *Courtesy:* National Museum

[8] A visit to Faqir: Bundi, Raj, *circa AD 1750*

Courtesy: National Museum

16. Management and Members' Services (9 members);
17. Multiculturalism and Citizenship (8 members);
18. National Defence and Veterans Affairs (8 members);
19. Public Accounts (9 members); and
20. Transport (14 members).

The operation, with respect to private members' business, of the Standing Committee on Privileges and Elections is particularly noteworthy in the light of the objectives whose pursuit gave rise to the current system. At the beginning of the session, the Clerk of the House conducts a random draw to establish an order of precedence for 20 separate items. The Committee then meets to select after the necessary consultation, and according to their importance, not more than six items which will be designated as votable items. The report of the Committee is then tabled in the House and deemed adopted. The selected items receive no more than five hours of consideration at the second reading stage. This system has the advantage of forcing the House to rule on contentious issues. Previously, members prolonged the debate until the allotted time had expired, thus avoiding having to make a decision on issues raised in Private Members' Bills but which the government did not wish to include on its legislative agenda.[12]

The effectiveness of the Standing Committees

Increased expectations concerning the standing committees as a primary means by which Parliament can perform its role in the scrutiny of government spending, and in holding government financially accountable, were very apparent in comments about the hoped-for results of reform expressed by the Hon. James McGrath, at the time of the release of the major proposals of the Committee which he chaired:

> We concluded only through an enhanced committee system could the talents of the private Member as a Legislator be best utilized and the bureaucracy kept in check. Eventually, through working closely with government departments, committees could become so knowledgeable about the workings of these departments that positive recommendations could be made both with regard to programmes which could be cut and also with regard to programmes which could be initiated.
>
> In other words, committees, rather than continually reacting to the executive and its bureaucracy, could eventually assume a leadership role.[13]

The expectations of the Hon. James McGrath were, furthermore, widely shared by other informed observers of Parliament. In an article which appeared shortly after the implementation of reform, John Holtby, who had served as Chief of Staff for the Special Committee, recognized that much of the impact of reform would depend on the degree to which committees opted to use their new powers. He expressed confidence, however, that the future would see a more intense scrutiny of government and, specifically, government spending:

> For almost two decades, the process by which the House examines the Estimates has been in disrepute: with the automatic timetabling of Estimates (spending proposals as set out by the government), Members lost the opportunity to hold up the granting of "supply," and only on the rarest of occasions has the House reduced the amount of money requested by the government.
>
> The reason is not difficult to understand. Once a minister has signed the Estimates, too much is at stake—loss of reputation, and loss of certainty in public administration. As a result of this, many would say that looking at the Estimates is a waste of Parliament's time.
>
> But the new order of reference enables the standing committees to look down the road—beyond the next fiscal year—and examine spending projections which do not as yet carry with them the reputation of the government. We may therefore see Members looking more seriously at future planning by the departments. With increased attention on the fiscal plight of the country, Members have an opportunity to involve themselves, in an advisory role, in spending patterns.[14]

What have the effects of reform been? There are a number of caveats which must accompany any answer to this question. First of all, the full impact of procedural and structural reforms often emerges only after the elapse of considerable time. Initial impacts may be produced by the expectations people hold concerning reform, rather than reform itself, or may emerge from other, relatively transient, reactions, hard-to-change habits, or indirect consequences of these. Secondly, as we have seen, reforms recently enacted should be seen, not in isolation, but as a particularly significant interval in a process of reform which has been in operation at least since the 1970s. It is probably impossible to fully disentangle the effects of recent and earlier reforms.

A recent work by C.E.S. Franks, a prominent Canadian authority on parliamentary institutions, acknowledges that reform has enhanced the general importance of committees, but provides an otherwise pessimistic view of their success

in meeting some of the expectations which accompanied reform:

> Committees serve a useful function, and on rare occasions can be astoundingly valuable and influential, as was the Special Joint Senate-House Committee on the Constitution in 1981–2. But committees do not often reach these heights... The working procedures of the standing committees have not been satisfactory and have made many committee proceedings into a formalistic, empty exercise with little commitment on the part of chairmen or members and little importance to government and public. Committees are now stronger and more influential than they ever have been in the past. But they are not ever going to have the influence of their U.S. counterparts, nor should they.[15]

Recent achievements by several committees, notably the Standing Committee on Finance and Economic Affairs, and the Standing Committee on External Affairs and International Trade, provide some basis for qualifying the pessimism apparent in Franks' general assessment. Where the political will is present in committee ranks, committees now not infrequently make use of their new capacity to depart considerably, in reports and other public statements, from prevailing government positions. Committee scrutiny of government appointments has, in a number of cases, generated considerable attention from the media and the general public. It should not be forgotten, in this connection, that public attention is an indispensable element in what has frequently been termed the "accountability loop": the ultimate purpose of accountability to Parliament is to enhance the accountability of governments to the public. Finally, Members of Parliament, and the public, have received a succession of substantial investigative reports—many containing policy recommendations which have on their obvious merits demanded, and received, serious consideration from the government.

There is, however, much less evidence on the basis of which one could object to Franks' omission of any specific reference to the scrutiny and control of government spending by committees, in his general reference to their new influence. The detailed scrutiny of departmental estimates, carried out by standing committees, both saves House time and enhances the governmental oversight function of Parliament, when compared with arrangements prevailing before 1969 under which the estimates were considered by the House as a whole, convoked as a Committee of Supply. The lack of administrative expertise within committees, and their reliance on department officials for information, imparts, however, broad limits to the effectiveness of this function. Limitations also result from the partisan behaviour of many committee members, and from their propensity to focus on broad policy issues rather than issues of departmental efficiency and effectiveness, or value-for-money issues.

Committee consideration of the estimates thus continues, as a general rule, primarily to provide a forum for general criticism of governmental policies and priorities—itself a component of Parliament's performance of the governmental oversight function—rather than for the control of government spending, or its specific scrutiny. It should not be forgotten, however, that the existence of committees capable, at their discretion, of focusing on these activities contributes, itself, to Parliament's role in maintaining the financial accountability of government. It is, perhaps, primarily in this sense that it can be argued that the new powers of committees have generated an enhanced role for committees in the scrutiny and control of government spending.

END NOTES

1. Peter Riddell, *Parliament and the Scrutiny of Public Finance*, Report of a Study Group of the Commonwealth Parliament Association, London, The Economist Intelligence Unit, 1980, p. 7.
2. As cited by the Royal Commission on Financial Management and Accountability, *Final Report*, Ottawa, March 1979, p. 14 (emphasis in original).
3. See *ibid.*
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Information Systems at the Legislative Assembly of Alberta

David J. Carter*

Alberta, one of ten provinces in Canada, covers an area of 751,000 square kilometres, spanning a topography that varies from plains to mountains. This area encompasses a total population of 2.5 million that is represented in the Legislative Assembly by 83 Members. These figures serve to demonstrate that Alberta has a relatively small population distributed over a rather large area. This offers special challenges in representing constituents that may be located over 600 kilometres from Edmonton, the seat of the provincial government.

In 1989, under the guidance of the Speaker of the Legislative Assembly and at the direction of the Select Committee on Members' Services, a new Electronic Data Processing (EDP) initiative was undertaken. The major objective of the initiative was to improve the flow of information between:

Members and their constituency offices
Members and their staff
Caucus office staff
Speaker's Office and the Legislative Assembly Office

The initiative was broken down into two components:

(a) the automation of constituency offices in the Province and
(b) the upgrading of EDP technology within the Legislature Building and the Legislature Annex.

Constituency Office Automation

The Special Committee on Members' Services has long recognized the need for automation in constituency offices. In June 1986 the Committee began working towards a rational development of the "electronic office". On December 5, 1988, the Committee authorized the computerization of Assembly constituency offices, as funding was provided. This approval was provided following a six month pilot project and subsequent evaluation report. The evaluation report recommended that "the constituency offices be encouraged to utilize microcomputer based technology to meet their EDP requirements subject to guidelines and standards established by the Legislative Assembly Office." This recommendation was based on a pilot project which demonstrated:

(a) That a stand alone microcomputer is a cost effective and user friendly device for meeting the primary requirements of the constituency office.
(b) The ever decreasing cost of microcomputer technology combined with its ever increasing capabilities make the microcomputer ideal for use in a constituency office.
(c) The communications related functionality provided an effective means of dealing with constituent concerns.
(d) Problems involving input from both of a Member's offices were handled better than before and turnaround time was significantly reduced.
(e) Issues could be dealt with promptly as information could be passed between participants very quickly.
(f) The support provided to a Member was greatly enhanced.

Based on this justification, the Members' Services Committee recommended and the Assembly approved funds in the 1989/90 Budget for the computerization of constituency offices.

Assembly Automation Upgrade

Following the formation of an Information Systems Services section within the Legislative Assembly and subsequent formation of an EDP Management Committee, a review of current EDP practices and needs within the Legislature Building and the Legislature Annex was conducted. This review resulted in the formulation of a *Five Year EDP Strategic Plan.* One of the major recommendations of this plan, which was approved by Members' Services in December 1989, was the upgrading of the Assembly's present technology to more up to date technology. This recommendation was based on economic as well as other considerations that are outlined below.

*Hon Dr. David J. Carter, Speaker, Legislative Assembly of Alberta, Canada.

Economic

Cost of maintaining the old system	$198,485/year
Cost of maintaining the present system	66,000/year
Total annual maintenance savings	$132,485/year
Cost savings over four years	$529,940
Cost of present system	392,000
Net Benefit	$137,940

Other Considerations

In addition to the cost savings noted above there are a number of other benefits that accrue as a result of this initiative.

(a) Decreased reliance on obsolete technology. The technology previously being used was old and increasingly difficult to maintain. The vendor had stated they were no longer producing hardware leading to the conclusion that maintenance would cease in the near future.
(b) The newer technology provides increased funtionality and thereby increased productivity. The older technology provided only word processing and some list management capabilities. The newer technology provides not only those capabilities but also spreadsheet anaylsis and data base management.
(c) The new technology is compatible with the technology installed in the constituency offices. This increases the ease of electronic communications between the constituencies and the Legislature.
(d) The upgrading is based on an industry standard, thereby ensuring that it will be compatible and can be upgraded to future technologies.
(e) Those using the new equipment find that it is more flexible, easier to use and produces a more professional looking product. This increases their job satisfaction.

Based on these benefits Members' Services approved upgrading to this new technology, in its December, 1989 meeting and the project commenced shortly thereafter. The technology implemented was microcomputer based and the information flow objective was accomplished by connecting all local work stations together using a Local Area Network (LAN) concept. All remote work stations, those in the constituency offices, were provided with microcomputers and modems to allow them to dial into the network using the Provincial Government's standard telephone system. As well, the network is connected to the Provincial Government's mainframe computers so that anyone with access to a work station can have access to mainframe data. A representation of the network is presented in Figure 1.

Using this approach Members and staff are now able to:

(a) produce professional looking reports, bills, letters and memos.
(b) send and receive electronics messages in seconds from anywhere in the Province, instead of taking days to send a message via standard post or playing "telephone tag" for hours.
(c) send and receive word processing documents and mailing lists in seconds from anywhere in the Province.
(d) receive support from the Information Systems area when difficulties are encountered. It is possible for Information Systems to view and correct most problems that occur in the Province from a central site.

In addition, this technology has allowed the Assembly to develop a number of unique systems to provide service to the Members. One of these systems is an Electoral Boundaries Mapping System that provides the capability to provide election and census information for each constituency by simply pointing to the area of the Alberta map that you are interested in.

In conclusion, this complete system was implemented in just over one year and has been well accepted by all participants. It now provides them with the information flow that they felt was neccessary for the adequate performance of their duties. This is not to say that the system will now remain static. It is a dynamic area and is continually changing as new technologies arrive on the market and as the needs of the Members and staff change.

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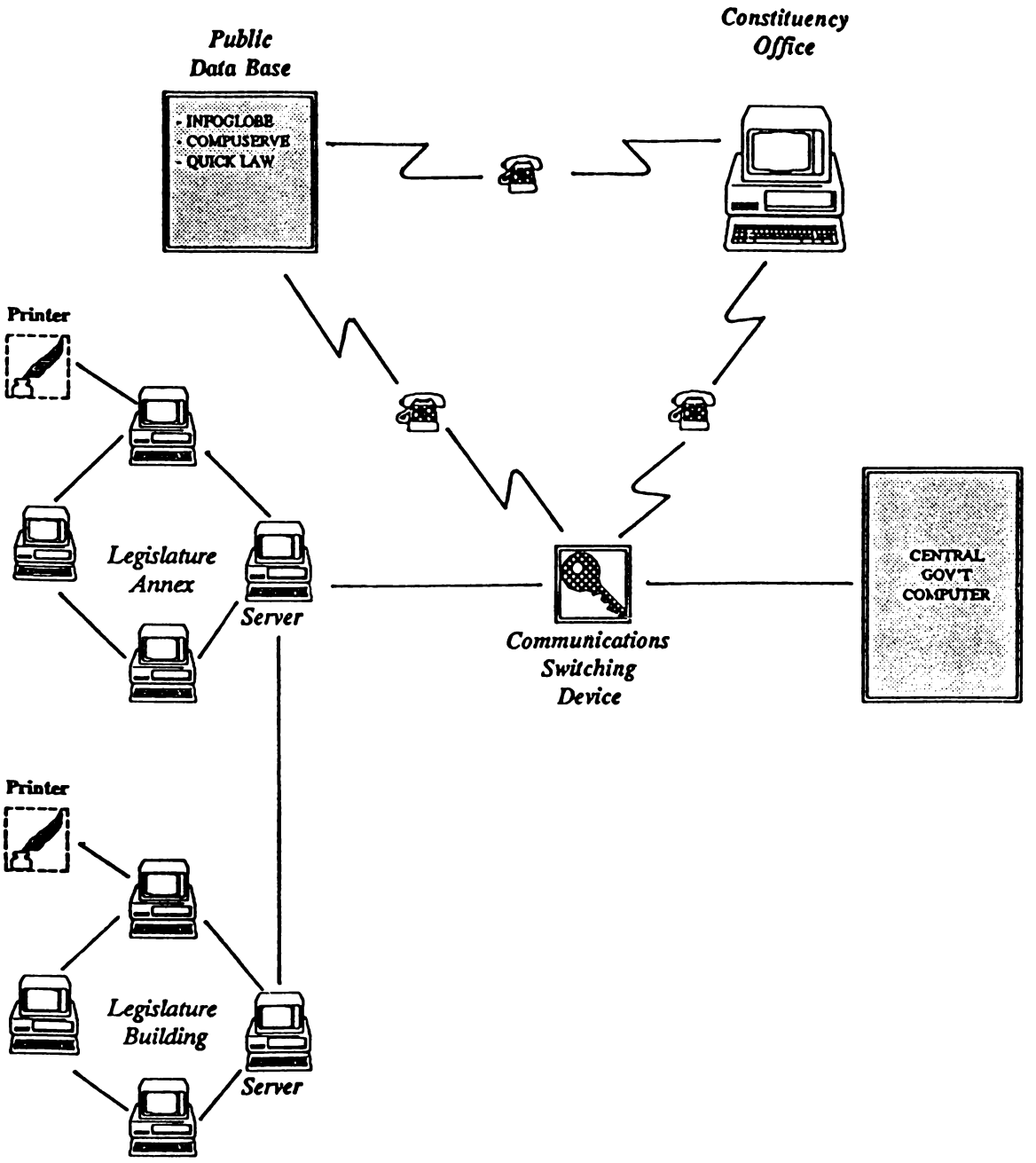

Alberta Legislative Assembly Network

The Legislative Assembly of New Brunswick

David Peterson*

The Legislative Process

New Brunswick's system of government, like the federal system in Ottawa and those in other provinces, is based on the British parliamentary system. Under our system of parliamentary democracy, each of the 58 Members of the provincial Legislative Assembly is individually elected to represent the voters in one constituency or district.

Although a Member of the Legislative Assembly (MLA) need not be affiliated with an organized political party, it has historically been the case in New Brunswick for Members to belong to either the Liberal Party or the Progressive Conservative Party. The first Member of the Legislature to represent the New Democratic Party was elected in 1982.

The New Brunswick Legislative Assembly continues for five years from the date of the issue of the writ for choosing the same, unless dissolved sooner by the Lieutenant Governor. The formal opening of the first session of a Legislature begins with the taking and subscribing of the oath of allegiance by Members, the election of a Speaker and the Speech from the Throne by the Lieutenant Governor.

Unique Roles for non-Members

The "Business of the House" in New Brunswick includes events that take place daily in most Parliaments which are based on the Westminster model. However, because New Brunswick elected a one-party Legislature in 1987, the New Brunswick Legislative Assembly adopted a unique procedure that allowed parties, without elected Members in the Legislative Assembly, to submit written questions to government Ministers.

During the second session in 1989, questions were delivered to the Clerk of the House who read them in the House. The Clerk, during a proceeding entitled Questions from Registered Political Parties, read the questions, indicated the registered political party which proposed the question and identified the Minister to whom the question was directed. Ministers responded orally to these questions without having had the benefit of prior knowledge of the question.

During the third session, which opened on 13 March 1990, the House continued the provisional rule but with major modifications. The Clerk no longer reads the questions. Instead, the House approved a plan that allows the Leaders of the three registered political parties to appear before the Bar of the House to pose their own questions.

I know of no authority which permits anyone who is not a Member of the House to address honourable Members from the Floor of the House. However, precedents to exist that suggest that it is competent for anyone, with the permission of honourable Members, to address the House from the Bar.

Following the tabling of the report of the Standing Committee on Procedure on 15 March 1990, the House unanimously approved the following motion:

> That the Leaders of registered political parties, as defined in the Elections Act, be afforded the privilege of appearing at the Bar of the House, to ask questions of Ministers of the crown relating to public affairs or to any matter of administration for which they are responsible.

In addition, our Standing Committees on Estimates and Public Accounts allow the representatives of registered political parties to attend committee hearings and examine witnesses in the same manner as if they were elected Members appointed to the committee by the House.

In the 1990 Fall Sitting of the House, it was agreed to allow the Leaders of registered political parties to table petitions in the House in the same manner as members are allowed to do in the Standing Rules.

It is anticipated that the tabling of petitions, the questions from registered political parties and the appearances of non-elected representatives before committees will be practices that will not continue when an elected opposition is once again part of the New Brunswick Legislative Assembly.

The Budget

On March 27, 1990, the Minister of Finance, Hon. Allan Maher, tabled his government's $4.135 billion budget. The government forecast that ordinary account expenditures

*Mr. David Peterson, Clerk, Legislative Assembly, New Brunswick, Canada.

would increase by $230.2 million over the 1989-90 Budget. This represents a growth in ordinary expenditures of 6.5 per cent which is below the rate of growth of the economy expected to be 6.6 per cent in 1990, about the same as the Canadian economy. Economic growth in New Brunswick in 1990, after adjusting for inflation, is forecast to be the highest in all of the Atlantic region.

The Budget, which contains no new taxes, will significantly increase funding in important areas such as health care, education, environmental protection, and job creation and includes a budgeted surplus of $3.7 million, the third successive surplus in the ordinary account. Grants to universities will increase to $143.9 million as recommended by the Maritime Provinces Higher Education Commission; the budget for Health Care will exceed $1 billion, an increase of $85.9 million or 8.8 per cent over last year, and the budget of the Department of Advanced Education and Training will increase by 7.9 per cent or $7.7 million.

Thirty million dollars in supplementary funding will be added to the 1990-91 Capital Budget for the Trans-Canada Highway and connecting links to the City of Saint John.

Highway capital spending will total $186.1 million including $102 million on the province's arterial highway system.

Mr. Maher reaffirmed his government's commitment to the policy of balancing the needs of New Brunswickers with the province's ability to pay.

Committees

The New Brunswick Legislative Assembly presently has nine Standing and two Special Committees as follows:

1. Standing Committee on Crown Corporations
2. Standing Committee on Estimates
3. Standing Committee on the Ombudsman
4. Standing Committee on Private Bills
5. Standing Committee on Privileges
6. Standing Committee on Procedure
7. Standing Committee on Public Accounts
8. Standing Committee on Law Amendments
9. Standing Committee on Legislative Administration
10. Special Committee on Economic Policy Development
11. Special Committee on Social Policy Development

Student Legislative Seminar

The first student legislative seminar ever held in New Brunswick brought fifty-eight students representing high schools from across New Brunswick to the Legislative Assembly for a three-day seminar in late March.

The weekend concluded with a mock legislative assembly which was unquestionably the highlight of the weekend's activities.

Financial support for the seminar was provided by The Association of Clerks at-the-Table in Canada, the Secretary of State, the Province of New Brunswick's Department of Intergovernmental Affairs, and the Legislative Assembly. The second seminar took place in March 1991.

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Legislative Assembly of the Northwest Territories

D.M. Hamilton*

Visitors to the Legislative Assembly of Canada's Northwest Territories, accustomed to the more decorous character of legislatures in the southern provinces, are often surprised by the unique and informal atmosphere of this Assembly.

The Legislative Assembly does not yet have its own building and is housed in an addition to a downtown hotel in Yellowknife, the capital of the Northwest Territories. The Assembly Chamber is decorated with a full-size polar bear skin, beaver pelts, sealskins, and a colourful tapestry by a well-known Inuit (Eskimo) artist, the late Jessie Oonark. Plans for a permanent home for the Assembly, however, are underway and the new building is scheduled for completion in 1993.

The mace, traditional symbol of the authority of the Legislative Assembly, is made almost entirely of materials found in the North, including a narwhal tusk, muskox horns and porcupine quillwork. The mace sits on the Clerks' Table on cushions of beaver fur, a reminder of the Assembly's official support for the hunters and trappers of the Northwest Territories.

The high school students who act as pages during sessions wear beaded and embroidered sealskin leather vests as they perform their duties.

The names of the 24 constituencies reflect the cultural and linguistic diversity of the North. One Arctic constituency, for instance, is called *Nunakput*, meaning "our land" in *Inuvialuktun*, the western *Inuit* dialect, while further south, the constituency which includes Fort Simpson is called *Nahendeh*, also meaning "our land" but in the South Slavey language of the *Dene* (Indian) people.

During sessions, Members use the aboriginal languages of the Northwest Territories with translation provided by the members of the Territorial government's Language Bureau, who work out of the interpreters' booths filling the rear wall of the Chamber. In 1986, the six languages of the *Dene* and *Inuit* were recognized as official languages in the Northwest Territories by the Legislative Assembly. As well as these aboriginal languages and English, the Legislative Assembly has added French to its operations.

These features reflect the native majority in the Assembly, where 16 of the 24 Members are of *Dene, Metis* or *Inuit* origin. The Executive Council, the equivalent of a southern Cabinet, also has a majority of aboriginal members among its eight Ministers. The present Speaker, the Honourable Richard Nerysoo, on his election in 1989, became the first aboriginal person to hold this position in the Northwest Territories.

There is no opposition in the Territorial legislature which operates within a consensus form of government without political affiliations. Despite some attempts to introduce a party system in recent years, partisan politics have not yet become a feature of politics in the Northwest Territories. As a result, the Executive Council and Government Leader are elected by all MLAs from among the Members.

The Government Leader, who plays a role similar in many ways to a provincial premier, is responsible for developing consensus positions with other Executive members and serving as their spokesperson on matters that do not fall within individual portfolios. The Government Leader also has additional authority for the overall management and direction of the Executive and for taking any disciplinary action he deems necessary with respect to the conduct of his cabinet colleagues.

But, as the present Government Leader, the Hon. Dennis Patterson, MLA for the Baffin Island constituency of Iqaluit, points out, "It would be very easy for the Members of the Legislative Assembly to overturn this government. It's no secret that there are 15 of them and eight of us. They have an enormous amount of power to make changes in the leadership of the government if they wish".

The northern style of consensus government has evolved as the people of the north have struggled to gain representative and responsible government. Over the last 80 years, northerners have been represented in turn by an appointed council made up of federal civil servants, by a council with both appointed and elected Members and, only since 1975, by a totally elected Legislative Assembly.

Although the Legislative Assembly still does not have the same legislative powers as in the provinces, in practice it acts in most respect as a provincial legislature. The Legislative Assembly makes new laws and changes existing legislation, decides how public money is spent and approves government programs and policies. The Territorial government differs from its provincial counterparts in that it does not have province-like control over most land, non-

*Mr. David M. Hamilton, Clerk, Legislative Assembly, Northwest Territories.

renewable resources with the exception of game, labour relations and certain aspects of criminal law. In addition, a variety of authorities are still in the process of devolution to the Territorial government.

Increasingly, the Commissioner is taking on the role of a Lieutenant-Governor. The Federal government still has the power to disallow bills for up to one year after passage and the Commissioner, a civil servant who reports to the Federal Minister of Indian and Northern Affairs, is still the Chief Executive Officer of the Government of the Northwest Territories. However, no Territorial legislation has ever been disallowed by Ottawa and the Commissioner generally follows the direction of the Legislative Assembly.

During its sessions, the Assembly operates according to standard parliamentary rules for debate, with some modifications to allow for northern circumstances. The Assembly, for example, frequently refers questions to Committee of the Whole where more informal discussions can take place.

Because there are no party organizations to provide services for Members, the 18-person staff of the Legislative Assembly provides assistance in the areas of finance and administration, research and public affairs to all Members on a non-partisan basis. As well, an Inuktitut-speaking staff member assists Inuit MLAs from the Eastern Arctic, many of whom are unilingual.

Following the Territorial election in 1987, the Legislative Assembly staff also began providing services in Braille to the first blind Member elected to the Assembly.

Sessions are usually held twice a year for a total of approximately 15 weeks, depending on the amount of business to be discussed. Sessions begin each year on the second Wednesday of February and the first Wednesday of October.

An active committee system allows all Members the opportunity to participate in making or shaping government policies. Committees have taken on responsibility for many of the tasks of governing. The Standing Committee on Legislation, for example, reviews all draft legislation, except financial bills, proposed by the Executive Council before its introduction in the Assembly and makes recommendations for changes, additions or deletions to each bill.

The present Eleventh Assembly, early in its term, created the Special Committee on the Northern Economy to develop a long-term strategy to guide economic development in the Northwest Territories until the year 2000. Before it presented its final report to the Assembly at the 1989 Fall session, the Committee visited each constituency across the vast Northwest Territories to hold public meetings to hear residents' concerns about the economy and their suggestions for improving it.

Rapid changes in recent times have produced a form and style of government that is still developing and evolving but will no doubt continue to reflect the cultural and geographic diversity and beauty of the huge territory and its people in the future.

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Organization and Operation of the National Assembly of Québec

Jean-Piérre Saintonge*

The Parliament of Québec was created nearly two hundred years ago following the model of the British system. It became a one-house system in 1968, when the Upper Chamber, or non-elected Legislative Council, was abolished.

The National Assembly

The National Assembly is composed of 125 Members elected by universal suffrage through a simple majority, uninominal, single-round ballot. Members usually belong to parliamentary groups corresponding to the political parties formed for election purposes. Parliamentary life in Québec is traditionally dominated by two major political formations.

The **President** is elected by all his colleagues and holds office throughout the legislature, that is, for a period not exceeding five years between two general elections. The very basis of his role implies neutrality: he does not take part in the Assembly's discussions and does not vote, except in the case of a tie. As long as a Member holds the office of President, he does not perform any partisan activity.

Becoming President entails acceptance of various responsibilities. At the parliamentary level, the President sees that the Assembly's Rules of Procedure are respected and ensures that the rights and privileges of the Assembly and its members are upheld. At the administrative level, he manages the National Assembly's services and personnel. Finally, he represents the Assembly in a number of international parliamentary associations. The president is assisted in his role by two **Vice-Presidents** elected at the beginning of each legislature. When replacing the President, they enjoy the same privileges and dispose of the same authority as he does.

The **Prime Minister** is the leader of the political party which had the most Members elected at the last general election. When he speaks in the House, he does so on behalf of the Government he leads. He is responsible for the Government's orientations. The **Ministers**, appointed by the Prime Minister, play an active part in the work of the National Assembly. They are responsible for the various sectors of government activity and must answer Members' questions. During the legislative process they are also required to defend any bills they table before the House.

The **Leader of the Official Opposition** is the leader of the party having the second-largest number of Members elected at the general election. He sits opposite the Prime Minister in the House and is his main interlocutor. The leader of each parliamentary group chooses a **House Leader**, who is an expert in matters of parliamentary procedure. The House Leaders, on behalf of their respective groups, propose the subjects to be discussed in the House, and are responsible for formulating their group's strategies. **Whips** are appointed by their party leader or elected by their peers. Their main function is to maintain order, cohesion and solidarity among the ranks of their parliamentary group. The eight **Standing Committee Chairmen** are Members elected to this office for a period of two years by their co-committee members. They act as organizers, moderators and planners within their respective committees.

The Triple Role of Members

Members play three major roles: as legislators, as controllers and as representatives. In the Parliament Building, when they are not sitting in the House or in committee, they spend part of their working time studying, discussing and preparing the speeches they will make in Assembly debates. The remainder of their time is devoted to trying to solve their constituents' problems.

Members as Legislators

Although Members theoretically have the power to introduce bills, they fulfil their legislative role principally by studying bills submitted by the Executive Council. In fact, only a Minister can introduce a bill involving spending by the State or the creation of a tax. At the **introduction** stage, a Minister or Member introduces the bill to the Assembly, which is then invited to vote without debate. Following this, a standing committee can hold a public hearing at which groups and individuals concerned are able to make comments and suggestions to the legislators.

Passage in principle is the stage when Members

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debate the relevance of the bill and its intrinsic value. The bill is then referred to the standing committee concerned or to a committee of the whole House for **detailed consideration.** The committee studies each section of the bill and debates the details, and then tables its report for **consideration** by the Assembly. The next stage is **passage** of the bill, where debate is restricted to its content. Finally, upon receiving the **assent** of the Lieutenant-Governor, the bill officially becomes law.

Members as Controllers

Parliament's principal role is to exercise its supervisory and controlling power over the Government and public bodies. Members have several possible ways of doing this: for example, questions, motions of no confidence, interpellation, the debate on the Opening Speech, the debate on the Budget Speech, consideration of the estimates, examination of financial commitments, the report of the Auditor General and consideration of the Government's budgetary policy.

Members as Representatives

Finally, Members act as representatives of their electors, and a significant part of their activity is carried out in their constituencies. The constituency office plays a strategic role. Electors often go there to express their needs, and it is also the place where a Member wishing to hear what his constituents have to say can strengthen contacts and thus become a better representative.

A Parliament in Evolution

Over the last twenty-five years the Parliament of Québec has undergone a number of reforms intended to improve its effectiveness as a legislative body and public watchdog. A number of these reforms affected the standing committees, which play a vital role in the legislative process and in controlling public administration. They are in fact an extension of the Assembly itself, and form the pivot around which Members carry out their legislative and controlling roles.

Other than the Committee on the National Assembly, eight standing committees cover the major sectors of public administration: institutions, the budget and administration, social affairs, labour and the economy, agriculture, fisheries and food, planning and infrastructures, education, culture. Each committee is composed of some fifteen Members, including the chairman and vice-chairman. Members are designated according to their political affiliation, and are appointed by the Assembly for a period of two years. Their main responsibility is to carry out the mandates entrusted to them by the Assembly. At the request of the Assembly, the committees study bills, estimates and anything else referred to them. They may, on their own initiative, study draft regulations and standing orders, the orientations, activities and management of public bodies, financial commitments and any other matter of public interest.

Reforms have also affected the House itself. One of the most spectacular was undoubtedly the introduction in 1978 of television coverage of debates. Parliamentary procedure has also been reformed from time to time.

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Parliament Without Parties—Executive and Legislature in Guernsey

Charles Keith Frossard*

It is a common observation and a source of regret to parliamentarians that the powers of the executive have tended to grow at the expense of the legislative branch. The Island of Guernsey offers an example of a parliamentary democracy in which the legislature and government have evolved along lines radically different from the Westminster tradition. It may be of interest to parliamentarians to note a few of the distinctive features of the Guernsey Constitution and their implications for the balance of power as between executive and legislature.

Guernsey is a fully self-governing island community with 55,000 inhabitants; the legislature, known as the States of Guernsey, combines legislative and executive functions. Guernsey, in common with the other Channel Islands, is a dependency of the English Crown, and enjoys close co-operation with Her Majesty's Government in the United Kingdom. Responsibility for defence and foreign relations rests with Her Majesty's Government and the Island, by agreement, makes a contribution toward the former and in respect of the latter pays for services provided as they arise.

Since 1948 the States of Guernsey have formed a single chamber legislature consisting of 55 elected members; at present 33 are People's Deputies, elected by universal suffrage by general election every three years, 10 are Douzaine Representatives, chosen annually by each of the 10 parish councils or *douzaines* which are themselves elected by universal suffrage, and 12 are *Conseillers*, 6 of whom are elected every three years, by an electoral college consisting of the legislature together with 24 additional parish representatives, to serve a 6 year term. Conseillers have tended to represent the more senior members of the States, to hold the presidencies of major committees and to form the majority of members on the Advisory and Finance Committee (see paragraph 6). A major revision to this system has recently been agreed and is summarised below.

Guernsey does not have a written Constitution; the States have existed continuously since at least 1605, and have evolved to meet Island needs. The Reform Law, 1948, as amended, governs the composition of the legislature, methods of election etc. and can perhaps be compared with the Representation of the People Acts in the United Kingdom. A limited degree of 'entrenchment' was provided in 1987, when it was enacted that any future amendment to the Reform Law would require to be approved by a two thirds majority of the members present and voting, failing which it would be resubmitted after three months when a simple majority would suffice. A standing committee of the States, the Constitution of the States Review Committee, recently proposed that the office of Conseiller, created in 1948, at a time of far reaching constitutional changes, to ensure continuity and to provide a 'second chamber' within a unicameral system, be abolished and replaced by a like number of additional People's Deputies, elected for an extended term of 4 years. This topic had been the subject of political controversy in the Island for a number of years.

In the event, a compromise was reached after one and a half days debate, and approved by the necessary two-thirds majority. With effect from the next general election in 1994 the Conseillers in their present form will be abolished; the number of People's Deputies will be increased by 12 to 45 and at their first meeting the new States will select 12 of those People's Deputies to the post of Conseiller, to serve until the next general election when they would have to stand for re-election in the same way as any other People's Deputy.

Party politics is unknown in Guernsey. All members of the States stand for election as independents; it follows that the legislature is not divided into government and opposition groups. One result is that there is no guaranteed majority for any proposal placed before the States; government is therefore conducted by consensus rather than confrontation. The States delegate the day-to-day functions of government to numerous executive standing committees, which have a uniform constitution of a President and 6 ordinary voting members elected by the States; the President and a majority of the ordinary members of each committee must be sitting members of the States. The work of these committees is co-ordinated by the Advisory and Finance Committee which has the duty of considering and commenting upon policy proposals before they are debated by the States. This system enables all members of the States to share in the responsibilities of government by sitting on one or more executive committees and members are free to criticise the performance of, or oppose the proposals put to the States by, any other Committee.

Enemy occupation during the Second World War prompted an experiment in 'cabinet' government unique in

*Hon. Charles Keith Frossard, Bailiff and President of the States, Guernsey.

Guernsey's history. A few days prior to the German invasion in 1940 the States delegated extensive administrative and legislative powers to a Controlling Committee, whose seven members were responsible for the various essential services such as rationing, food production, health etc. This executive was able to make swift decisions, without public debate or the delays involved in convening meetings of the States, in order to cope with the emergency. This system endured throughout the five years of occupation; the States as a body met less and less frequently as the war progressed, and their meetings were often very brief and purely formal, to consider annual budget and accounts; normal political activity was suspended for the duration, and no popular elections were held.

On the liberation of the Island in 1945 the States decided to return to the committee system of government as being, in the words of a report accepted in July 1945, "best suited to the island, particularly as it has the great advantage of spreading the administrative work of the States over a number of its members instead of concentrating it in the hands of the few." The opportunity was however taken to reduce the number of pre-war committees and rationalise their functions, and to set up an Advisory Committee to co-ordinate the work of the States, not a 'cabinet' but elected by and responsible to the States in the same way as any other committee. The rule of this Controlling Committee for 1940 to 1945 was an effective response to an extreme emergency but was not regarded as appropriate in peacetime; it is remarkable that during the period of popular debate on the Constitution which led to the Reform Law, 1948 the principle of government by executive committees was taken for granted; instead the controversy centred upon the method of election to the States and the relationship between the Royal Court and the States. The Controlling Committee was the exception which proved the rule.

States procedures for the enactment of legislation are highly streamlined as compared with the Westminster tradition. Government sponsored legislation is invariably preceded by a policy letter or 'White Paper' drawn up by the relevant Committee summarising the proposals in a layout convenient for parliamentary debate; the policy letters for consideration at each monthly meeting are submitted to the President of the States, the Bailiff of Guernsey (a Crown appointment which combines the functions of Speaker of the legislature and President of the Royal Court) and published at least 20 days prior to the meeting. As a general rule, the detailed drafting of legislation is only commenced when the States have approved the proposals in principle; the policy letter will however have been so drafted as to provide clear directions for the legislative draftsmen to follow. The advantages of this system are that the States are able to reach a decision on the principle of proposed legislation at an early stage, rather than in clause by clause debate on the draft legislation itself; only when the principles have been accepted is scarce draftsmen's time devoted to preparation of bills. Draft legislation is then prepared and laid before the States for approval at a later meeting, again with at least 20 days' notice. It is rare for the principles to be debated again or for legislation to be significantly amended or rejected at this stage. Most Island legislation is in the form of Ordinances of the States, which simply require the approval of the States for their enactment. More far reaching legislation, for example affecting the constitution, creating criminal offences, imposing new taxes or changing the customary law, requires to be drawn up as a Bill or *Projet de Loi*, which after approval by the States is submitted to Her Majesty in Council for ratification by Order in Council.

Private members can place proposals before the States by way of *Requete* or petition, signed by 7 members; these are published prior to the monthly meeting in the same way as policy letters. The *Requete* procedure is commonly invoked either to invite the States to set up an investigation committee to examine a particular problem or to direct an existing Committee to investigate and report back. For example, the report of the Constitution of the States Review Committee in January 1991 on the post of conseiller was made pursuant to a *Requete* approved by the States in amended form the previous May.

The streamlined procedures summarised above contribute to the productivity of the States; debates rarely exceed 2 days each month, or a total of 110 hours each year. (All debates are broadcast live by BBC Radio Guernsey—and are said to account for the station having the largest audience, in proportion to population, of any BBC radio station in the British Isles).

20 days' notice is usually given of proposals submitted to the States, whether original policy letters or subsequent legislation. However there was until recently no comparable requirement for prior notice of amendments, with the exception of amendments to the Annual Budget, which had to be circulated 5 days in advance. The States Rules of Procedure Committee and the States have recently had to balance the democratic right, and indeed practical necessity, to allow amendments to be placed during the course of debate, against the equally democratic right of other Members and the public to have proper notice of what is proposed and time to consider the possible effects of such amendments.

The result has been an extension of the 5 days' notice requirement to cover amendments to, *inter alia:*—

(i) legislation;
(ii) propositions involving capital expenditure; and
(iii) propositions relating to taxation or charges generally (i.e. not limited to the Annual Budget debate).

The notice requirement does not however apply to any amendment proposed by the Committee sponsoring the original proposals.

Amendments which go further than the original propositions have also created procedural difficulty. This has been resolved to the effect that, when an amendment has been so designated by the President, and on the motion of at least one-third of the members voting, the amendment may be not debated at all, or may be postponed for consideration at a later meeting, as the case may be.

Individual Committees may seek a vote of confidence from the States and may offer their collective resignation if defeated on an issue vital to the committee. The States then have to decide whether to accept such resignation or not. However, because executive power is diffused through numerous committees, each responsible directly to the States, the concept of a vote of confidence for the government as a whole is quite unknown.

In brief, the Guernsey form of parliamentary democracy has the following distinctive features:—

Fixed term of office and therefore no power for the executive to call a general election.

Members are all independents; every vote is a free vote and decisions are reached by consensus rather than the exercise of party discipline.

All members can participate in government through the executive committees to which they are elected by the States, but are free to criticise any other aspect of government.

Debating procedures are streamlined; all States Committees and any Private Member, through the Requete procedure, have equal access to parliamentary time.

Reasonable notice has to be given to Members of all executive proposals, draft legislation and amendments.

Written Constitutions commonly incorporate elaborate checks and balances intended, not always successfully, to define and limit the powers of the legislative and executive branches. In Guernsey a similar effect has been achieved, not by conscious planning, but as a natural consequence of a legislature without parties, in which executive functions are delegated to a wide range of standing committees each of which are independently responsible to Parliament.

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Freedom is not worth having if it does not connote freedom to err.
—Mahatma Gandhi

The Structure and Organization of the Legislative Council in Hong Kong

Law-Kam-Sang*

The Legislative Council consists of the Governor of Hong Kong, who is the President; three ex-officio members, namely, the Chief Secretary, the Financial Secretary and the Attorney General; seven official members appointed by the Governor and 46 non-official members. Among the non-official members, 20 are appointed by the Governor, 12 are by the Electoral College and 14 are elected by functional constituencies.

The Electoral College comprises members of the District Boards, the Urban Council and the Regional Council. The District Board members are for this purpose grouped into 10 geographical constituencies (each representing approximately 500,000 people) providing 10 Legislative Council members. The remaining two members are elected by two constituencies formed respectively by members of the Urban Council and of the Regional Council.

There are nine functional constituencies returning a total of 14 members to the Legislative Council. Each functional constituency represents an occupational or professional group: commercial; industrial; finance and accountancy; labour; social services; medical and health care; teaching; legal; and engineering, architectural, surveying and planning. Of these, the commercial, industrial, finance and accountancy, labour and medical and health care functional constituencies return two Legislative Council members each while the other four return one member each.

Appointments of the remaining members are made by the Governor with the approval of the Secretary of State. The official members among the appointed members are senior civil servants. In appointing non-official members to the Legislative Council, the Governor tries to ensure a broad spectrum of representation and, where necessary, to balance sectoral interests.

A leading non-official member is appointed by the Governor as Senior non-official member of the council. This appointment exists by convention.

Direct elections will be introduced to the Legislative Council in 1991 when the number of members in the Council will be increased to 60. Only the three ex-officio members will remain in the Council, 18 will be returned through direct election in district constituencies, 21 will be elected by functional constituencies and 18 will be appointed by the Governor.

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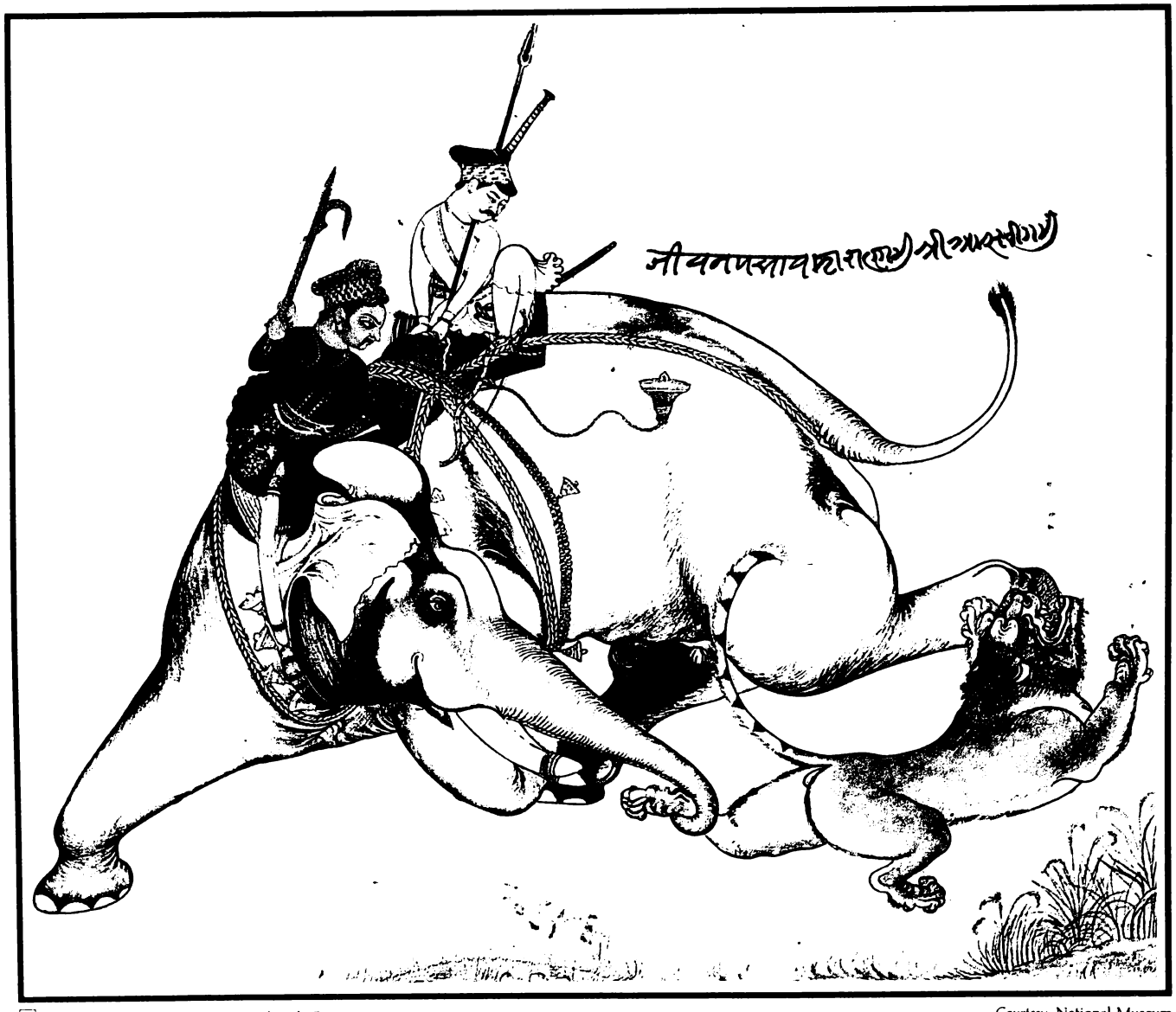
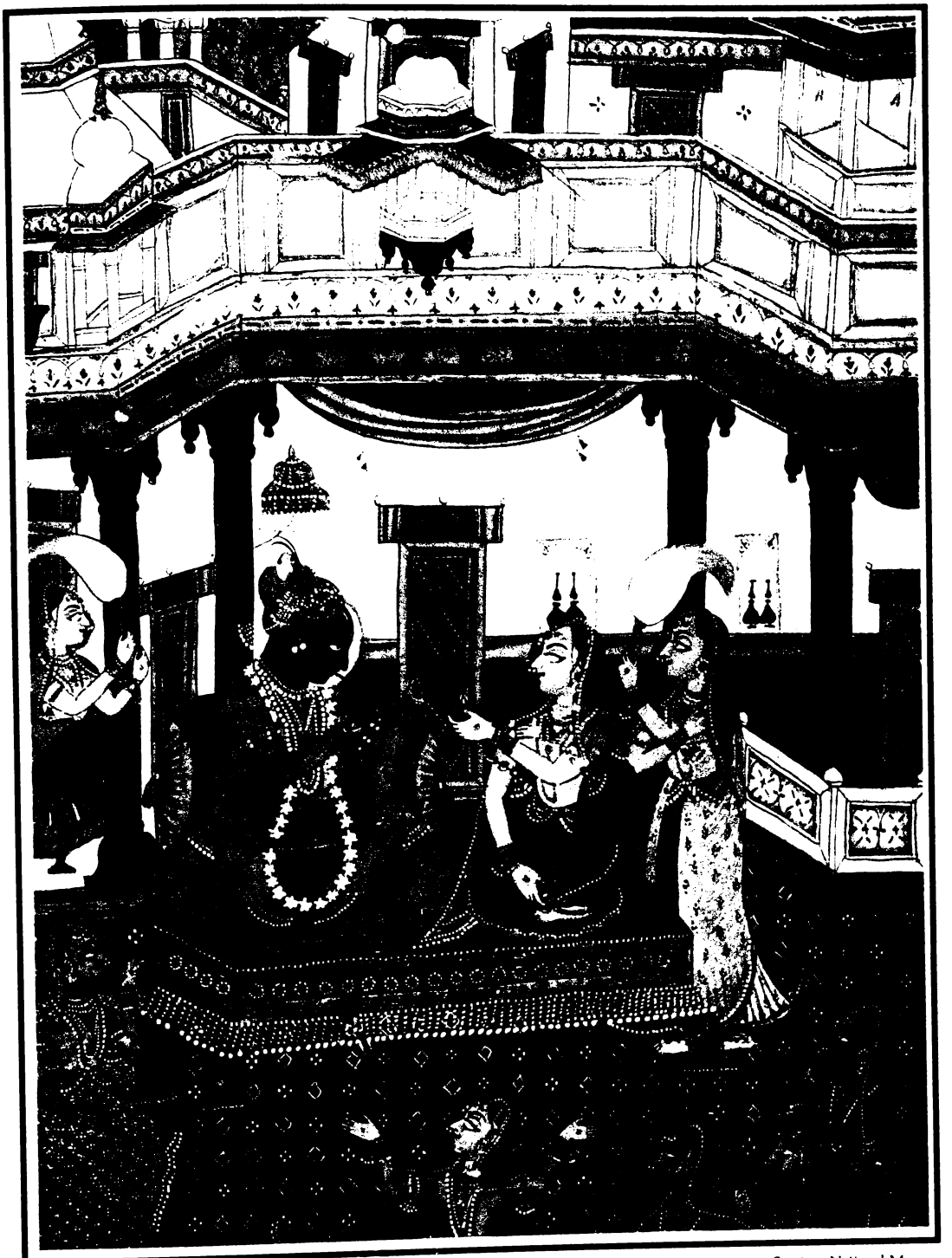
*Mr. Law-Kam-Sang, Clerk, Legislative Council, Hong Kong.



9 Lion-elephant fight: Bundi, Raj. mid 18th Century

Courtesy: National Museum

10 The month of Sravana (SSSSSSS): (Baramasa painting) Kotah, Raj, *circa AD 1750* *Courtesy*: National Museum



Courtesy: National Museum

11 Raga Malkounsa: Uniara, Raj, *circa AD 1770*

12 Ragini Gauri: Uniara, Raj, *circa AD 1770* *Courtesy:* National Museum

The Tynwald of Today

Prof. T. St. J. N. Bates*

The Branches of Tynwald, the Legislative Council and the House of Keys, sit in their separate chambers in Douglas to consider Bill. Bills which are passed by both Branches and then signed by a majority of each Branch when sitting together in Tynwald, and which receive Her Majesty's Royal Assent, become law in the Isle of Man.

When the Branches sit together in the Tynwald Chamber in Douglas, they form the Tynwald Court. Tynwald Court authorises the expenditure of the Isle of Man Government, and scrutinises its administration.

The Queen, Lord of Man

For many centuries the Stanley family (the Earls of Derby) were feudal Kings or Lords of Mann but in 1765 the Island was purchased by the British Crown.

Her Majesty The Queen is therefore Lord Proprietor of the Island and is formally referred to on the Island as "The Queen, Lord of Mann".

The Lieutenant Governor

The Lieutenant Governor is the personal representative of the Queen on the Island. He is appointed by the Sovereign, on the advice of the Home Secretary and with the concurrence of the Government of the Isle of Man, and usually serves for a five year term.

Formerly the Lieutenant Governor was, in essence, the executive head of the Government on the Island but in recent years the role of the Lieutenant Governor has become somewhat more vice-regal. Many of the governmental functions have now been transferred to the Council of Ministers or to Government Departments and in exercising the majority of his remaining functions the Lieutenant Governor acts on the advice of and with the concurrence of the Council of Ministers. However, he retains some important constitutional duties. In respect of parliamentary matters, for example, the Lieutenant Governor may dissolve the House of Keys and may, since 1981, grant Royal Assent on behalf of the Queen to designated Bills passed by Tynwald. The Lieutenant Governor presides at the St. John's Ceremony. However, if present on the Island, it is customary for the Sovereign to preside at St. John's and other members of the Royal Family may also preside under Letters Patent granted for that purpose.

The President of Tynwald

The President of Tynwald presides over Tynwald in Dauglas and also over the Council. He is responsible for order and the conduct of business in Tynwald and the Council. He is elected by the members of Tynwald from amongst their own number. Mr. President, Hon. Sir Charles Kerruish. O.B.E.C.P... was elected in 1990. He is the first elected holder of the office. Prior to 1990, the Lieutenant Governor presided over Tynwald and prior to 1980 over the council. From 1980 to 1990 the Council elected *IB* own president. Sir Charles was Speaker of the House of Keys from 1962 to 1990. He celebrated his fortieth year in the continuous service of the House in 1986. The same year marked the twenty-fifth anniversary of his first election to the Chair making him the longest serving Speaker in the Commonwealth. In 1984 Sir Charles long-standing connection with Commonwealth parliamentary affairs was recognised by his appointment as President of the Commonwealth Parliamentary Association.

The Legislative Council

The Legislative Council is the Upper Branch of Tynwald. It consists of three ex officio members, the President of Tynwald the Lord Bishop of Sodor and Man and Her Majesty's Attorney General and eight members elected by the House of Keys.

The term "Sodor", in the Bishop's title, refers to the mediaeval diocese which used to include the Hebrides—the "Sudreys" or Southern Isles (as opposed to the "Nordreys"—the Northern Isles of the Orkneys and Shetland). Historically the Bishop was a Baron and as a Lord Spiritual, a member of Tynwald.

The remaining eight members of the Legislative Council are elected by the House of Keys for terms which expire in the February following the fourth anniversary of the date of election. Although elected by the Keys, not infrequently from among its own members, the elected members of the Legislative Council are not controlled by, or delegates of the House of Keys.

The House of Keys

The House of Keys is the Lower Branch of Tynwald and is

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directly elected by the people of the Isle of Man, a General Election is held every five years although exceptionally, the House could be dissolved and a General Election held within that period. For many centuries it has had a membership of twenty-four (in Manx, "Kiare as Feed"), although when the Kingdom of Mann and the Isles existed it had representatives from the Hebrides and numbered thirty-two.

The twenty-four members represent single member and multi-member constituencies. The present allocation of seats is as follows: Ayre (1 member); Castletown (1 member); Douglas East (2 members); Douglas North (2 members); Douglas South (2 members); Douglas West (2 members); Graff (1 member); Glenfaba (1 member); Malew and Santon (1 member); Michael (1 member); Middle (1 member); Onchan (3 members); Peel (1 member); Ramsey (2 members); Rushen (3 members).

The Speaker of the House of Keys

The Speaker of the House of Keys is elected by the House from amongst its own members immediately the House assembles after a General Election. He presides in the House and is responsible for order and its conduct of business. In Tynwald he is the spokesman of the House, although he attends Tynwald as an elected member and has there the same rights and duties as other elected members.

Hon. G.V.H. Kneale, C.B.E., M.A., was elected speaker in 1990, having been first elected to the House in 1962.

The Officers of the Court

The Clerk of Tynwald, Secretary of the House of Keys and Counsel to the Speaker assists the President and the Speaker in organising the business of Tynwald and the House of Keys, and advises on procedure. He is responsible for maintaining a record of the proceedings and as Counsel to the Speaker, he advises members on Bills coming before the Branches.

The Clerk of the Legislative Council and Clerk Assistant of Tynwald assists the President.

In organising the business of the council, advises on procedure in, and is responsible for maintaining a record of the proceedings of that Branch.

The Chaplain of the House of Keys leads the House in prayers at the beginning of their sittings.

Yn Lhaidher ("The Reader") fences the Court in the Manx language and when required, promulgates the Acts in Manx.

The Sword of State

The Ancient Sword of State is carried before the person presiding over the ceremony by the Sword Bearer at each meeting of Tynwald at St. John's. It dates from not later than the 12th century. When Tynwald meets in Douglas it is laid on the table at the centre of the court. It signifies the duty or the Sovereign acting through Tynwald, to protect and defend the the people from the incursions of their enemies, in peace and war.

The Deemsters

The First Deemster and Clerk of the Rolls. His Honour J.W. Corrin, is the Chief Judge of the Island's High Court of Justice and, in the absence of the Governor, acts as Deputy Governor.

The Second Deemster is His Honour H. W. Callow.

The office of Deemster is of very ancient origin. The name is derived from the "doom" or judgement which in olden times before written records were kept, the Deemster gave as "Breast Law".

At the Tynwald Ceremony it still remains the duty of the Deemsters to promulgate Acts of Tynwald by reading the title of each Act and a memorandum containing a brief statement of its object and purport in Manx and English from Tynwald Hill.

The Chief Minister and the Council of Ministers

The Chief Minister is the political head of the Isle of Man Government. The office in its present form, came into being in December 1986. The Council of Ministers consists of the Chief Minister and nine ministers and is primarily responsible for the formulation and implementation of Government policy. The Chief Minister is appointed by the Governor on the nomination of Tynwald. Ministers are appointed by the Governor on the nomination of the Chief Minister. The Chief Minister and the Ministers are all members of Tynwald.

The Coroners

The Coroners are officers of Tynwald and the Courts, who serve summonses and other processes and enforce their execution.

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The Speaker's Relationship with Political Parties and his Constituents

Headley Cunningham*

So much has been written and spoken about the role of the Speaker, it is almost impossible to touch upon any aspect of this office that has not been addressed.

In so far as its relationship with political parties is concerned. the position of the Office of Speaker is in a continuous state of crisis. Indeed, it is a position of extremes and contradictions. There is no doubt that in most Parliaments, maybe all Parliaments, the Speaker is held in very high esteem and in a very peculiar way, he is viewed with "awe" and "respect." Incidents of censure motions on Presiding Officers are almost non-existent in Commonwealth Parliaments in recent times. Yet, this paradox exists for the impartiality of the Speaker to be recognized and accepted in a multi-party Parliament. He is expected to keep out of party politics. In the one-party system the requirements appear to be even more exacting, because he has to avoid the Executive and all other interest groups, to satisfy the Parliament that he is acting impartially. So here we have a situation where whether it is a one-party or multi-party system, the Speaker is always conscious that impartiality must not only be done, but must appear to be done. This places serious difficulties on the Speaker. There is the problem of being the impartial Speaker when you are presiding in Parliament, and on the other hand, being the politician when he is in his constituency, and he is expected to work for his constituency. Clearly, this cannot he achieved without some assistance from the political machinery. We are therefore looking to a situation where the Speaker is receiving political "favours" which can easily place him in a compromising position to those who find it convenient, so to do.

I submit that the way out of this dilemma is for Parliament, /or I would think it more appropriate in this situation, for political parties to have a serious look at the convention of not contesting the Speaker's seat.

In any event the system has worked well so far, and until a better system can be found, and I have no doubt having regard to the ingenuity of man, such a system will emerge in due course.

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*Hon. Headley Cunningham, M.P. Speaker, House of Representatives, Jamaica.

A Glimpse at the Office of Bailiff in Jersey, Channel Islands

Peter Crill, C.B.E*

The Channel islands lie off the north west coast of France. Thus they incline geographically towards France but for historical reasons have been dependencies of the English Crown since at least the thirteenth century. They consist of two Bailiwicks, that of Guernsey and that of Jersey. The legislature of each Bailiwick is called the states, which derived its powers originally from the royal courts in each bailiwick, hence the dual role of the president of the states, called the Bailiff, who has remained also, as he was originally, that is the president, or chief justice of the Royal Court. Constitutionally the Channel Islands may be described as self-governing dependencies. The United Kingdom is responsible for their international relations and defence. The crown is represented in each Bailiwick by a lieutenant governor, who is the personal representative of the sovereign and the channel of communication between the insular authorities and the United Kingdom government. The relationship of the island with the United Kingdom was examined in 1973 by a Royal Commission which concluded that their system of government was "full of anomalies, peculiarities and anachronisms." It added, however, that anomalies should be, "if not encouraged, at least accepted so long as they were cherished by those most directly affected and did no harm to others." The Islanders cherish their institutions and hope that they do no harm to others.

The dual role of the Bailiff in each Bailiwick was considered by the Royal Commission which recommended that there should be no change. The states in Jersey now consist of a democratic body of 53 elected members. The dean (of the anglican church), the attorney general and the solicitor general are appointed by the Crown and have seats in the assembly with a right to speak but not to vote. The lieutenant governor has a seat, but by custom does not speak except at his last sitting. He has a right of veto over matters affecting the Crown. The Bailiff has a right of dissent over matter he considers the states are not competent to enact. If he exercises this power he has to report thereon to the home secretary, the Privy Councillor who is responsible for the affairs of the channel islands. All permanent legislation of the states requires the sanction of the Queen in Council, although there are provisions for the enacting of triannual regulations of minor domestic importance.

Procedure in the states is governed by standing orders, but the Bailiff has the ultimate decision as to their interpretation and if points arise that are not covered by orders the Bailiff may give his ruling which has to be accepted. Government in the states is by committees which consist of a president and six other elected members. There is no party government and each member is an independent. For historical reasons one group of members called the senators consisting of twelve, sit for six years, but the rest of the members for three. In general, although the constitution of the states may be a mixture of parliament and local government, parliamentary procedure, as understood throughout the Commonwealth, is as far as possible followed. Thus Erskine May is some times resorted to by the Bailiff. The states as such, at least in Jersey, was first mentioned in a deed in 1497 so that for nearly 500 years there has been a form of elected government in Jersey but it may be said that it is only since certain reforms of 1948 that the states may properly be described as a democratic body. The islands in both bailiwicks have maintained close contact with the Commonwealth Parliamentary Association and indeed one member from Jersey was the honorary's treasurer of the body for a number of years. It was the Jersey representatives who in 1980 suggested the setting up of a small countries conference to be held before the main conference. That innovation has worked well. So it may be said that small countries have a contribution to make to the major problems of democracy which they experience in microcosm; some anomalies are worth preserving!

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*Hon. Sir Peter Crill, C.B.E., The Bailiff of Jersey, Channel Islands.

An Account of the Procedures of the States of Jersey

E.J.M. Potter and R.S. Gray*

The purpose of this article is to explain briefly the procedure of "government" in the Bailiwick of Jersey.

The first thing which strikes the observer is that there is no government in the generally accepted sense of the government and opposition. The States of Jersey (the name by which the Parliament is known) comprises fifty-three elected Members, all independent and all elected by virtue of their own "platform" at election time and not because they follow the usual party lines. Indeed, they cannot do so because there are no political parties. Attempts have been made from time to time to organise political parties but their existence is short-lived, a possible explanation being that the rugged individualism of the Jersey resident does not lend itself to the constraints which must be tolerated if a party system is to work successfully.

The fifty-three Members are made up of twelve *Senators*, elected by the electorate of the whole Island for a period of six years, twelve *Connétables*, elected by the electorate of their parish for a period of three years—the Island being divided into twelve parishes and the *Connétable* being the civic head of the parish—and twenty-nine *Deputies*, elected by the electorate of a statutorily defined constituency for a period of three years.

Facilities, etc., for the Elected Members

There is still a very strong tradition of honorary service in the Island and it is exemplified by the fact that Members are not paid any salary. There is machinery available designed to ensure that no Member has an income of less than £15,400 a year, but it cannot in any way be regarded as providing a salary. Quite recently provision has been made to pay each Member an allowance of £2,000 a year to help with the cost of employing a secretary, postage stamps, telephone calls, etc., but the amount is hardly calculated to encourage extravagance.

A Special Subcommittee was appointed by the House Committee towards the end of 1990 to consider the whole question of Members' remuneration (the terms of reference excluded consideration of the payment of a salary), and the report of the Subcommittee is likely to be published in the near future.

Non-elected Members

The President of the State is the Bailiff of Jersey or in his absence, the Deputy Bailiff. Very occasionally when neither the Bailiff nor his Deputy can preside, the duties are temporarily performed by one of the most senior Members, or by the Greffier of the States. The Lieutenant-Governor, the Dean, the Attorney General and the Solicitor General have a seat in the Assembly and have a right to speak but have no vote. the Bailiff has a casting vote although it is very seldom necessary for him to use it. The minutes of the States must be submitted in draft form to the Lieutenant-Governor who has a power of veto in matters affecting the special interest of Her Majesty.

Officers of the States

The officers of the States are the Greffier of the States, the Deputy Greffier of the States, who are respectively the Clerk, and Clerk-Assistant, and the Viscount who is the executive officer.

Sessions of the States

Standing Orders provide that the States sit one day each week during two Sessions. The first Session is from the third week in January to the last week in June (with a recess during Holy Week and Easter Week) plus one meeting in July and August, and the second from the last week in September to the second week in December. However, the Assembly has accepted a proposal of the House Committee that the States should sit once a fortnight for the year 1991 and it is envisaged that this will become a permanent arrangement. The States now sit on every other Tuesday commencing at 9.30 a.m. and if business is not finished that day the Bailiff has the power to extend the sitting to another day or to convene an additional meeting. A special meeting may also be convened at the request of at least seven elected members.

The Order Paper

Before each sitting, an Order Paper is produced by the Greffier and circulated on the Friday before the Tuesday sitting. Business is conducted in accordance with the

*Mr. E.J.M. Potter and Mr. R.S. Gray are respectively, the former and present Greffier of the States, The States of Jersey.

matters shown on the Order Paper. Coupled with the decision to sit on every other Tuesday, was a decision that the planning of the business of the States for each sitting and indeed for the whole of the session should be the responsibility of the Greffier, in consultation with the Bailiff and the Presidents and other movers of propositions concerned. In this way, it is hoped to enable Members to plan their other commitments much further ahead and also to provide, as far as one can estimate these things, a full day's work for each sitting.

The States Chamber

The States sit in a horseshoe-shaped Chamber in St. Helier. The groupings are according to whether one is a Senator, a Connétable or a Deputy and this is possible because of the absence of the party lines across the floor of the House. The present Chamber was opened in 1887 and was considerably modernised some thirty years ago, but the original layout and overall design was successfully retained. Each Member has his own seat and desk top, and there is a monitored microphone system relaying the debates to the press box and the staff room. There is no Hansard, although the States have recently adopted a proposition to record States' proceedings on magnetic tape, and the local newspaper reports the debates as fully as it is able to. Minutes of each meeting are prepared which simply record the business transacted together with details of any votes.

A States Sitting

At the commencement of the sitting, the Bailiff enters the Chamber in procession, preceded by a member of the Viscount's Department carrying a silver gilt mace presented to the Island by King Charles II in 1663, and followed by the Greffier. The Bailiff wears a red gown and bands, the officers black gowns and bands, but none wears a wig. The Greffier calls the roll of Members in French. This is followed by prayers said either by the Dean or the Greffier, again in French.

Thereafter the remainder of the proceedings will be in English, although Members still have the right to address the House in French or Jersey French if they wish to. This is a rare occasion today as relatively few Members could still deliver a major speech in either of those tongues and they would not be understood by all their colleagues.

The quorum of the House is twenty-four, and when the Greffier declares to the Bailiff that there is a sufficient number, the business of the day begins. In the event that a quorum cannot be obtained because of the failure of enough Members to be in attendance and that absentees do not have an acceptable excuse, they are liable to a fine of no less than £1 which is to be levied by the Viscount. As one might expect, illness is a sufficient excuse for being "en defaut" but absençe from the Island is also acceptable regardless of whether the Member is away on official or private business.

Subject to the carrying of a Motion "that strangers do withdraw" or to the requirements of any Law that a matter must be debated in camera, the public are admitted to all sittings, the only restrictions as to the numbers are imposed by the space available in the galleries. This was not always so and it was not until March 1833 that the sittings were opened to the public, although not, of course in the present building. We are told that in their initial enthusiasm the spectators left the Members in no doubt to which side they were supporting in the various debates and, by these standards, today's onlookers have an unblemished record of good behaviour inside the House.

Standing Orders

In 1966, Standing Orders were drawn up with the considerable assistance of Mr. C.A.S.S. Gordon who at that time was the Fourth Clerk-at-the-Table of the House of Commons at Westminster and who subsequently became the Clerk of the House. They are modelled on the Westminster pattern, but with very considerable adaptations to suit the size of the legislature and the absence of the party system. The House Committee is at present undertaking a comprehensive review of Standing Orders to bring them into line with current thinking and practice.

The Committee System or "the Government"

The day-to-day administration of the Bailiwick is delegated to Committees of the States elected by the States after each general election and comprising seven members. The President of the Committee is elected first and he subsequently nominates for approval the other six members. Standing Orders name twelve Standing Committees and these cover every aspect of Island life, e.g. Finance and Economics, Harbours and Airport, Public Health, Public Works, Agriculture, Education, Social Security, Tourism, etc. No member can be President of more than one Standing Committee nor a member of more than two. The President of a Committee is really the equivalent of a Minister and he is supported by his Committee and the usual Department resources of the Civil Service.

An important recent addition to the Committee structure has been the Policy and Resources Committee with wide terms of reference to enable it to play a very important co-ordinating and leadership rôle without adopting a cabinet style of government.

Debates in the House

The business of the States is generated very largely by the Committees. A Committee will seek States' support for its policies and this support is obtained by putting a Propo-

sition down on the Order Paper and securing a simple majority of the votes cast at the end of the debate. The President of the committee will propose the Motion and then every other Member of the House is entitled to speak if he can catch the Bailiff's eye. A member may speak only once in a debate, but some have succeeded in making more than one contribution to a particular debate through skilful use of the well-known device of "Point of Order". When no other member wishes to speak the President of the Committee will sum up and the vote will be taken. This can be either by a *"standing vote"* in which Members merely indicate their wish by standing in their seat or by an *"appel nominal"* where each member's name is called and he replies either *"pour"* or *"contre"* according to his inclinations. Several attempts to alter the system of voting or to substitute *"for"* and *"against"* for the traditional *"pour"* or *"contre"* have been stubbornly rejected in favour of the status quo. Not even an eminently reasonable proposal to satisfy all shades of opinion by changing to *"oui"* or *"non"* could attract a majority.

Any number of Propositions can be dealt with at any sitting if the States have previously agreed to debate the matter on that date, and it will be seen that "the Government" in the House is really the Committee for the time being proposing the matter, with a potential "opposition" comprising the other forty-six members.

Financial Matters

Any Committee or Member wishing to propose anything which involves money must submit the Proposition first to the Finance and Economics Committee which will then comment on it. Money can only be voted by the States at Budget time in November or two nominated Supply Days during the year.

Private Members' Business

A private Member is entitled to raise any matter in the House either by means of Proposition or by legislation. Provision is also made on the Order Paper for oral and written questions and one sees now a gradual trend towards the asking of more questions but not yet on anything approaching the scale of Westminster.

Legislation

Legislation is usually promoted by a Committee although, as has been said, a private Member may do so. The first reading is the formal presentation of the Bill which then must lie on the Table for at least fourteen days to give Members time to study it. On the date fixed for its debate, the Bill will be debated Article by Article in Second Reading and, if adopted, will then be taken in Third Reading at which time no amendments can be made but the Bill must be adopted or rejected in its entirety. If adopted in Third Reading it is then submitted by the Greffier to the Privy Council in London for Royal Sanction.

Conclusion

The above is of necessity a very sketchy outline of some of the aspects of government and its procedure in Jersey. Several things strike strangers as odd—not least the absence of a Cabinet, the absence of a party system and the presence of an honorary service. The only reply that one can give is that the present system has worked for very many years and still does work. How long it will continue to do so is impossible to say; there have been calls recently for a review of the composition of the States and allied matters. Some rationalisation of the Committee structure has already taken place and the Policy and Resources Committee will be taking this a stage further in 1991. No doubt events will make modifications and adaptations imperative but changes are likely to come gradually; we still believe in the old adage "More haste, less speed"!.

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Democracy

Tan Sri Dató Mohamed Zahir*

Man has yet to invent a more equitable system to govern himself than the democratic system where the people elect the government they want for a specific period—mostly for four or five years—and at the end of that period if the government they had elected had not performed up to their expectations, or had betrayed their trust, they could turn that government out of office and elect a new government of their choice.

To define democracy, one can do no better than quote the 16th President of the United States of America, Abraham Lincoln from his famous Gettysburg Address where he uttered the famous dictum, "government of the people, by the people, for the people."

In democracy the will of the people functions through the Parliament they have elected and the Executive or Cabinet is answerable to the Parliament. Under the Parliamentary system, if the Government is defeated in a vote over an important issue the Government will have to resign and let the Opposition form a new government or hold fresh elections. The principal variation to the Parliamentary system in democracy is the Presidential system as is practised in the United States of America.

Let us now examine how democracy was evolved and the practice of democracy today.

Democracy was widespread in ancient Greece. The Athenians were also among the first people to form a democratic form of government. However, in ancient times the democratic form of government was the exception rather than the rule as most countries, big and small, were ruled by kings and emperors. The famous Greek philosopher Aristotle had written extensively about the system of democracy practised in the ancient times as well as on the advantages or otherwise of the rule by kings vis-a-vis democratic governments.

Democracy practised in the ancient times, however, was fundamentally different from that of modern times. It was direct democracy in the sense that the representative system as we know it today was unknown then. All the people were involved in the ancient democratic system of government and this was made possible by the limited size of the State which was generally confined to a city and its rural surroundings.

In ancient democracies all citizens were entitled to attend meetings of the legislatures and to vote. There was also no division between the legislative and executive branches as both were in the hands of the active citizenry. There were also no political parties as we know them today. Moreover, the inability of the people in those days to develop a representative system made it impossible for them to create large democratic states.

With the advent of the industrial revolution things began to change as the industrial revolution produced, among other things, the new concept of the dignity of labour which, in turn, gradually helped to break down the barriers of the privileges of birth, class, race and sex. The ideas of liberty and equality slowly gained acceptance.

In the beginning voting rights were restricted to property holders. Later it was voting rights for men only, and the women had to fight for a very long time for the right to vote in the elections. Therefore, the universal adult suffrage as we see it today is of quite recent origin. Of course, all these were not gained without a lot of sacrifices and struggles on the part of many gallant men and women.

Seventeenth century England may be regarded as the birth place of modern democracy. As a result of the revolution of the 17th century there, the control of national affairs had passed into the hands of Parliament with a steadily growing preponderance of the House of Commons. Over the years the British succeeded in evolving a two-party system where the party in Opposition during the course of one Parliament might become the Government after the next general election. The two-party system in Parliament has contributed to the success of democracy as it helps to keep the government on its toes all the time.

In the United States of America, because of its enormous size and other peculiarities, its founding fathers chose the Presidential system of government. But the American Congress, consisting of the Senate and the House of Representatives, remains a powerful legislative body and the United States a beacon of democracy.

India, with over 800 million people, is the biggest democracy in the world. Although her per capita income is comparatively low, India has made great strides in the fields of agriculture and industry through the democratic system and has been a model for many of the newly independent countries of Asia and Africa. However, of late sectarian and ethnic unrest seems to have taken its toll on the country and the formation of a minority government recently by a party which represents hardly 10 per cent of the membership in the Lok Sabha, the Indian Lower House of Parliament, is hardly in the great traditions of Parliamentary democracy.

Malaysia chose Parliamentary democracy with a

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constitutional monarch as the Head of State at the time of its independence. Because of the multi-racial character of its population, the founding fathers of the country formed a multi-racial coalition party to contest the first general election in the country and won handsomely and this formula, with some modifications, exists until today. The Opposition in Malaysia, although comparatively small in number, is both vocal and vigorous.

As in the case of any other man-made system, democracy too may have its weaknesses. In fact, there have been many cases where demagogues have succeeded in using democratic methods to subvert democratic governments turning them into dictatorships.

After the Second World War many countries threw away the colonial yoke and gained independence from their erstwhile colonial masters and chose the democratic system of government. But it is a matter of profound regret that in many of these countries the democratic form of government has been short-lived and has been replaced by military regimes or dictatorships. There are perhaps many reasons for such developments.

In the flush of newly gained independence the people might have had great expectations of their governments in relation to development projects and other material benefits. But in a democracy public funds have to be properly accounted for. So projects have to be planned, approved by Parliament and then subsequently implemented; the slow pace may have disappointed many people and some of them may have initially acquiesced in the changes in the system of government brought about by self-seeking leaders.

On the other hand, in some other countries without the firm hand of the colonial masters there have been fissiparous tendencies based on ethnic, tribal or linguistic considerations and this may have brought about military rule or dictatorship. But whatever the reason, after a time the people would realise the comparative advantages of the democratic system of government and would yearn for its return. Indeed, it is heartening to note that some of the countries which have been under military regimes or dictatorships have recently returned to the democratic fold.

It is said that under the democratic system one has to guard against the tyranny of the majority. However, this problem is well taken care of in most countries by way of constitutional guarantees to provide elaborate safeguards to political minorities in Parliament and outside. Any abuses of power by the government of the day are avoided by setting up Judiciaries which are independent of the government. Therefore, the often repeated criticism by some people in the developed countries about the alleged abuses of power and restrictive nature of some of the laws in the nascent democracies of the developing countries is unfair.

The paramount concern of the governments of the developing countries, which have been neglected development-wise for a very long time by the colonial powers, is to improve the standard of living of their people by implementing various development projects and these projects can only be carried out if there is peace and political stability in the country. Moreover, any foreign collaboration or participation would also be dependent on the political stability, industrial peace and conducive economic climate of the country concerned. Under these circumstances, all citizens will have to obey the laws of the country and strict discipline will have to be enforced in the initial stages of the development of a country.

In other words, the majority should have the right to rule without unnecessary obstructions. After all, under the democratic system, if the people do not like a government they can always change it at the next election. What George Washington said in his farewell address that "the very idea of the right of the power of the people to establish government presupposes the duty of every individual to obey the established government" is very relevant here.

The recent changes in the political systems in Eastern Europe has given a great boost to democracy. It can safely be expected that more and more people under the totalitarian system of government will throw away that system and will come to the democratic fold. Once again the ballot will have proved itself to be more powerful than the bullet.

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The Structure and Organisation of the State Legislative Assembly of Perak

Muhammad Padzil Bin Khalid*

Perak is one of the States in Malaysia and having an elected government by the people, of the people and for the people. Perak is known as a Silver State and it has been one of the biggest tin producing countries in the world.

It has its own written constitution known as 'The Laws of the Constitution of Perak'. The constitution defines the legislative and executive powers of the State government.

In the State, the source of all authority is in theory, the Supreme Head of the State the Royal Highness, the Sultan of Perak Darul Ridzuan. Bills passed by the State Legislative Assembly only become law upon being assented to by the Royal Highness, the Sultan of Perak Darul Ridzuan.

Legislative Powers

The State Legislative Assembly of Perak have its own legislative powers so provided for by the State Constitution. It has forty-six (46) representatives by the people elected during the general election. The State Legislative Assembly is empowered to make laws applicable to the State on any matter listed in the State Constitution.

The State Legislative Assembly is headed by the Speaker elected by the State Assemblymen. This is provided for in the Standing Orders so as to uphold the decorum of the House. The Standing Orders is so written to guide the proceedings of the House.

The State Executive Council is created by the State Constitution and headed by the Menteri Besar (Chief Minister). A Ruler must act on the advice of the Executive Council, a body which is collectively responsible to the State Legislative Assembly.

In theory the formation of the Executive Council is done independently. The Executive Council consists of not more than eight nor less than four other members from among the members of the Legislative Assembly.

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Sarawak Legislative Assembly Special Select Committee on Flora and Fauna

Lim Kian Hock*

Introduction

Sarawak situated on north Western part of Borneo Island is the largest State in Malaysia with rich natural resources and natural beauty. Its State Assembly known as Dewan Undangan Negeri was established on 8th September 1867, making it the oldest State Assembly in Malaysia. Since 1969, the Assembly is the only fully representative (elected) Assembly in the country with Members directly elected by the people through the respective single constituencies. Begun in the township of Bintulu in Sarawak with 5 official Members and with 16 community leaders, it had since grown in membership to the present 56 with a Ministerial system of State Government. Hence, it is also the largest Assembly in Malaysia followed by its sister States—Sabah (48 Members), Perak (46 Members), Selangor (42 Members), Kelantan (38), Johore (39), Pahang (33), Penang (33) Trengganu (32), Kedah (28), Negeri Sembilan (28), Malacca (20) and Perlis (14 Members). Sarawak Legislative Assembly is thus the supreme symbol of the sovereignty of the State, its identity and autonomy as reflected in the Memorandum on Malaysia.

The Assembly normally has a few meetings in each session, conducting its sittings in formal proceedings. The time given is limited against the increasing matters for deliberation by the House. The fast modern communication system and increased tempo of development calls for increasing number of legislations and subsidiary legislations for which the House cannot go into details, due to lack of time.

The principal purpose of parliamentary committee is to perform functions which the House itself is not well fitted to perform, that is, finding out the facts of a case, examining witnesses, sifting evidence and formulation of a reasoned conclusion. In a sense they "take the Assembly to the people" and allow direct contact between members of the public and the representative Members of the Assembly, when engaged on public inquiry. It makes the Members better informed on community's views besides promoting action and encouraging public debate on issues affecting the people. The Committee's scrutiny of the Executive, could also contribute towards a better informed Administration and government policy-making process. The parliamentary committees operate as extension of the House, limited in their power of inquiry only by the extent of authority delegated by the House, and governed in their proceedings by procedure and practice similar to that of the House within the provisions of the Standing Orders. Hence the parliamentary Committees are seen as means of harnessing the energy and talent of the backbencher.

Parliamentary Committee system in Sarawak began in 1946. Provisions were made in the Standing Orders, for the appointment of Select committee for the purpose of Examination on any Bill before the House, followed by the other Sessional Select Committees in 1964. Although it was not used fully in those earlier years, it paved the way, as a parliamentary innovation, for the House to scrutinise the Executive's legislative programme in later years.

Type of Parliamentary Committees

The Parliamentary Committees appointed by the Dewan are provided for under the various Standing Orders. They could be classified as Committee of the Whole House, Committee of Supply, Sessional Select Committees and Select Committee.

(a) Committee of the Whole

When a Bill has been read a Second time, it shall stand committed to a Committee of the whole House to consider the Bill in detail. Any proposal for amendment shall require at least one day's notice. The Committee sits with the whole Members of the House with a Chairman instead of Speaker to preside over.

(b) Committee of Supply

The Committee of Supply is a Committee of the whole House sitting to consider the details on financial issues. When the estimates are under consideration, the debates would be on the criticism of the conduct or policy of the Ministries. No amendment proposing any increase in the amount under a head, sub-head or item shall be moved in the Committee of Supply except by a Minister.

(c) Sessional Select Committees

Sessional Select Committees are those that continue for the duration of the Session of the Dewan. They comprise of (i) the Standing Orders and Slection Committee (ii) Public Accounts Committee (iii) House Committee (iv) Public

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Petition Committee and (v) the Committee on Privileges.

The Speaker is the Ex-officio Chairman of the above Sessional Select Committees except the Public Acounts Committee.

(d) Select Committee

The Committee consists of known number of Members specially named and appointed from time to time or regularly appointed to deal with particular matters. The Committee is appointed on a resolution of the House and is to report to the House by a specific date. Under the provision of the Standing Orders, the House could refer a bill for full consideration by the Select Committee. The Committee may be given leave of the Dewan to report from time to time for which it is at liberty to make progress report.

A Select Committee, having only a delegated authority, cannot divide itself into sub-committees without leave of the House. The procedures governing the operation of the Committees are clearly spelled out in the Standing Orders.

(e) Special Select Committees

The special Select Committee is a Select Committee with Special term of reference appointed to scrutinize the administration either on some subject such as environment, National parks, etc. The procedure is similar to the Select Committee.

Powers and Procedures of Committees

The powers and procedures of the Select Committees, in normal practice, are on the same bases as that of the Committee of the Whole House. The powers of a Chairman of Select Committee are described by May as being substantially the same as those of the Chairman of a Committee of the whole House. As no appeal can be made to the Speaker regarding the decisions and ruling of the Chairman in the Committee of the Whole House, it follows that no appeal can be made against the decision and rulings of a Chairman of a Select or Standing Committee. A Chairman's procedural authority in a Committee is as exclusive as that of the Speaker in the House. Nevertheless, Speakers' rulings on procedural matters are as significant as precedents. Committee Chairman must have regard to the practice of the House whereever it is applicable to committee proceedings. Any concern about Committee procedure or authority can be brought to the attention of the House in a special report, a dissenting report or in a debate on a motion that the House take note of a report.

Parliamentary Committees in Operation
Special Select Committee on Flora and Fauna

The benefit of having parliamentary committees on issues affecting the lives of individual and the society (general public) is well-recognised by our Assembly. Consequentially, the House had appointed such Committees from time to time, and among others, it includes Select Committee on Rent Control, Breach of Privileges, special Select Committee on Flora and Fauna, etc.

On 20th November 1984, a motion was moved by a private member for the LImbang Constituency seconded by another private Member of Muara Tuang to look into the danger of depletion of the State Fauna and Flora and its conservation. The motion read as follows:

> "That this Hon'ble House, with the intention of avoiding the danger of depletion of the State Flora, Fauna, birds, fisheries, turtles and tortoises resolves:—
>
> A special select Committee of the House be appointed to:
>
> (a) study and investigate the problem associated therewith and
> (b) make recommendation to this House and authorities concerned on how best these problems can be solved."

The motion was unanimously passed by the House making it, the first Assembly in this region to be directly involved with environmental issues, with special reference to Flora and Fauna. The Hon'ble Member in moving the motion said "Like all developing countries, the flora and fauna of Sarawak are suffering from the impact of accelerated development and exploitation of the resources of the country—mostly forest and land are cleared for development". In order to cover the wide are a of the study and to investigate into the problems against the difficult terrain and wide are a of tropical forests, the Select Committee agreed:—

(i) to appoint 5 technical Sub-Committees to collect data, and to study and make technical report for consideration by the Committee.
(ii) to invite by public notification all members of public or any interested persons to submit their views or suggestions by way of written memorandum to the Committee.
(iii) to have public hearing (Inquiry) when members of public or interested persons express their views and intentions, or in any other circumstances deemed fit by the Committee.

(a) *Findings*

Detailed technical studies were carried out by the technical sub-committees involving persons both in the government

sector as well as the private agencies. These exercises resulted in the compilation and submission of not less than 50 technical reports. It covered various topics on mammal and their habitat, conservation management, impact of Hydro-electricity transmission lines, conservation strategy and the environmental impact caused by timber logging and so on.

The Committee also carried out open Public inquiry hearing at 5 regional headquarters to hear public opinions, objections or suggestions pertaining to the term of reference of the Committee. It is heartening to note the good general consensus of the public opinion in welcoming the governmental effort to conserve the State's Flora and Fauna.

(b) *Recommendation of the Committee*

The Committee observed that the existing provision on punishment through fines is an insufficient deterrent against possible abuse and violation of the legal enforcement and recommended for heavier penalties and wider publicity on offenders for building public awareness.

The inadequacy of the existing legal provisions for protection of wildlife and plants were also highlighted. In this regard, the Committee recommended for a more far-reaching amendment to the State National Parks Ordinance and the Wildlife Protection. Ordinance to include a list of protected species of Flora and Fauna and their protection, etc.

Conclusion

After the tabling of the Select Committee report on Flora and Fauna, interesting responses were recorded from visiting international environmentalists and other interested international institutions on the Assembly's initiative in the matter.

The State Government, after due study of the recommendations of the Committee, accepted the report and enacted the National Parks (Amendment) Bill 1990 and a new Wildlife Protection Bill 1990. The Bills seek to provide more effective control on the preservation and protection of Wild animals and plants. It also gives due consideration to certain members of the native communities who have to rely on some of the species listed as protected plants and animals for their existence.

In moving for the passing of the Bills into law, the Minister of Environment informed the House that "People outside Sarawak who criticised us on forest and environment, little realise that we in Sarawak, through our representative in this august House, have taken up the task, as earlier as 1984, of preserving our heritage of Flora and Fauna through the establishment of the special Select Committee on Flora and Fauna.... The presentation of these Bills is a culmination of what was done and recommended by the said Select Committee."

The passing of the Bills demonstrates the recognition of the role of parliamentary Committees.

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Democracy is the worst system devised by the wit of man, except for all the others. ***—Winston Churchill***

Is the Supremacy of Parliament Being Challenged?

L. Gonzi*

I would imagine that a large number of the legislatures represented during a Commonwealth Parliamentary Conference have Parliamentary privilege rules that are related in one way or another to the privileges held by the House of Commons in the United Kingdom.

This is certainly true of the Malta House of Representatives whose privileges are defined by a specific Ordinance titled the Privileges Ordinance, as well as by the Constitution which itself specifies a number of privileges which are regarded essential to the dignity and proper functioning of Parliament.

Historically, the Maltese system followed the principle that the Courts will not interfere with the decision of the House where one of its undoubted privileges is infringed, particularly with respect to those collective and individual rights without which the Parliament and its Members cannot properly undertake their functions and proceedings.

But recently some debatable points have arisen particularly when viewing these privileges within the context of fundamental human rights and the power of judicial review.

Most of the post-war constitutions include a declaration of fundamental rights, and allow for judicial review and eventual remedy in those cases where a breach has been established. The first was the Indian Constitution which came into force in 1950. Based partly on the American Bill of Rights and partly on the experience of English constitutional history, the fundamental rights and their qualifications in the Indian Constitution are elaborated with great fullness.

Malta's 1964 Independence Constitution borrows extensively from the India Constitution, but it also encompasses the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"). Malta ratified the Convention and recognised the competence of the European Commission on Human Rights to deal with applications from individuals. Eventually, in 1987, an Act of Parliament was passed by the House, as a result of which, the Convention was incorporated into the domestic law of Malta.

All these events did not in any way affect the existing powers and privileges of the House. As already stated, these privileges are actually enshrined within the Constitution as well as in the statute books. But both the Constitution as well as the Convention, guaranteed certain fundamental rights without any exception, and therefore these rights would appear to be enforceable also with respect to the rights and privileges of Parliament. The potential conflict is therefore quite evident.

This hypothesis becomes reality when the House reaches a stage where it considers that a breach of privilege has been committed and when, therefore, the machinery established for judging the breach, and eventually meting out punishment, is put in motion.

The procedure stipulated in our standing orders, as applied and extended by custom and practice over the years, allows for a member who feels aggrieved, to raise a matter of breach of privilege prior to the start of public business during a sitting. The Speaker would then have to decide whether there is a "prima facie" breach—a decision which can be postponed until the Speaker has verified, the facts or carried out his investigations. Eventually, if the Speaker rules that there is a "prima facie" breach, he instructs the Leader of the House to present a specific motion which would imply that the House must move on to a second stage when it would deliberate the matter, hear witnesses—if necessary—and pass judgement.

All this is in accordance with the rule that the House has the right to enforce its privileges and to regulate its proceedings by punishing those who offend against the House. Thus a member guilty of disorderly conduct, who refuses to withdraw, may on being named by the Speaker be suspended from the service of the House. Punishment may also take the form of an admonition by the Speaker, or in more serious cases of commitment to prison by order of the House.

There is nonetheless a possibility of conflict which may affect the liberty of the subject. This conflict is highlighted when a legal system guarantees certain fundamental human rights, in particular the right of the individual faced with a criminal charge against him, to have a fair and public hearing within a reasonable time and by an independent and impartial tribunal established by law (Article 6.1 of the Convention).

This right poses two major questions that need to be answered. Firstly, do procedures for breach of privilege or contempt against the House, constitute a "criminal charge", and secondly, does the House

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qualify as an "independent and impartial tribunal"?

The answer to the first question is by no means an easy one. Breach of Privilege may consist of a number of various offences which generally speaking relate to the inner regulation and smooth functioning of the institution. Thus offences of this nature must be regarded purely as a matter of internal discipline and maintenance of order—something totally disciplinary in nature.

But can the same be said of those offences which by virtue of their very nature are defined by the statute books as "criminal acts", independently of whether they do constitute a breach of privilege or not?

There seem to be two conflicting answers to this question. One school of thought seems to favour the rule that even in these matters, the issue is always a disciplinary one, and therefore the charge that may be brought against an individual, even if it involves imprisonment in case of guilt, remains a disciplinary measure "in toto".

The contrary opinion is that procedures for a breach of privilege, might, in certain extreme cases, be defined as constituting a "criminal charge" but the process in determining whether this is so or not, depends on a number of objective factors which would take into consideration what the statute books stipulate, what the nature of the offence is, and possibly the severity of the punishment that can be meted out.

Let us assume, for the sake of argument, that the second opinion is the correct one, and consequently in these cases a person is being faced with a "criminal charge", we must then tackle the second question which concerns the point as to whether the House constitutes an "independent and impartial tribunal". In terms of the Maltese Constitution, "whenever any person is charged with a criminal offence he shall... be afforded a fair hearing within a reasonable time by an independent and impartial court established by law". One may immediately note that this clause is similar to the above quoted Article 6.1 of the Convention.

One must start by saying that the Maltese Constitution recognises Parliament's power to determine the privileges, immunities and powers of the House and the members (Art. 65.1). Also, Art. 67.2 states that subject to the provisions of the Constitution, the House may regulate its own procedures. There is also no doubt that in exercising its prerogative to maintain order and to mete out punishment in case of breach, the House has and continues to exercise judicial functions.

To this extent, therefore, one could say that during the deliberation or debate on a breach of privilege motion, the House is itself exercising a function which is not merely legislative, but which takes on a judicial or quasi-judicial nature. But does this mean that the House becomes a tribunal or a Court of Law? Does it mean that in a system which advocates the principle of separation of powers as subject to checks and balances, it is possible for one branch—the legislative—to change its very nature and become, even if temporarily, a judicial body?

The prevailing view on this point is that the House remains a legislative body with power to exercise certain disciplinary measures which are essential for its, proper functioning and therefore vital to its existence. Obviously, in the exercise of those disciplinary measures, the House rules must give a fair and just opportunity for a person charged, to defend himself and explain his actions. However, it remains a power which resides with the House as a legislative body.

In this view, therefore, the House cannot be described as a Tribunal or a court of law. If this is the case, and assuming that an individual is being charged with a criminal offence, then the procedure would certainly not be in accordance with the articles quoted above from the Maltese Constitution, as well as from the Convention.

There are other aspects which cause concern and which might be the subject of lengthy debate. Assuming, for example, that one reaches the conclusion that the House would indeed become a "court" in terms of the clauses which have been quoted, can the House be considered "independent and impartial", keeping in mind that the aggrieved party in a breach of privilege process, is the House itself; that the prosecutor would be the House itself, and that the judge would also be the House itself?

Perhaps, there is one other point which needs to be mentioned. I have already stated above that the procedure for a member to raise a matter of breach of privilege or contempt, stipulates that the member must first raise the issue at the start of public business. The Speaker must then decide whether that issue constitutes a "prima facie" breach. The Speaker, at this stage is free to investigate the matter and to give a ruling which could kill the process, or alternatively, put the machinery in motion against the person or persons involved. It is legitimate to ask whether a ruling at this stage can be interpreted as prejudging the issue and therefore reversing the burden of proof.

There is, in my opinion, an approach which might be interpreted as satisfying the criteria which have already been mentioned. In a process such as the one explained in the previous paragraph, the Speaker is expected to hear the complaint, consider the facts available to him, and then decide whether the matter does infact constitute a "prima facie" breach. This is a function which should ideally involve an investigative process by the Speaker, who must verify the facts, and examine these facts in the light of what the written rules state.

In a system such as ours, the Speaker is obliged to act in an independent and impartial manner. This rule derives itself from a number of provisions which exist both in the Constitution as well as in the Standing Orders. Perhaps, the most indicative of these rules, is the clause in the Constitution that states that Speaker does not vote except when the

votes are equally divided, in which case he has a casting vote (Art. 71.1)—a clause which is clearly intended to safeguard the Speaker's impartiality.

The problem here is that the independent and impartiality of the Speaker exist with respect to the sides of the House. He represents the House as a whole, and therefore he has the responsibility to safeguard the House, its process and its function. However although in theory the Speaker would infact be representing the "victim" in a breach of privilege complaint (in the sense that the victim is the House as a whole) in practise, the Speaker has always decided on these issues without taking sides, and whilst protecting the respect that is due to the House, in the vast majority of cases, the Speaker has ruled that a breach did not exist. Clearly, the proof of the pie is in the eating, and the proof of the Speaker's impartiality in privilege matters, is the track record which indicates that complaints were accepted, only in those cases where a real and precise breach of privilege or contempt existed.

One could, therefore, argue, admittedly with much trepidation, that the Speaker is the first person who exercises the quasi-judicial function of deciding whether there is an element of guilt—even if prima facie; that the Speaker is an independent arbiter and an impartial judge in such matters without himself representing either the victim or the prosecutor.

One could also point out that once the Speaker has expressed himself and delivered his ruling, if his decision is that there is no breach, then the House has no right of appeal from that decision. His ruling cannot, in other words, be overturned by any other process. On the other hand, if the Speaker rules that there is a prima facie breach, then his decision is not final, since the matter would still have to be brought in front of the House, and decided upon by means of a specific motion which must be voted upon. At this stage, the Speaker's initial judgement can be overturned in the sense that the Motion can be rejected. On the other hand, it can be confirmed, and if so, the motion can also indicate the punishment that will be meted out.

There is no doubt that the complications arising out of this conflict are indeed numerous. It is inevitable that occasionally in life, one has to decide between two conflicting claims and I strongly believe that every parliamentarian must be prepared to face this conflict and find a solution which continues to guarantee the sacrosanct rule of the status and independence of Parliament.

The very great constitutional importance of the supremacy of our Parliaments on the one hand, and the fundamental human rights on the other hand, challenge us to face these issues and to try to discover new ways that would guarantee Parliament's total independence, but that would also respect those fundamental human rights which are at the very basis of our beliefs in democracy, freedom and the rule of law.

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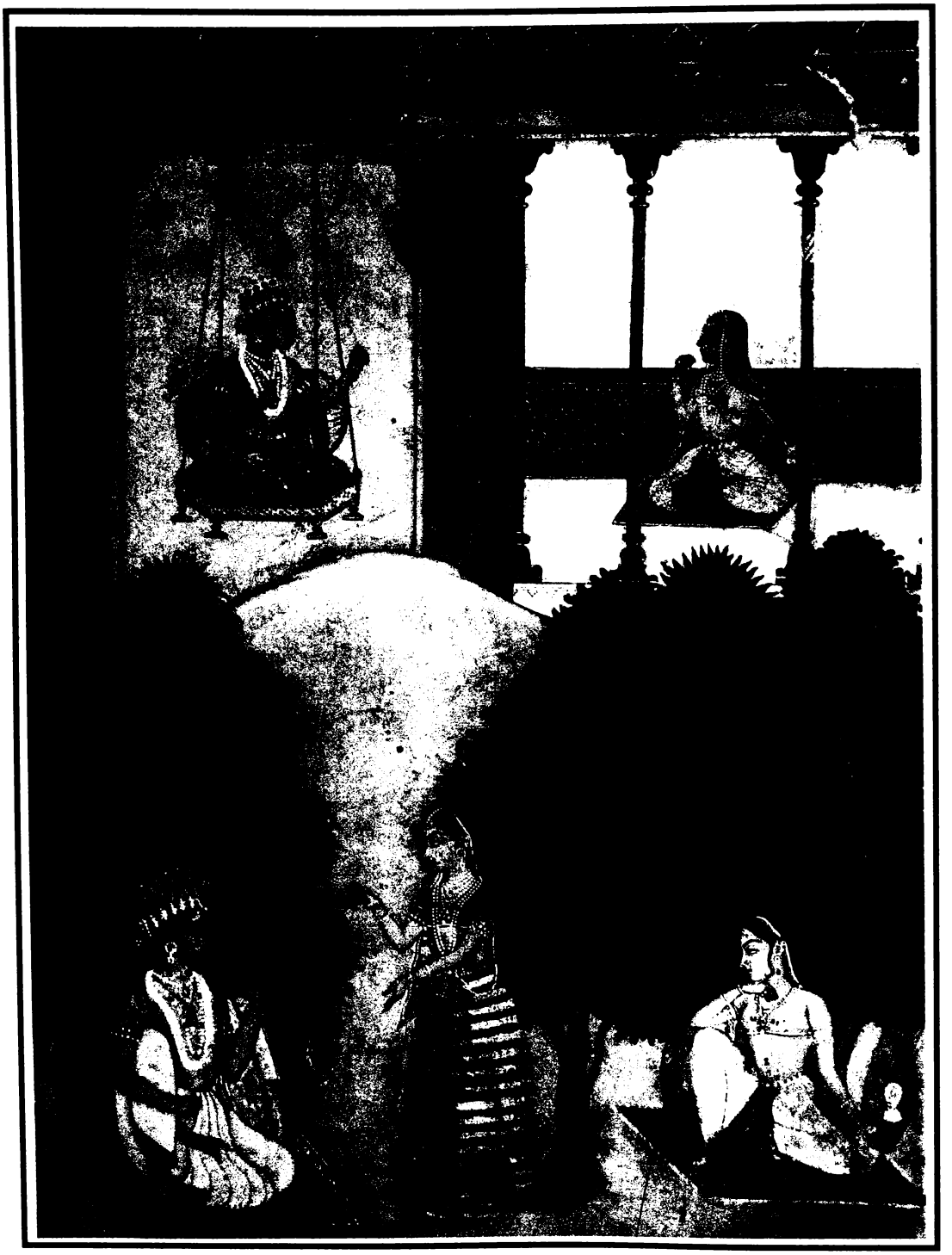
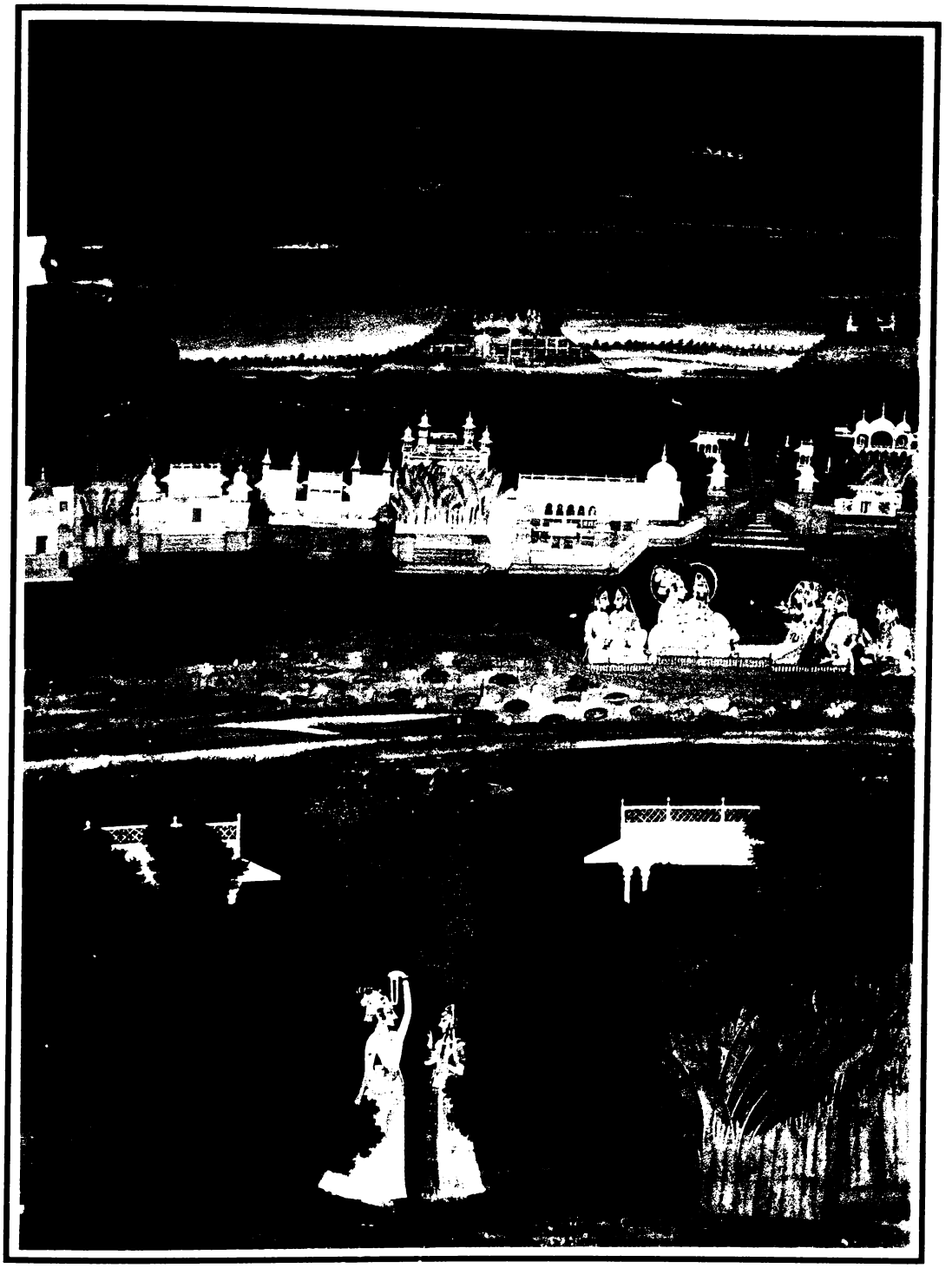
Mahisasurmardini, Bikaner, Rajasthan, AD 1655-80

Courtesy National Museum

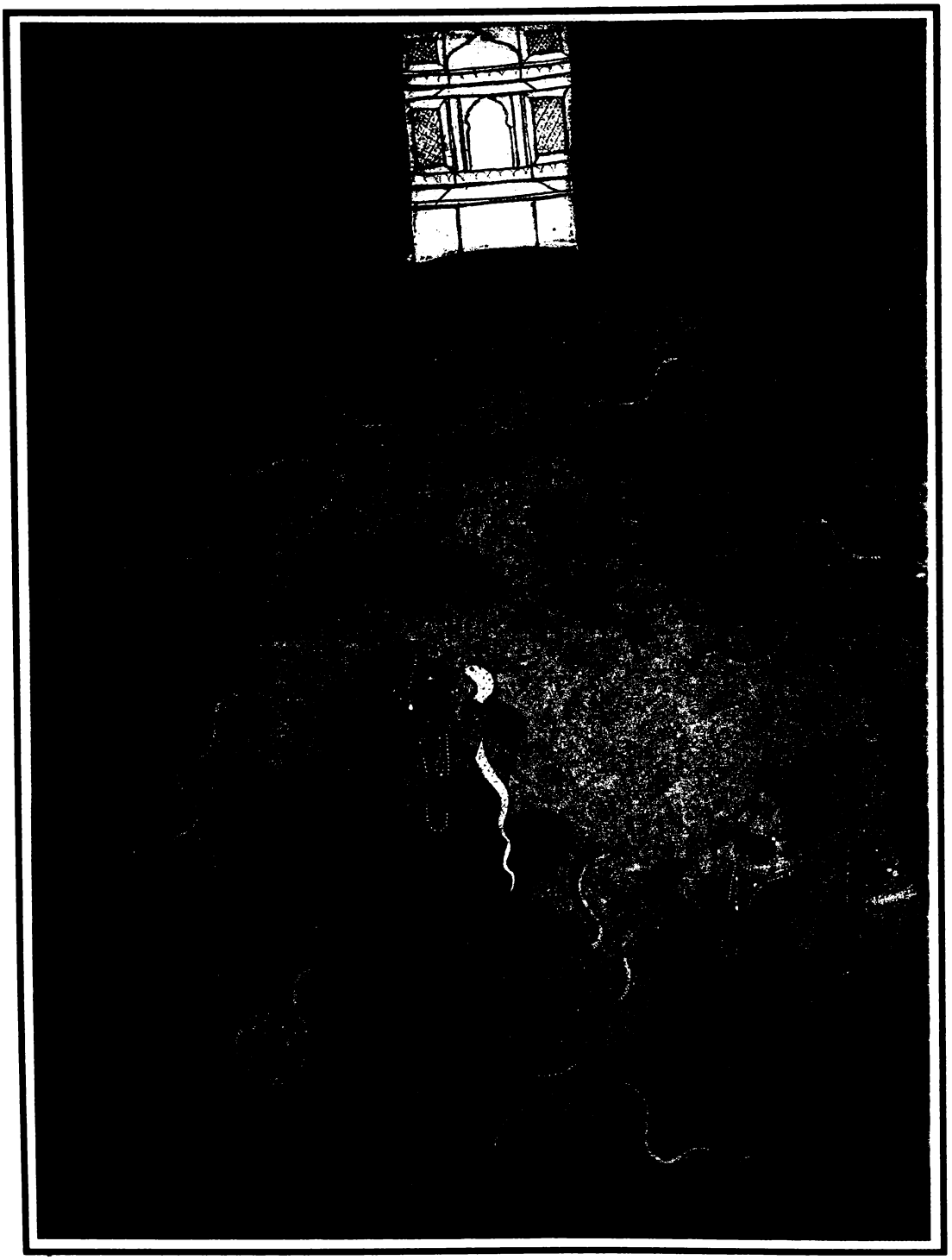


14. Krishna on swing : A folio of Keshvadasa Rasikapriya, Bikaner, Raj. *circa* AD 1695 — *Courtesy:* National Museum



The Boat of Love, Kishangarh, Raj. *circa AD 1750* Artist: Nihal Chand

Courtesy National Museum



[16] Ragini Asavari: Amer, Jaipur *circa AD 1710*

Courtesy: National Museum

Mauritius—The Move Towards Parliamentary Democracy

L.R. Quenette*

Mauritius is one of those few Commonwealth countries where parliamentary tradition has been alive since the early days of the nineteenth century. This is no doubt, the normal consequence of the political activity. particularly buoyant during the French Revolution, Which had swayed public life in the ancient *Isle de France*, years ahead. And this to such an extent that it can safely be laid down that local political considerations were not alien to the fate of arms in 1810 and that they lergely inspired the terms, uncommon by its generosity, of the Acte de Capitulation of 3rd December of that year. Indeed the Eighth Article of that At which allowed the inhabitants of French descent to preserve their religion, laws and customs gave support to a kind of hegemony which was bound, sooner or later, to conflict with British administrators, not all of whom were made of the same diplomatic fibre as the first British proconsul of the island: Sir Robert Townsend Farquhar. Hence, some sort of caucus had to be established which would gradually but surely snatch power and influence from public functionaries belonging to the old regime and who were not always willing to yield to the dictates of the new metropolis. Thus came into existence the first Council of Government, established under Royal Instructions dated 9th February 1825, and which nominated four British Officials under the chairmanship of the Governor "to assist and advise in the adiministration of Government."

The first Council of Government did not live long. A major source of antagonism between the British administrators and the colonial elite soon became apparent when the British Government signified, as early as 1828, its intention of making applicable to Mauritius the laws that had been enacted, on 10th March 1824, for the betterment of the conditions of living of slaves in the West Indies. Opposition went rife and calls for civil disobedience were heard. So much so that before the House of Commons voted, on 12th June 1833, resolutions for the abolition of slavery throughout the colonies, the British Government had to accede to a major request from the natives in the form of a substantial remodelling of the council of Government. On 20th July 1831, new Royal Instructions were issued providing for the nomination to the council of seven natives "from and out of the chief landed proprietors and principal Merchants" of the island. However, the provisions of the new Constitution did not allow the new Council to be more than an advisory body. The Governor was the only person entitled to propose legislation thereat and the terms and conditions of the Commission issued to him for that purpose did not give to the Council any executive powers in the exercise of the "advice and consent" required from it for the promulgation of laws "for the order, peace and good government" of the colony.

The weaknesses of the new Constitution were twofold. In the first instance, the local intellegentsia felt very early that it needed more than advisory powers in the administration of the island. Its members belonged to a highly-cultured class and "the chief landed proprietors and principal merchants" wielded much wealth. They accordingly dreamt of effective influence in the conduct of local affairs and, as far back as those days, claims for autonomy and self-government were heard. However, economic considerations soon muted that piece of political impertinence. The abolition of slavery had largely disturbed the social set-up of labour. Even before abolition and the introduction of apprenticeship, the conditions of slave labour were regulated by strict legislation and the numerous queries of the Protector of Slaves became not only nerve-racking for proprietors but spurred them towards looking for other forms of labour which would be more economical and, at the same time, escape the neverending inquisition of the State. Indentured labour was the remedy and for the furtherance thereof on terms—cheaper and very often sub-humane-the proprietors felt that relations with the local government and ultimately with the Colonial Office had to be handled with extreme caution. Hence, only threats to local interests happened to give rise to vociferous outbreaks against the prevalent regime. But concessions from White-Hall, often with the complicity of governors, succeeded to stiffle the most daring attacks upon the Constitution.

Matters turned different when, following a report from the Deputy Conservator of Forests of India, R. Thomson, Government decided to consolidate and revise forests laws, involving the recovery by the State of Crown land appropriated by individuals and in some cases expropriation of private land. In spite of strong opposition in the Council of Government, no back-pedalling was envisaged as inconsiderate depletion was working havoc on the whole eco-system. Then came a louder plea for reform. It was felt

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that the introduction of a numerically preponderant batallion of elected members into the Council was the remedy to evils of all kinds which, from London, were directed against local intersets. The struggle would have been extremely difficult had it not been for a second constitutional insufficiency connected with the composition of the population.

By the side of the white "chief landed proprietors and principal merchants" of the colony, who sat in the Council of Government, lived a majority of persons of mixed descent who, on grounds of wealth and culture, had equal rights to be present in the Council but who had been systematically ignored. Their battle for civil and political rights had been mainly fought in the press and if their civil emancipation had been entrenched in the Constitution of 1831—which, incidentally, prohibited the passing of laws discriminatory against "persons of African or Indian birth or descent"—, following an appropriate legislation enacted on 2nd December 1829, there were poor signs of translation thereof into social realities. Hence, when the agitation of the white proprietors against the Constitution started as a result of the forests laws, leaders of the population of mixed descent rightly felt that the time had come for joint action. The strategy was well thought out but laboured under the phobia of Indian immigration which had brought to the island a large majority of potential electors who were likely to swamp the register in case qualifications for registration would be too low. The reform movement split but even the more Democratic faction could not conceive of a register large enough that would accommodate its avowed liberal principles.

By that time, Mauritius had had voting experience. By Ordinance No. 16 of 27th december 1849, Port Louis, the capital, had been placed under the administration of a wholly elected Council and elections had been held for the first time on 21 and 23 February 1850. There was no reason then for the Colonial Office to deny to the country at large a political experience which had worked so well in the capital and which later had given birth to campaigning in line with the best political traditions of Britain. On 16th September 1885, the Constitution of the Council of Government was amended with a view to admitting elected Members. Elections were held in January 1886 and Mauritius started its real move towards true parliamentary democracy. This happened more than a century ago.

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The democracy of my conception is wholly inconsistent with the use of physical force for enforcing its will. ***—Mahatma Gandhi***

Some Problems of Micro Parliaments in Micro States: The Montserrat Case

Dr. Howard A. Fergus, OBE, MLC*

Introduction

In the early nineteenth century the governmental system of the Anglo-Irish colony, Montserrat, was in danger of collapsing. This was because as estate fortunes vanished after emancipation, many Protestant Whites abandoned the island and returned to England. Many of those remaining were illiterate and since Roman Catholics were denied civil and political participation in government there were too few persons qualified to exercise the franchise, serve as jurors, or become legislators.

Today, effective government is imperilled although for different reasons. The education of the 12,000 persons who inhabit this 102 square kilometre British dependent territory is of a high standard, but it has been difficult to attract citizens of quality education to the hustings. This contrasts sharply to other territories in the regions such as Barbados. Jamaica and even those in the Organisation of Eastern Caribbean States. This is not to deny that the territory has seen some shrewd, able and intelligent politicians.

An examination (no pun on the word) of the seven current elected members of Council reveals the typical picture. Of the four members on the government bench none acquired tertiary education although Chief Minister John Osborne, a highly skilful technician, credibly claims to have attended a technical college while being an immigrant in the United Kingdom. Of the three in opposition, two had tertiary exposure though only one, a lawyer gained the relevant credentials. In fact, fewer than half of the seven members obtained no secondary education partly and even largely because secondary education was restrictive and elitist in their day.

The absence of persons with disciplined learning, impacts negatively on the quality of governance needed at the present. The issues and governmental agenda were simpler in the 1950s centred as they were around low wages, high prices of consumer goods and the oppression of unconscionable merchant-planter lords who often had some support from expatriate colonial administrators. The central theme was liberation with all its emotive appeal. The then champion of the people's cause, the island's first Chief Minister (CM) W. H. Bramble CBE, was equal to the task although he had only all-age primary education. Let it be noted, however, that many of his successors with better *schooling* have not attained the quality of thought, clarity and resonance which his speeches evinced. He was an example of a politician with good native wit.

Contemporary issues and challenges are different: differing paradigms for economic integration and political unity, sophisticated negotiations with prospective investors and developers, transport, marketing, currency, cultural penetration, management of aid, offshore banking, corruption and so forth. Senior civil servants can play a significant advisory and creative role, but political leaders should be mentally on top of policies and should be able to conceptualise solutions. At least, they must be in a position to understand options presented to them and to make reasoned decisions. A new breed of politician is needed. Effective democracy in the last decade of the twentieth century needs not only an intelligent and knowledgeable electorate, but also an educated political directorate. The first section of the article illustrates the Montserrat dilemma, the second section, details reasons for the reluctance of the intelligentsia to enter active politics and alludes to concomitant problems. The final section proposes tentative remedial strategies.

The Montserrat Dilemma

In a recent interview on national radio, the Chief Minister of Montserrat appeared to endorse the view proposed above when he said.

> We have reached a stage in our political life where we need better people than we have. We need more competent and devoted people, and when I look at those that are already involved, and the names of those that I have heard of who intend to offer themselves, I am not happy at all.

What was astonishing though, was when he pronounced what was tantamount to a vote of no confidence in his own government. Questioned on his party's projected performance in the next election, constitutionally due in 1992. John Osborne replied:

> I am not sure that I am going to put out myself to do the work that is needed to convince people

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> that they should give the present government another chance.

These generally speaking, were the same persons and the same calibre of persons with whom Osborne had ruled the country for the last 13 years. His Deputy, J. Benjamin Chalmers retorted with his own devastating lack of confidence in the leader. In prophetic tones, he predicted his political demise. Repeating a statement he had given to the Caribbean News Agency (CANA) months earlier, Chalmers said: "Those whom God doom to fail he takes from them the power of reason". One cannot go as far as Chalmers, but his speech appears to sound the death knell of Osborne's leadership as well as his party.

The tepid response of the Opposition, The National Development Party (NDP) reflects its weak position as a faction in waiting poised to offer alternative government to the country. The leader admittedly said that the CM was "desperately afraid that my Party and I *would* beat him at the polls". But this *would* does not spell the usual certainty of political rhetoric. It is not clear that the Opposition has representatives for every electoral riding even though the government lacks cohesion and is obviously on "the verge of collapse" according to the NDP's own newspaper. And among those committed to it, the majority did not receive tertiary education. Indeed the NDP has reportedly held accommodatory talks with a completely new emerging group self-styled the Concerned Citizens. Part of the concerns of this group is presumably the quality of governance offered by the PLM, and NDP's weak stance as a potential government.

NDP's problem lies to a great degree in the general difficulty of attracting to politics, persons who can win in constituencies, as well as make intelligent contributions to the governmental process. During the last election (1987) both the NDP and another opposition group the Progressive Democratic Party (PDP) attempted to form a coalition, but failed. These efforts at accommodation are really symptoms of the recruiting problem, even though the proffered reason is that two opposition parties would make it easy for the incumbent government to survive. It is significant that although the PLM government is obviously in shambles, with their national popularity at an all-time low, the issue of a coalition has surfaced. The next section examines the reasons why the intelligentsia have not been attracted to active politics.

The Recruitment Problem

The recruitment problems lie mainly in the traditional nature and style of electoral campaigns, the size of constituencies, the harassment of small island politics, and the official exclusion of public servants from politics.

The island's post-plantation society leaders were politician-kings of messianic stature heading effectively one-man governments. This excerpt from an election eve speech of the first CM, W. H. Bramble, gives some idea of the messianic posture and the tone of the crowd hero.

> Listen to me you landless people, you people the industrial machineries of this country. Arise and throw off the yoke that binds you like slaves to Wade Plantation.

He caught the imagination of the people: he was the leader and the other members of his team were vote winners on the campaign trail and "yes-men" in the parliament they were disparagingly called. Some councillors were barely literate. This image of the politician as either a self-made self-educated worldly wise leader or one of the outstanding local folk as follower, died hard. Where neighbouring St. Kitts-Nevis and Antigua-Barbuda have made the transition to a new kind of politician, Montserrat has failed to do so. It is a vicious cycle: for as long as the image of the politician remains unattractive, those who must help to brighten that image opt to reject a political career.

The better learned who have so far entered the arena (and they are few) have not fared well. In 1983, of the 22 persons who contested the election, only five had university level education and of those five, only one was successful. Even so this represents an improvement. For out of 54 persons who contested elections between 1952 and 1979, only four or 7.4 percent had received formal tertiary education. Of these four, two were elected. Academic credential is not by itself a critical variable in election victories. The intellectual has to be community-minded with strong grassroots connection if he is to impress the electorate. A prominent university lecturer satisfied this criterion in the 1983 general elections. But a trade unionist, advocating innovations such as worker participation, and being a little left centre ideologically, he was caricatured as communist and rejected by the electorate. This is a risk that "progressive" intellectuals run not only in Montserrat, but in the Caribbean region as a whole.

The style of campaigning tends to be a disincentive to the serious thinker. Mudslinging and personal abuse rather than issues dominate campaign speeches: and the speeches are diatribes instead of debates. I see no reason to alter this assessment which I made after the 1983 general elections:

> Election campaign meetings tend to assume a carnival-like atmosphere in Montserrat and most persons attend them to be entertained rather than to be educated, using that word loosely, of course. Part of the entertainment lies unfortunately in the platform gossip and mudslinging. One columnist

> described election speeches as "half-truths, innuendos, stale outworn gossip...verbal abuses, character assassinations, a complete adventure in skulduggery, vulgarity and the like". Perhaps there is a sad logic at work in the prominence of personal abuse since the electorate tends to vote for personalities rather than on issues.[1]

Electoral bribery of some sort features significantly in electoral victories. In the early days of universal adult suffrage, the merchant-planter had more that an edge, monopolising as he did the powers of patronage. In many cases, the voters were tied to his estate, survived off credit in his store and rode in his bus to the polling station. They were subject to harassments such as tenant evictions if they did not vote *correctly*; Many were illiterate, and so their ballot was not entirely secret.

We may have refined the modalities and given some a patina of innocence, but the damage to democracy is evident, giving the term "free and fair elections" a special and stipulative meaning only. Bribery may take the form of leaving monies at rum shops, handing out ten or twenty dollar bills, helping with home repairs or occasionally giving vehicles to key constituency agents, but the power of the purse ever works. Politicians boast of the amount they plan to spend, and although the crudeness may be changing, there is still a strong correlation between personal wealth and safe seats. A well-to-do politician can personally do more for his constituents than his poorer counterpart, and this counts for much at the polls.

In this business of personally attending to constituents, smallness is a critical factor. At the present time, registered voters in the seven electoral districts in Montserrat number 2105, 1131, 1062, 893, 874, 729 and 536. It can be readily seen how unscrupulous politicians can subvert the democratic process with numbers like these. A well-off politician can purchase his way to power in the manner of some British politicians in what were dubbed the rotten pocket boroughs. To survive in this situation, the educated candidate also requires a monetary qualification.

The problem is not just one of attracting educated persons to politics. There is a related problem—the felt imperative to give personal favours to one's supporters rather than governing in the general interest. This issue surfaced recently in the administration of post-hurricane relief. The Minister of Housing who has the smallest constituency was accused by the press and in parliament of giving the lion's share of some housing materials to his own constituents. A constitutional commission to the Turks and Caicos Islands where the average number of voters in each of the eleven constituencies is 370 (ranging from a high of 648 to a low of 370) encountered the identical problem. Its comment is instructive and warrants quoting at some length:

> Given the closeness of the communities involved and the strength of the party spirit and party organisation, it is inevitable (despite the secrecy of the voting process, which we have no reason to doubt) that each successful candidate for election will have a good idea of who his supporters are and it is likely that he will be personally acquainted with every one of them. The pressure that this puts on him to regard himself as primarily obliged to further their individual interests and advantage—an obligation which they are themselves not slow to urge upon him—and only secondarily, if at all, to further the interest of all his constituents of whatever party, let alone the interests of the islands as a whole, is very difficult to resist. We are satisfied that it very often has not been resisted and that those members of the Legislative Council who were able to do so—and this applies especially, of course, to Ministers and those other members who had the ear of the Ministers—have regularly felt compelled to use their position to secure preferential treatment for these parochial or personal interests. We are convinced that this is seriously inimical to healthy and effective government.[2]

Stemming from smallness and the "closeness of communities", the micro state parliamentarian is harassed in a manner unknown to the holder of a large electoral riding. The parliamentarian. whose dwelling is readily accessible is expected to attend to the personal problems of his electors, domestic and otherwise. He has little privacy as his constituents become virtually part of his extended family. These unofficial duties often consume more time of a Minister than his official duties, and the peculiar services to his voters seriously impact on central government policies and often conflict with them. In short, there are as many private administrative agendas as there are members on the government benches. The public servant for example, with his or her security of tenure prefers to avoid the toils of this kind of political life.

In any event, *General Orders* which regulates the functioning of the civil service forbids public servants to actively participate in politics, following the Westminster model. In theory, they are supposedly neutral, although in practice many surreptitiously support parties in positive and effective ways. One frequent method is to leak confidential information to opposition politicians. This rule effectively disempowers politically a sector of the population in whom the society has invested much in terms of education and training. The time may have come to re-

examine this regulation with a view to modifying it.

Addressing the Problem

I have focussed the discussion predominantly on the educational quality of the parliamentarians who conduct the country's affairs and the difficulty of attracting a more mentally disciplined candidate. This is because I regard this as the fountain head of many other parliamentary problems. For instance, parliamentarians are so occupied with individual constituency matters that too little time is given to the legislative process. Until recently, the Council met in an *ad hoc* manner on an average of 6 times annually for about half a day at a time. In that situation, legislation was rushed through in a manner that was unsatisfactory and considered deleterious to parliamentary democracy. To remedy this, a move was successfully made to ensure a mandatory meeting at least once every two months.

Another problem is the inability of parliamentarians to properly debate beyond the most simple issues. And even seemingly simple issues are parochially conceived rather than within the larger context of national policy. Two major issues which surfaced over the last year-and-a-half were constitutional changes and off-shore banking both with serious implications for development. Very few parliamentarians were able to make a meaningful contribution to the debate. The result of this kind of situation is that instead of participative parliamentary democracy we end up with dictatorship by default as the CM works his will. To have effective governance in the last decade of the twentieth century and beyond, a highly literate and fairly well educated political directorate is a pre-requisite.

There are signs that this state of affairs may be changing, but certain strategies need to be adopted to accelerate and ensure remediation. These are (a) attractive remuneration, (b) controls on electioneering expenditure, (c) modification of the regulation banning civil servants from entering active politics, (d) electoral reform to ensure larger electoral districts and (e) political education.

(a) Attractive remuneration

Significantly, the emerging Concerned Citizens group has a high tertiary education content in its ranks, especially among the chief players. Presided over by a medical doctor, it reportedly includes, four social scientists, a senior banker and a primary school head teacher. No one is sure who among these will actually face the hustings, but the quality of the cluster is impressive. It is also significant, that several of the prospective candidates may be civil servants. It may be only fortuitous that parliamentarians benefitted from a recent salary increase which put them in the upper salary echelons of the island.

There are those who aver with a tinge of cynicism, that it is the attractive remuneration and related perquisites that have pulled this young new breed. If this is the case, I welcome the move. If parliamentarians are inherently venal and corrupt a large salary may not deter them: but in these tiny territories which tend to depend on dubious measures like off-shore banking for economic survival the temptation to be corrupt is intensified for impecunious legislators. Besides, remuneration signals, to some extent, the value we place on the service of legislators.

(b) Controls on election expenses

If, as now obtains to a great extent, the wealth of an electoral candidate is a critical variable in electoral fortunes, then a sinister form of discrimination is at work. The wealthy are given reins to deploy their wealth to secure return to parliament. What is more, otherwise qualified candidates can be debarred. In the interest of some measure of equity, limits should be set on campaign expenses as is the practice in the United States of America. This will not be easy to monitor and administer, but this expedient has merit when taken as part of a package of strategies.

(c) Lifting the ban on civil servants

In their submissions to a Commission on salaries and conditions of service in 1988, the civil servants requested that the regulations be changed to allow them to participate in electoral politics if they wished. Their argument was that the ban excluded the better educated and more articulate sector of the population from political life. One appreciates the counter arguments based on the need for neutrality and the potential for conflict of interests. A Permanent Secretary Development, with an eye on Parliament, for instance, can retard progress and stymie government policy. He can even seek to extract personal credit from governmental projects. Similarly, a Chief Community Development Officer can utilise public resources for personal canvassing.

The argument of the civil servants, nevertheless, has merit, especially given the dilemma we have described. There are several civil servants outside critical positions of influence and power—persons whose jobs have little or no direct connection with the commanding heights of government policy—Head teachers and some categories of medical officers fall into this group. A new dispensation should be promulgated in which certain categories of civil servants are allowed leave of absence to contest elections. One cannot spell out all the details and caveats here, but generally speaking, those who are unsuccessful should be allowed to return to their jobs. This would merely take further a provision in the British Virgin Islands, which allows persons to participate in politics and return to their jobs without loss of benefits if the service needs them. And it is analagous to what obtains in the Falkland Islands where

certain levels of civil servants are given leave to serve as councillors.

(d) Larger constituencies

The recommendation here is simple. Treat the entire island and its voters as a single constituency. There will still be seven elected members, but each would be required to campaign throughout the entire island. The compactness of the island would facilitate this. This should limit the rotten pocket borough effect and hopefully curb electoral bribery, as prospective Parliaments are required to canvass support from larger numbers over a wider geographical area.

Alternatively, and to preserve the principle of identification of a parliamentarian with a particular constituency, there can be fewer electorial districts, which would make each district multi-membered. There is nothing new about this. In fact, the Marshall Report on the Turks and Caicos Islands to which I have already alluded made the same recommendation for that colony. I regard the recommendation as applicable to Montserrat and micro states of similar status.

(e) Education

It is not uncommon in the Caribbean for a party in opposition to criticise illegitimate practices and then proceed to perpetrate the same activities when they become the ins. The task therefore of creating in citizens the kind of mindset which will prevent them from prostituting their franchise for a mere pottage or a swill of liquor should be assigned to recognised educational institutions and not left to party platforms and public political harangues.

First of all, there should be political education in secondary schools to include knowledge of electoral and parliamentary history of the island and critical analyses of electoral behaviour and practices. In addition, careers guidance sessions should include Parliament, government and related services as potential careers. In dealing with political matters in the school, the emphasis should be on a cognitive and eliciting approach rather than partisan indoctrination.

Education should also be imparted to adults. Civic organisations and university extension arms may be the appropriate agencies. Panel discussions and lectures in all districts, on local radio and television can do much to enlighten the populace on the processes of government and rationally induce changes in behaviour and procedural values. Electoral practices could be presented to adults in the larger context of government which encompasses individual rights, civic duties, use and abuse of power, law, justice, representation, order, equality etc. An ultimate aim of the educational process will be to reduce the dissonance between the skills which parliamentarians need to win elections and those they need to administer the country. Time, they will always need "interpersonal intelligence" as they seek to interpret desire and influence people, but they should also have a respectable level of logical-mathematical intelligence".

Concluding Note

This article focussed on some of the problems which smallness and a related kind of political culture posed for Parliament in the micro British colony of Montserrat. In particular, it highlighted the seminal problem of attracting the better educated in parliamentary life, given the contemporary imperative for more sophisticated governance. Five corrective strategies are proposed, while milieus and traditions vary from one dependent territory to another, it is suggested that territories like Anguilla, the British Virgin Islands, and the Turks and Caicos Islands face similar problems, and so the remediating strategies may be applicable to them.

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Structure and Organisation of the Montserrat Legislature

Kathleen E. Russel*

The Montserrat Legislative Council consists of seven Elected Members, two Ex Officio Members; namely, the Attorney General, the Financial Secretary and two Nominated Members. The Montserrat Legislature has the power to make laws for peace, order and good Government in accordance with the Constitution Order 1989 and the Standing Orders of the Legislative Council, 1972.

The elected members are persons qualified for election in accordance with the Constitution and are elected by the process of a general election. A general election is held within three months after every dissolution of Council, as the Governor shall appoint by proclamation in the Gazette.

The Governor shall dissolve the Council at the end of five years from the date when the Council first meets after every General Election. Every Nominated or Elected Member shall vacate his seat at the dissolution of Council. The First Nominated Member is appointed by the Governor acting after consultation with the Chief Minister, and the Second Nominated Member is appointed on the advice of the Chief Minister.

After every general election at the first meeting of the Council, its first business is to elect the Speaker and Deputy Speaker. The Speaker is elected from outside the membership of the House and the Deputy Speaker from among the members of the House who are not on the Executive Council, which takes the place of a Cabinet.

The Meetings of the Legislative Council are held at least once every two months on such days as the Speaker determines. Presentation of Papers is done by a member of Executive Council and any member presenting a Paper may take a short explanatory statement on its contents. All Papers shall lie upon the Table without any question put. All Statutory Rules and Orders (SR&Os) made by the Governor in Council under authority of an Ordinance which do not require the approval of Legislative Council are laid on the Table after being made. Questions may be put to Members of Executive Council relating to Public Affairs with which they are officially connected.

Any member of the Legislative Council may introduce any Bill or propose any motion for debate or may present any petition to the Legislative Council.

A member desiring to speak rises in his place and addresses his question to the Speaker or if the Council is in Committee, the Chairman. No member other than the mover shall speak more than once on a motion. This rule, however, does not apply when the Council is in Committee.

Every Bill shall be introduced and given three readings prior to it being passed. Bills introduced in the House are made available to the general public after the first reading. Also, Bills should not be passed through more than two readings at any one sitting unless the Standing Orders are suspended for that purpose.

The member moving the second reading of a Bill states the object of the Bill and the reasons for its introduction. When a motion for the second reading of a Bill has been made and seconded, there may be a debate. The Bill is then referred to a Committee of the whole Council to be considered in detail, and amended wherever necessary. Bills can also be referred to a Select Committee.

A Select committee may be appointed by the Speaker for examining and reporting on the substance of the Bill. Every Select Committee reports back to the Council on the matters referred to it. When a Bill has been reported on by a Select Committee, it is certified by the Chairman that the Bill has been considered clause by clause in the presence of a quorum of the members of such a Committee.

When a Bill has been settled in the Committee, the Council resumes without question. The member having charge of the Bill reports that the Bill is passed through the committee stage with or without amendment as the case may be. On a motion made for third reading of the Bill, the Bill is read and passed.

Any Bill containing the Estimated financial requirements for expenditure on all the services of the Government for the current or succeeding year is called an Appropriation Bill. After the Appropriation Bill has been introduced and read a first time, the motion for the second reading is made and the Minister of Finance then makes his Budget Speech.

A Bill does not become law until the Governor has assented to it on behalf of Her Majesty's Government. He signs in token of such assent, and signifies such assent by proclamation published in the Gazette. Any law assented to by the Governor may be disallowed by HMG through a Secretary of State. The disallowance is immediately published in the Gazette and the law is annulled with effect from this date of publication.

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Public Accounts Committee

At the first meeting of the Legislative Council or as soon after as possible, the Speaker appoints a Standing Committee called the Public Accounts Committee. This Committee consists of three members chosen by the Speaker from among the Council and one member from outside the Council with accounting or commercial experience. Such a member does not have the right to vote in proceedings of the Committee. The Leader of the Opposition is normally the Chairman of this Committee.

The duties and powers of the Public Accounts Committee are to:

1. ascertain that authorised expenditure during the financial year has been done in accordance with law;
2. make an effective examination of public accounts and scrutinise the causes of any excess over authorised expenditure;
3. summon any public officer to give any information or explanation or produce records or documents which are considered necessary.

The Public Accounts Committee submits its report to Council.

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It is apt that this Association should meet in our Capital city which witnessed the singing of instruments marking the beginning of the end of colonialism. Here was born the singular and remarkable concept of a new Commonwealth which owes much to the genius of Jawaharlal Nehru and that of the Indian people which he symbolised. He wanted the new relationship to be based not on animosity and bitter memories but on forgiveness and friendship.

—Indira Gandhi

Parliament of Nauru

Derog Gioura*

January 31, 1968 is a landmark in the history of Nauru. The Country gained independence that day and became a sovereign Republic. Earlier, on January 29, 1968, the people of Nauru had adopted the Constitution of Nauru declaring the country as a sovereign Republic, in the Constitutional Convention. The Constitution of Nauru as amended by the Constitutional Convention came into force on May 17, 1968. Since then, this day is celebrated as the "Constitution Day" of Nauru.

First Parliament

In accordance with the provisions of the first Convention, the people of Nauru elected a Legislative Assembly consisting of eighteen Members on January 27, 1968. With the coming into force of the Constitution on May 17, 1968, the Legislative Assembly became the Parliament of Nauru and the Members of the Legislative Assembly became the Members of the first Parliament of Nauru. The function of Parliament is to "make laws for the peace, order and good government of Nauru." The laws so made by Parliament have effect outside as well as within Nauru.

The Constitution of Nauru has laid down the membership of Parliament at eighteen. Parliament is authorised under the Constitution to increase the number of Members of Parliament but no law has yet been enacted by Parliament to increase its membership. These eighteen Members of Parliament are elected from eight constituencies, seven constituencies, namely Aiwo, Anabar, Anetan, Boe, Buada, Meneng and Yaren electing two Members each and the eighth, Ubenide, electing four Members.

Qualification for Membership

Any citizen of Nauru, irrespective of sex, who has attained the age of twenty years, is eligible to be elected as a Member of Parliament, except when he is an undischarged bankrupt or insolvent, insane or mentally disordered, convicted and sentenced to death or imprisonment for one year or longer, does not possess the qualification relating to residence or domicile in Nauru, or holds an office of profit in service of Nauru or of a statutory corporation. Under the Constitution, a Member of Parliament is debarred from holding the office of the Chief Secretary, Clerk of Parliament and member of the Public Services Appeals Board. However, no law prescribing the offices which will constitute an office of profit has so far been enacted.

In accordance with a decision of the Supreme Court in 1989, a Head of Department can be elected as Member of Parliament as there is no bar either under the Constitution or under any Act. In the absence of any such law, persons serving in government departments and statutory corporations have been elected as Members of Parliament, and under administrative instructions they are not required to attend to their duties in the Department they are serving during the period sittings of Parliament or when its committees are held.

A Member of Parliament vacates his seat—

1. on the dissolution of Parliament; but the Speaker and Deputy Speaker of Parliament do not vacate their offices till the first meeting of the next Parliament;
2. on incurring any disqualifications for membership of Parliament;
3. by resigning his seat;
4. if he is absent without leave of Parliament on every day on which a meeting of Parliament is held during a period of two months; or
5. on ceasing to be a citizen of Nauru.

General Election

Writs for holding the General Election or a by-election to Parliament are issued by the Speaker. The Chief Secretary is the Returning Officer for all the elections. A General Election is held at such time within two months after the dissolution of a Parliament as the Speaker, in accordance with the advice of the President, appoints. After the election, the Returning Officer declares the result of the election, and also sends to the Speaker the return of the Writ. This return of Writ is placed before Parliament by the Speaker at the next meeting of Parliament and thereafter Members elected take Oath. In the case of General Election, the return of the Writ is laid on the Table of Parliament by the Clerk of Parliament who presides over the first sitting of the new Parliament as Chairman till the Speaker is elected.

Life of Parliament

Parliament, unless sooner dissolved, continues for a period of three years from and including the date of the first sitting of

*Hon. Derog Gioura, Speaker, Parliament of Nauru.

Parliament after any dissolution and then stands dissolved.

Parliament may be dissolved earlier than three years by the Speaker on receipt of the advice of the President of Nauru to this effect but only after referring the advice of the President to Parliament as soon as practicable and in any case before the expiration of fourteen days after the receipt of the advice. If necessary, a sitting of Parliament is convened by the Speaker for this purpose and at this stage there is an opportunity available for any Member of Parliament to bring a resolution for the removal from office of the President and his Council of Ministers. If no such resolution is passed by Parliament within seven days after the date on which the advice of the President was referred to Parliament, the Speaker dissolves the Parliament on expiry of the aforesaid period of seven days.

The last (Ninth Parliament) was dissolved on the President's advice on October 20, 1989, and the first meeting of the present (Tenth) Parliament was convened on December 12, 1989.

Sessions of Parliament

The Constitution of Nauru has vested the power to summon sessions of Parliament or to convene sittings of Parliament, on the Speaker. The Speaker summons sessions of Parliament as and when a proposal to this effect is received from the President or the Cabinet. If Parliament has been prorogued, the Speaker may also summon Parliament to meet if he receives a written request from at least one-third of the total number of Members belonging to at least three constituencies, setting out the business to be transacted. The gap between the two sessions cannot exceed twelve months, or in the case of a General Election, within twenty-one days after the last day on which a candidate is elected. Parliament once summoned remains in session till it is prorogued or dissolved by the Speaker. Within a session, there are long and short adjournments.

Sittings of Parliament are held in the Chamber of Parliament House. Sittings normally commence at 10.00 a.m.; and the time of adjournment depends upon the business to be transacted and its urgency, in accordance with a motion adopted by Parliament for the next sitting.

Speaker and Deputy Speaker

After each General Election the Parliament elects one Member as the Speaker to preside over the sittings of Parliament. Once elected, the Speaker holds office till the commencement of the first meeting of next Parliament constituted after dissolution. Another Member is elected by Parliament as the Deputy Speaker to preside over the meetings of Parliament in the absence of the Speaker. The other and more vital function of the Deputy Speaker is that he is Chairman of the Committees of the Whole House. Like Speaker, he also continues in office till the first meeting of the next Parliament. A Member of the Cabinet cannot be elected as the Speaker or the Deputy Speaker. When Parliament meets after a General Election, the Clerk of Parliament acts as Chairman till Members take the oath and the Speaker is elected. At the time of the election of the Deputy Speaker, the Speaker presides.

The Speaker has been vested with many functions, responsibilities and wide powers by the Constitution and the Standing Orders of Parliament. He summons and prorogues sessions of Parliament, presides over its meetings and dissolves the Parliament. He decides on the admissibility of various notices, maintains decorum and discipline in the House, selects Members who are to speak, exercises control over the duration of speeches; keeps a check on the use of offensive expressions and tedious repetition, fixed time of meetings of Parliament except where it is already fixed by Parliament itself, adjourns meetings of Parliament, exercises control over the precincts of the House and admission of strangers in the Public Gallery or the Chamber of the House, appoints the Clerk of Parliament and exercises the administrative control over officers and staff of Parliament; issues warrants of arrest in connection with cases involving breaches of privileges of Parliament. A Bill passed by Parliament becomes enforceable as an act after it is certified by the Speaker that it has been passed by Parliament. The Speaker also issues writs for holding General Elections and By-elections to Parliament.

The Speaker and Deputy Speaker can resign their offices and can also be removed from office when a resolution to that effect is passed by Parliament. In case both the Speaker and the Deputy Speaker are absent, Parliament may elect one of its Members to preside over the House on that day.

President of Nauru

Under the Constitution of Nauru, the President of Nauru enjoys a position which is somewhat different from that prevailing in other democratic states. He is both the Head of the States as also the Head of Government. He heads the Council of Ministers which is answerable and responsible to Parliament and can be removed by Parliament. The President of Nauru acts like a Prime Minister and answers questions and attends to business concerning the departments under his charge.

Under the Constitution, the President is elected by Parliament from among its Members. The Speaker and Deputy Speaker are not qualified to be elected as President. After assuming office, the President continues to hold office till Parliament elects another Member, as President.

Soon after his election, the President appoints four or five Members of Parliament as Ministers. The Cabinet which consists of the President and the Ministers is

collectively responsible to Parliament. Ministers hold office during the pleasure of the President and the President can change his Council of Ministers at any time. The proposals for summoning, prorogation or dissolution of Parliament are sent to the Speaker by the President.

The President and his Ministers can be removed from office by Parliament by passing a no-confidence motion with at least one half of the Members of Parliament voting in favour. The President assigns portfolios and allots the government departments to Ministers and presides over the meetings of Cabinet. When the President goes abroad or is otherwise not able to discharge his functions, one of the Ministers is appointed as acting President to preside over the meetings of the Cabinet during the absence of the President.

Business of Parliament

The Speaker takes the chair at the commencement of a sitting at the appointed time. Under the Constitution quorum to constitute a sitting of Parliament to transact the business is one-half of the total number of Members of Parliament, other than the person presiding at the sitting. At the commencement of a sitting, the Speaker reads the Prayers. After Prayers, the House proceeds each day with its ordinary business in the following routine—

1. Oath by a new Member
2. Obituary reference on demise of a Member
3. Messages from the President
4. Announcement regarding vacation of seat of a Member on resignation or conviction by the Court
5. Election to fill a vacancy on a Committee
6. Presentation of Petitions
7. Giving notices of motions/Bills
8. Questions on notice
9. Questions without notice
10. Presentation of papers and reports
11. Ministerial statements
12. Matter of public importance
13. Moving of motion or presentation of Bill of which notice has been given at previous sitting
14. Orders of the Day

An Order of the Day is a Bill or other matter which the House has partly considered and ordered to be further considered at a future time.

Committees of Parliament

Parliament functions through three types of Committees—

1. Committee of the Whole House, to consider Bills clause by clause at the second reading stage;
2. Select Committee, for considering a Bill or any other matter referred to it; and
3. Standing Committees.

Parliament has the following Standing Committees, which once constituted, function till Parliament is dissolved—

1. Standing Orders Committee
2. Committee of Privileges
3. Library Committee
4. House Committee
5. Subsidiary Legislation Committee
6. Private Business Committee
7. Printing Committee.

Questions

As in other Parliaments, the procedure of questions in the Parliament of Nauru is the most effective instrument in the hands of Members of Parliament to seek information on the activities of Government, to keep a check on the functioning of the government and to bring to light any lapses or irregularities or mal-administration.

Questions on matters of public importance covering areas in which responsibility of the government is involved may be asked by any Member either through a written notice given in advance or without notice on the floor of the House. When a question is allowed by the Speaker, the Minister concerned replies to it orally either giving the information or saying that information was not ready with him. When the Minister gives the information in his reply, further information arising out of the reply can be asked by any Member through a supplementary question. Where the information in answer to question on notice is not ready with the Minister, the question is again put down on the notice paper from day to day till the Minister gives the information in his reply. The question also remains on the notice paper if the Member in whose name the question stands is absent when the question is called by the Speaker.

Legislation

The most important function of Parliament is to pass laws for the peace, order and good government of Nauru. Legislation is initiated in Parliament by any Member by introducing a Bill. Every Bill has to pass through several stages, known as first reading, second reading and third reading, before it is passed by Parliament. When passed, the Bill becomes an Act and is notified in the Gazette for the information of the people, with the Speaker's certificate.

Privileges

The powers, privileges and immunities of Parliament of Nauru, its Members and officers and its committees

have been codified in the Parliamentary Powers, Privileges and Immunities Act, 1976. The Act covers certain areas only and in respect of areas not specifically covered, it provides that Parliament and its Members "shall have all powers, privileges, and immunities which the House of Commons of Parliament of United Kingdom and its Members have for the time being, except such powers, privileges and immunities as are inconsistent or repugnant to the Constitution or express provisions of this Act".

As enshrined in Article 27 of the Constitution of Nauru, the Parliament of Nauru has contributed in substantial measure to the improvement of the conditions of the citizens of the country through laws made for the peace, order and good government of Nauru.

Parliament of Nauru is member of the Commonwealth Parliamentary Association, and has the status of observer in the Inter-Parliamentary Union. Delegations of Members of Parliament, selected by the House Committee or the Executive of the C.P.A. are sent to the conferences sponsored by these international organisations, where the Members of Parliament of Nauru interact with their counter-parts from other Parliaments to discuss and work out solutions to their common problems.

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It is because of our long national experience that India put forward the idea of co-existence. There cannot be harmony without the acceptance of the right of even the smallest nation to follow its own path. ***—Indira Gandhi***

An Outline of the Legislative Process in New Zealand

Robin Gray*

The legislative process, on initial consideration, would seem to be the same from parliament to parliament. After all, bills are introduced, given first, second and third readings and in many cases sent to select committees for review, but the timing of the process, and the emphasis given to the stages can vary considerably. In New Zealand, for instance, the select committee review is now of major importance and the public has come to believe it should have a right to make submissions on proposed legislation, even when it espouses strongly held Government policy which is unlikely to be substantively changed. This article describes the legislative function of the Parliament of New Zealand which is unicameral, the upper house having been dissolved in 1951.

New Zealand's Constitution Act 1986, in section 15 (I), declares that "The Parliament of New Zealand continues to have full power to make laws". This recognises the full legislative competence attained by the New Zealand Parliament, formerly called the General Assembly, in post-colonial times. The New Zealand Constitution Act 1852 and its amendments, and the Statute of Westminster 1931 (Acts of the Parliament of the United Kingdom), have ceased to have effect as part of the law of New Zealand.

As may be expected of a House of Representatives which sits in more than 30 weeks of the year, law-making is a major activity of the New Zealand Parliament. The process begins, of course, outside of the House—in party policy platforms, consultations by the Government with interest groups, proposals from Government departments, Cabinet deliberations, and so on—but that is outside the scope of this paper.

There are two basis classes of bills: public and private. Most public bills are Government bills, the introduction of which is moved by Ministers, who must be members of the House. Government bills may be presented to the House at any time on a sitting day-once petitions, papers and—questions for oral answer have been disposed of—except on a Wednesday, when a general debate on miscellaneous business has precedence.

Standing in contrast to Government bills are: private members' bills, which are most often sponsored by Opposition members on an issue of the day; local bills, promoted by local authorities which affect particular localities; and private bills, designed for the particular interest or benefit of a person or body of persons. Debates relating to private bills, local bills and private members' bills have precedence of Government business on alternate Wednesdays.

The debate on the introduction of a bill of any class is two hours. For Government bills this time is divided equally between the Government and the Opposition. The Minister and the first Opposition speaker have unlimited time, while other members may speak for up to ten minutes on a first speech and five minutes on a subsequent one. For private members' bills, local bills and private bills, the member moving the introduction and the next speaker may speak for up to fifteen minutes, while subsequent speeches are limited to ten minutes.

Upon the House agreeing to its introduction, the bill is given a pro forma first reading. The great majority of bills are then sent to one of thirteen select committees appointed in accordance with the Standing Orders at the beginning of each Parliament, or on occasions, to a special purpose committee or committee appointed on the bill. The "subject" committees broadly parallel areas of Government administration or portfolio areas.

In some jurisdictions these committees would probably be regarded as "legislative scrutiny" committees. In New Zealand, select committees do have wider functions than the consideration of bills—in particular, the consideration of petitions, examination of estimates of expenditure and conducting inquiries—but legislation normally takes priority.

Referral of bills to select committees occurs after the first reading (though bills may, although this rarely happens now, also be referred to a select committee after the second reading). In the case of a Government bill or a private member's bill, the Minister or member in charge of the bill moves its referral to an appropriate committee. Local bills stand referred to the Internal Affairs and Local Government Committee, and private bills to the Justice and Law Reform Committee, unless the member in charge of the bill chooses to move it be referred to another committee—an unusual occurrence.

However, there are presently three exceptions to the referral of Government bills to select committees. There is no provision for an Appropriation Bill or an Imprest Supply Bill to be so referred, nor is any bill that the Speaker certifies as a "money bill" referred unless the Minister wishes it. The

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term "money bill", however, does not refer to the Constitutional relationship between the lower and upper houses and the dominance of the former in financial matters, as under the Parliament Act in the United Kingdom, for the New Zealand Parliament is unicameral.

The exception relating to money bills applies to any bill that the Speaker certifies to be of a financial or budgetary nature by reason of it dealing substantially with the rates of taxation, levies or charges; the appropriation of moneys to the Public Account; or the imposition or alteration of any charge on the Public Account.

There is, though, a half-way house situation. A bill that is not a money bill may nevertheless contain provisions dealing with taxation, levies or charges. The select committee to which such a bill is referred does not have jurisdiction to consider the clauses, or parts of clauses, determined by the Speaker as dealing with those matters.

Finally, a bill does not go to a select committee if the bill is one for the passing of which the House, on the motion of a Minister, has resolved to accord urgency—that is, if the House agrees to pass the bill through all its stages at one sitting.

Normally select committees call for submissions on bills referred to them. A closing date for receipt will be set and advertised in major newspapers, with known interested parties directly notified, and then a programme of hearings is determined. In due course, the select committee having heard evidence, considered it and deliberated on the bill, the chairman of the committee presents the committee's report on the bill to the House together with any suggested amendments that the committee wishes to see made in the bill.

The debate at this stage is on a motion that the report lie on the Table and is limited to one hour, with the first two speakers having up to ten minutes each and subsequent speakers up to five minutes each. Whether or not the motion is agreed to, the bill will be set down for second reading on the next sitting day. The discharge of the bill may, however, be moved before the second reading is called.

Speeches are limited to twenty minutes on the second reading debate on the broad principles of the bill, and there is no time limit unless one has been agreed to by the Whips. Second reading debates are frequently concluded after two to three hours. Amendments to the bill recommended by a select committee become effective upon the bill being given a second reading.

Timing of the second reading debate on any Government bill depends on its place in the Government orders of the day set out on the Order Paper; this is decided by the Government, through the Leader of the House. The same applies to Government bills at subsequent stages.

A private member's bill involving an appropriation of public money may not proceed to a second reading unless the Governor-General recommends to the House that such an appropriation be made.

Virtually all bills which have been given a second reading, other than Imprest Supply Bills, are set down for consideration in committee. The committee referred to here is not a standing committee or a grand committee "upstairs", as for Scottish affairs in the United Kingdom House of Commons, but a committee of the whole House, having the same membership as the House itself. The "committee stage" is rarely dispensed with by leave, not even for short, unopposed local bills where amendments are not proposed.

Once a bill has been fully considered in committee, the Chairman of Committees returns the bill with or without amendment to the House. The House immediately decides upon the motion that the Chairman's report be adopted, without amendment or debate. The bill is then set down on the Order Paper for its third reading.

The third reading speeches are limited to ten minutes and debate is not necessarily pro forma, particularly if substantive amendments have been made in the committee of the whole House. When a bill receives its third reading it is said to have been passed by the House.

The Constitution Act 1986 states, in section 16, "A Bill passed by the House of Representatives shall become law when the Sovereign or the Governor-General assents to it and signs it in token of such assent." In this, as with any other exercise of authority, the Sovereign or, more usually, the Governor-General, acts on ministerial advice, in this case that of the Prime Minister, in accordance with the principle of Constitutional monarchy or responsible government. The Attorney-General certifies to the Governor-General that the bill is in order.

Two copies of the bill are signed. This is usually done without ceremony and nowadays does not await the end of a session. The Clerk of the House inserts the date of assent into the Act of Parliament after its Title, and one copy is retained by the Clerk, while the other is deposited with the Registrar of the High Court at Wellington. The Act is then printed for public sale.

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The Parliament of New Zealand

D.G. Mc Gee*

New Zealand's Parliament

In 1852 the United Kingdom Parliament passed an Act "to grant a representative constitution to the Colony of New Zealand". This Act—the New Zealand Constitution Act—contained the seeds of the system of parliamentary democracy New Zealand presently enjoys. In terms of continuously functioning national parliaments this means that New Zealand has one of the world's oldest. Not more than eight other countries have parliaments dating back to before May 1854 when New Zealand's first parliamentarians assembled in Auckland.

The law-making function within New Zealand is vested in this Parliament, which consists of two elements—the Sovereign (who is represented in New Zealand by a Governor-General) and the House of Representatives. The Governor-General plays a largely formal role as an element of the Parliament, and the main focus of attention is the popularly elected chamber of the legislature, the House of Representatives. It is the House of Representatives which is almost invariably identified with Parliament in New Zealand, so much so that members of the House of Representatives are entitled to be known and designated as "members of Parliament".

Responsible Government

When the House first met in 1854, the executive authority within the then colony was exercised much more personally by the Governor than is the case today. The Governor's advisers, those persons who carry out his wishes of "minister" to him, were not members of Parliament but persons who owed their position to their standing and personal relationships with the Governor.

For the first two years of Parliament's existence, Ministers were not chosen by the Governor because they commanded the support of a majority of members of the House but for these other personal reasons. This severely limited the House's control and influence on the Government, for the ultimate means of such control—withdrawal of its support for the Government leading to the Government's dismissal—could not be brought to bear when other factors determined the composition of the Government. It was the endeavour of most of the early legislators to achieve for New Zealand a "responsible" form of Government, that is one in which Ministers were answerable to, and subject to the full control of, the House for their official actions, to add to the representative form of government conferred by the Constitution Act.

In 1856 the Governor, after consulting the Imperial Government, accepted that he would in future choose Ministers only from among members of Parliament who could rely on the support of a majority of members of the House. Responsible government had been achieved. It is on this principle that Ministers are appointed by the Governor-General today. All Ministers must be members of Parliament.

Number of Members

The House of Representatives, elected for the firs-time during the course of 1853, consisted of thirty-seven members. This figure was determined by Governor George Grey under the authority of the Constitution Act. Parliament very soon took into its own hands the determination of the total membership of the House and this has gone up and down (usually up) over the succeeding years.

The electoral Act 1956, which governs representation in the House and electoral matters generally, does not prescribe a total number of members as did its predecessors. Instead, it presribes a formula by which the total number of members may be calculated. The Act provides that the House shall consist of members elected for General electoral districts (or "seats") and for Maori electoral districts. There are four Maori electoral districts. These were first created in 1867 and consist of a Northern, an Eastern, a Western, and a Southern electoral district. There are twenty-five General electoral districts in the South Island. The number of districts in the North Island is the number of seats equivalent per head of electoral population to the twenty-five South Island seats. Thus, while there are always twenty-five members representing General electoral districts in the South Island, the number of members for North Island General electoral districts varies up or down depending upon relative population movements between the two islands. At present there are ninety-seven seats in total.

Term of Parliament

Each Parliament is elected for a maximum term of three years. In 1990 a proposal to extend the term of Parliament to four years was defeated at a referendum. The ninety-

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seven members are each elected on a simple first-past-the-post system of voting.

The sitting day

The regular days on which the House meets (its "sitting" days) are Tuesdays, Wednesdays, and Thursdays, when it sits from two to five-thirty in the afternoon, and then from seven-thirty to ten-thirty in the evening. The House can sit on other days if it so decides and, although it is not common now, Monday and Saturday sittings were quite frequent occurrences in the past as the House endeavoured to get through all its business and allow members to return to their homes. In 1860 the House even went so far as to authorise the Speaker to appoint sittings of the House on either of these days for the remainder of the session if he thought fit. Under the Standing Orders, there can be no sitting of the House on a Sunday.

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We must look forward. It is our duty, whatever part we have taken in the past, to hope and pray for the well-being and happiness of all the peoples of India, of whatever race, religion, social condition or historic character they may be. We must wish them all well and do what we can to help them on their head. Sorrow may lie in our hearts but bitterness and malice must be purged from them, and in our future more remote relations with India we must rise above all prejudice and partiality and not allow our vision to be clouded by memories of glories that are gone forever. ***—Winston S. Churchill***

Senate of Pakistan

Wasim Sajjad*

Introduction

Introduction of a bicameral Majlis-e-Shoora (Parliament) under the Constitution of the Islamic Republic of Pakistan adopted on April 12, 1973, led to the creation of the Senate of Pakistan as a legislative body in addition to the National Assembly. The Senate of Pakistan came into existence on the 6th of August, 1973 when the Members took oath of office and signed the Rolls of Members.

Composition

Senate, as a legislative body, derives equal representation from all the four federating units and has a total membership of 87. The Provincial Assemblies of the four Provinces elect 19 Members each from their respective Provinces for the Senate which include 14 for general seats and five for seats reserved for ulema, religious scholars, professionals and technocrats. Furthermore the Federally Administered Tribal Areas are represented by eight Members whereas the Federal Capital has three seats in the Upper House of the Parliament.

Elections

The Senate of Pakistan is a permanent legislative body and symbolises a process of continuity in the national affairs. The Constitution lays out the methodology for the election of the Senate. About one half of the Members are elected for six years' term after every three years and mid-term vacancy in the Senate, caused by the death, incapicitation, disqualification or removal of a Member, is filled in through the by-election by the respective Provincial Assembly and the Member so elected retains his membership till the expiry of the term of the original Member who vacated the seat. The qualifications of a Member of the Senate are that he should be not less than thirty years of age and should be registered as a voter in an area of the Province from where he seeks election.

Chairman and Deputy Chairman

The Chairman and the Deputy Chairman hold office for a period of three years. They are elected by the Senators, through an election by secret ballot, by a majority vote, when the vacancy occurs. The Chairman under the Constitution acts as President of Pakistan during the absence abroad of the President or after the office of the President becomes vacant by resignation, death or removal, and holds the office of President till another person is elected as President in accordance with the Constitution.

Legislation

The Senate, being a part of the Legislature i.e. the Majlis-e-Shoora (Parliament), is competent to pass the Bills originating in the Senate or transmitted to it by the National Assembly. A Bill to amend the Constitution can also originate in either House, i.e. Senate or the National Assembly. The Bill passed by both the Houses is presented to the President for assent. When a Bill receives assent of the President it becomes a law. All other legislative Bills except Money Bills, can also originate in either Houses and a simple majority of the members present in the House is required for passing these Bills except a Constitutional Amendment Bill where two third majority of the total membership of each House is required for its passage. Where there is some disagreement between the two Houses on the passage of a Bill, the matter is referred to a joint sitting of the parliament but no corresponding provision is available to resolve a disagreement between the two Houses on a Constitutional Amendment Bill, which stands killed and is disposed of even if it is passed by one House but not approved by the other House or passed by the other House with amendments.

The Senate has no powers to entertain and pass money Bills. The Money Bills originate in the National Assembly only. Annual Budget statement is laid before the National Assembly for its approval. The Senate has no power to discuss or pass the Annual Budget.

The Senate, in addition to the disposal of Constitutional and other Legislative Bills, also deals with Questions, Adjournment Motions, Privilege Motions and Call Attention Notices presented by its Members. A Private Member's Day is also observed on every Sunday to transact the legislative and other business of the members of the Senate. Other days of the week are meant for Government business.

The Question Hour is an effective mode of accountability of the Government. The Ministers to whom Questions are addressed are bound to respond to the questions of the Senators requiring information on matters relating to their

*Hon. Wasim Sajjad, Chairman, Senate of Pakistan.

respective Ministries/Divisions. Phenomenon of the Supplementary Questions provides the entire House an opportunity to discuss the specific question in detail and querries are made to clarify the position.

Motions

A question involving a breach of privilege of the Senate, or a member or a Committee thereof, may be raised by the Members as a Privilege Motion. If the Chairman holds the Motion in Order, it is referred to the Privilege Committee of the House for its disposal. The Committee may advise the relevant Ministry/Division to bring the offending office/official to book, if the breach of privilege has really occurred.

The matters relating to the general public importance are brought before the House through Adjournment Motions for which half an hour time is reserved for discussion on almost all working days. If a Motion is held in Order by the Chairman it is admitted for discussion as the last item for not more than two hours discussion on such a day as the Chairman may fix.

The Rules of Procedure and Conduct of Business in the Senate also provide that matters of Sufficient Public Importance can also be put under discussion once in a period of seven consecutive working days. The Chairman may allot half an hour for discussion in a matter which in his opinion is of sufficient public importance and has recently been the subject of a Question; but such a notice should not seek to reverse the policy of the Government.

With a view to enabling the Members to have attention of the Ministers to a matter of sufficient public importance, a system of Call Attention Notice is devised, and a notice is given in writing to the Secretary at least two hours before the commencement of the sitting in which the call attention notice is proposed to be moved.

Committees System

There are 12 Standing Committees of the Senate. These Committees are constituted to discuss in detail various matters pertaining to Ministries/Divisions and are also competent to summon the relevant functionaries of the specific Ministry/Division. The Committees include:

1. Cabinet, Establishment, Women, O & M.
2. Defence, Defence Production and Aviation.
3. Commerce, Industries, Production, Communications and Railways.
4. Petroleum and Natural Resources and Water and Power.
5. Finance and Economic Affairs, Planning and Development, Statistics and Population Welfare.
6. Foreign Affairs, Kashmir Affairs, and Northern areas and States and Frontier Regions.
7. Information and Broadcasting, Culture, Sports and Youth Affairs and Tourism.
8. Education, Scientific and Technological Research.
9. Justice and Parliamentary Affairs and Religious Affairs and Minorities Affairs.
10. Interior, Labour, Manpower and Overseas Pakistanis.
11. Food and Agriculture, Livestock, Agricultural Research, Local Government and Rural Development.
12. Health, Works, Environment and Urban Affairs, Special Education and Social Welfare.

In addition to these Standing Committees there is a *Committee on Rules of Procedures and Privileges* which considers matters regarding procedures and conduct of business in the House and also disposes of the Privilege Motions moved by the Senators.

The *House Committee* deals with the matters like issuance of admission cards for the galleries and looks after the boarding and lodging of the Senators.

The *Finance Committee* regulates the expenditure incurred on functioning of the Senate and its establishment.

The *Functional Committees*, include the *Committee on Government Assurances* and the *Committee on Problems of Less-Developed Areas*. The former looks after the implementation and actions on the assurances, commitments and promises made by the Ministers on the floor of the House whereas the latter is constituted to promote a balanced development in different parts of the country and identifies the areas of difficulty and bottlenecks in this regard.

The *Library Committee* is established to improve the Library service and looks after the research and reference work to cater to the needs of the Members of the Senate.

Working Days

The Senate is required to meet for at least 90 days and hold at least three Sessions in a year. The Senate is summoned and prorogued by the President. The Chairman of the Senate is also competent to call a session which is requisitioned by at least 1/4 of the total members of the Senate. Where the Chairman summons the Session upon requisition of members, he is also empowered to prorogue it.

Secretariat

The Senate of Pakistan has its own Secretariat to regulate its work and maintains its own administrative set-up, like recruitment and conditions of service of the persons appointed in the Secretariat. The Secretary of the Senate is

the administrative head of the Secretariat. He is also the ex-officio Secretary of all the Senate Committees.

Journal

A journal of the Senate is prepared which contains:

(a) a brief record of proceedings of the Senate at each of its sittings,
(b) information on any matters relating to or connected with the business of the Senate or a matter which in the opinion of the Chairman may be included therein, and
(c) information regarding the Committees.

Record of Proceedings

A verbatim record of the proceedings of the Senate is also maintained and, after proper editing, is printed. It is kept for record and is supplied to the Members.

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The Commonwealth is a child of history. In its historical setting, it takes us back to the Magna Carta as well as to the radiant and ageless cultures of ancient civilisations. It reminds us of the continuous struggle of mankind for freedom and free institutions through ages. In its sheer expanse, it transcends the constraints of geographical proximity. It shows how distances cease to deter when there is friendship and goodwill and common striving.

—Fakhruddin Ali Ahmed

Relationship between Executive and Legislature Under the Present Constitution

Gohar Ayub Khan*

Pakistan is a living monument to the memory and ideals of its founder Muhammad Ali Jinnah—a country, achieved as a result of a democratic and constitutional struggle guided by the force of Muslim Nationalism. From the Minto-Morley and Montague Chelmsford Reforms through the Round Table Conferences, Government of India act 1935, till the dawn of Independence he waged a ceaseless struggle, for the establishment of a separate homeland in the Indo-Pakistan Sub-continent.

The form of government he envisaged for Pakistan was Democratic, Federal, Parliamentary, and based on Islamic principles of social justice in which the civil liberties and human rights of all citizens would be guaranteed without discrimination. The Pakistan Constitution today is reflective of the constitutional framework envisaged by the Father of the Nation. Our Constitution represents the quintessence of our values, faith and beliefs, and the hopes and aspirations we acquired through long years of our freedom struggle.

In a Parliamentary Democracy based on Executive accountability to the legislature, the latter is the bridge between the people and the government, the government being answerable to Parliament, and the latter being answerable to the people. The success of the Parliament depends on it fulfilling its vital role of responding to the aspiration and needs of the people and in fulfilling the commitments made to the populace.

Parliamentary Democracy, however, is an interdependent participatory system in which the people, the Parliament and Government have their own well defined responsibilities and roles. In a Parliamentary System since the executive obtains its sanction and legitimacy from the legislature, it obviously seeks direction from the collective will of people's representatives in Parliament. The two organs of state are thus interlinked by a dynamic relationship needing constant reappraisal and deliniation.

Constitutionally and in practice Parliament and Executive in Pakistan as in other Parliamentary Democracies are interdependent, and linked in the conduct of public policy by a whole network of relationship. There is, however, a clear distinction between the functions of the Executive and those of the Parliament. Pakistan's Parliament is a multifunctional institution. While the initiation of legislative proposals falls in the realm of the Executive, it is the Parliament which frames the rules and oversees and scrutinizes governmental policies and controls the nation's purse.

Some of the significant devices for the review of administrative action are provided by Questions, Adjournment Motions, discussion on the Motion of Thanks on the President's Address, Resolutions, and other substantive motions. All these devices, which are designed to keep the entire administrative apparatus responsive, are instrumental in eliciting information focusing attention on various aspects of governmental activity and exposing the executive to legislative accountability. These devices, if intelligently used not only expose the lapses of the government, but at times the administration feels obliged to spell out even its future course of action in certain important areas of public policy.

The executive also comes under intense scrutiny of the Parliament through its committees. There is a growing awareness that the role of these committees needs to be made more effective given the range and complexity of governmental activities in the present day world. One area of intended reform is to give new and enhanced powers to the 29 standing committees, each corresponding to an administrative ministry. One of the Committees which has constantly remained in the lime light is the Public Accounts Committee. The role of the PAC is particularly important as it acts as a watch dog for parliamentary monitoring of public expenditure. The committee by exposing waste and inefficiency adds greatly to the accountability of the executive in all matters involving public finance and the utilization of the tax payers money.

Another Committee which is extensively utilized by the members is the Committee on Rules & Privileges. Since this committee has broad powers of investigation where privileges of a member are involved, the device of 'breach of privilege' is extensively used by the members to bring pressure on the government. Separately the Finance Committee of the House ensures that control of day to day operation of the Budget of the National Assembly remains with a Committee of the House.

One of the most effective method for parliamentary oversight over the executive is through the "power of the purse." The government comes under close parliamentary scrutiny during the discussion on the Finance Bill. Moreover, once the Parliament votes the revenues and disbursements, the government has to spend within the

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given sanction and for any excess amount spent it has to seek regularization.

Majlis-i-Shoora (Parliament)

Majlis-i-Shoora in Pakistan has a pivotal position in the country's constitutional and political set up. The Parliament comprises the President, Senate and the National Assembly.

The President

The President is elected for a term of 5 years by members of an electoral college, consisting of members of Senate, National Assembly as well as Provincial Assemblies.

The President gives his assent to the bills before they become law, when passed by both Houses. He is empowered to withhold assent for thirty days and return a bill to the Parliament for reconsideration. The Parliament in a Joint Session may pass the bill with or without the proposed amendment, and send the bill back to the President and he shall thereafter be obliged to give his assent to it. The President also signs the Finance Bill which is the Annual Budget passed by National Assembly. He cannot, however, veto or withhold assent to the Money Bill.

The executive authority of the Federation vests in the President and he symbolises the unity of the country. He may promulgate Ordinances when the National Assembly is not in session and he is satisfied that circumstances exist which render it necessary for him to take immediate action. Such Ordinances, shall remain in force for a period of four months unless disapproved by either House.

The President can also promulgate a state of emergency if he is satisfied that emergency exists in which the security of Pakistan or any part thereof is threatened by war or external aggression. The President acts on the advice of the Cabinet or the Prime Minister, except in the matters defined by those articles of the Constitution where the President is empowered expressly to act in his discretion.

The President's discretionary powers include, holding of referendum [Article 48(6)], fixing the date of election of the National Assembly after dissolution [Article 48(5a)], appointing a Caretaker Cabinet [Article 48(5b)], appointing Chief Election Commissioner [Article 213(1)], appointing Chairman Federal Public Service Commission [Article 242(a)] and appointing Chairman Joint Chiefs of Staff and the three Services Chiefs [Article 243(2c)].

The President also has the power to appoint and dismiss the Governors of the Provinces in consultation with the Prime Minister. Under the present Constitution the Prime Minister is required to keep the President informed on domestic and foreign matters. This is in consistence with the parliamentary practice under the UK, the Canadian, the Australian and Indian Constitutions.

The President has the power to dissolve the National Assembly in his discretion where in his opinion a vote of no-confidence having been passed against the Prime Minister no other member of the National Assembly is likely to command the confidence of the majority of the members or when a situation has arisen in which the government of the federation cannot be carried on in accordance with the provisions of the Constitution. There is, however, a decision of the Supreme Court on the subject stating that the Constitution does not envisage dissolution of the assemblies at will and that the grounds for dissolution of the assemblies have to be clear, specific and existent in order to be sustainable in law.

Thus, in our parliamentary system, the President has been given a dignified role so that he does not remain a mere figure head. He is the fountain-head of power while the Prime Minister is the head of the government and the instrument through which the executive power of the government is exercised. This strikes a new balance of power between the two highest functionaries of the State.

The Senate

The Senate functions as a legislative body with equal representation from all the four Federating units viz the Province of the Punjab, Sindh, NWFP and Baluchistan and representation from the Federally Administered Tribal Areas. It consists of 87 members, elected for a period of six years. About half of the total members of Senate retire every three years.

A bill including a constitutional amendment bill can also originate in the Senate and if passed, is to be resubmitted to National Assembly for approval. The Senate, however, cannot entertain and discuss money bills. Unlike the National Assembly, it is a permanent body and cannot be dissolved. The Senate is competent to pass, reject or amend bills sent to it after approval by the National Assembly. If a bill is rejected, or passed with amendments in the Senate, it is sent back to the National Assembly but if it is passed by the Senate without any change it is presented to the President for his assent.

The National Assembly

The National Assembly of Pakistan, the Lower House of the Parliament, is the sovereign representative assembly of 217 members elected by universal adult suffrage, for a term of five years. It meets for 130 days in a year. Under the Constitution the Prime Minister is elected by a majority vote in the House and the Cabinet is responsible to the National Assembly.

Thus the National Assembly makes laws for the Federation in respect of powers enumerated in the Federal Legislative list and for list of subjects given in the concurrent list. Federal laws prevail over provincial laws in all

circumstances. Through its debates, Adjournment Motion, Questions, Standing Committees, the National Assembly keeps a check over the excesses of the Executive and ensures that the government functions within the parameters set out in the Constitution and does not violate the fundamental rights of the citizens. The Prime Minister and the Federal Ministers are collectively responsible to the Assembly. The National Assembly has the power to vote and approve the budget and to ensure that the voted moneys are spent for the purpose they were sanctioned.

The National Assembly has the exclusive power to examine and adopt the National budget. The recommendations of the National Finance Commission and the annual reports of the Auditor General relating to the Federal accounts are also examined by the National Assembly. It has the power to examine and pass bills relating to the abolition, remission, amendment or regulation of any tax. In short the National Assembly has control over federal public expenditure and accounts.

The National Assembly further has the authority to discuss and debate reports on the observance principles of policy in relation to the affairs of the Federation. The Parliament may consider and investigate through its committees any irregularity by summoning, witnesses and pertinent experts from the concerned Committees.

Legislative bills after having passed by the National Assembly are transmitted to the Senate for concurrence or those originating in the Senate referred to the National Assembly for the same. Finally the bills are sent to the President for his assent. In case the President does not give his assent to the bill and returns it for reconsideration, the bill shall be reconsidered by both the Houses in a joint sitting. If the bill is again passed with or without amendment the President shall have to give his assent to it. Once the President gives his assent, it becomes Law.

The Prime Minister

Under the present Constitution, while the executive authority of the federation vests in the President, it is exercised by the Prime Minister in the name of the President. Thus the Prime Minister is pivotal to the whole system. The Prime Minister is responsible to the National Assembly for the administration of the country and by implication responsible to people for his policies. Since he is the elected leader, members of his Cabinet are responsible to the National Assembly. All policy decisions are spelt out in the House and he as the Leader of the House, is required to obtain their endorsement in the National Assembly.

In the exercise of his functions the President acts in accordance with the advice of the Prime Minister [Article 48(1)] and appoints the Federal Ministers on the advice of the Prime Minister [Article 92(1)]. Apart from the areas of express discretion referred to earlier, the President cannot act independently of the advice of the Prime Minister. He can only act in his discretion in matters in which he is empowered by the Constitution to do so. Therefore, normally the President has to act on the advice and in consultation with the Prime Minister.

It may be noteworthy to mention that while the President can return a bill to the Parliament requesting that the bill or any specified provisions thereof be reconsidered, he cannot return the Money Bill. The implication is that since the Prime Minister's advice forms an effective and integral part of the money bill rejecting the bill would be tantamount to rejecting the advice of the Prime Minister himself.

The Prime Minister can advise the President to dissolve the National Assembly which would stand dissolved at the expiration of forty eight hours of his advice, provided however, that no notice or resolution for a vote of no-confidence has been given against the Prime Minister. It may further be pointed out that in case where the Prime Minister advises the President to dissolve the Assembly, the dissolution is not justiciable, where as the dissolution of the National Assembly by the President in his discretion can be challenged in a court of law.

Moreover, the President cannot dismiss the Prime Minister at will either. He shall have to provide him/her a chance by asking to take a vote of confidence of the house if he is satisfied that the Prime Minister does not command the confidence of the majority members of the National Assembly.

As the supreme respresentative body, the Parliament of Pakistan is striving to act as a catalyst for social change and bring about a more just, social, economic and political order based on Islamic ideals.

It would be recalled that the *raison détre* of the emergence of Pakistan was the desire of Indian Muslims to preserve and foster Islamic values. Implicit in the demand for Pakistan was the demand for an Islamic State. The movement for Pakistan would never have acquired the impetus it did, had it not been for the politically potent Muslim ideal of an Islamic society based on Islamic principles of social justice and equality.

The present government is endeavouring to bring the existing laws in conformity with the Sharia and Islamic system. Thus the future of the democratic set up depends largely upon the manner in which legislators discharge their functions. Their Parliamentary performance, which would require commitment, character and competence would largely determine the institutional development of Parliamentary Democracy in Pakistan. A legislature finally has to be judged by the level of Members' awareness of their obligations towards the people, the concern shown by them in the direction of removing the inequities in society and bettering the lot of the common people.

The Birth of a Parliament Nevis, West Indies

R. Spencer Byron*

Prior to the status of Independence attained in 1983 the island of Nevis was represented on the Legislative Council of St. Kitts Nevis and Anguilla. From Crown Colony government it moved under new constitutional arrangements to Statehood in 1967. All through this period, the administration of the island territory was effected through a central government machine based on St. Kitts. Authority in every department on Nevis was subordinated to the control of the departmental head on St. Kitts.

For a few years from the mid 1940's an attempt at simple local government was introduced in the form of Village Boards. These operated under the control of the Warden. Some assistance in organization was given by a Social Welfare Officer appointed under a C.D&W Scheme. Later these bodies gave way to the formation of the Nevis Local Council which was a statutory body and a most useful forum for expressing grievances and channelling requests for greater improvements in water services, public health and secondary roads. It actually provided a valuable training ground for future politicians.

The turn of the tide came with the introduction of party politics. Parties based in St. Kitts sought to extend their influence by becoming involved in the Nevi Scenario. A genuine and enthusiastic response was however found by the Nevis Reformation Party which seemed to offer the self esteem and liberation that the people wanted, and to promise the type of positive, enlightened and nationalistic leadership which they felt was needed at that time.

In the 1980 elections the Labour Party (The former government) won the highest number of votes. The determination of the next government now depended on what coalition would be formed. In the absence of any previous affiliation between either of the St Kitts parties, and the Nevis Reformation Party (NRP) the issue dependend on speed of negotiation. This was initiated with deft efficiency on election night by the People's Action Movement (PAM) before dawn. By next morning the Governor-General could announce as the new government a coalition between the P.A.M. and the N.R.P.

The terms and conditions of the coalition became manifest on September 19, 1983 the date of Independence. Essentially, there emerged an autonomous Nevis Administration and an independent Nevis Parliament or House of Assembly. It is comprised of five elected members representing five electoral districts, and two nominated members from the government side. In the absence of an elected member of the Opposition a member will be nominated by the Governor General.

The Speaker of the House is styled the President and there is also a Deputy President. These are appointed by the Governor General on the recommendation of the government.

At the last general election there has been a change in the composition of the House arising from the fact that there is now an elected member of the Opposition. There, however, continues to be a nominated member of the Opposition who is also the Deputy President.

It must be noted that Nevis is also represented in the Federal Parliament, thus enjoying a unique position.

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*Hon. R. Spencer Byron, President, Nevis Island Assembly.

The Commonwealth Today

Emmanuel F. Adams*

Commonwealth Countries are independent sovereign nations with full membership of the United Nation, except a few territories like Hontserat in the Caribbean. There are certain common bonds among Commonwealth Countries and they recognise a special relationship with the Crown and a relationship of friendship and association among themselves.

Commonwealth Countries experience a common historical background; they observe democratic institutions and parliamentary practice and procedure. But each Commonwealth country has its own local and foreign policy and special relationship and interest in its dealing with foreign countries. The Commonwealth Secretary General is a constant link with all Commonwealth Countries. The CPA provides a forum for discussion, expression and exchange of views and ideas. The Commonwealth Prime Ministers' Conference which provides occasion to ventilate not only common interest and policy matters but such controversial matters like apartheid and the imposition of sanctions on South Africa, play an important part.

Commonwealth Countries look at broad fundamental matters and issues such as the preservation of democracy, free trade, modern market economy etc. and are also concerned with fair and free election, popular representation by all the people, the preservation of civil rights and liberties in the pursuit of a just society.

Commonwealth Secretariat monitors elections and provide observor teams where necessary at elections in order to obtain first hand evidence of the electoral process in action. They encourage party and multi party Government as a means of safeguarding people's right.

It is of interest to note that today Commonwealth Countries are interested in the total progress of its people in the field of development, health, population control, preservation of the environment, the education of its people in order to promote human welfare. Today Commonwealth Countries are conscious of the fact that they have not only a responsibility but a duty to eradicate illiteracy, hunger, disease and to prevent the consumption of harmful substances among its people's in order to assist them to attain a higher standard of living.

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*Hon. Emmanuel F. Adams, Speaker, House of Assembly, St Vincent and The Crenadines.

The Parliamentary System of Government in Sri Lanka

S.N. Seneviratne*

Although institutions of a democratic nature have existed in Sri Lanka from ancient times, the Westminster type of Parliamentary Government was introduced in Sri Lanka in 1948 after independence from British rule was achieved. The post-independence Soulbury Constitution of 1948 provided for a legislature comprising the Governor-General and two Houses—the House of Representatives and the Senate. In 1972 Sri Lanka was declared a Republic. The Republican Constitution of 1972 while retaining the Cabinet form of Government provided for a unicameral legislature called the National State Assembly and a nominated President. The present Constitution which came into operation in September 1978 has created a Presidential System of Government within a Parliamentary framework.

The current Parliament of Sri Lanka which is also the Second Parliament under the new Constitution consists of 225 Members. This is composed of 29 Members selected from the National List and 196 Members elected on the proportional system of representation, which has been written into the 1978 Constitution and marks a significant departure from the earlier first-past-the-post system of election.

Parliament is elected for a period of six years but may be dissolved earlier by the President. The life of Parliament is divided into Sessions, each usually lasting one year. At the opening of each Session, the President's Statement of Government Policy to Parliament outlines the government's broad policies and proposed legislative programmes. Each Session is terminated by prorogation. On the dissolution of Parliament, the President must summon a new Parliament to meet within three months and fix a date for election.

In the Republic of Sri Lanka, sovereignty is in the People and is inalienable. Sovereignty includes the powers of government, fundamental rights and the franchise. Parliament and President who together exercise the People's sovereignty are the supreme instruments of State Power. Parliament exercises the legislative and judicial powers of the People, and the President the executive power. The judicial power, however, has to be exercised by Parliament through courts, tribunals and institutions established by the Constitution and by law. In the discharge of its functions, Parliament and its Members are fortified by certain privileges, immunities and powers relating to which Parliament may exercise the judicial power directly according to law and punish any person who commits a breach of privilege.

Fundamental rights, the other component of the People's sovereignty, are recognized by and enshrined in the Constitution, and "shall be respected, secured and advanced by all the organs of government." Fundamental rights include freedom of thought, conscience and religion, freedom from torture, the right to equality, freedom from arbitrary arrest, detention and punishment, prohibition of retroactive penal legislation, freedom of speech, assembly association, occupation and movement. In the event of any infringement or the imminent infringement of any such fundamental right by executive or administrative action, persons have recourse to the Supreme Court which has sole and exclusive jurisdiction to hear and determine any question relating to such infringement of fundamental rights.

The franchise is exercised by the people at the election of the President, and of the Members of Parliament and at every Referendum. All citizens above the age of 18 years, unless subject to disqualification under the election law are entitled to exercise the vote at all elections.

Sri Lanka has experienced representative democracy since 1833 and enjoyed Universal Suffrage since 1931. More than half a century of the exercise of the right of Universal Franchise has imbued in our people a keen political awareness and has educated them in the process of the working of a Parliamentary democracy. Twelve Elections have been held since the grant of Independence, and on six occasions the electorate has turned out an incumbent government from office. It is worthy to note here that with every General Election the percentage of people actually voting has increased, starting with 55.8% in 1947 to a record of 86.7% in 1977, with the exception of 1989 election making it almost a record amongst modern day democracies.

As the supreme legislative authority in the country, Parliament has power to make laws, including laws repealing or amending any provisions of the Constitution or adding any provisions to the Constitution. Laws pertaining to the Constitution, have to be passed by a majority of two-thirds of the whole number of Members of Parliament,

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including those not present. The amendment of certain Articles of the Constitution however must receive the approval of the People at a Referendum. Parliament cannot make any law suspending the operation of the Constitution or any part thereof or repealing the Constitution as a whole, unless such law also enacts a new Constitution to replace it.

The Constitution also lays down the Directive Principles of State policy to guide Parliament, the President and the Cabinet of Ministers to govern and enact laws for the establishment of a free and just society in Sri Lanka. By these principles the State is pledged to establish a democratic, socialist society that will ensure the full realization of the fundamental rights and freedoms of its People and the promotion of social security and welfare by a social order in which social, economic and political justice will guide all the institutions of national life. The objectives of a just society also include an adequate standard of living of its citizens, the rapid development of the country by public and private economic activity and by laws as may be expedient to direct and control such activity and by equitable distribution among its citizens of the material resources of the country. The State, in terms of the Directive Principles of State Policy, shall also raise the moral and cultural standards of the People, completely eradicate illiteracy and assure to persons the right to universal and equal access to education at all levels, and thus ensure the full development of human personality. The State also undertakes to strengthen national unity and broaden democratic government through decentralized administration which will afford opportunity to the people to participate in national life and government and pledges to eliminate social and economic privilege and disparity and the exploitation of man by man and by the State. All communities, whether they belong to the majority or a minority, are safeguarded by the right to equality and to equality of opportunity. This guarantees that none shall suffer disability or discrimination on grounds of race, religion, language, caste, sex, place of birth, occupation or political opinion.

Parliament cannot abdicate or in any manner alienate its legislative power and cannot set up any other authority with real legislative power. Parliament could make any law relating to public security incorporating provisions empowering the President to make emergency regulations in accordance with such law. Such regulations are brought into operation by a Proclamation which can operate only for a period of one month and should be approved by a resolution of Parliament within 14 days of its coming into operation.

No court or tribunal can question on any ground the validity of legislation enacted by Parliament. However, before the enactment of such legislation, the constitutional jurisdiction of the Supreme Court could be invoked by any citizen by special procedure to examine the validity of such proposed legislation and its consistency with the constitution.

Another principal function of Parliament is to scrutinize government policy and administration, particularly proposals for raising revenue and for expenditure. Parliament has full control over public finance and Parliament alone authorizes taxes and duties to be levied and the various objects of expenditure and the sums to be spent on each. No payment out of the government's Consolidated Fund can be made, no taxation, charges or loans can be authorised except by Act of Parliament. Certain payments which has to be reimbursed can be made within limits from the Contingencies Fund which itself has been created by Parliament.

The Financial year of the Government is the twelve-month period beginning on January 1st and ending on December 31st. The Appropriation Bill and the Estimates of Income and Expenditure for the financial year are termed the Budget. The Budget Speech by the Minister of Finance takes place when the Appropriation Bill is taken up for Second Reading. The Debate at this stage is confined to the general merits and principles of the Bill and the Budget proposals. After the passing of the Second Reading, the Appropriation Bill is referred to the Committee of the whole Parliament, when each item is taken up for detailed discussion. The Programme for the Committee Stage of the Budget is prepared by the Leader of the Opposition in consultation with the Ministers.

After the Committee Stage discussion is concluded the Bill is read a Third time and passed. When the Bill is certified by the Speaker it becomes the Appropriation Act for the ensuing year.

Any treaty or agreement between the Government of Sri Lanka and the Government of any foreign state has the force of law in Sri Lanka when Parliament approves these by resolution passed by a two-thirds majority as being essential for the development of the national economy.

The Cabinet of Ministers is charged with the direction and control of the government and is collectively responsible and answerable to Parliament. It is the supreme policy making body and the source of the greater part of the legislation and financial proposals that come before Parliament. The approval of these is ensured through the majority the Government commands in Parliament. The President is the head of the Cabinet and the Constitution requires him to appoint the Prime Minister and the Ministers from among the Members of Parliament. He is responsible to Parliament for the due exercise, performance and discharge of his powers, duties and functions. The statement of government policy at the commencement of each Session of Parliament is made by the President. He presides at the ceremonial Sittings of Parliament and has the right at any time to attend, address and send messages to Parliament. The Constitution also provides for the President to appoint Ministers who are not Members of the

Cabinet and these Ministers too have to be selected from among Members of Parliament. All Ministers cease to hold office if they lose Membership of Parliament.

The Speaker is the representative and spokesman of Parliament in its collective capacity. He presides over sittings of Parliament and he interprets and enforces its Standing Orders. In his absence the Deputy Speaker or in their absence the Deputy Chairman of Committees presides over sittings of Parliament and performs the functions of the Speaker.

At the head of the permanent official staff of Parliament is the Secretary-General of Parliament, appointed by the President. The Members of his staff are appointed by him with the approval of the Speaker.

The party system is a vital component of Parliamentary Democracy and the organization of the political parties, represented in Parliament, as Government and Opposition helps to ensure that all aspects and view points of matters placed before Parliament are duly considered before any decision is taken. The Government Group is organized under the Leaders of the House and the Chief Government Whip. The leader of the party in the Opposition with the largest number of Members is recognized as the Leader of the Opposition. It also has its Chief Whip. The Leader of the Opposition is accorded the status and given the emoluments of a Cabinet Minister and provided with a separate staff, office accommodation, official residence and car. The other parties in the Opposition may at their discretion come under the Whip of the Opposition.

The detailed arrangement of government business and the allocation of time for debate is decided at meetings of the Committee on Parliamentary Business. It consists of the Speaker as Chairman, the Deputy Speaker, the Deputy Chairman of Committees, the Leader of the House, the Leader of the Opposition, the Chief Government Whip, the Chief Opposition Whip and the Leader of the other parties.

The Sri Lankan Parliament has a strong and active Committee system comprising Legislative Standing Committees, Select Committees and Committees for Special purposes such as the Committee of Selection and the Committees on Standing Orders, on Public Accounts, on Parliamentary Business, on Privileges, on Public Enterprises and on Public Petitions.

The Committee on Public Accounts, consisting of 12 Members of Parliament chosen from all parties, is appointed at the commencement of every Session of Parliament to examine the accounts showing appropriation of the sums granted by Parliament to meet public expenditure along with the report of the Auditor General thereon. It is also the duty of this Committee to report to Parliament on the accounts examined, the finances, financial procedure, performance and management generally of any department, local authority and on any matters arising therefrom. This Committee is invested with the power to summon before it and question any person and call for and examine any papers, books, records or other documents and to have access to stores and property. During the First Session and the ongoing Second Session of the Second Parliament, the Committee had 157 sittings and has presented 4 reports to Parliament suggesting ways and means of improving Parliamentary control over public finance and to improve the administration of public finances. During the previous Sessions of First Parliament it carried out an in depth study into the "inequitable distribution of education facilities in the districts of the Island." The Committee is assisted in its work by the officials of the General Treasury and the Auditor-General.

The Committee on Public Enterprises which consists of twelve Members of Parliament, is appointed by Parliament to look into the accounts, performance etc., of Public Corporations, Statutory Bodies and Government Business Undertakings. The Committee's main functions are two-fold. It examines the Accounts of Public Enterprises in relation to the Reports of the Auditor-General with the assistance of the Auditor-General. It also reviews the past and present performance of the Public Enterprises with the assistance of the Director, Public Enterprises Division of the General Treasury. For this purpose, the Committee conducts on an average 70–80 Meetings per year. At present there are about 190 Public Enterprises in Sri Lanka and the Committee has presented two Reports to Parliament with its observations and recommendations during the 1st and ongoing 2nd Session of the Second Parliament.

Parliament has also provided by law for the establishment of the office of the Parliamentary Commissioner for Administration (Ombudsman), empowered with the duty of investigating complaints and allegations of the infringement of fundamental rights and other injustices of maladministration, when asked to do so by the Public Petitions Committee of Parliament, to which petitions presented by Members of Parliament on behalf of members of the public are referred. The Ombudsman's powers of investigation extend to administrative actions by Central Government and Local Government departments and Corporations. He has access to departmental papers and reports the findings to Parliament. He is appointed by the President.

The Committee on Public Petitions has assumed a great degree of importance after the creation of the office of Parliamentary Commissioner for Administration because all matters going before the Parliamentary Commissioner have to be referred to him by the Public Petitions Committee. Grievance of citizens are presented by Members in the form of Petitions to Parliament which if approved by the Speaker as conforming to Standing Orders are referred to the Public Petitions Committee. If the matter falls within the jurisdiction of the Parliamentary Commissioner Public Petitions Committee refers the petition to him. In other cases the Committee itself will inquire into the petitions for

which purpose it has been given powers to summon and question any person and call for any papers and documents and to have access to stores and property. Since the Ombudsman started functioning there has been a great increase in the number of petitions presented to Parliament.

The privileges and immunities of the Members of Parliament have been embodied in the Parliament (Powers and Privileges) Act. Apart from specifying the offences which are termed breaches of privilege, this Act declares and defines the privileges and immunities of the Parliament and its Members. These privileges and immunities are the rights enjoyed by the Parliament and its Members without which they could not properly discharge their functions. All questions of Privilege have to be first discussed with the Speaker in his Chambers and then raised in the House. If the Speaker is satisfied that there is a *prima facie* case, he would advise that the matter be referred to the Committee on Privileges. The practice in such cases has been for the Leader of the House to move a Motion referring the matter to the Committee on Privileges. Although the Parliament as a body can hear evidence and decide on matters of privilege, the practice has been to refer such matters to the Committee on Privileges. When such a matter is referred to it, the committee is expected to report to Parliament whether a breach of privilege has been committed with reference to the facts of each case and to make recommendations regarding what should be done. When the Committee reports to Parliament, Parliament will decide on the course of action that should be taken. In nearly every case hitherto, the recommendations of the Committee have been accepted by Parliament.

There is also a system of Consultative Committees, the number of these corresponding to the number of Ministries in the Cabinet. The Chairman of a Consultative Committee is the Minister in charge of the subjects and functions which the Committee has been empowered to consider. Each Consultative Committee reflects as far as possible the party composition in Parliament. Parliament or the Minister who is the Chairman of the Committee can refer to it any matters for inquiry and report including proposals for legislation, supplementary or other estimates, statements of expenditure, motions, annual reports and papers. A Consultative Committee has also the power to initiate a bill or motion through the Chairman. It also provides members with a popular means of raising matters pertaining to their electorates.

These Committees of Parliament have been invested with the power of summoning to appear before it, Secretaries to Ministries, Senior Public Servants and other officials. If necessary, Members of Parliament too could be summoned to give evidence. Through hearings and published reports they bring before Parliament and the Public an array of facts and informed opinion on many important issues. A valuable opportunity is afforded for a searching examination of government policy to both the government's own back-benchers and the Opposition.

Apart from the passing of laws, an important function of Parliament is to provide a forum for Members to raise matters of public importance, to discuss Government policy and to ventilate grievances of the public. The floor of the House is available to Members for this purpose during debate on legislative proposals and other Motions. Also available to this end is the facility of asking questions for oral or written answer and the one hour set apart on sitting days for the debate on the Adjournment Motion.

The Standing Orders of Parliament provide for Members to perform their duties and discharge their functions in Sinhala or Tamil which are the national languages of Sri Lanka. They are also entitled to the use of English in Parliament. All laws and subordinate legislation are enacted and published in both Sinhala and Tamil with a translation in English. Any speech made in Parliament is recorded in the Official Report of Parliamentary Debates (Hansard) in the language in which it was spoken.

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No Party Politics in a Small Nation

Chief Fusitu'A*

The Tongan Constitution was granted by King George Tupou I on the 4 November 1875. This Constitution is based on the Westminster system with some adaptations. The Tongan system basically created a single house, the Legislative Assembly, which was tripartite in character. The three divisions are made up of representatives of the Nobles, who are elected by the Nobles, the Ministers, who are appointed by the Monarch and People's Representatives who are elected by popular suffrage. It has been said that the unique character of the Legislative Assembly is in that the government is in the minority. In 1875 there were only four ministers while there were twenty nobles' and people's representatives each. But some ministers were usually appointed from nobles' representatives so in practice there were usually more people's representatives in the Legislative Assembly than nobles' representatives. In 1880 the number of nobles' and people's representatives was increased by ten. By 1914 there were seventy members of the Legislative Assembly, which was reduced to seven ministers, seven nobles' representatives and seven people's representatives. The nobles' and people's representative numbers were increased to nine each in 1982. Though the government is the minority in the Legislative Assembly it is still very influential and can nearly always pass all the bills it desires. The Tongan system clearly does not accept the adversial characteristic of the Westminster system.

Political parties are not appropriate in a small country because there the society is usually homogenous, they have the same language, beliefs, culture and history. They also do not have enough resources, having a limited pool of talent and not enough capital to support staff for the political parties, Legislature and Executive.

The Kingdom of Tonga is a small country with a population of about 95,000. Political parties are not illegal in Tonga but none exist and they are not essential for the efficient running of the Tongan government. One of the historical reasons why political parties do not exist in Tonga is because of the beliefs of the Tongan Monarchs. The Tongan Monarchs have not approved of partisan ideas in the Legislative Assembly. They have always exhorted the members in the Legislative Assembly to work together as one body, each carrying out their function. The Constitution of Tonga, like the United States Constitution was designed to operate successfully without a party system. It is conceivable that Tupou I, like the authors of the United States Constitution, had no love for political parties. This is of no surprise for when one looks at Tonga's history, in the 18th and 19th centuries, there were political and civil upheavals and constant warfare. Tupou I had only just in 1852 fought his last battle to assert his political dominance in Tonga. He clearly did not want the factionalism which caused these upheavals to be inherited by the Constitution he gave in 1875. This is clearly seen in how he even appointed chiefs, out of nobles' whom he had only eight years previously been at war with.

Tupou II's reign was full of factional disputes and it was only in Tupou III, Queen Salote's, reign that this factionalism slowly disappeared. Queen Salote, like her predecessors, greatly valued the unity of their subjects and the stability of the Tongan government. She stated that Tonga's source of strength and stability is unity. When occasions occurred which disrupted this unity she would do her utmost to dispel the cause and for this reason it seems that she did not approve of political parties or factionalism. The reigning Monarch, His Majesty King Tauta'ahau Tupou IV in a speech to the Legislative Assembly, on the 12 November, 1974, said:

> I firmly believe that the people of this country should be proud of the age of the Constitution, as it seems that this Constitution was made with the objective of ensuring that *the King, the Chiefs and the people work together harmoniously* in developing the country and following those courses that will benefit the country as a whole.

This statement with other comments again highlights the Monarch's belief that government in Tonga is by consensus and that this was why political parties were possibly not appropriate.

The Monarchs have been strong supporters of Christianity not just because they themselves believed in it but because it was also a unifying force. Tongans believe that Tonga is dedicated to God for Tupou I at Pou'ono around 1839 called a meeting of chiefs and asked them who they would give Tonga to for protection. The chiefs gave various answers. Some said to give Tonga to the Lion (Great Britain) others to the Cock (France) another to the Eagle (United States) and yet another to the Shark (a Tongan god). Tupou picked up a handful of soil and replied that he will give Tonga to the strongest of all. That is, he would give Tonga to the heavens (God). But this unity in

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religion is slowly changing for new sects and other religions have come to Tonga. But Protestant Church organizations have split from their mother churches and this reflects partisanship based not on creed (for they have the same doctrines) but on the divisions of personality.

Factionalism in Tonga is not so much based on Left/Right ideology but is based on personality, regional and village identity and the mana of chiefs. Recent events in Tonga may indicate that ideological factions are becoming more important in Tonga but it is still mainly a division based on personalities i.e. individuals who hold themselves out as intellectuals (kau poto) competent enough to be an unofficial opposition to the government. Therefore in Tonga parties can be created on personality lines.

As there is no official Opposition to the government, the system in Tonga on this point is more akin to the United States' presidential system. For the President's executive power does not flow from a legislative majority, and presidential candidates do not owe their power to the strength of their party in an elected house.

The whole purpose of the Westminster system is the enabling of popularly elected majorities through their chosen leaders, the Prime Minister and Cabinet, to control the formal constitutional powers of the legislature and Head of State. Choosing Members of Parliament to be Ministers in the Westminster system depends on the practice of the different parties. For example in New Zealand the National party leaves it to the Prime Minister's discretion, while the practice of the Labour party is for caucus to choose who will be in Cabinet but the Prime Minister allocates the portfolios. In Tonga, since there are no parties, Cabinet is constituted not by convention but by clause 51 of the Constitution. It says:

> The Cabinet or ministers of the King shall consist of the Prime Minister, Minister of Foreign Affairs, the Minister of Lands, the Minister of Police and any other ministers whom His Majesty may be pleased to appoint. It is the King's prerogative to appoint the ministers...

The King can choose his ministers from representatives of the Legislative Assembly or from persons outside the Legislative Assembly.

In the Westminster system the office of Prime Minister is created by convention or by statute (Constitution). The leader of the largest party in the Legislature is usually invited by the Sovereign or (Governor General) to be Prime Minister. In Tonga the office of the Prime Minister is specifically constituted in cl. 51. of the Constitution. Therefore in Tonga the Prime Minister's executive power does not flow from a Legislative majority or owe its power to a party in an elected house. The Tongan Prime Minister is the head of government (chief minister) and differs from other Prime Ministers in that he is not also the leader of a party, thereby owing loyalty to his party and its policies and interest.

By clauses 38 and 77 of the Tongan Constitution, the Monarch is given authority to dissolve the Legislative Assembly at his pleasure and command that new representatives of the nobles and people be elected although the Legislative Assembly's term has not expired. This power has never been exercised and makes the 3-year term of the Legislative Assembly rigid similar to the American Constitution and distinct from other countries where the term of the Legislature can vary. This prerogative in countries which have parties has caused much political controversy and comment. The dissolution of the Legislature by the Sovereign or Governor General is now usually advised by the Prime Minister and used by the party in power to their most advantage. If the Prime Minister perceives that his/her party is likely to win an early election, the Prime Minister will advise the sovereign or Governor General, as the case may be, to dissolve Parliament. The advice of the Prime Minister in the majority of cases is accepted. It has on occasions been refused. This refusal has been called the exercise of the reserve powers. The issue of 'gerrymandering' in Tonga does not arise for the government will not gain any tangible advantage in changing the boundaries of the election districts.

Part of what is known as 'collective responsibility' relates to a confidentiality rule. The Report of the Radcliffe Committee of Privy Councillors on Ministerial Memoirs sets out the practice in the United Kingdom as:

> Ministers should not disclose cabinet transactions...if they affect national security, or would be injurious to foreign relations or would publicize relationships between Ministers, or between Ministers and the Civil Service or outside advisers.

Social and political differences (especially there being no political parties) make collective responsibility in Tonga different. It serves a variety of political uses. As most governments are drawn from members of one party, it serves to reinforce party unity and to prevent back-bench M.Ps from inquiring too far into the processes of government. It helps to maintain the government's control over legislation and public expenditure and to contain public disagreements between departments. It reinforces the traditional secrecy of the decision making process within government. It helps to maintain the authority of the Prime Minister.

Prime Ministers in countries with parties, in effect, decide what collective responsibility means. The Tongan Prime Minister maintains his authority as chairman of Cabinet and as the appointee of the Monarch. If any Minister undermines Cabinet policy, the Prime Minister could request the Monarch to dismiss the Minister. Until

recently Ministers in Tonga rarely discussed government policy in public and always supported and defended the government's policies.

Individual ministerial responsibility to the Legislature is the convention whereby the constitutional position of individual departments is clear. Each Minister of the Crown is *accountable to Parliament* for the administration of his department. The employees of the department are his agents: everything they do, they do in his name. In the eyes of the law the permanent official is an anonymous instrument of the Minister.

At Westminster, Ministers have sometimes resigned in order to acknowledge their responsibility for shortcomings within their departments. But this practice is no longer observed in some countries because of the unlikelihood of a no confidence motion being passed in the Legislature because of party discipline. The whole idea of ministerial responsibility has been stated to be a political one. In Tonga ministerial responsibility does not exist as a convention, instead ministers have legal responsibility towards the Legislative Assembly imposed by clause 51 of the Constitution. It *inter alia* says:

> Each minister shall draw up a report once every year acquainting the King with the affairs of his department and such report shall be forwarded by the King to the Legislative Assembly at its next meeting and if the Legislative Assembly shall wish to know anything concerning the department of *any minister he shall answer all questions put to him by the Legislative Assembly and report everything in connection with his department.*

The practice is that the Ministers' reports are tabled in Privy Council where the Sovereign accepts them. They are then forwarded by the Prime Minister's office to the Clerk of the Legislative Assembly to be tabled before the Legislative Assembly.

The English Parliament used to enforce ministerial responsibility through impeachment. It is still available in the United Kingdom but more modern means of achieving ministerial responsibility have rendered it an obsolete weapon. In Tonga it is the only means by which the Legislative Assembly can enforce ministerial responsibility other than individuals taking civil action in the courts.

To conclude, because there are no political parties the governments policies tend normally to the middle of the road and is cautious and has been said to be unexciting and not dynamic. There are also no sharp switches of policies as are evident in party politics. This is how the Kingdom of Tonga now stands in relation to party politics. It does not mean that there will never be party politics in Tonga but at present with our heritage and economical status, party politics are not yet relevant.

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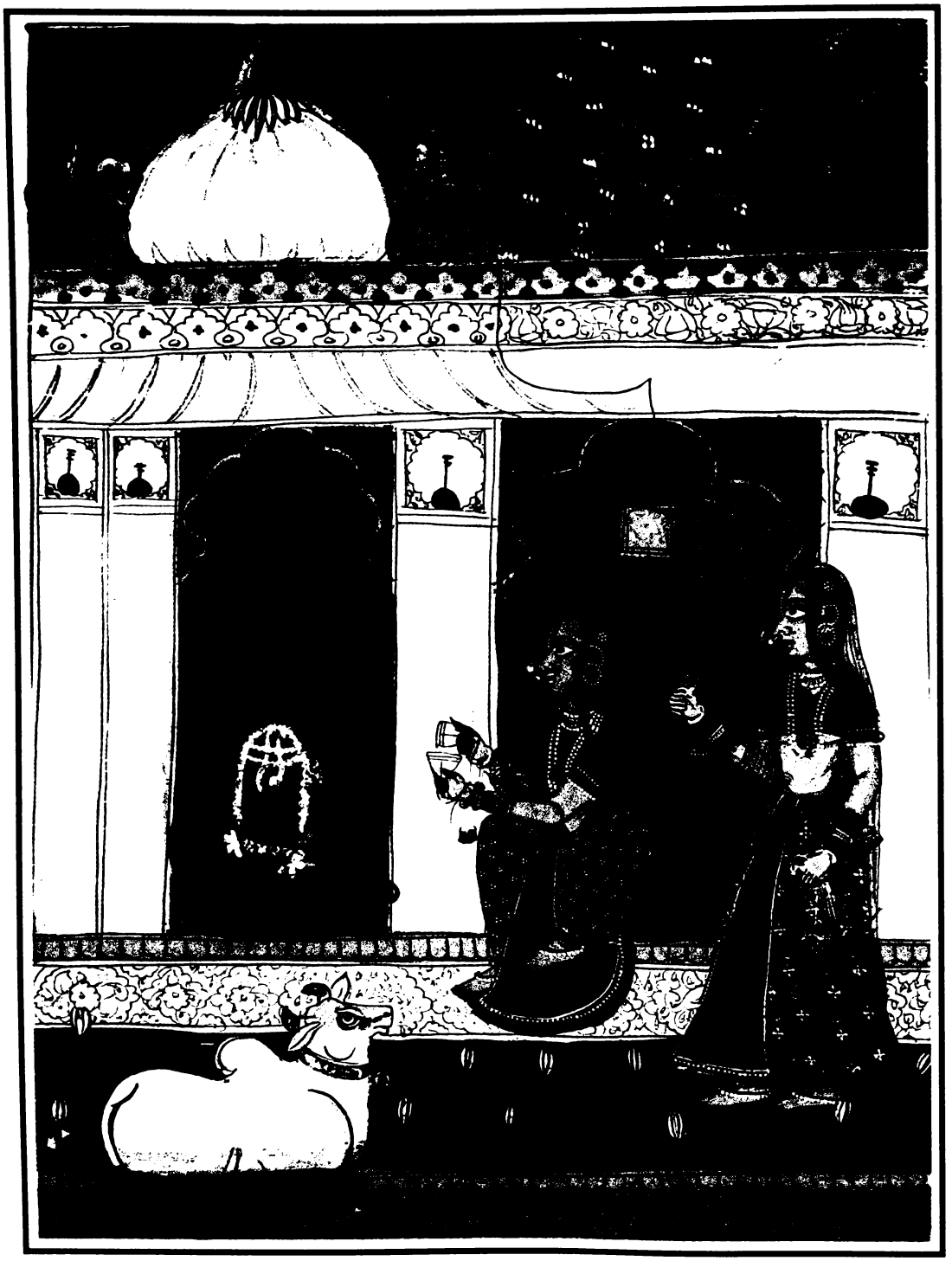
The story of Sravan Kumar: Jaipur, mid 18th Century

Courtesy: National Museum



[18] Ragini Bhairavi Sirohi: Raj. early 18th Century

Courtesy: National Museum

12. Sita offering fruits to Rama: Raghogarh, M.P., early 19th Century. *Courtesy:* National Museum

20. Hanuman and Sampati: A folio of Ramayana. Malwa, Central India. *circa AD 1660* *Courtesy:* National Museum

The History of the Legislature in the Turks and Caicos Islands

Mrs. R. Blackman*

Background

The Turks and Caicos Islands are a group of islands situated five hundred and seventy five miles south east of Miami, thirty miles north west of the Bahamas and one hundred miles south east of the Dominican Republic.

The Islands have a rather unique history in that it was the only island forming part of the Commonwealth Caribbean having salt as its main industry dating back to the 18th Century. The early settlers were the Bermudians followed later on by the Loyalists from the Southern Colonies of North America with their slaves.

History records that the islands were discovered by Juan Ponce De Leon in 1512 however, in recent years some Historians are claiming that the most likely landfall of Columbus in the New World was Grand Turk rather than San Salvador, Bahamas. This claim will be the subject of much debate by Historians in 1992, the year marking the bicentennial anniversary of Columbus Landfall.

Previous Governments

In the early 1760's the Turks and Caicos Islands were placed under the jurisdiction of the Bahamas with representation in the Bahamian House of Assembly, the Government of the Bahamas proposed the levying of dues on the Islands and this resulted in the inhabitants petitioning Her Majesty's Government for separation from the Bahamas. The petition was not responded too quickly but in 1848 a charter enacted by the Bahamas Legislature instituted administration of the territory by a President appointed by the Queen. The President governed with a Council of eight other persons, four of whom were nominated by the Queen and four elected by the people. The system found favour among the islanders who demonstrated their ability to administer their own affairs.

Annexation to Jamaica

The islands suffered severe damages as a result of a hurricane of 1866, this devastated the Salt Industry causing the economy to collapse and having to receive grant-in-aid from Her Majesty's Government (HMG). The remoteness of the territory from the colonial power caused much frustration among the islanders and a petition was lodged to HMG to have the territory annexed to Jamaica. In January 1874 by an Order in Council the islands became a dependency of Jamaica.

This new constitutional arrangement provided for the establishment of a Legislative Board for the Islands consisting of not less than four nor more than six members appointed by the Governor of Jamaica. The Board was granted legislative powers but the power of disallowance was vested in the Governor of Jamaica. This arrangement remained in place for ninety (90) years until Jamaica joined the Federation of the West Indies in 1959 and the territory felt that their interest would be less served and furthermore there were no common features with the remaining Caribbean Islands.

Constitutional Advancement

This separation from Jamaica brought the territory much closer to the kind of "Crown Colony Government" which had been in existence in the larger Caribbean Islands for a number of years. The 1959 Constitution established the office of Administrator, an Executive Council the Legislative Assembly with the Governor of the Bahamas being responsible for the territory. For the first time the inhabitants were able to exercise their right to vote as "universal adult suffrage" was heralded in.

During this period events in the neighbouring Caribbean Islands had begun to change as these Islands had begun the process of moving towards internal self Government. The inhabitants took the view that the Governor of the Bahamas would be so caught up in this new thrust that the affairs of the territory would receive little attention and sought a complete break away from the Bahamas.

Ten years later the 1969 Constitution was brought into force. This was a rather unique but more advanced Constitution than what had previously been adapted. It established a State Council comprising of nine elected members and three official members. Under this unique arrangement Standing Committees were established. Senior Public Officers were appointed as Secretaries to these Committees and they were responsible for the drafting of policies, papers for presentation to the committee for which they carried portfolio responsibility, the execution of policies and follow up action once the Committee had

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considered the subject matter. The Elected members appointed to these Committees attended State Council Meetings along with the Administrator and the Official Members and they were responsible for taking the portfolio subject matter through the State Council.

There were obvious conflicts between the elected members and the Administrator as power was still vested in the Administrator and they sought a further Constitutional Review. In late 1973 the Rt. Hon. The Earl of Oxford and Asquith, KMG was appointed Constitutional Commissioner. He visited the islands and consulted widely. Two years later the 1976 Turks and Caicos Islands (Constitution) Order was enacted introducing a ministerial system of Government.

This Constitution remained in force until 1986 when following a Commission of Inquiry to look into the burning of a Government Building and Corruption of Government Officials the Constitution was suspended and replaced by an Interim Order entrusting the governing of the territory in the Governor and an Executive Council consisting of four nominated members and three officials. The Legislature remained in tact. In early 1988 a new Constitution was enacted introducing larger Legislative and Executive bodies. It provides for such safeguards like an Ombudsman, the Public Service Commission and at least two Standing Committees of the Legislature responsible for monitoring portfolio responsibility assigned to Ministers.

The Legislature at present

The Legislature at present is a uni-cameral body having similar functions to those that exist in other Commonwealth countries. The Constitution provides for one meeting to be held in every four months. It is the supreme legislative body in the land.

The Legislative Council is prorogued at the end of February each year, the new Session begins in March with the ceremonial opening in which the Governor delivers the Throne Speech followed by the normal debate thereafter.

The budget is presented annually in mid-March, the Chief Minister delivers the budget address which is then debated by the House. The Appropriation Bill along with the Estimates of Recurrent Expenditure is then committed to the Committee of the Whole. Unlike many of our Commonwealth Caribbean neighbours the passing of the budget is not a lengthy exercise, however, the debates tend to be very pertinent to the existing financial climate in the Territory. The Standing Orders make provision for an Expenditure Committee but this Committee is responsible for monitoring and investigating the expenditure of the sums voted to the respective Ministries and Departments.

The territory's defence remains the responsibility of Her Majesty's Government, with budgetary provision made in the annual budget for the operation of the Police Force.

The Constitution provides for the establishment of two Standing Committees with responsibility for monitoring those areas of portfolio assigned to a Minister. These are the Administration Committee and the Expenditure Committee. The membership of both Committees consist of eight and are appointed at the commencement of each Session. The Administration Committee reports on the implementation, administration and development of policies of Government in every Ministry. The Leader of the Opposition chairs this Committee.

The Expenditure Committee is responsible for the examination of expenditure of the sums granted by the Council to Ministries to meet the public expenditure. The Chairman of this Committee is elected by the Committee.

The Legislature has adopted the practice existing in other Commonwealth Parliaments on the procedures laid down for dealing with Bills. Public Bills are drafted by the Legislative Draftsman in the Attorney General's Chamber, once he receives clear instructions from a Ministry through the Executive Council. When the necessary consultation has taken place with the particular Ministry and the final content of the Bill is drafted it is submitted to the Executive Council for consideration and approval to be taken to the Legislature. Once approval is granted by the Executive the Bill is published in the Gazette for information and circulated to Members with the Order Paper. The minister with portfolio responsibility takes carriage of the Bill through the House, but the Attorney General's contributions are vital, especially on points of law.

Only in exceptional circumstances does the House commit Bills to Select Committees. Normally legislation is passed through all three readings at a meeting, but when there is need for public consultation second reading is deferred so as to enable the public to respond through their elected representatives. When a Bill has been passed the Attorney General Chambers takes responsibility for ensuring that the final content is produced in the form passed by the Legislature. It is then signed by the Speaker and Clerk and submitted to His Excellency the Governor for assent. Finally the Ordinance is published in the Gazette as a Legal Notice either bringing it into force on Gazettal or by a subsequent notice giving notification of the day appointed for its commencement. The constitution makes provision for the Governor's reserved powers in matters pertaining to legislation, for return of Bills to the Legislature and for disallowance of laws.

The Standing Orders provide for the introduction of Private Bills. These Bills must be lodged with the Clerk in accordance with the prescribed requirements and must be referred to a Select Committee so as to enable the promoters or objectors to be represented at meetings of the Committee. The payment of all fees for printing and publications must be borne by the promoters.

Parliament and the Courts

Bernard Weatherill*

Commonwealth gatherings provide a valuable opportunity for presiding officers and parliamentarians to share their experiences of parliamentary practices and procedures that have grown from the single root of the British Parliament but have since spread outwards in a great variety of different directions. Because the United Kingdom is a member of the European Community and other European groupings, I also have an annual opportunity to meet fellow presiding officers from Parliaments of the countries of Europe. Their Parliaments have histories and traditions that are quite separate from ours, and in detail their parliamentary practices tend to bear little resemblance to the British model. But there are certain fundamental issues that arise in all Parliaments; and in considering such issues, the experience of legislatures outside the British tradition can be as illuminating as of those within it.

Last year I participated in a discussion of this sort with my colleagues from the continent of Europe, on parliamentary investigative committees and the judiciary. It has prompted me to attempt this more general re-statement of practice on the relationship between Parliament and the Courts, which I know is a matter of concern also to a number of Parliaments in the Commonwealth.

The Legislature and the Judiciary have quite distinct functions; and our guiding principle is that each should leave the other to carry out their respective functions without interference. One obvious way in which this separation is marked is that professional full-time judges are disqualified from membership of the House of Commons. There have of course been occasional conflicts over the centuries. The famous case of Stockdale -v- Hansard, in which Stockdale sought to pursue an action for libel on the basis of a report printed by order of the House and which was pursued through a series of actions between 1837 and 1840, was the last really serious one. So serious was it that the House committed Stockdale's legal representatives into custody and came close to considering the committal of the judges in the case. But the lesson has been learnt; and the relationship between Parliament and the Courts in this century has been marked by self-restraint on both sides.

For their part the Courts have been reluctant to do anything which might be interpreted as interference in the internal affairs of the House. They have ruled, for instance, that the House is not bound by the liquor licensing laws which apply elsewhere in the country. This means that the bars in the Houses of Parliament can continue to serve alcoholic drinks during the night, when bars elsewhere have had to close; and it means that when the House wishes to bind itself to observe the provisions of a new law, a specific clause to that effect has to be incorporated into the text of the law. There was another striking instance more recently, during my Speakership. In 1987 the Government were successful in obtaining a court injunction to prevent the public showing of a television programme on the ground that it would be damaging to national security. Some Members of Parliament then announced that they were proposing to show the film within the Houses of Parliament; and the Government immediately responded by asking the court to grant a further injunction in order to prevent this showing. The court refused the application, apparently on the ground that this was a matter to be resolved by the authorities of the House. It therefore fell to me to decide whether or not the film should be shown. (I decided that it should not, and my action was subsequently approved by the House.)

This is not to deny that there are occasions when the courts interpret legislation in ways that come as a surprise, and sometimes an unwelcome surprise, to the Parliament which passed it. But when that happens, Parliament has a remedy to hand: it can pass new legislation making its original intentions clear. In the same way, Parliament can legislate if it considers that the courts are encroaching on traditional parliamentary privileges. So the United Kingdom Parliament responded to the Stockdale -v- Hansard dispute by passing the Parliamentary Papers Act 1840 to undo what would otherwise have been the consequences of the court's judgement. Similarly the Australian Parliament recently spelt out their privileges in the Parliamentary Privileges Act 1987, as a response to a court case in which the parties had been permitted to make unrestricted use of unpublished evidence taken by a parliamentary committee and cross examine witnesses on testimony they had given to that committee.

One reason why the British nation always tends to be suspicious of written constitutions and charters of human rights is that, almost inevitably, they result in unelected courts sitting in judgement over the laws and actions of the elected Parliament. This in turn leads to a blurring of the distinction between the legislative and judicial functions. If a new law can be struck down by the courts as contrary to a basic constitution or charter of rights, Parliament may lose

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its ability to legislate its way out of a conflict.

But if Parliament insists on its right to legislate, it must equally respect the right of the courts to exercise their judicial powers without interference. This we achieve through a self-denying ordinance, normally known as the Sub-Judice Rule, to restrict discussion on matters under adjudication before the courts. The rule applies to criminal proceedings from the time that a person has formally been charged with an offence, and to civil proceedings from the time that a case has been set down for trial, or notice of motion for injunction or notice of appeal has been given to the court. The rule does not apply to debates in the House on legislation which amends the law in respect of an issue which happens to be arising in a current court case. Moreover I and my deputies have a discretion to waive the application of the rule and allow discussion to proceed without restriction where we consider there to be no substantial risk of prejudicing court proceedings. My predecessors and I have not hesitated to exercise that discretion, particularly in relation to civil court cases against Ministers. These cases are heard by judges alone, without juries, and the risk of a judge being swayed by what may be said in Parliament is normally slight. But the question of immediate influence is not the only issue. The fact that Parliament can change the law if it does not like the court's interpretation of it is the overriding reason why Parliament should not even *appear* to be seeking to influence the court's decisions.

The fact that the sub judice rule does not apply fully until criminal charges have been laid can give rise to difficulties. There was a good example of this in the House of Commons in April 1990. A story broke in the press and on radio and television that the British customs authorities had impounded some metal tubes manufactured in Britain and destined for export to Iraq; the allegation was that the tubes were designed eventually to form part of a giant artillery weapon, and were therefore covered by a ban on arms exports to Iraq. There was also controversy about the advice which had been given to the companies concerned by the Department of Trade and Industry. The Secretary of State for Trade and Industry made a statement to the House on the matter; but he subsequently declined to comment on several points raised in supplementary questions on the grounds that to do so might "prejudice the possibility of criminal proceedings". When I was appealed to, I had to say that the sub judice rule did not apply at that stage and that it was for the Minister to take responsibility for the content of his answers.

The House's Trade and Industry Committee encountered a similar problem in connection with the same affair. Because of the involvement of the Department of Trade and Industry, the Committee decided to conduct an enquiry into the incident. Later that same day a man was charged with criminal offences in connection with the affair. When it became clear that none of the main aspects of the matter could be discussed in public without prejudicing the trial and so infringing the sub judice rule, the Committee decided to suspend its inquiry.

For similar reasons it is no longer the practice of the House of Commons to set up ad hoc committees of investigation into particular incidents which are likely to be followed by criminal charges. A parliamentary committee set up in 1913 to investigate the Marconi scandal produced a partisan report; and since then it has been generally accepted that an independent inquiry, often headed by a judge, is the best way to inquire into such events as a major train accident, a prison riot or a serious administrative failure. Inquiries of this sort, however, fall under the sub judice rule only if they are formal tribunals established by the House itself. If (as is much more common) the Government refers a matter to a special inquiry or commission, this is not regarded as analogous to court proceedings and the sub judice rule does not apply.

This was the area where discussions with my European counterparts revealed the greatest differences between practice in Britain and on the continent. In some of those countries special parliamentary committees of investigation are not only used for such purposes but are being used with increasing frequency. We were, for instance, able to draw a direct comparison between two tragic incidents in recent years which led to the deaths of spectators at football matches: the Heysel stadium tragedy in Belgium was investigated by a committee of the Belgian Parliament, but the Hillsborough football disaster in England was investigated by a Lord Justice of Appeal. There are also basic differences in legal procedure. In some continental countries the initial investigation of a criminal case is carried out under the supervision of a judge or examining magistrate; in our case the judiciary does not become involved until a later stage. This has obvious consequences for the nature and interpretation of sub judice rules or conventions.

Although the House of Commons is no longer accustomed to setting up ad hoc committees of inquiry, our permanent committees have a wide remit to conduct inquiries of their own choice into the expenditure and administration of Government Departments and associated public bodies. An inquiry undertaken by such a Committee may give rise to potential conflict with the courts if the matter being inquired into does subsequently result in criminal proceedings. This was the position with the proposed inquiry by the Trade and Industry Committee into the Iraqi super gun affair, which I have already mentioned. There the Committee abandoned their inquiry altogether. In other cases, where not all but only some parts of a committee inquiry may be relevant to a possible or pending legal case, it may be possible for the Committee to limit its enquiry and take evidence only on aspects of the subject which are not likely to be at issue in court

proceedings. A few years ago, for example, a Committee of the House was inquiring into the Government's plans to return the electricity supply industry to the private sector. A civil case was started about the supply of coal to two power stations. I gave a ruling in the House that that particular matter was sub judice but that the future supply of coal in general was not; and in taking oral evidence the Committee avoided asking questions in public on the specific matter awaiting judgement in the courts.

Circumstances vary greatly from case to case. But as a general rule it is surely prudent, in Parliaments following British traditions, for a parliamentary committee to restrain its inquiries until the nature and probable scope of criminal investigations or court proceedings have been clarified, and then to conduct those inquiries with due regard to the spirit as well as the letter of the sub judice convention. Criminal investigations and prosecution do not preclude the possibility of subsequent parliamentary inquiry into the political and administrative aspects of a case; but because article 9 of the Bill of Rights of 1688 prevents proceedings in Parliament from being "questioned in any court or place out of Parliament", hasty inquiries by a parliamentary committee *may* jeopardise subsequent court proceedings. As parliamentarians we are right to expect the courts to respect the authority, powers and privileges of Parliament; but that respect must be reciprocal.

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India's association with the Commonwealth is consistent with its traditions of fostering peace and good will and of working for the prevalence of ideals over fear, hatred and bitterness. ***—Indira Gandhi***

The United Kingdom Parliamentary System

A Brief Introduction

Peter Cobb, OBE*

Composition

House of Commons

There are 650 elected Members of Parliament. Each is elected by simple majority vote in a single member constituency with about 65,000 electors. With limited exceptions all those over the age of 18 are entitled to vote. Average turnout in the last three general elections was 73-75%.

The balance between the political parties after the 1987 general election was:

Conservative	375
Labour	229
Liberal Democrat	22[1]
Scottish Nationalists	3
Welsh Nationalists	3
Northern Ireland	17[2]
The Speaker	1[3]

There are 43 women MPs.

In the thirteen general elections since 1945, one party or other has achieved an absolute majority of seats in the House of Commons on all but one occasion. Each general election brings about 100-120 new Members into the House (either through the retirement of the sitting Member or his defeat in the election).

House of Lords

There are 1183 holders of peerages entitled to membership of the House of Lords. 765 have become members by inheriting their title from a relative and a further 20 have been created heriditary peers themselves. 353 have been created life peers themselves (and so will not pass on their title to any successor). 26 bishops and 19 serving or retired judges sit in the House of Lords because of their office. There are 45 women peers, 20 of whom inherited their title. The potentially active membership (excluding those with leave of absence and those under age etc) is 941.

The political balance of the House of Lords is:

Conservative	444
Labour	113
Liberal Democrat	55
Social Democrat	17

257 peers are independent or "cross-bench".

These figures are for November 1989, but the size and composition of the House of Lords are not fixed. The average daily attendance is 316 (1988-89). 381 members attended one third or more of the sittings in 1988-89 and the highest recorded number of members voting in recent years was 509 in 1971. Members of the House of Lords may not be MPs, but there is provision for an MP who inherits a peerage on the death of a relative to renounce the peerage for his lifetime and thus remain an MP. Members of the House of Lords, like MPs, may be members of the European Parliament.

Time Scale

The Maximum length of one "Parliament" is five years from the date of the previous election. The Prime Minister can call a general election at almost any time. The average length of a parliament since 1945 has been 3.66 years.

Each parliamentary term is divided up into sessions, usually starting in November and lasting for a year. In a normal session the House of Commons sits for some 35 weeks or about 170 days. The House of Lords sits for about 165 days, spread over 39 weeks. There are recesses of 2-3 weeks in December/January, 1 week in March or April, 1 week at the end of May and 10-12 weeks in August to October.

Both Houses start their sittings in the afternoons on Mondays to Thursdays and in the mornings on Fridays. The House of Commons usually sits until at least 2230 (except on Fridays when the House rises at 1500). The average length of the daily sittings in 1988-89 was just over 9 hours. The House of Lords' average daily sitting time in that year was just over 7 hours.

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[1] Formerly Liberals and Social Democrats.

[2] Unionists 13, Social Democratic and Labour Party 3, Sinn Fein 1.

[3] Re-elected on a non-party basis.

Number of Sitting Days in 1989

	Commons	*Lords*
January	16	8
February	20	16
March	17	16
April	19	19
May	19	16
June	19	15
July	20	22
August	—	—
September	—	—
October	11	12
November	19	15
December	14	16

The division of time between different activities in the Commons is: about one third of the time spent on the floor of the House is devoted to legislation; and a smaller amount to main debates. A somewhat smaller proportion is devoted to scrutiny of government (through questions, short debates etc).

Although any proceedings on the floor of the House provide opportunities for the Government, Opposition and back-benchers, the initiative for choosing the subject under consideration lies mainly with the Government (though they consult with the Opposition). In 1988-89, 54% of business was at the choice of the Government, compared with 22% for back-benchers and 7% for the opposition. One of the Opposition's main weapons is the choice of subject on the 20 Opposition Days, which occur by agreement twice every three weeks. 17 of these days are at the disposal of the main Opposition party; 3 at the disposal of the smaller parties.

Corresponding proportions in the House of Lords are: three quarters of time devoted to legislation; and one-eighth to debates.

The time spent on the floor of the House on different types of business in the 1988-89 session was as follows:

	Commons (hours)	*Lords (hours)*
Government Bills	475	606
General debates	492	108
Delegated legislation	88	31
Scrutiny	263	30
MPs/Peers/Bills/Motions	109	24

Role of the Speaker

House of Commons

The Speaker is elected from among the Members of the House at the start of each parliamentary term on the basis that he will be able to command the respect of the whole House. He relinquishes all political activities and does not return to party politics when he leaves the position. He exercises important powers in controlling debates and chairs the House of Commons Commission, which employs the staff of the House. Mr. Speaker Weatherill was elected in 1983 and (having fought his constituency without a party label) was re-elected in 1987. Previously he was a Deputy Speaker for four years and deputy chief whip of his party before that.

House of Lords

The Speaker of the House of Lords is the Lord Chancellor, a member of the Cabinet appointed by the Prime Minister and the head of the Judiciary in the UK. He plays an active part in promoting Government business in the House of Lords and his duties in presiding over sittings are purely formal. (Order in the House of Lords is kept by the House as a whole). He ceases to be Speaker when he relinquishes the office of Lord Chancellor. The current Lord Chancellor, Lord Mackay of Clashfern, was appointed in 1987, following the retirement of his two predecessors within the space of six months. He does not come from a political background and is the first Scottish lawyer to occupy the Woolsack.

Legislative Process

The bulk of the legislative work of both Houses is provided by the Government. Some of it is primary legislation, which has to pass through both Houses in the same form. An increasing amount is secondary legislation (known as statutory instruments) for which there is a variety of simpler parliamentary procedures.

Legislation introduced by private Members is allotted specific days for consideration in the Commons and only a small proportion of the bills introduced actually pass into law. In addition, each House also passes legislation (known as Private Bills) to deal with a specific matter affecting only one area or group of people

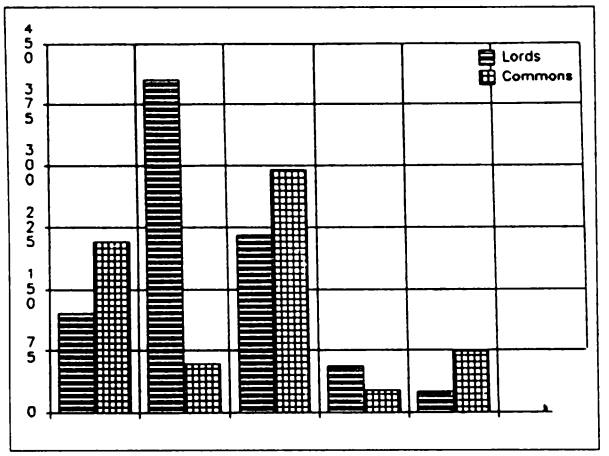
The stages every Bill has to pass through in each House are set out below:

Stage	*Commons*	*Lords*
First Reading	Formal (7-10 days)	Formal
Second Reading	Debate on principles (one day) (7-10 days)	Debate On principles
Committee	Detailed consideration in Standing Committee (upto 80 hours)	Detailed consideration (in plenary)
Report	Committee amend-ments discussed in plenary	Further detailed consideration
Third Reading	Debate on principles (for 3 hours)	Further Detailed consideration plus debate on principles

Lords/Commons Amendments	Considered as necessary in both Houses
Royal Assent:	Formal announcement in both Houses

Legislation may be introduced in either House, but the Government's main political legislation is usually introduced in the Commons.

The number of hours spent in plenary between these different stages of legislation in the 1987-88 session is shown in the chart below:



The Commons has power to override the Lords if the Lords twice reject the same bill passed by the Commons. In practice the Lords' power of rejection has been used very sparingly and the Commons' power to override has not been put into effect since 1949.

The Lords' powers over raising and spending public money are also limited. Legislation involving taxes or expenditure cannot be initiated or delayed by the Lords.

Despite these apparent restrictions on their power, the Lords play a significant part in the legislative process, both by detailed revision of bills and by giving the Commons the opportunity to reconsider particular controversial points. In 1988-89 the Government was defeated 12 times in the Lords on the details of legislation.

When there is a disagreement between the two Houses, the bill in question travels back and forwards until a common text is agreed. In practice, the pressure for compromise is great. Normally only one or two Bills actually shuttle between the two Houses each session. One Bill in the 1970s went to and fro six times.

The progress of legislation may be controlled in the Commons, but not in the Lords, by allocation of time ("guillotine") orders introduced by the Government and approved, with or without amendment, by the House after a three hour debate. The selection of amendments to be debated is made by the Speaker.

Bills Introduced and passed in 1988-89 session:

Bills which received Royal Assent	46
Government Bills	37
started in Lords	15
started in Commons	22
Private Members' Bills	9
started in Lords	1
started in Commons	8
Bills introduced into but not passed by Commons:	130*
Bills passed by Commons but not passed by Lords:	1
Bills passed by Lords but not passed by Commons:	2

Committees

House of Commons

There are two types of Committees: legislative ("standing") and inquiry ("select"). Legislative Committees are set up principally to deal with the Committee stage of particular Bills, and members are appointed separately for each Bill. Select committees are normally set up for the whole parliamentary term, have wide-ranging terms of reference and freedom to choose particular subjects within their overall remit.

	Standing	*Select*
size	16-50	Departmental: 11 others (7-21)
Chairman	neutral (chosen by Speaker)	active (chosen by the committee)
Subject	Bill referred from House	chosen by committee
Duration	specific bill	full parliamentary term
Proceedings	formal debate standing	informal, sitting
Public	all meetings	most evidence in public, deliberate in private
Party balance	reflects party balance in the House as a whole	
Report	Bill (as amended) and proceedings	Substantive recommendations and evidence

From the beginning of Session 1990-91, a special variant of Standing Committee deals with the bulk of

*All Private Members' Bills.

debates on European Community Documents (see below). Each document recommended for debate by the Select Committee on European Legislation stands automatically referred to one of three European Standing Committees. Each has a small permanent membership and specialises in particular departmental areas. Unless the Government makes special provision for a debate on the Floor, the documents are debated in the Committee, followed by a formal vote on the Floor. In the Standing Committee, the responsible Minister may be questioned for up to an hour followed by a debate which may take the total length of proceedings to 2½ hours. Any Member of the House may take part in the proceedings if he wishes.

Prominent among the Select (inquiry) Committees are those which monitor the expenditure, policy and administration of specific government departments. Their pattern of activity is as follows:

1. Members nominated by Committee of Selection
2. Committee chooses own Chairman (may be an Opposition MP)
3. Committee chooses own subject(s) of inquiry
4. Written evidence sought from interested parties
5. Oral evidence heard from key witnesses
6. Study visits conducted at home and abroad
7. Chairman's draft report considered, amended and adopted
8. Government replies within 60 days
9. New subject chosen

Departmental Select Committees meet at least once a week, produce between two and six reports a year and have a full-time staff of two graduates and two others. They rely on part-time advisers for specialist assistance.

The Select Committee on European Legislation is responsible for considering a wide range of Community documents submitted to the Council of Ministers or to the European Council, including all proposals for legislation submitted to the Council by the Commission. It reports to the house its assessment of their political or legal importance. If the Committee recommends that a proposal be debated, the presumption is that Ministers will not agree to that proposal in the Council of Ministers until a debate has been held. In the 1988-89 Session the Committee reported on 887 documents, of which 310 were considered politically and/or legally important and 105 were recommended for debate. In the same Session, there were 52 debates on European Community documents (on the Floor and in Standing Committees on European Community Documents), covering 97 documents.

House of Lords

Detailed discussion of legislation takes place on the floor of the House, so there are no legislative Committees. There are two main Select Committees. The European Communities Committee works through six sub-committees, produces some 25 reports per year and involves some 80 peers. Its activities are widely respected in the European Community. The Science and Technology 0-11 Committee works through two sub-committees and has a membership of about 25 peers. Membership of both Committees is based more on personal expertise than political allegiance. Special Select Committees are set up, more frequently than in the Commons, to address particular issues.

Scrutiny of Government

House of Commons

A variety of weapons is at the disposal of backbenchers to test the Government. Ministers from each Department answer oral questions on the floor of the House for between 25 and 55 minutes once a month or so. MPs have to give two weeks' notice of the first question but can then ask an unexpected supplementary. The high level of interest in this activity means that only a proportion are successful in asking a question on a particular day. In the 1988-89 session, 23,932 questions were put down for oral answer (of which only just over one-tenth received replies on the Floor of the House). Questions seeking information can also be tabled for written answer within a minimum of two days. 39,540 such questions were tabled in the 1988-89 session (226 per sitting day).

On matters of urgency, an MP may ask a Private Notice Question (one or two a week are granted at the Speaker's discretion) or make a three minute speech pressing for an emergency debate (although such applications are usually granted by the Speaker only two or three times a year). Pressure for a statement by the Government on a topical issue also gives an opportunity for airing current concerns. Other opportunities include the half hour adjournment debate at the end of each day's sitting, when a minister will have to reply for up to 15 minutes to the issue raised.

House of Lords

Each day's business starts with up to four oral questions with supplementaries. 572 questions were asked in this way in 1988-89. Questions can also be put at the end of the day's business and give rise to debate, (35 in 1988-89) and written questions are also asked (1202 in 1988-89). Private Notice Questions are rarer than in the Commons, with only one asked in 1988-89.

Costs and Money

Members of the House of Commons receive an annual salary—currently £26,701—which is linked to the pay of

a senior civil servant. They also receive an allowance of £27,166 for the employment of a secretary and/or research assistant and for general office expenses and equipment. Those who live outside London receive an accommodation allowance of £10,570; London MPs receive an allowance of £1,222 instead. MPs also receive free travel between their homes, constituencies and Westminster and a car mileage allowance appropriate to the engine size of the car used on Parliamentary business.

Members of the House of Lords are unpaid but can recover expenses within current daily limits of £64 for overnight accommodation, £24 for subsistence and incidental travel and £25 for secretarial expenses. They can also claim the cost of travel between their home and London.

The identifiable costs of running each House in 1989-90:

House of Lords	£20.06 million
House of Commons	£95.65 million

(Plus maintenance and development of the Palace of Westminster: £26.5 million)

In addition to official salaries for the Leader of the Opposition and 3 other opposition officers, about £1 million is provided per annum to assist Opposition parties in their parliamentary duties.

Broadcasting

Both Houses are recorded for sound broadcasting. The House of Lords has been televised since January 1985 and the House of Commons began televising (initially on an experimental basis) in November 1989.

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The Speaker and Party Politics*

Introduction

The tasks of the Speakers in Parliamentary systems are highly significant and worthy of note. Generally speaking, the work of parliaments revolves around the Speakership, whether it be in a single or multi-party State. However, whatever the political system a country, especially a democratic State, may have, the Speakership is guided by the principles of impartiality and freedom. As a matter of caution, we should hasten to mention that the purpose of discussing the issue of "The Speaker and Party Politics" is not to advocate a general uniform Speakership in all parliamentary systems. The aim of discussing this topic is to bring out the realities in which the Speakers find themselves with regard to party politics in their respective Parliaments. This paper, therefore, will briefly discuss the topic "The Speaker and Party Politics" with reference to the Zambian Parliament.

The Speaker and Party Politics

The discussion on the topic "The Speaker and Party Politics" can be best understood by what academicians, political scientists and commentators have been saying about "The Speaker and Party Politics".

There are basically two schools of thought on "The Speaker and Party Politics" whose views are diametrically opposed. However, there are certain fundamental principles concerning the Speaker's general conduct on which these schools of thought converge or agree. For the sake of argument, these schools can be termed as "neutralism" and "realism".

The "neutralists" argue that the Speaker must be completely neutral in his words and deeds with regard to party politics. That is, he should be seen to be above party politics in order to head the Legislature properly. But this school of thought appreciates the fact that the Speaker, being a human being, may have his private political views and affiliations, but this should not be apparent. Many countries, especially in the Commonwealth, subscribe to this point of view and thus there are provisions for the Speakers to be elected either from amongst the Members of Parliament or from outside Parliament on condition that they fulfil the requirements for election to Parliament.

Those countries where the Speaker is elected from outside Parliament believe that this may perhaps enable him exercise his functions with greater freedom and independence than would be possible if he were an elected Member of the House. On the other hand, those countries which feel that the Speaker must be elected from amongst the Members of the House believe that in the context of Parliamentary Government by parties, the Speaker must have popular support, for it is he who represents the collective will of the House which comprises the elected representatives of the people. In order to attain this objective, he should refrain from taking an active part in politics. Of course, the speaker is free to take part in political, academic, social or other activities which have nothing to do with any patronage to any party.

Furthermore, the "neutralists" believe that in the event of a Speaker being elected from amongst the elected Members of the House, he should distance himself from party politics because, in the eyes of the public, it is not reconcilable that a Speaker can be independent and at the same time be actively involved in party politics in a multi-party democracy. In short, the "neutralists" are saying that in order for the Speaker to be effective, he should refrain from active participation in party politics.

On the other hand, the "realists" base their viewpoint on the fact that the Speaker operates in the political sphere, as politics is practised, in Parliament. Therefore, a Speaker cannot be completely divorced from politics. Moreover, the "realists" maintain that the Speaker is a politician because he presides over the affairs of politicians in Parliament. Thus, if he is a politician, he will definitely have a political viewpoint within the political system in his country.

To substantiate their argument, the "realists" make an analogy between politics and a football game or any other game. Taking the example of a football game, the Speaker is like the referee who knows the rules and conduct of the game but is not necessarily a footballer himself. Therefore, the Speaker need not be a politician even though he is operating in the political sphere, but must take part in party politics.

This school of thought also postulates that basically the Speaker is elected to this office and, therefore, his post has roots in popular support in the will of the people as expressed through Parliament. Many countries, in their constitutions, have articles that provide for the removal of the Speaker by a two-thirds majority of the Members of the House. Therefore, it is evident that from the time the Speaker is elected until he leaves office, his tenure is governed by political activity.

Within this context, we can say that as soon as the Speaker is elected, his views must reflect those of the

*Paper prepared by the Research Department of the National Assembly of Zambia Lusaka.

various parties that are represented in the House rather than just one party. Theoretically, the Speaker should behave like a Member of all the political parties in the House rather than eschewing politics. The Speaker, therefore, should be able to distinguish the politics of government from party politics. In this way, the Speaker shall be in a position to protect both the majority and the minority in the House.

In summary of this view, we can say that the Speaker should belong to a political party but should play the role of a referee in Parliament bearing in mind that his party's interests are paramount only outside Parliament.

In synthesizing these two views of thought, it can be argued that the functions of the Speaker are to regulate debate and enforce the observance of the rules which govern the House. He must have an inherent power to interpret the rules and procedures of the House. The Speaker is the custodian of the rights and privileges of the House. He is also the guardian of the rights of the minority. The Speaker is the representative of the House in its external relationship with the government and other authorities and persons outside Parliament.

The Speaker's impartiality both in the Chair and outside Parliament, remains an essential feature of any political system which permits free men and women to air their honest differences of opinion in open debate. In any political system where democracy is practised, the Speaker should be impartial. This means that he should practise the protection and balancing of the rights of the minority and the rights of those in the majority. In a single party system, it is between the rights of the Back-benchers and the rights of the Government Bench. The Speaker's rulings should be just and fair.

Another good quality of true Speakership is political freedom, which is as important as his impartiality because it helps him to maintain his stand and perform his role effectively. A Speaker should disassociate himself from political favouritism or politics of allegiance but rather should toe the line of justice by being impartial.

For this reason, it is important for him to distinguish between Party allegiance and his duty to Parliament. The Speaker should not be a "Government man" or "party's man"; rather, he should be a man free from party politics and government interference. This is so because the Speaker is one of the trustees of a nation's liberties.

To this end, therefore, the Speaker should exercise restraint and be circumspect when engaging in any party controversy. If possible, the Speaker's seat should not be contested in general elections; rather, he should be elected by the House, otherwise his proper role could be disadvantaged by the party which supports him.

In order to do this effectively, the Speaker must be protected by law to enable him to exercise his power with freedom. There is a general contention that a democratic Parliament can exist only in a democratic society. This means that the role of Parliament as custodian of democracy is only possible if the cultural background of the society does allow for the existence of a democratic Parliament, otherwise the parliamentary institution would be in danger of being a "rubber-stamp." Hence, for the Speaker to be able to perform his role effectively in any political system, he has to be protected by law. Such protection will accord him the freedom and power to be impartial. The sources of this protection can be either the Constitution or conventions and traditions of Parliaments.

The Zambian Situation: The General Political System

Zambia became a sovereign, independent State within the Commonwealth of Nations of 24th October, 1964. The historical development of Speakership in Zambia dates as far back as 1948 when the first Speaker, T.S. Page, was appointed to preside over the Legislative Council. T.S. Page was succeeded by Sir Thomas Williams, who was also an appointed Speaker.

The first democratically constituted National Assembly after independence met on 14 December, 1964, and comprised:

one elected Speaker;
seventy-five elected Members; and
five nominated Members.

In 1968, the number of elected Members was increased to 105. In 1972, Zambia became a one-party State and since 1973, the National Assembly has consisted of:

one elected Speaker;
one hundred and twenty-five elected Members; and
ten nominated by the President.

The above constitutes what is generally known as the National Assembly. But the Parliament of Zambia consists of the President and a National Assembly and is constituted every five years after Presidential and General Elections. The main functions of Parliament are:

to make laws by debating Bills brought before the House;
to exercise control over Government actions through debates in the House and its Sessional Committees; and
to vote money for public use.

The Speaker

The position of Speaker in Zambia is a constitutional one. Article 69 of Chapter 1 of the Laws of the Republic of

Zambia (as revised in 1972) provides for the election of the Speaker. According to this Article, the Speaker is elected by the Members of the Assembly from among persons who are qualified to be elected as Members of the Assembly but are not Members of the Assembly.

In line with the principles of maintaining the independence and freedom of the House, the Zambian Speaker has no direct active role to play in party politics. Once elected to the office of the Speaker, he ceases to be actively involved in party politics, although he continues to attend some party meetings and conferences. He also detaches himself from regional functions and activities within the party. He holds no constituency. This enables him to have national interest at heart.

It is Zambia's strong belief that if the Speaker has to play his role properly, he must be independent of party politics. This is one of the reasons why the Speaker is always elected from among the non-members of the Assembly. This ensures that the Party will have little or no interest at all in the work of the Speaker.

If he is appointed to any other post, then he must resign his post of Speaker. This seeks to implement the principles enshrined in the impartiality of the Speaker and attempts to free him from any potential party pressure. It has been discovered that this arrangement enables the Speaker to inspire confidence in the House and to command the respect of all the Members of Parliament. This has helped the Speaker to succeed in maintaining his independence and fairness in conducting the proceedings of the House and has uplifted his image and authority even outside the Chamber.

Since the introduction of the Speakership in Zambia, there has never been any censure motions against any of the Speakers nor have their rulings been challenged. This has enhanced their respect and dignity. Our Speakers have believed that the "life-blood" of the parliamentary system depends on free debate, objective deliberation and healthy criticism. Thus, they have always striven to promote this objective.

Furthermore, even during Zambia's multi-party era (1964–1972), the Speakers used to listen to Members from all sides with an unprejudiced mind, and this approach yielded rich dividends. Thus, the Speaker in Zambia has always received co-operation and unstinted support from all sides of the House. The Speaker has always been held in high esteem and regarded with great affection by all Members of Parliament.

Conclusion

It should be admitted that the issue of the Speaker and party politics is quite debatable as it depends mainly on the country's political system. Some people have argued that the task of Speakers in countries with a single-party system is much easier as compared to that of those with multi-party systems. But the truth of the matter is that the Speaker must be neutral and impartial in the House regardless of the political system in which he operates. That is, whether in a single or multi-party Parliament, he must show impartiality in the House. He can do this only by divorcing himself from active participation in party politics.

In December, 1990, the Zambian Parliament passed a Constitutional Amendment Bill that repealed Article Four of the Constitution of Zambia to enable the country to revert to a multi-party system of government. Prior to the passing of the Bill by Parliament, the President of the Republic of Zambia, Dr. K.D. Kaunda, had appointed a Constitutional Commission to work out appropriate constitutional changes to re-introduce the system of political pluralism. The Constitutional Commission has yet to submit its recommendations to the Government.

In Zambia, the fact is appreciated that the Speaker must have no active role to play in party politics. This is why we feel that the Speaker should have no constituency and that when appointed to any post in the leadership, the incumbent must resign the post of Speaker.

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Zambia Under a One-Party Parliament

A.C. Yumba*

Introduction

Zambia, at independence on 24 October, 1964, was a Multi-Party State. The two major parties in Parliament were the United National Independence Party, UNIP (the ruling Party) and the African National Congress ANC, (the main opposition). However, 25 February, 1972, His Excellency, The President, Dr. K. D. Kaunda, proposed the introduction of a One-Party State. This form of Government was introduced as a means of ending inter-party strife which characterised the elections and politics of this period and was found to be retarding development.

A Commission was set up to consult the public on what form the One-Party System should take within the context of Participatory Democracy and the Philosophy of Humanism.

Recommendations of the Commission were accepted by the Government and were subsequently submitted to the National Assembly in the form of a Bill which was passed as Act No 20 of 1972. The Act was assented to by the President of the Republic on 13 December, 1972, thereby giving legislative effect to the One-Party State. The Constitution of Zambia (Amendment) Bill was passed as Act No 27 of 1973. Thus, Zambia became a One-Party State and, consequently, the National Assembly became a One-Party Parliament.

In order to discuss how Zambia has fared under a One-Party, it is necessary first to say what Parliament is meant to embody.

Qualifications of a Democratic Parliament

The Institution of Parliament is of great importance to any nation that lays claim to democracy. It is in itself both a symbol and an embodiment of democracy in a nation.

Under the doctrine of separation of powers, Parliament is one of the three organs of Government, namely, the Executive, the Judiciary and the Legislature. One authority says of this that: the essential union of executive and legislative branches (of Government) is accompanied by the constitutional principle that the legislative body or Parliament is supreme. It is further said that the rule of continuous legislative confidence is regularly demonstrated in the Government's (or executive) submission of its programme and record of parliamentary approval.

In a democratic nation then, Parliament is the supreme body. It passes legislation, votes Government expenditure and more importantly controls Government activity. It is a "watchdog" over the Executive and seeks to ensure that the Government has the good of the people at heart.

For Parliament to fulfil these functions, it must be:

(a) freely. elected—that is, it must be made up of persons chosen by and responsible to the people;
(b) representative — Members in the House must represent a broad cross-section of the population;
(c) independent — it should not be subject to interference by any outside body. The Members should be free to express themselves without fear of intimidation. The only authority allowed to direct what may be said in the House is the Chair;
(d) in a position to get any information it may need in the course of its work;
(e) able to provide some kind of opposition to the ruling authority. This is to ensure that the Government is accountable to some authority other than itself;
(f) the body that legislates.

Under the Zambian Constitution, Parliament has uncontrolled authority in the making, confirming, enlarging, restraining, abrogating, repealing, revising and expanding laws concerning matters of every nature.

Parliament is provided with constitutional powers, rights and privileges to enable it discharge effectively the functions assigned to it by the Republican Constitution. This authority is derived from the Constitution of Zambia and the National Assembly (Powers and Privileges) Act 17 of the Laws of Zambia and the Standing Orders of the National Assembly.

The power to legislate is vested entirely in Parliament. Article 63 of the Constitution Cap. 1 of the Laws of Zambia provides that:

> The Legislative Power of the Republic shall vest in the Parliament of Zambia which shall consist of the President and a National Assembly.

No law, therefore, can be binding upon any citizen of Zambia, that has not been passed by Parliament. Further, it is only Parliament that has the power to alter the Constitution.

Article 80(1) of the Constitution Cap. 1 of the Laws of Zambia states that:

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> Subject to the provisions of this Article, Parliament may alter this Constitution or the Constitution of Zambia Act.

Parliament is a freely elected body. The right to vote in Zambia is exercisable by every person aged 18 years or more and voting is done freely and secretly. Any person that meets the qualifications set in the Constitution for a Member of Parliament may stand for elections. A losing candidate who feels he has lost unfairly may contest the election results in a court of law. The period following elections in Zambia has been characterised by these cases in courts. If the court upholds the claims of a candidate, a by-election is held in the constituency that falls vacant by invalidation of an election result. Constituencies can be contested by an unlimited number of persons. Since the electorate is free to choose who should represent them, the Zambian Parliament is largely representative.

As stated above, one of Parliament's duties is to oversee the activities of the Government. In Zambia, the Government is responsible to the House. Parliament, through the Committee System, questions for oral and written answer, Motions and papers laid on the Table, exercises its powers of Parliamentary control over the Executive. The House is divided into a back bench and Front or Government Bench. All Ministers, Ministers of State, District Governors and Parliamentary Secretaries sit on the Government Bench. It is the back bench that plays the role of opposition. The back bench questions Ministers on Government Policy, demands explanations for all activities deemed under-handled and generally scrutinizes all Government activity. The backbenchers have over the years played their role of "opposition" effectively taking Government officials to task as often as they have thought necessary.

Connected to this is the question of freedom of speech. Backbenchers in Parliament have been known to be very vocal. They have spoken their minds sometimes to the chagrin of the Government. Government policy is criticised and Ministers taken to task on particular decisions their ministries have taken.

Members' freedom of speech in the House is protected by law. This enables them to speak freely on any subject in their contributions to the House. This freedom is granted to the Members of Parliament by Section 3 of the National Assembly (Powers and Privileges) Act Cap. 17 of the Laws of Zambia which states:

> There shall be freedom of speech and debate in the Assembly. Such freedom of speech and debate shall not be liable to be questioned in any court of law or place outside the Assembly.

This provision ties in with what Article 87 of the Constitution of Zambia Cap. 1 of the Laws of Zambia provides in respect of debate in the House. It states:

> Members of the National Assembly shall be free to speak and vote on any issue in the National Assembly.

Section 4 of the National Assembly (Powers and Privileges) Act Cap. 17 of the Laws of Zambia states:

> No civil or criminal proceedings may be instituted against any Member for words spoken before, or written in a report to the Assembly or to a Committee thereof or by reason of any matter or thing brought by him therein by petition, Bill, Resolution, Motion or otherwise.

Thus Members cannot be prosecuted for offences such as libel for words spoken in the House.

On the right to information, Section 10 of the National Assembly (Powers and Privileges) Act Cap. 17 of the Laws of Zambia states:

> The Assembly or any authorised committee may, subject to the provision of sections thirteen, fourteen and twenty, order any person to attend before the Assembly or before such Committee and to give evidence or to produce any paper, book, record or document in the possession or under the control of such person.

It can, therefore, be seen that the Zambian Parliament under the One-Party System has powers and privileges to give it independence and authority to effectively perform its work.

It has been argued that the term "Parliamentary democracy" should be reserved for those political systems that are not only democratically elected, but also have Multi-Party Parliaments, thus suggesting that a One-Party Government cannot be democratic. However, while it is true that the term democracy has been so loosely used as to have become of no definite meaning, so much that even the most dictatorial regimes have claimed democracy, to term all One-Party Systems undemocratic cannot be justified.

It can be seen that while being One-Party, the Zambian Parliament has aspired to be and has been as democratic as other Parliaments that are Multi-Party. However, as shown above, some schools of thought feel that being a One-Party Parliament, there have been certain limitations.

Constraints on Parliamentary Democracy in Zambia's One-Party Parliament

It is suggested that because the system is One-Party, there are constraints to the Members' freedom of speech in the

House. It is felt that while Members of Parliament are free to speak in the House, they have had their freedom compromised in other fora. For example, Members are also part of the National Council of the ruling party which is the highest policy-making body of the Party. As such, they are part of party policy. For this reason, they may feel that they cannot oppose these policies excessively in the House. It has been further said that since all Members belong to one Party, they are all eligible for Government posts. Thus a Member of Parliament can, at any time, be moved from the back bench to the Government Bench. While he may have been vocal on the back bench, he is then bound by the principle of "collective responsibility". He cannot criticise Government policy to which he is supposed to be part. Furthermore, since there is no constitutional limit to the number of Members that can sit on the Front Bench, it can easily outnumber the back bench thus allowing all Government Bills to pass.

Another limitation that has been cited is that while Government has to report to the House on its activities and face severe criticism from the back bench, the demands for accountability placed by the back bench of a single party cannot be as tough as those placed by an opposition party.

Conclusion

In conclusion, it can be said that while some limiting factors have been cited, Zambia under One-Party Parliament has been democratic. Some shortcomings may have been present, but Parliament has striven to live up to the requirements of a democratic Parliament. As already said, the One-Party Parliament was instituted to suit local conditions and it has worked well in those conditions. Parliament has striven to see that while being One-Party, no authority, due to democratic Parliament, has been compromised. While Parliament has a great tradition to follow and emulate, it has the responsibility of meeting the particular needs of the society in which it is set.

Presently, Zambia is in a transition period. Act No 22 of 1990 repealed Article 4 of the Constitution allowing the nation to revert to Multi-Party politics. However, new parties formed will only be able to contest elections after the present Parliament is dissolved.

It is the hope and belief of the Zambian people that their Parliament will continue to fulfil its role effectively as it has done since independence.

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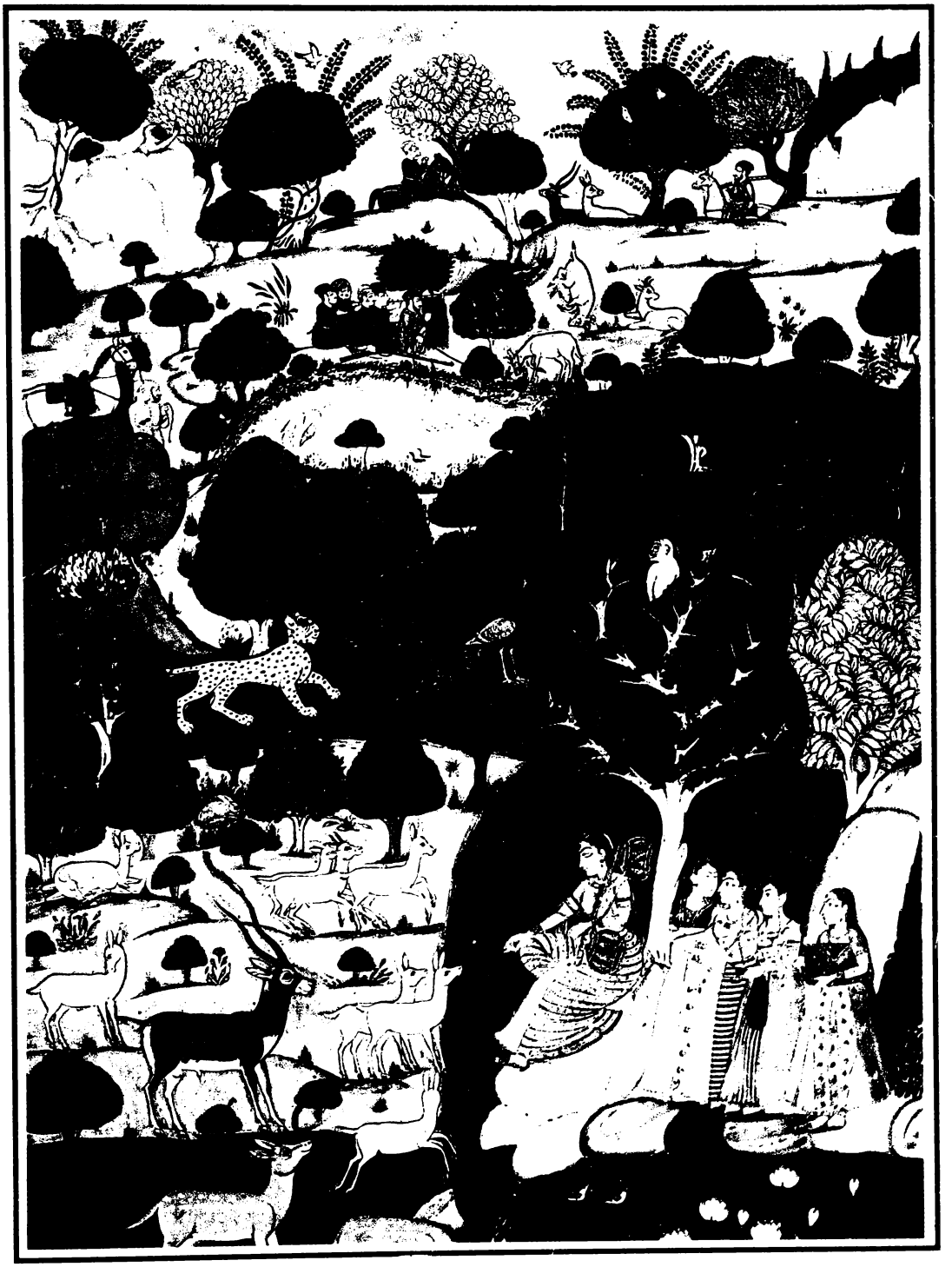
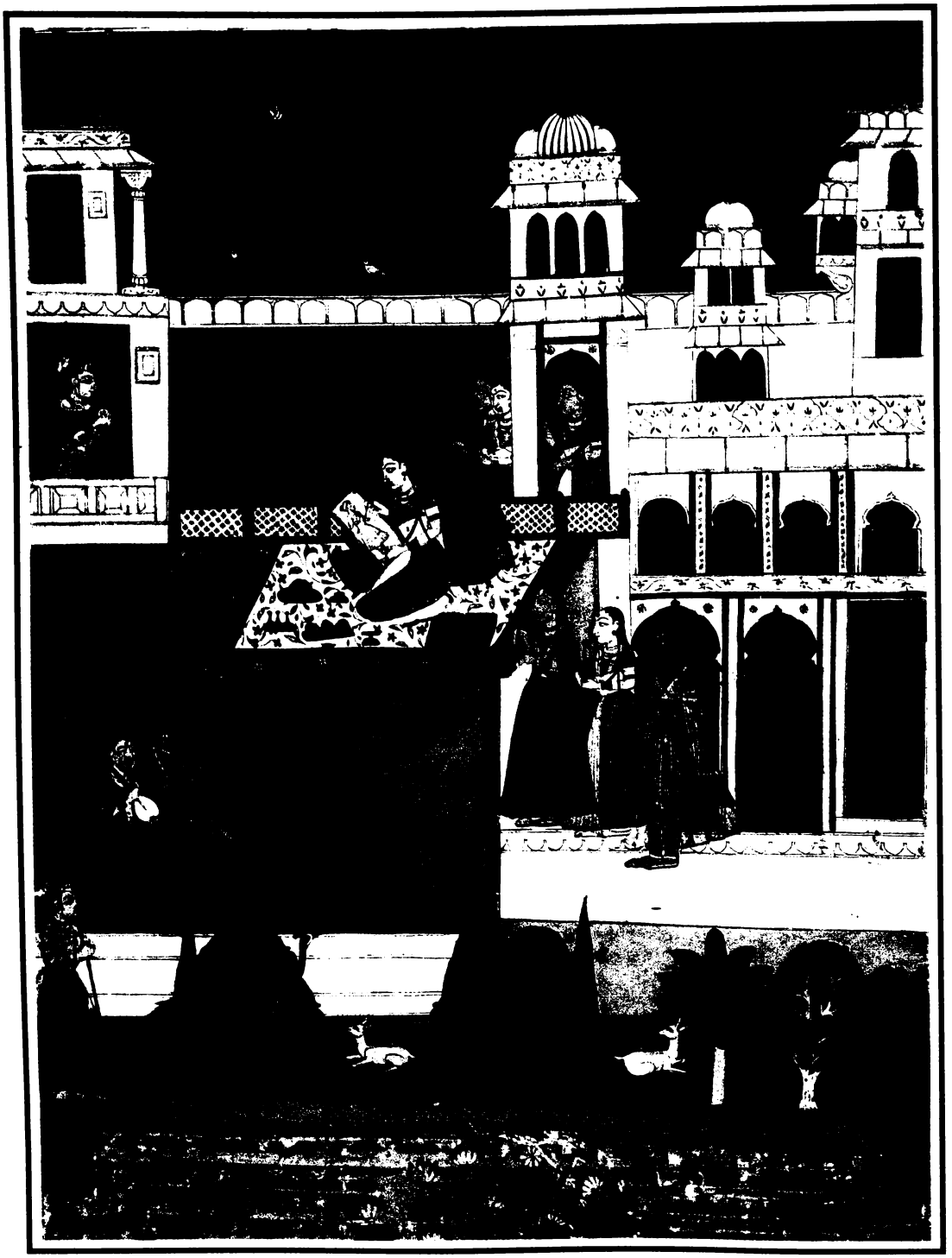


21 Ragini Todi: Bundelkhand Central India early 18th Century

Courtesy: National Museum



22 Ragini Malsri: Bundelkhand, Central India, early 18th Century

Courtesy: National Museum

23. Akbar receiving gifts: Mughal, *circa* AD 1590 *Courtesy* National Museum

40 Buddha in Bhumisparsh Mudra: Tibet, (Tanka) early 18th Century

Courtesy: National Museum

Speakership and African Tradition

D.N.E. Mutasa*

In African societies, long before the advent of modern governments, there existed various democratic systems designed to articulate the will and aspirations of the people in matters affecting the community, or clan. Miniature "parliaments", courts and cabinets existed when our forefathers gathered under trees for deliberations, execution of functions and conflict settlement. They did this within a kingdom under a king. These traditional kings and kingdoms were destroyed and replaced by sophisticated parliamentary institutions, courts and cabinets. However, prior to the advent of colonialism, traditional kings had executive, legislative and judicial functions. Depending on the occasion, the king sat as Chief Justice, Speaker or Prime Minister if his role were to be looked at from the point of view of the doctrine of the separation of powers. In this paper we shall examine the role of the king as the Speaker.

The role of the king as Speaker emerges clearly when we discuss his functions in the context of a traditional "parliament." Parliament being a place where one talks, is one of man's greatest political inventions although the types of parliaments differ from one society to another. In our Zimbabwean tradition, Parliament is the same as *dare* in Shona or *bandla* in Ndebele. The role of *dare* is ultimately a role connected with making laws and resolving conflicts in society and ensuring that certain minor disputes between groups are prevented from occuring or getting worse—which is precisely what modern parliaments do. Every society has to face the fact that individuals, and different people have a clash of interest. There are occasions *when to protect* "the consumer of a given commodity one has to hurt the producer of that commodity. There are occasions when to protect the national interest as a whole, one has to curb the activities of either workers or employers, or both". Clashes of interest are therefore, inevitable as part of the pattern of human arrangement. And clashes have been there since the beginning of time. And thus every society had some form of institution-*dare*-among the Shona of Zimbabwe and Parliament in the United Kingdom, to explore possibilities of compromise (when clashes of interest occurred) and try to give solutions that are fair and workable. Parliaments or *dare* are thus human institutions and they both reflect the anxieties and uncertainties, the problems and blunders of a world which is in a constant state of turmoil.

Having pointed out the similarity between Parliament and our traditional *dares*, I am now going to discuss Speakership in the traditional sense, and the role of Mr Speaker (the King) at the *dare*.

At a traditional 'parliament' the king was the Presiding Officer. He occupied the Chair. He was acting as the Speaker. The M.P. was appointed from amongst a group. The group could be of villagers wanting more land. Normally the spokesman would be a close relative of the group represented or a wiseman. In Shona he would be referred to as *mumiriri* or *isikhulumeli* in Ndebele meaning spokesman. Thus although the method of selection differed from what is followed in a modern parliament to elect an M.P., the concept of representation was there. This spokesman was the right-hand man of the people. All communication between the councillors (ministers) and the king on one hand and the people on the other hand was through him. This is still the case with our present day parliament which is based on the Westminster system, where the M.P. confronts the Executive on behalf of those he represents.

At a traditional 'parliament' there was also a definite sitting order, they did not just sit anyhow. In the Zimbabwe Parliament today, before doing anything else the Speaker prays and then makes some announcements. At a traditional 'parliament' one of the Councillors indicated to the others that it was now time to pay their respects to the king. This they did through clapping their hands in a certain manner. People were supposed to be seated by a certain time just like in the present Parliamentary system. When arriving at the traditional parliament councillors had to bow before the King. The same thing still happens today to the Speaker.

After all this, the person with a problem would then introduce his case to the king just like a motion in the present day parliament. The king did not say anything until the time of summing up. The Speaker does the same.

Knowledge of the process of debates was of major importance since it was the medium through which their 'parliament' worked. This requirement is still important today in our present day parliament. In order to facilitate the process of their debates they also had certain rules and sanctions to ensure a smooth running of 'parliament.' The same is still the case with our present day parliament. In all Commonwealth Parliaments (Zimbabwe included) Mr. Speaker has the power:

(a) to direct a Member who speaks on matters irrelevant to a topic or is tediously repetitive to dis-

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continue his speech, (kuvuisa mbudzi).

(b) to call an offending Member to order,

(c) to request a Member to withdraw unparliamentary words, or may require a Member guilty of gross disorderly conduct to withdraw from the Chamber for the rest of the day's sitting, and

(d) in the event of grave disorder occuring in the House, adjourn the House or suspend the sitting etc.

All these disciplinary powers of the present day Speaker were also vested in the traditional king, although the manner in which they were carried out might have been a bit different. At a traditional parliament if one used 'unparliamentary language' or did not follow the rules, one was asked to withdraw from the 'parliament'. They would ask him to skin a goat somewhere. In their view, no punishment was greater than this one, for to be asked to withdraw from the "House" meant that one was not mature enough or lacked common sense.

When presenting a case (moving a motion) upon a definite matter of public importance e.g. rainmaking, one had to be granted leave to speak by the king. The same still happens today. The traditional 'parliaments' did not have an order paper as we now have, but business was disposed of in the order in which it came.

Perhaps one also ought to mention the fact that there was freedom of speech at these traditional parliaments. But this immunity (just as today) did not mean that a member at the 'parliament' could say whatever he wanted. Thus just as present day parliaments have internal discipline, so did those traditional 'parliaments'.

The term of office of the traditional king normally came to an end after the death of the king—the king in this case representing Government, or was dismissed if the majority of the councillors complained about him—this in a way is still found in modern Parliaments, when a government is defeated on a motion or lost.

Therefore, from the foregoing, it can be seen that the concept of Parliaments is not new to Africa. It was closely interwoven with our understanding of justice, good government and fair play. Therefore, when we refer to Parliaments, we should in no sense be doing so from the point of British or French historical traditions and English constitutional history. Rather we should base ourselves on our own understanding drawn from the historical wisdom and knowledge of our ancestors, and their perception of justice. Thus when we argue that uni-cameral as opposed to multi-cameral parliamentary systems are more appropriate for us, we do so because we know what was done before and is best for our countries. And when we argue for one party states, we do so from the knowledge that the kingdom was the one party. In fact there can be no universal rule with regard to the implementation of the principles of democracy. Developed and developing countries have many common problems and differing political circumstances. Even within each of these groups there is considerable differentiation. Thus political systems must not be viewed in isolation, but rather in the light of the total political culture of a society.

However, it should be realized that the ideal of democratic government is the development of the human spirit which should not be fettered by material or social compulsions. So long as the lot of the masses is entangled in the yoke of poverty, ignorance and disease, our new political systems will not be acceptable to them. It is thus very important that, the true ends of society, namely the material and cultural welfare of the ordinary masses, be taken into account by all developing nations (be they in Africa or Asia) through their representative parliamentary systems.

In this context it is necessary to emphasize that the Parliamentary institutions are sustained by the people they intend to serve "Democracy" it has been said, "is not merely a matter of political institutions, but of the spirit in which they are worked; democracy must arise from within and cannot be imposed from without—though it may be helped or hindered from without... Unless true democratic temper is present, the most beautifully devised political or economic machinery will result in nothing but slavery."

To sum up: the Zimbabwean Parliament like the country itself is young in years and perhaps still growing in stamina. However, although present parliamentary practice in Zimbabwe is modelled largely on the Westminster system which is a common heritage throughout the Commonwealth of nations, it is hoped that through the passage of time it will be modified to reflect and project the culture of the Zimbabwean people.

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The Zimbabwe Legislature: A Reflection

A.M. Zvoma*

Introduction

Zimbabwe is a multiparty democracy with a popularly elected Executive President. The present "unicameral" or "single" chamber Parliament in Zimbabwe replaced the bicameral Parliamentary structure (consisting of the Senate and House of Assembly) at the beginning of the 1st Session of the 3rd Parliament of Zimbabwe in May, 1990. The House comprises one hundred and fifty members, of which one hundred and twenty are elected by popular vote in general elections that are held every five years. Zimbabwe is, therefore, divided into one hundred and twenty constituencies (the area that a Member of Parliament represents) for the purpose of elections. Of the remaining thirty seats in Parliament, eight are reserved for Provincial Governors, ten are reserved for Chiefs and twelve members are appointed by the President.

Legislative Powers

Subject to the provisions of the Constitution of Zimbabwe, Parliament may make laws for the peace, order and good government of Zimbabwe. The power to make laws is exercised through bills passed by Parliament and assented to by the President. When a Bill is presented to the President for assent he, subject to the law and Constitutional convention, either assents or withholds his assent.

The President is required to give his assent to a Bill within a period of thirty days. If assent is not granted within this period, he sends the Bill back to Parliament indicating the particular provisions to which he objects. Parliament then makes the relevant amendments to the Bill before sending it back to the President for assent. After that the Bill becomes an Act. Parliament may amend, add to or repeal any of the provisions of the Constitution. However, Constitutional amendments have to be passed by an affirmative vote of at-least two-thirds of Parliament's total membership.

Separation of Powers

The relationships between Parliament, the Executive and the Judiciary in Zimbabwe are largely governed by the doctrine of the separation of powers. While the function of Parliament is to enact laws, that of the Judiciary is to interpret and apply them and that of the Executive is to carry out the duties of the States, such as deciding Government policy and executing those policies through Government Departments. However, there is a considerable overlapping of duties and functions, and in cases even in the composition of these bodies, for example, the Legislature and the Executive.

(a) Parliament and the Executive

Zimbabwe has a Parliamentary Executive and an Executive Presidency. As a rule, Ministers must be Members of Parliament. Thus the composition of both Parliament and the Executive links the two organs. The interdependence of Parliament and the Executive is clearly observable during the process of legislation, control of finance and formulation of policies.

Though legislation is the most important task of Parliament, it has to be initiated by the Executive which is well equipped for that purpose. The legislative Chamber has the right to initiate legislation, except financial matters where the initiative lies constitutionally with the Executive, but that right exists only in theory. In practice the Executive controls the legislative initiative entirely. Parliament's role, therefore, is to examine, criticise and approve laws.

Parliament also exercises its power *inter alia* through financial control. It authorizes the raising of revenue through taxation and votes funds for meeting expenditure in connection with the transaction of the business of Government. When finance is approved for utilization by Government, Parliament sees to it that it is expended for the purpose for which it is intended, that no waste occurs, and that adequate results for the money spent are obtained.

Individual Ministries are responsible to Parliament for the work of their departments and the Government is collectively responsible to it for Government policy. In this way the Administration is made constantly aware of the will of the public. In Zimbabwe, Parliament and the Executive are interdependent.

(b) Parliament and the Judiciary

The relationship between the two bodies is, in addition to the doctrine of separation of powers, determined by the principle of the supremacy of Parliament (or Parliamentary sovereignty) on one hand and the independence of the Judiciary on the other. Supremacy of Parliament implies that the legislature can make or unmake any

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law in Zimbabwe. Theoretically this means that what it does cannot be undone by any other body or person. Practically, however, in Zimbabwe where there is a written Constitution, the courts have the power to declare an Act of Parliament *ultra vires*, if, for example, it contravenes the provisions of the Declaration of Rights in the Constitution. The Supreme Court also has jurisdiction under the Constitution to hear complaints against contraventions of provisions of the Declaration of Rights.

As regards Parliament-Judiciary relationships the Zimbabwean Constitution clearly states that the courts shall have such jurisdiction and power as may be conferred upon them by, or under, the Constitution and any Act of Parliament.

Budget and Finance

The authority to impose taxes, approval of supply grants and authorisation of expenditure rests with Parliament. This authority can only be exercised through request, in the form of legislation, brought to Parliament by the Government.

The Government has complete freedom to suggest the level of expenditure and to specify amounts required for the various departments. It also has full freedom to determine how money should be raised to meet expenditure. However, once the Government has submitted the Estimates of Expenditure and Parliament has approved the supply grants, Government has to conform to Parliamentary sanction.

The main Estimates of Expenditure are framed by the various departments of Government according to their forecasted needs for a particular financial year. These are forwarded to the Treasury for examination and approval before being brought before the Cabinet for final approval. Treasury approval is not automatic as there is frequent consultation between different Ministries and the Treasury. Only then are Estimates of Expenditure of various Government departments brought to Parliament.

The Estimates of Expenditure are tabled in Parliament during the Budget Speech which is presented by the Senior Minister of Finance, Economic Planning and Development, who moves a motion for leave to bring in the Finance Bill. In his speech, the Senior Minister gives a brief review of the economy's performance over the previous year which serves as a background upon which the present policy is based, then outlines the major economic, financial and developmental issues that require action and attention over the coming year, before finally presenting to Parliament proposals for public revenues and expenditure during the ensuing year and laying upon the Table the Financial Statement and Estimates of Expenditure. Members of Parliament then debate the Speech focusing on a wide range of topics including control of budget deficit, balance of payments, development, investment, security, Government spending and taxation proposals. At the end of the debate the Senior Minister for Finance must reply before presenting the Finance Bill seeking authorisation for Government to raise funds for the State in the manner outlined in the Financial Statement.

If their Main Estimates are inadequate or overspent, Departments apply to Treasury for more funds or approval of the over-expenditure. The Senior Minister for Finance will then table Supplementary or Additional Estimates of Expenditure which are referred to the Committee of Supply.

Standing Order No. 80 of the Parliament of Zimbabwe provides for a Committee of Supply (which is a Committee of the Whole House) to be appointed at the commencement of every session. The purpose of this Committee is to enable consideration of the Estimates of Expenditure. The Estimates of Expenditure contain the various Ministries' Supply Grants with detailed notes on how the monies voted to the Ministries are to be spent.

In the Committee of Supply, Members of Parliament consider the Supply Grants one by one before giving their approval. The business of supply on the Main Estimates may include, in addition, the consideration of reports from the Public Accounts Committee and from the Departmental Committees of Parliament.

A period not exceeding eighty-five hours in the aggregate is allotted to the business of supply on the Main Estimates of Expenditure while a period of not more than thirty hours is allotted to the business of supply on the Additional or Supplementary Estimates and not more than five hours is allotted to each Supply grant in such estimates. If the allotted time expires before the Committee of Supply considers all the Supply Grants, the Chairman puts every question necessary to dispose of the grant then under consideration, without amendment or debate. The Senior Minister for Finance brings up the Appropriation Bill or Bills to give effect to the Estimates of Expenditure. The Bill seeks authorisation from Parliament for Government departments to spend money contained in the Estimates. After its introduction, the remaining stages of the Bill; the First Reading, Second Reading and Third Reading, but excluding the Committee Stage, are disposed of forthwith. The Appropriation Bill has to become law by the 31st October, so that Government Departments carry on with their projects and thus spend money without seeking the special authority of the President.

Bills

The Parliament of Zimbabwe's legislative programme consists mainly of Public Bills. However, from time to time a few Private Bills are also presented.

Public Bills

Every Bill which, in the opinion of the Speaker of Parliament, has, as its object, the alteration of the statute law or the common law in the public interest is treated in Parliament as a Public Bill. A Public Bill emanates from the relevant Government Minister administering the matter that is to be legislated and the draft Bill has to obtain Cabinet approval before it is presented to Parliament. It is standard practice that the Minister concerned obtains the broadest spectrum of views before drafting a Bill since its aim is to fulfil the public interest.

A Public Bill is piloted through Parliament by a Government Minister who must issue a notice of his intention before its introduction. Except on very few occasions, Public Bills constitute the full legislative programme of Parliament.

Parliament also on very rare occasions deals with Private Bills whose object is to affect particular interest or benefit any person or persons or bodies of persons as opposed to the public interest. These Bills in Zimbabwe are also sponsored by individual Members of Parliament. Private Members Bills have been almost unheard of in Zimbabwe since independence.

Stages of Bills

As in other Parliaments whose practice is based on the Westminster system, Public Bills are generally introduced after notice by the Minister responsible. This stage consists of reading the Bill for the First time without any debate taking place. After their introduction, all Bills, with the exception of Constitutional Bills, are referred to the Parliamentary Legal Committee in terms of Section 40 B (1) (a) of the Constitution.

Similarly, if a Bill is amended in Committee, it stands referred to the same Committee. This is to ensure that it does not violate any Constitutional provisions, particularly the Declaration of Rights.

After the Parliamentary Legal Committee, whose functions are described below, has given a Non-Adverse Report on a Bill, the Bill is set down for the Second Reading stage. During the Second Reading, the Minister outlines the principles of the Bill and debate follows on the provisions of that Bill, in other words, on the general application and desirability of the Bill. It is at this stage the Minister succeeds or fails in convincing the House on the desirability of the Bill. When the Bill receives its Second Reading, it is set down for the Committee Stage.

It is during the Committee Stage that the Bill is discussed section by section or clause by clause with Members probing the Minister on the content and meaning of the Bill and they suggest improvements. It therefore follows that any amendments may be made with notice at this stage either by the Minister or by any Member. It is pertinent to point out that the Committee of the Whole House suffers from certain limitations, notably, the fact that it is bound by the decision taken by the House to accept the principles of the Bill at Second Reading.

The Committee, therefore, may not amend the Bill in a manner that is in sharp contrast with that decision. However, it is possible that the cumulative effect of amendments is such that the nature and purpose of Bill are wholly changed. In the event of this occuring it is the general practice to withdraw the Bill after the report of the Committee.

After a Bill has been amended in Committee and the Parliamentary Legal Committee has further given it a non-adverse report the amendments are considered by the whole House after the Report Stage. This ensures that the Bill in its final form represents the opinion of the House and not of the Committee which is only a delegate of the House.

The last stage of the Bill, the Third Reading, is a Constitutional requirement before a Bill is assented to by the President. The debate at this stage is usually restricted to the discussion of the principles of the Bill which have already been raised during the Second Reading. No amendment may be offered to the text of the Bill except for purely verbal and minor amendments relating to typing and drafting errors.

If the motion for the Third Reading is accepted the Bill is deemed to have completed all its stages in Parliament and it is forwarded to the President for his assent, after which it is placed on the Statutes on enrolment with the High Court.

The Committee System

The most important committees of our Parliament are the watchdog or investigatory committees. Their function is to maintain the effective accountability of Government to Parliament. Parliament's responsibility is the continuous scrutiny that it is empowered to exercise over the Government's implementation of the measures which Parliament has given assent. This role of scrutiny is to a large extent carried out by Committees (including the Committee of Supply), which are an extension of the whole House or indeed miniature chambers which must report back to their mother body.

(a) Departmental Committees

Standing Order No. 153 of the House provides for Select Committees to be designated as Departmental Committees. The terms of reference of these committees are:

> To enquire into and report upon the activities and Estimates of Expenditure of Ministries, Departments of Government and *Parastatals* as they may

think fit with a view to achieving economies and drawing attention to items which, in the opinion of the Committee may involve or have involved wasteful or unnecessary expenditure in the administration of any Ministry, Department of Government or *Parastatal*. Each Committee shall confine itself to matters falling within the jurisdiction of Ministries, Departments of Government or *Parastatals* assigned to it.

The Departmental Committees investigate and assess estimates of expenditure of Ministries, Government Departments and *Parastatals* falling under four broad categories. These are the Finance, Economic and Development Ministries (i.e. Finance, Economic Planning, Commerce, Industry, Agricultural Development and Natural Resources); Services (i.e. Health, Education, Manpower Planning, Welfare, Information, Political and Foreign Affairs); Security (i.e. Justice, Home Affairs and Security), and Technical Ministries (i.e. Mines, Energy, Transport and Construction). The Committees assume a broad measure of permanency and continuity in that they focus on specific Ministries on a more regular basis and thus ensure that their reports on these Ministries are acted upon. The Departmental Committees are a feature of Parliamentary control over expenditure and they examine in detail, the estimates of expenditure presented to the House, mainly with a view to achieving economies in Government spending and to ensure that money voted by Parliament is expended to the best advantage. Unlike their predecessor, the Estimates Committee they are, empowered to examine or report upon government policy.

Departmental Committees are also empowered to send for persons, papers and records and to meet, notwithstanding any adjournment of the House, at different places. They are also empowered to report from time to time.

The selection of the estimates to be investigated is entirely within the discretion of the Committees but is restricted to Ministries, Departments of Government and *Parastatals* that fall under their jurisdiction. The scope of the work of the committees may be defined as consisting of four types of inquiry, viz.

(a) broad overall reviews of Government spending;
(b) reviews of individual departments and other organisations which spend public money;
(c) inquiries into problems or aspects of a department's work; and
(d) small "case" type enquiries into suspected abuses or irregularities.

It is an accepted basic principle of financial procedure that State expenditure is initiated through its Ministers and it is the responsibility of Government to determine the national expenditure (through Treasury). In this connection, Departmental Committees are the watchdogs of Parliament in regard to Government expenditure, as revealed in the Estimates. They ensure that the policy implied in the Estimates is being carried out economically.

(b) The Public Accounts Committee

The Committee is appointed in terms of Standing Order No. 152.

> "for the examination of the sums granted by Parliament to meet the public expenditure and of such other accounts laid before Parliament as the Committee may think fit."

In other words, the Committee examines and reports on accounts which reflect the use of any sums of money drawn from accounts approved by Parliament as reflected in the Estimates of Expenditure for a particular financial year and which form one Consolidated Revenue Fund. The Committee has power to send for persons, papers and records, to report from time to time, and, subject to the approval of the Speaker, may travel beyond the precincts of the House.

It must be noted that the actual powers which are conferred upon the Committee through its terms of reference are strictly limited. Nevertheless, the power and influence which the Committee can exercise indirectly is considerable and derives from:

(i) The methods it adopts and the interpretations concerning the scope of its activities and purpose which by tradition have been practiced by successive Committees of Public Accounts here and elsewhere upon the intentions of Parliament;
(ii) The publicity given to the matters it investigates and reports upon, the moral effect which public criticism has on the Administration and Executive alike.

The main function of the Committee is to make sure that the Parliamentary grants for each financial year have been applied to the purposes for which Parliament intended them and to consider matters brought to the attention of Parliament. The researches made by the Committee on behalf of the House are intended to ensure a critical examination of the public accounts. The work of the Public Accounts Committee is primarily based on the appropriation Accounts and the Comptroller and Auditor-General's Report thereon. The Committee begins by a review of the Report of the Comptroller and Auditor-General in collaboration with him. This is followed by a consideration of irregularities of expenditure, unauthorised expenditure and other matters which are the subject of adverse com-

ment in the Auditor-General's Report.

Thus, Parliament is concerned that the best use is made of the country's limited financial resources. As a result, the Committee can and does concern itself with the financial consequences of the implementation of any given line of policy. This aspect of the Committee's work involves it in the examination of, and investigations into, reports made to Parliament of unnecessary, wasteful or excessive expenditure of public money, indicating for example:

(a) weakness in departmental organisations or in the administration of departmental functions;
(b) defects in the system of financial administration and control.

In all such investigations the Committee's function is to elicit the facts and make judgements thereon. The functions of the Committee may therefore be described as *quasi-judicial.*

During investigations the Committee invariably calls the responsible accounting officer for examination. The Committee finally reports to Parliament on its findings recommending remedial and punitive measures designed to prevent a recurrence of irregularities revealed in the Auditor-General's Report.

Government is not bound to accept all recommendations made by the Committee but does so where it believes that it will achieve the desired result and that, taking everything into consideration, it will best serve the public interest.

In rare cases where the Treasury considers that the Committee's recommendations cannot or ought not be implemented, it is normal practice for Treasury to state why this cannot be so. However, at the same time it is probable that the Treasury will indicate what alternative arrangements are under consideration with a view to meeting the Committee's criticisms.

(c) Committee on Government Assurances

The function of this Committee is to keep track of all assurances, promises and undertakings given by the Government on the floor of the House. It is nominated at the commencement of every session and has power to send for persons, papers and records, has leave to travel beyond the precincts of Parliament and to report from time to time.

(d) Parliamentary Legal Committee

The Parliamentary Legal Committee is appointed by the Standing Rules and Orders Committee in terms of Section 40A of the Constitution of Zimbabwe. The Committee consists of no less than three Members, the majority of whom must be legally qualified. Any increase or decrease in the membership of the Committee is determined by the Head of State.

The Committee examines any Bill, draft bill, Statutory Instrument or draft statutory instrument submitted to it. The purpose of such examination is to determine whether in the Committee's opinion any provision of the above would, if enacted, contravene the Declaration of Rights or any other provision of the Constitution.

(e) Other Committees

These include the Committee of Pensions, Grants and Gratiuities, Committee on Foreign Currency and the Committee of the Whole House, which is not a small offshoot of the House, but the House itself proceeding under more informal rules and presided over by a Chairman rather than the Speaker. It deals with the Committee Stages of all Bills and considers Estimates of Expenditure in Committee of Supply after the budget.

Other committees of the Parliament of Zimbabwe are purely for House-keeping purposes, these being the Committee on Standing Rules and Orders, the Parliamentary Library Committee, the Internal Arrangements Committee and the Committee on new Parliament Buildings.

Committees are thus the working units of Parliament. In this regard they help to speed up the work of Parliament and as small groups they have every opportunity to consider parliamentary issues in the greatest possible detail. Committees can neither give directives to the Government nor the bureaucracy. All they can do is to draw attention to what they consider to be problems or make recommendations for the consideration of Government.

Procedural Innovations

The most notable procedural innovation is that of allowing a new member of Parliament making his maiden speech to read it if he so wishes. This is intended to give confidence to the Member in his first speech in Parliament.

In addition, Ministers whose Ministries are reported upon by Parliamentary Committees are required to reply within twenty-one sitting days after presentation of the Report. Previously there was no time limit and often the replies were not forthcoming.

Under the present unicameral parliamentary system, a Bill is referred to the Parliamentary Legal Committee immediately after the First Reading in the House. Previously under the bicameral system the Legal Committee lodged in the Senate used to scrutinise a Bill only after it had passed through the House of Assembly, unless the Bill emanated from the Senate in which case it would be referred to the Legal Committee after the First Reading in the Senate.

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PART TWO

INDIA SECTION

Inter Parliamentary Cooperation

Shivraj V. Patil*

The Parliaments of different countries in the world have been cooperating with one another in several fields. The forums through which this is done, mainly, are the Inter Parliamentary Union and the Commonwealth Parliamentary Association.

The methods adopted so far are the holding of the Conferences and the delegations.

In the Conferences, through formal and informal discussions, issues of international importance are discussed and the process, of crystallising the views, through the length and breadth of the world, is set in motion. Delegations visit various countries and see for themselves the lands and meet the leaders and important private persons in different parts of the world. These activities help in creating world public opinion and an understanding which helps the legislators in moulding the policies in their respective legislatures and countries.

Several topics of importance have been discussed between delegations and in the Conferences. They include subjects like terrorism, drug traffiking, housing, child welfare, world peace, disarmament etc. The conclusions arrived at in formal and informal discussions may or may not be held as binding on the countries. Yet, they do have their weight and importance, which cannot be easily brushed aside. Consciously and subconsciously, the moulders of policies and framers of the methods are in some degree or other influenced by their interactions.

In future too, there can be and should be more cooperation between the Parliaments. The speedy means of communication and transports, the electronic instruments can help the Members of the Legislatures to interact with one another with greater ease and facility. The computers, satellites and other communication devices can be used by them to exchange views, the records of the proceedings, the literature stored in libraries and that too within minutes and hours, not even in days. What is necessary in this respect is the development of formal methods, and links between the headquarters of the ~~IPU and the~~ CPA and those of the legislatures and the Centres in countries where information is stored and from where information is disseminated. The sooner this is done, better will it be for the legislatures and legislators and the Governments and the people of the world.

There are different fields in which worldwide cooperation would be necessary and can be developed. New developments have opened new vistas and thrown up new problems in international cooperation.

So far, it is only the land and land resources which have been used. The Oceans and the Space and resources and potentialities in them have not been used on a large scale. With the development of new technologies and sciences, the possibilities of using them on an increasing scale have gone up many fold. The technologies and sciences in these areas are not yet fully developed. In many cases, the development of technologies without cooperation between advanced and developing countries may be slow. Cooperation between countries may speed up the required development. Between the countries of the world, there is no identity of views as to the rules and regulations and the international agreements and laws that should be followed, in using the new and enormous resources. What is necessary in this respect is the creation of new and enlightened approaches. The cooperation in these fields is going to be more paying and beneficial than the competition. However, the views may not be easily crystallised and the climate for cooperation may not suddenly or easily appear on the scene. Constant enlightened interaction and discussions at individuals, groups and institutional level, through delegates and Conferences may help. Through the United Nations, attempts are being made. Through the IPU and the CPA and national legislatures too, enlightenment can be generated and disseminated.

In the world, nothing is or has been more important and valuable than knowledge. In the present times, this is realised more clearly and poignantly than ever before. Upto this time, discussions for free and unhindered flow of commodities, goods and services have been taking place. Equally, the discussions for free and unhindered flow of knowledge—technological, scientific, managerial, cultural and spiritual—are important. Steps need be taken to facilitate the same. Something in this respect is being done. But, much more needs to be done. It would be useful to facilitate speedier movements in this direction.

The environment is responsible for creating, sustaining and protecting the Cosmos and the life. It is losing its balance and getting polluted because of ignorant interference by the human beings and forces unleashed by short sighted economic and other activities. If balance and harmony are disturbed beyond a certain limit, life itself may be difficult to sustain and continue. Therefore, before that limit is reached, it would be wise to understand the effects of what human beings are doing and to take corrective

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steps. Those who are advanced have been more responsible in upsetting the balance and the harmony. Those who are in the process of development have also been contributing towards the disaster, though more slowly. The knowledge of these aspects at all levels and in all parts of the world is the *sine qua non* for initiating steps to preserve and protect the environment. The efforts for the same have to be made simultaneously and co-operatively. The Parliamentarians can play a very effective and splendid role in this. These issues can be discussed formally and informally, any number of times. The greater the discussion, the better it is for the action to preserve and protect the environment.

Man does not live by bread alone. He needs culture and spiritualism to lead a meaningful life. Material prosperity alone is not enough. Cultural and spiritual advancement would be needed.

In different parts of the countries and the world, different climatic and geographical conditions, historical forces and interaction between them have given rise to a variety of cultures and attitudes towards lire and existence. This diversity is rich in substance and full of meaning. It should be protected, preserved and enhanced. However, at the same time, there is something, which is common to all cultures and every kind of spiritualism and unites them. This something should also be understood, protected, preserved and enhanced. In the world of today, an international culture and cosmic spiritualism would develop which would vouchsafe peace and prosperity, harmony and understanding and real happiness for humanity.

It would be necessary to take conscious steps to speed it up and see that it materialises sooner than later.

Should not the CPA members think about what has been done and what can be done and charter the course of cooperation in the present and future times? Yes, we think, it should be done.

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In many ways the Commonwealth is like a Mini-United Nations. We represent all the various components of our globe.

—Rajiv Gandhi

Parliamentary Democracy in India: Some Pre-requisites for its Success

Najma Heptulla*

Parliamentary system in India has over the years developed many intricate procedures and processes but of all these processes what really is the most significant is the process of institution-building. Parliamentary system has made our polity responsive to the public opinion. Parliament is primarily people's institution. It reflects their will and, therefore, it occupies a very important place in the entire power structure which concerns the governance of this country. In Parliament what we see primarily is the evolution of democratic institutions. For example, it is in Parliament we learn that speaker or the presiding officer has a very important place and every member must respect the dignity of this office. This, of course, is an extension of the tradition that was with us from ancient time which ordained that the Assembly and the Chair must be respected.

Parliamentary system also ensures accountability. Members are accountable to the people and the Government is accountable to the Parliament. In the executive we have political executive which comprises ministers. The other part of the executive is administration to which the civil servants belong. So far as the political executive is concerned it is the creation of Parliament. Ministers belong either to Lok Sabha or to Rajya Sabha. In case a minister does not belong to either House of Parliament, he has to seek membership of Parliament within six months of his assuming the ministership. The accountability of Ministers and the accountability of Government to Parliament through Ministers is direct. There are various parliamentary devices which are available to Members of Parliament both in Lok Sabha and Rajya Sabha which ensure the accountability of Government towards Parliament. Members can ask questions. They can raise matters under short duration discussions. They can move motions. They can also introduce bills and resolutions. In Lok Sabha, Members can move adjournment motions and No-confidence Motion. This, of course, is not possible in Rajya Sabha because Government is ultimately accountable to Lok Sabha for its survival. This, however, does not mean that Rajya Sabha is in any way a secondary chamber. Rajya Sabha has got special powers under the Constitution. For example, under article 249 of the Constitution if the Rajya Sabha adopts a resolution by a majority of not less than two-thirds of members present and voting, stating that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State list specified in the resolution, Parliament assumes power to make laws for the whole or any part of the territory of India in respect of that subject. Similarly, under article 312 if the Rajya Sabha passes a resolution by a majority of not less than two-thirds of members present and voting declaring that it is necessary in the national interest to create one or more all-India Services common to both the Union and States, Parliament acquires the power to create by law such services. In financial matters, particularly, with regard to Money Bills though Rajya Sabha has got less powers as compared to Lok Sabha, it however, plays an important role in the process of institution building which make Indian polity a successful democracy. In the Constituent Assembly the question regarding the utility of the second chamber was discussed and debated. There were members who believed that an Upper House would introduce an 'element of sobriety and second thought', but there were also those who considered Upper House as an impediment. After giving due thought to the question, the founding fathers of Indian Constitution favoured bicameralism as an essential feature of the Indian parliamentary system. As a deliberative and revisory chamber, Rajya Sabha has given a good account of itself.

Apart from various parliamentary devices available to a member under the Rules of Procedure to exercise control over executive, the strong committee system which exist in our Parliament also strengthens parliamentary oversight over the executive. The important financial Committees, namely, the Public Accounts Committee, the Estimates Committee and the Public Undertakings Committee do a remarkable job in controlling the executive. There are other standing Committees like Committee on Subordinate Legislation, Committee on Petitions, Committee on Papers Laid on the Table of the House which also look after the various activities of the Government. Through these Committees the administration is controlled by Parliament. Senior Civil Servants come to these Committees for evidence and furnish answers for the lapses that have occurred in the implementation of various policies approved by the Parliament. Recently the Committee system of Parliament has been strengthened by creating three important subject Committees, namely, Committee of both

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the Houses on Science and Technology and Committee of both the Houses on Environment and Forest. This was done in pursuance of the recommendations of the Rules Committee of Lok Sabha. Each of these Committees have 22 Members. 15 Members are from Lok Sabha and 7 members from Rajya Sabha. These Committees are to go into the working of the ministries and allied departments dealing with the subjects coming under the scope of these Committees.

Administration is, thus, made accountable to Parliament, for what it does and also for what it fails to do. The accountability of the executive on the floor of the Parliament operates through Ministers. A minister speaks for his ministry and is accountable to Parliament for any lapse on the part of his Ministry. For any such failure civil servants by name are not criticised. It is only the Minister who receives the criticism of the House. The Principle under which the anonymity of Civil Service operates is that those who cannot defend themselves on the floor of the House should not be criticised.

Tolerance is the hall-mark of parliamentary democracy. In parliamentary democracy Government has to be tolerant to the view-points of the members, however critical they may be in their assessment of the functioning of the Government. The primary function of the opposition in a democracy is to oppose the Government and while this important function is performed by the opposition no one should think that it is working against the national interest. Whether a member belongs to the ruling party or he is in the opposition, he serves the national interest. In this connection it would be appropriate to quote Sir Ivor Jennings who commented on the conflicts of principles between Government and the opposition thus:

> "Much of what is contentious is so only because there is a choice of alternatives, neither perfect, in which the opposition chooses the one because the Government chooses the other. Other proposals are contentious because the Government has one bias and the Opposition another, so that (for instance) a piece of legislation which either party might have introduced has particularly variant to suit 'ideology' of the party in power. It follows that much of the Parliamentary battle is shadow-boxing. The Opposition chooses issue on which it can, it believes, make propaganda."

This clearly shows that all members of Parliament irrespective of the fact whether they belong to the ruling party or the opposition must receive highest consideration because they represent the people. So far as the goals are concerned, whether it is the Parliament or the Executive, what is of real importance is to serve the people and to work for their welfare.

Governments are either based on discussions or on force. With force perhaps a dictator might be able to command greater obedience but in a parliamentary democracy higher importance is attached to discussion. Through discussion perhaps the speed may be slow in achieving goals but still this system is more suited to our country because it is responsive to the needs and aspirations of our people, as the late Jawaharlal Nehru, the first Prime Minister had once observed in the Rajya Sabha:

> "I think that the Parliamentary system of Government itself is a very good system. Of course, I believe in it. It is not so much that but the administrative aspects that delays, and there is no norm why we should not evolve administrative aspects which have proper parliamentary control, checks, etc. and yet do not delay."

Parliament is a body which controls public finance, appoints and dismisses Governments. Under its authority the laws are passed. While all these functions of Parliament are important but they are not an end in themselves. The Purpose of parliament is to make people live in peace and unity with one another and to achieve this purpose the executive also has to work in cooperation with Parliament. Therefore, the goals of Parliament and the Executive are common.

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India and the Commonwealth

Rabi Ray*

The Commonwealth is a free, voluntary, association of sovereign States once associated with Great Britain, each responsible for its own policies, consulting and cooperating in the common interests of their people and in the promotion of international understanding and world peace. In this respect, it is no different from the United Nations, but unlike the latter, it is not based on any treaty or any Constitution. The member States, who can join or leave the association at will, presently span over one billion citizens, i.e., a quarter of the world's population and are spread across the Continents and the Oceans. The strength of the Commonwealth lies in its diversity—diversity of region and race, diversity of culture and forms of government, diversity of size and stage at development, diversity of religion and ideology, diversity of priorities and challenges and problems. Each element of that diversity advances the vitality of Commonwealth; without each, the Commonwealth's value to its member States and its significance to the world community would be diminished. Thus, the Commonwealth is a multi-racial, multi-cultural and multi-lingual association of States.

The Commonwealth is not only an association of governments but also of peoples who, because of common historical ties with Great Britain and the British heritage, still have many things in common. They believe in the prime purpose of the Commonwealth to promote consultation and cooperation with one another for mutual benefit within the Commonwealth as well as outside. They also believe in and work for the success of the United Nations. The overwhelming majority of them belong to other regional or world-wide international associations—economic or political. Commonwealth membership is not an alternative, but a complement to other forms of international cooperation. Membership of the Commonwealth is compatible with the freedom of member governments to be non-aligned or to belong to any other grouping, association or alliance. Given this diversity, all members of the Commonwealth hold certain principles in common. It is by pursuing these principles that the Commonwealth continues to influence international society for the benefit of mankind. As a perceptive Commonwealth observer put it, "The Commonwealth cannot negotiate for the world but perhaps it can help the world to negotiate."

India has been an active member of the Commonwealth ever since it joined the association soon after independence. As a British colony, India's pre-independence membership of the Empire-Commonwealth was unique. Indeed it may have been India's anomalous position in the Commonwealth before independence that may have given rise to widespread public misapprehension in post-independence India, that Commonwealth membership compromised Indian independence in some way.

During the days of the freedom struggle, the leaders of the Indian National Congress had made it clear that they were opposed to British Imperialism, but not to the British people. Mahatma Gandhi said at the Second Round Table Conference in London, in 1931: "The Congress contemplates a connection with the British people. But that connection must be such as can exist between two absolute equals".

Thus, when Prime Minister Clement Attlee announced in the British Parliament that after Independence India would be free to leave the British Commonwealth, any reservation regarding imposition of British views on India disappeared. On attaining Independence, India decided to continue as a Dominion. However, India made clear its intention to become a Republic and pointed out that it could not agree to any allegiance to the British Crown. In order to accommodate India, Britain had to change the law with the concurrence of the other Dominions, like Australia, Canada and New Zealand. These difficulties were removed by a new formula devised by Nehru and Attlee. The name of the British Commonwealth was changed to Commonwealth by dropping the word 'British'. India agreed to the British Monarch's continuing as the symbolic head of the Commonwealth. Thus, India was joining as a Republic, not the British Commonwealth, but the Commonwealth—a free association of nations, of which India was to be an equal partner.

In December 1948, at the Jaipur Session of the Indian National Congress, a resolution was passed which said that India would welcome its free association with independent nations of the Commonwealth for their common welfare in the promotion of world peace. The Jaipur decision was a clear indication of the future set up. India very much preferred an association with the British Commonwealth which would not bind India to any commitments but which would help bringing nations together for the purpose of consultation and possible cooperation. The Constituent Assembly was assured that the policy of the Government of India in regard to the country's association with the Commonwealth would be strictly determined by the Jaipur

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Congress Resolution.

India's decision to retain Commonwealth membership constituted a major watershed in the evolution of the Commonwealth, establishing a precedent for non-white Republican membership. In urging the Constituent Assembly on 16 May 1949 to ratify the decision of India to continue to be a member of the Commonwealth, Jawaharlal Nehru said: "We join the Commonwealth obviously because we think it is beneficial to us and to certain causes in the world that we wish to advance. The other countries of the Commonwealth want us to remain because they think, it is beneficial to them".*

Jawaharlal Nehru, the principal architect of India's Commonwealth link, was fully conscious of the advantages of the Commonwealth membership. Strongly defending the Commonwealth link, he said: "If we are completely dissociated from the Commonwealth, for the moment we are completely isolated. We cannot remain completely isolated and so inevitably by stress of circumstances we have to incline in some direction or other". As the former Commonwealth Secretary-General Shridath Ramphal was to observe later, Nehru's words have great strength because common endeavour derives from a sense that it is inspired and sustained by the free will of free people and so would be a significant step towards global peace and cooperation. Nehru hoped the Commonwealth would bring a healing touch to a sorely troubled and divided world.

The determination to retain Commonwealth membership was one of independent India's first major foreign policy decisions which gave the country a greater access to both Britain and the United States and widened its scope for an important international role without committing New Delhi to a power bloc. The early fifties were the heydays of Indo-Commonwealth relations, despite periodic demands from sections to the left and right of the political spectrum to sever the tie on the issue of South Africa's racial policies and Pakistani attempts to introduce informal talks on the Kashmir dispute. India has been all through a very active participant in shaping the Commonwealth's role as far as various global issues are concerned. In this article, the emphasis will be mainly centred on three such issues, *viz.*, South Africa and apartheid, disarmament and the need for a new international economic order.

The new Commonwealth that emerged in the post-World War period consisted of many developing countries which were committed to bury the scourge of colonialism and racism. It recognises racial prejudice as a dangerous sickness threatening the healthy development of the human race and racial discrimination as an unmitigated evil of society. It opposes all forms of colonial domination and racial oppression and is committed to the principles of human dignity and equality. Thus, South Africa which practised apartheid found itself the subject of severe criticism by the Commonwealth in general and several member countries, including India, in particular. South Africa's apartheid policy elicited sharp criticism in the Commonwealth following the Sharpeville massacre on 21 March 1960 in which the South African police opened fire on a group of peaceful Black demonstrators and many of them were shot dead. India and most other members pointed out that apartheid was incompatible with the principles which Commonwealth was assured to embody. South Africa, sensing the mood of the member states, ultimately withdrew its application for continued membership.

The member countries of the Commonwealth, embracing peoples of diverse races, colour, languages and religious faiths, have long since condemned racial prejudice and discrimination as an abhorrent practice and are pledged to use all their efforts to foster human dignity everywhere. In keeping with the Commonwealth interest in monitoring developments in Southern Africa, a number of declarations have been issued on this question which include the 1977 "Gleneagles Agreement", seeking to isolate South Africa in sports and games, the 1979 "Lusaka Declaration of the Commonwealth on Racism and Racial prejudice" which proclaimed unanimous commitment to make strenuous efforts to eliminate racism within Commonwealth countries and to fight it more vigorously, the 1985 "Nassau Accord on Southern Africa", the 1987 "Okanagan Statement on Southern Africa and Programme of Action" and the 1989 Kuala Lumpur statement entitled "Southern Africa: The Way Ahead". The Commonwealth Committee of Foreign Ministers on Southern Africa, set up in 1987, has been an active forum in the fight against apartheid.

India has always been in the forefront of the campaign against the apartheid policies of South Africa. India has consistently stood by the people of South Africa in their struggle for basic human rights, freedom, equality and human dignity and has asked the racist regime to recognise the writ of history. In the New Delhi Summit meeting of the Commonwealth Heads of Government in 1983, India played a pivotal role in condemning South Africa. The Commonwealth then expressed its grave concern at the sharp deterioration of the situation in South Africa which endangered international peace and security. A resolution on the subject issued at that meeting said that the international community as a whole had an obligation to take effective measures to impose restraint on South Africa and to ensure that stability in the region was not jeopardised by further acts of aggression. It also called for the withdrawal

*For the text of Jawaharlal Nehru's speeches in the Constituent Assembly, Moving a Resolution on the Commonwealth Decision and replying to the debate on the Resolution *see* Appendix I and II at the end of this volume.

of South African troops from Angola and an end to all forms of assistance to subversive forces.

In the Commonwealth Summit at Vancouver in 1987, India called for a minimum programme of measures to curtail economic relations and end all military cooperation with South Africa and also suggested that if no progress resulted, these measures would need to be strengthened. In recent times, India has welcomed the release of Mr. Nelson Mandela, after a quarter of century behind bars, and also welcomed the talks initiated between the African National Congress (ANC) and the South African Government to clear the way for negotiations on a new non-racial Constitution. India hopes that the South African Government will urgently deal with the various problems, in order to remove this threat to the process of peaceful change. It is worth mentioning here that India as also the Commonwealth had played a very crucial role in Namibia's tryst with freedom. Meanwhile, India continues its relentless campaign within the Commonwealth and outside to ensure that apartheid is eliminated once for all as it is convinced that the Commonwealth can play a significant role in ensuring that apartheid is dismantled fully and completely.

So far as steps towards disarmament are concerned, India feels that the world at large and the Commonwealth in particular has a high stake in achieving the goal of a general and complete disarmament under effective international control. Commonwealth, ever since it was constituted, has been concerned with the problems of international peace and security and the independence, sovereignty and territorial integrity of small countries. Believing that "international peace and order are essential to security and prosperity of mankind", the Commonwealth has supported the United Nations and sought to strengthen the forces of peace in the world and efforts to remove the causes of tension between nations.

At the New Delhi Summit of the Commonwealth Heads of Government, a separate document called the 'Goa Declaration on International Security' was issued pledging that the Commonwealth would make a political contribution in encouraging the two super powers to promote international security and understanding by ending the prevailing fear and mistrust. In order to arrest the trend towards incessant increase in global arsenals, India, along with Argentina, Greece, Mexico, Sweden and Tanzania, launched a six-nation five-Continent initiative in 1984, to mobilise world opinion to halt and reverse the nuclear arms race. In the same spirit, India and the Soviet Union signed the Delhi Declaration in November 1986, embodying a joint vision of the future of mankind in a nuclear weapons-free and non-violent world. These ideas were carried forward and presented in a concrete time-bound Action Plan for ushering in a world without nuclear weapons, which India presented to the United Nations in 1988. India also continues its efforts within the Commonwealth to ensure that the association plays a meaningful role in achieving international peace and security, especially with the changing global scenario in the wake of super power detente and developments in the European continent.

India believes that in the wider interest of peace, all powers should accept and strictly observe the principles of peaceful co-existence, non-intervention and non-interference in the promotion of which the Commonwealth could play a meaningful role. The Commonwealth endeavour towards disarmament is best exemplified in the Nassau Declaration on World Order which was adopted in Bahamas in 1985, at the United Nation's 40th Anniversary. The Nassau Declaration underlines the Commonwealth's common cause with the United Nations in giving collective security a practical meaning under a system of world order sustained by the rule of law. Political developments on all sides continue to demonstrate the need for such a system—and more than ever, in particular, for small States.

Economic Cooperation is one of the principal objectives of the Commonwealth. The Singapore Declaration of Commonwealth Principles (1971) specifically affirms:

> We believe that wide disparity in wealth now existing in different sections of mankind are too great to be tolerated. They also create world tensions; our aim is their progressive removal; we, therefore, seek to use efforts to overcome poverty, ignorance and disease, in raising standards of life and achieving a more equitable international society. To this end, our aim is to achieve the freest possible flow of international trade on terms fair and equitable to all, taking into account the special requirement of the developing countries and to encourage the flow of adequate resources, including governmental and private resources, to the developing countries, bearing in mind the importance of doing this in a true spirit of partnership and of establishing for this purpose in the developing countries, conditions which are conducive to sustained investment and growth.

In pursuance of this Declaration, the Heads of Government at the Kingston Meeting in 1975 set up a Group of Experts to evolve a comprehensive and inter-related programme of political activity directed at closing the gap between the rich and the poor. India took the initiative to discuss how the South could cooperate with the South, a dimension of cooperation which was explored at the Arusha Meeting of the Group of 77 in 1979. It also took the initiative to set up a summit-level group of 15 developing nations to try to evolve a coordinated approach by the South on global economic issues and for intensification of South-South cooperation.

Trade is the other area in which cooperation between

developed and developing countries is vital. The need for trade promotion between them had attracted the attention of the Commonwealth way back in 1932. Thus, a Commonwealth Preference Scheme was initiated and was in operation for years. The countries in the Commonwealth, with their differentiated economies, are even better placed to trade with each other. India strongly feels that trade and technology transfer is a constructive basis of expanded cooperation among developing countries within the Commonwealth.

The New Delhi Summit in 1983 reviewed the developments in the world economy and paid special attention to monetary and financial issues, protectionism and the status of the North-South Dialogue. It also stressed the need to take urgent and comprehensive action to deal with the grave problems facing the world economy, and a high-level consultative group was set up to pursue the matter.

In early 1983, the then Commonwealth Secretary-General Shridath Ramphal set up a group of nine leading bankers and economists to examine international trade and payments system. It proposed wide-ranging measures to secure greater international cooperation, improved co-ordination of policies of international institutions and the larger role for institutions like the IMF and the World Bank. India is hopeful that the Commonwealth will continue its efforts to attain the noble goal of a new international economic order.

Protection of the environment has become an issue of public concern on a global scale. The global environment cannot be separated from the political, economic and moral issues posed by a world in which there is great wealth and also great poverty with states that range from great powers to vulnerable micro-states trying to co-exist and with only tenuous legal and institutional arrangements preserving international order. The Langkawi Declaration on Environment adopted in 1989 expressed the deep concern of the whole Commonwealth on the threat to the present and future generations posed by the serious deterioration of the environment. The Declaration agreed to a 16-point programme of action calling for co-ordinated joint global effort by all levels of society to meet this threat. The Commonwealth feels that environmental needs should be viewed in a balanced perspective which accorded due emphasis for promoting economic growth and sustainable development, eradicating poverty, meeting basic needs and enhancing the quality of life. India's proposal for a Planet Protection Fund, unveiled at the Non-aligned Summit in Belgrade in September 1989, also found favour with the Kuala Lumpur Summit leaders. A major commitment to act collectively and individually to save the environment was made at Kuala Lumpur and an action plan for the *Langkawi Declaration*, drawn up by the Secretariat, was formulated to co-ordinate all secretarial activities in this field. It is bringing together all its Divisions which already have ongoing programmes to enable them to plan joint projects and maximise their effectiveness. It is a happy augury that the Commonwealth Secretariat is also working to strengthen the capacity of member States to tackle the deterioration in their environment and is putting together technical assistance programmes for this purpose.

In addition to the linked challenges of poverty and the environment, other new areas are clamouring for attention at the head of the global agenda which could well be taken up by the Commonwealth in all earnest. The menace of illicit drug trafficking received attention at both the Nassau and Vancouver meets. In the light of these discussions, there has been encouraging Commonwealth co-operation in the legal and enforcement fields covering, but not confined to, drug-related matters. A major landmark was the adoption by Commonwealth Law Ministers in Harare in 1986 of the scheme for mutual Assistance in Criminal Matters between Commonwealth Jurisdictions which, Heads of Government in Vancouver agreed, should provide for the international enforcement of the confiscation of criminal proceeds, a measure aimed particularly against the drugs trade and its vast profits. The Secretariat has also focussed assistance on women and young people working against drug abuse and towards training needs. Today, the Commonwealth is drawing closer together in the fight against drug abuse and trafficking. Heads of Government in the Kuala Lumpur meet agreed that the capacity of relevant international agencies combating the problem needed to be strengthened so that they could effectively support UN efforts to counter the drug menace, a view which is wholly endorsed by India.

India feels strongly that the Commonwealth ought to further strengthen the Commonwealth Fund for Technical Cooperation (CFTC) which was established in 1977. The Fund provides assistance on a multilateral basis to member countries, in economic and social development. The main objective of the CFTC is to provide technical assistance in the form of advice, expertise and training to developing Commonwealth countries, India's contribution in Indian rupees is used for training of the nationals of other Commonwealth countries in India, under the education and training programme.

At the beginning of 1989, the Commonwealth of learning, an endeavour which had the full backing of India, was launched. This pioneering venture for co-operation in distance education links institutions all over the Commonwealth, enabling them to share programmes. It also helps in strengthening distance education by training staff, adapting courses and producing materials among the Commonwealth countries. This is one other area of further cooperation which the Commonwealth could undertake. India is also keen that there should be greater cultural interaction among the Commonwealth countries. This is more so because the Commonwealth abounds in cultural diversity.

Intensified cultural cooperation in the form of exchanges of delegations, etc. could go a long way in a better understanding of the institution of Commonwealth among the peoples of the member States.

On a different plane altogether, India best exemplifies the Commonwealth's commitment to the promotion of parliamentary and democratic ideals by virtue of its being the largest working democracy in the world. The Indian Parliamentary Group (IPG) has been actively involved in the activities of the Commonwealth Parliamentary Association (CPA). The CPA aims to promote understanding and cooperation among the members of its 112 branches in national and state legislatures in the Commonwealth and to strengthen parliamentary institutions. These goals are sought to be met through annual conferences, regional conferences, parliamentary seminars and the publication of the quarterly journal, 'The Parliamentarian' and regular Newsletters on Parliamentary and Association affairs. The annual conference is a unique opportunity for parliamentarians to exchange views on the major political issues. We in India have had the proud privilege of hosting the CPA Conferences in 1957 and 1975 and are now hosting this prestigious Conference again in 1991. India had successfully organised the Commonwealth Speakers' and Presiding Officers' Conference in 1970 and again in 1986 as also several regional conferences and parliamentary seminars. The IPG continues its involvement in the CPA's programmes of consultation and cooperation.

It is thus obvious that in the context of the problems and issues of the present and the future, the Commonwealth has evolved into a significant and dynamic association. Its multi-racialism, its practice of consultation, discussion and cooperation, its commitment to international understanding and peace, its support for the purposes and principles of the United Nations, its recognition of non-alignment as a distinctive policy and its concern for the resolution of North-South issues—all these reflect its unmistakable dynamism and breadth of outlook. The Commonwealth has also shown a rare capacity to grasp and identify itself fully with the present and to anticipate the concerns and issues of the future without imposing any excessive expense or constraint on its member nations. Within the Commonwealth, India seeks to play a role consistent with its inherent strength and its commitment to the values of freedom, democracy, secularism and economic inter-dependence. At the present juncture, when the world is gradually moving from conflict and confrontation to dialogue, mutual understanding and peaceful cooperation, India feels that the Commonwealth is uniquely placed to make useful contribution towards making the world a better place to live in. India can justifiably take pride in the fact that the Commonwealth today offers a ray of hope to the peoples of the world, for India has always played a crucial role in the evolution of this association.

It may thus be seen that we in India visualise the Commonwealth as an antithesis of a power bloc, but we strongly feel that in the changing international scenario, the Commonwealth can help build bridges of understanding among differing perceptions on global issues because the Commonwealth covers such a wide spectrum of the world's peoples and leaders. Way back in 1976, former Secretary-General of the Commonwealth, Shridath Ramphal, stressed the potential of the Commonwealth in the following words:

> It is a Commonwealth...that cannot but be concerned with all the great problems of mankind—for there is no area of global concern that does not touch some Commonwealth country intimately and directly... It is thus a Commonwealth that has to be outward-looking, perceiving itself in its global environment and acknowledging a responsibility to contribute to the search for solutions to global problems. It is a Commonwealth that must see itself as an enlightened plural community ready to place at the disposal of a wider humanity the special and unique facilities for dialogue, understanding, cooperation and consensus with which its experience and diversity endow it.

What Shridath Ramphal said in 1976 holds good today too. And this precisely is what India envisages as the role of Commonwealth in the years ahead.

Jawaharlal Nehru, who has been acknowledged by all Commonwealth historians as the one world leader who contributed the maximum towards the evolution of the Association as we see it today, in a speech to the CPA Conference in New Delhi in December 1957, observed thus:

> What is the purpose at present of the Commonwealth? It is not an easy question to answer and, perhaps, the answer which different people may give will not be the same. But the fact remains that all these varied people in the various continents, different in so many ways, in religion, in the way of living, in the shade of the colour of their countenance, meet and confer together, and have some kind of a link: this is the Commonwealth link.
>
> ...Even though we differ sometimes rather strongly and have problems amongst ourselves, apart from the way we look at the problems of the world, we meet and discuss in a friendly way trying to find a way of cooperation, and we frequently succeed in finding one; even when we do not find that way of cooperation in any matter, we still hold together, not trying to exaggerate the differences but rather to lay the emphasis on the points of unity.

...What strikes me about the Commonwealth is not so much the points of likeness, which are many, of course—otherwise we would not be together—but rather the points of difference which have not been allowed to come in the way of our meeting, conferring, consulting and cooperating with each other in a large measure. And if that is good for the Commonwealth, it should be good for others also, and good for the world at large.

And this could well be the message the Commonwealth has to spread the world over in the years to come.

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People of Asia and Africa are so close to each other—and they have passed through difficult times for centuries—that it is natural for them to sympathise more with one another than other countries do and such organisations as help the best of relations between the people of these countries are necessary.

—Dr. Rajendra Prasad

The Legislature in West Bengal

H.A. Halim*

The present Legislature in West Bengal is uni-cameral, consisting solely of the West Bengal Legislative Assembly. The Constitution of India provided for a bi-cameral Legislature for West Bengal, that is, a Legislative Assembly and a Legislative Council and both of these were constituted after the first General Elections in 1952. The Legislative Council was in existence until July 1969. On the 21st March 1969 a Resolution was passed by the Legislative Assembly for the abolition of the West Bengal Legislative Council under Article 169 of the Constitution and accordingly the Parliament passed the West Bengal Legislative Council (Abolition) Act, 1969 abolishing the West Bengal Legislative Council with effect from the 1st August, 1969.

After the formation of the new Legislature under the Constitution of India in 1952, a Branch of the Commonwealth Parliamentary Association was formed for the Legislature of West Bengal in pursuance of a resolution passed by the West Bengal Legislative Assembly on the 5th August, 1952 and by the West Bengal Legislative Council on the 6th August, 1952. In fact, there was a Bengal Branch of the Commonwealth Parliamentary Association since 1939 but after partition of the province on the eve of independence, it ceased to function. It was formed again in 1952.

It may also be mentioned that from the 1954 August-September Session of the Legislature the Automatic Vote Recording Equipment came into operation with complete success.

In the first Assembly, constituted after the General Election in 1952, the number of members of the Assembly was 240 including two members nominated by the Governor from the Anglo-Indian Community under Article 333 of the Constitution of India. The total number of members in the Tenth House recently dissolved was 295 including one Anglo-Indian Member nominated on the 6th May, 1987, under Article 333 of the Constitution of India. The strength of the Assembly had been increased in accordance with the provisions of the Constitution.

The Rules of Procedure of the West Bengal Legislative Assembly which were in force before the commencement of the Constitution were adopted by the Speaker, with necessary modifications, in pursuance of clause (2) of Article 208 of the Constitution of India when it came into force on the 26th January, 1950. Since then, important modifications have been made in these Rules.

As to the Legislative powers of the West Bengal Legislature and for that matter of the Legislatures of all other States of India (with exception of Jammu and Kashmir), the Legislative and Executive authority of the States have been delimited to the State and concurrent Lists in the Seventh Schedule of the Constitution. But too large a field has been assigned to the Union for the operation of its Legislative and executive authority. The field assigned to the States is rather small and even then provisions have been enacted in the Constitution which give the Union over-riding powers in respect of many of the important State Subjects. Having witnessed the partition of the Country, a fearful Constituent Assembly included these measures with a view to providing for a strong union. How far that purpose has been fulfilled is another matter. But the achievements of the West Bengal State Legislature or of any other State Legislature in our Country should be evaluated against this background.

Despite the basic constraint as aforesaid the West Bengal State Legislature has worked for upholding the prestige, dignity and powers of the Legislature—that is, of the people. In order to provide for a closer scrutiny of the functions of the Executive and for ensuring a more effective accountability of the Executive to the Legislature, the West Bengal State Legislature has made some important innovations in its Committee System. Besides, the usual Committees of the House, Subject Committees on some of the major Budget heads of expenditure have been set up. The Rules of Procedure and Conduct of Business have been amended to provide for reference of Demands for Grants to these Subject Committees before these are debated in the House. These Subject Committees have been set up on Panchayat, Education, Health and Family Welfare, Transport, Irrigation and Waterways, Welfare and Environment.

Thus an important procedural innovation has been made with regard to the discussion and sanction of the Budget demands. After the Speech of the Finance Minister introducing the Budget in the Assembly, all the Demands for Grants are moved together. At the conclusion of the General Discussion on the Budget, the Demands for those Grants for which Subject Committees have been set up stand referred to the appropriate Subject Committees and after the reports of these Subject Committees are submitted to the Assembly, the discussion on these Grants take place. The Demands as initially submitted to the Assembly may be altered, amended or reallocated among different sub-

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heads by the Subject Committees, of course, keeping the total amount of Grant demanded unaltered and these recommendations are given effect to as far as practicable. Thus a system of prior scrutiny of the Budget before it is passed by the House has been at work since 1989. This necessarily involves some delay and the debate and adoption of the Budget cannot be completed before the commencement of the financial year for which the Budget has been presented. In order therefore to comply with the Constitutional requirement a Vote on Account for the expenditure for three months along with an Appropriation Bill for the same is passed by the Assembly and the Budget Session continues. This gives the Members adequate time as provided in the Rules for a full and detailed discussion on the Budget. Perhaps, the Budget Session of the West Bengal State Legislature is the longest compared to the other State Legislatures in the Country.

Another important convention which has been firmly established in the West Bengal Legislature is that the opposition is allowed half of the entire time of the House, irrespective of the numerical strength of the opposition. It is recognised in actual practice, that the House belongs to the opposition and the principle that the other side must be heard is upheld. An analysis of the proceedings of the West Bengal Legislature since 1977 will show that the major portion of the Questions, Calling Attention Notices, entertained and replied to in the House, came from the opposition. So also is the case with Motions and Resolutions.

The West Bengal State Legislature considers that its rights and privileges are the rights and privileges of the people and these must be upheld. It would be relevant here to give a notable instance of the approach of the Legislature in this matter.

In 1967, when the United Front Ministry was in office in West Bengal, Shri Dharma Vira, the then Governor of this State, dissolved the United Front Ministry and appointed a new Council of Ministers headed by Dr. P.C. Ghosh without recourse to the Assembly and summoned the Assembly on the advice of Dr. P.C. Ghosh. Immediately *after the Assembly met on 29th November, 1967, Shri Bejoy Kumar Banerjee, the then Speaker, adjourned the* House *sine die* on the ground that the dissolution of the United Front Ministry, the appointment of Dr. P.C. Ghosh as Chief Minister and the summoning of the House on Dr. P.C. Ghosh's advice were "unconstitutional and invalid" as they had been "effected behind the back of the House". Shri Banerjee in his ruling cited a precedent of the Bengal Legislative Assembly. In March 1945 the then Government of Bengal was defeated in a vote taken on the demand for a grant in respect of Agriculture. The question arose as to the constitutional consequence of such a defeat. Shri Syed Nausher Ali, the-then Speaker of the Assembly ruled that the Council of Ministers headed by Shri Nazimuddin (the-then Chief Minister) could no longer function as a Council of Ministers as it had lost the confidence of the House and observed, *inter alia* "The Ministry is the creature of the House; this House can make and unmake the Ministry and the Governor is but the registering authority of the decision of the House. Any other course, I am afraid, would strike at the very root of democracy." Referring to this ruling of Speaker, Shri Syed Nausher Ali, Shri Bejoy Kumar Banerjee observed, *inter alia*, "No doubt the circumstance facing Shri Syed Nausher Ali were different. But the essence of the matter, namely, that this House is the supreme authority in regard to making and unmaking of Ministries, is the same. And this Statement came from the lips of a presiding officer of this House when India was not free. To-day when the sovereign Indian people have given unto themselves a Constitution, surely the authority of this House has increased and not diminished.

"Honourable Members will appreciate that the Constitution and the Rules of Procedure charge me with the high responsibility of protecting the dignity and privileges of this august Assembly. And I would be failing in my duty if I did not uphold the rights and powers of this House in the face of attempts to infringe and restrict such rights".

The West Bengal State Legislature continues to maintain this high tradition.

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The Council Chamber, Shimla

Thakur Sen Negi*

Council Chamber, Shimla: The simple yet stately building has a past as well as a present to be proud of. And it hopes for a future even better.

At present, it has, eversince July 1, 1963, been housing the Legislative Assembly of Himachal Pradesh, the border State of the Union of India adjacent internationally to China (Tibet). It has always accommodated an "Assembly" and not a "Council". Yet the name "Council" Chamber and not "Assembly" Chamber has persisted. Historically, it seems that when the building was conceived and the foundation stone laid the concept of a "Council" was still in the air, but by the time the edifice was completed and came to be inaugurated by Lord Reading, the then Viceroy of India, on August 21, 1925, the idea of a Council no longer held the field alone and, side by side, the notion of an Assembly had arrived in practical form. However, the survival of the word Council is pregnant with the previous history of legislative growth in India under the British.

The public need for consultation in running the polity was first recognised under the Charter Act of 1853. The consultative body was formerly officially called a Council. It was advisory in matters executive as well as legislative. The first Council was constituted in 1854. The Government of India Act, 1919 marked a basic departure from these earlier institutions of a highbreed hue. While the Executive Council continued, a Legislative Assembly stepped in to take over legislation.

Shimla was the summer capital of the British Imperial Government of India and the Assembly had to be provided appropriate accommodation at Shimla for the summer season. An interesting anecdote is on record pertaining to the Committee of 15 representing all parts of the country convened to discuss the issues about the location and construction of the building in Shimla. The conclusions were unanimous but for a solitary member. When asked why he had dissented and preferred the hot climate of Delhi even in summer, he is said to have replied that he would not be present in any case because he had no intention of joining the new Assembly!

A number of internal changes have since been effected, but the chair of the Presiding Officer remains the same. It is said to have been gifted to the Central Legislative Assembly of India by the then Government of Burma and was made of the renowned Teak. The first to occupy the Chair was the illustrious President (as the Presiding Officer was then designated) Vithal Bhai J. Patel.

In 1947, after the Partition, the East Punjab Government shifted to Shimla and the Punjab Assembly held its first meeting in this building and stayed here upto 1953 when it moved to Chandigarh. The Assembly of the Part-C State of Himachal Pradesh used to sit in Shimla, holding its meetings in a part of the Viceregal Lodge. In 1952 the building was handed over to the Himachal Pradesh Assembly. When the Himachal Pradesh Assembly was dissolved on October 31, 1956, following the report of the States Reorganisation Commission, turning Himachal Pradesh into a Union Territory under a Lieutenant Governor, and in consequence of the building in which the Himachal Pradesh Administration Secretariat was located got gutted by a conflagration, the Council Chamber became temporarily the Secretariat of the said Administration. For some time the All India Radio was also housed in a part of the lower flat. The premises were restored to the original destiny on July 1, 1963 when the new Assembly, the Himachal Pradesh Vidhan Sabha, re-occupied the building. The first Session of the first Vidhan Sabha was held here on October 3, 1963. Reckoning from this date the Assembly celebrated its Silver Jubilee function to commemorate the completion of the 25 years of its existence on 27th October, 1988.

During the times of the short lived tactical participation of the Indian National Congress through its adhoc offshoot named the "Swarajist Party", the Chamber resounded with the parliamentary orations and seasoned debates of titans like Pt. Moti Lal Nehru, Pt. Madan Mohan Malaviya, Shri Satya Murti, Shri Bhula Bhai Desai and Mr. Mohammad Ali Jinnah who later became the Head of the State of Pakistan when India was partitioned to carve out the new country.

This short interregnum of election politics, on the part of the Indian National Congress, to strive for independence from within the legislature alongside the open struggle in the field, was marked by some striking features long to remember in the progress of the fight for freedom. Led by Pt. Moti Lal Nehru, the Leader, the Swarajist Party got a resolution passed recommending to the Governor General in Council to take immediate steps to move His Majesty's Government for a declaration in the British Parliament embodying certain fundamental changes in the then constitutional machinery and administration of India. The Crown was reminded that the ultimate goal was independence. "India is determined to win freedom. The manner and measure and the time either you determine in a reasonable spirit or else she will determine for herself". The beauty

*Hon. Thakur Sen Negi, Speaker, Legislative Assembly, Himachal Pradesh.

of India's Struggle for freedom, under the leadership of Mahatama Gandhi was that constructive social activity went on parallelly with the political fight for independence and the Central Legislative Assembly passed another historic resolution in this Council Chamber, this time pleading for franchise for women. In this, the credit was shared both by the Swarajist and other political leaders and the official benches. Actually the resolution was moved by Sir Alexander Mudiman, the then Home Member. Mr. B. Dass, supporting the resolution observed that every legislature would welcome the advent of women into the legislative arena.

President Patel set the tone in many things. Immediately on his election he declared, "From this moment, I cease to be a party man. I belong to no party. I belong to all parties.....". If the Speaker at Westminster has to hold high the rights of the Commons, as he had, at times in past history, had to do at the risk of his life and limb, President Patel had to and did set his sights high in asserting the independence of the fledgeling representative Central Assembly of a subject nation against the British Imperial might and the present Indian Speaker has to protect the independence of the legislature against the Executive and the Ruling Party bosses. On not a few issues and occasions did Shri Patel come into conflict with the Imperial Government, making headlines in the newspapers. Yet, and it speaks well of the sense of respect for the parliamentary system ingrained in the British blood, the second time Shri Patel was elected President it was a unanimous election, the official block joining hands with the non-official members. This time Shri Vithal Bhai Patel had declined his party ticket and won his election to the Assembly, as an independent.

Thus he was the first truly independent Presiding Officer. However, this graceful act of a foreign Government, ensuring uncontested election of the Speaker, has, unfortunately, not been followed by the Opposition parties in India. Another of the notable achievements of President Patel was the passing of a resolution for the creation of a separate legislative Assembly Department under the President. Setting the ball rolling, he had declared "I am responsible to the Assembly and no other authority". By a compromise between the Assembly and the Government it was decided to create the department legally in the portfolio of the Governor General but retaining defacto control of the President. He ordered the galleries of the House closed till a settlement of the issue with the Government. Ultimately Government control of the inner precincts was replaced by the control of a Watch and Ward Establishment responsible to the President. Today the Speakers of India do have a separate Secretariat but the arrangements still fall short of the complete independence of the Legislative Secretariat.

The Himachal Pradesh State Assembly, successor, in occupation of this building, the Council Chamber, Shimla-171 004, to the Central Legislative Assembly of President Patel's days, the first to occupy the building, enjoys the reputation, by comparison, of being among the better behaved legislatures in the country. As recently as the 14th of February, 1991, in an atmosphere where turbulence has been the order of the day in many of the other legislatures, things degenerating even to physical obstructions to the constitutional and formal annual address by the Governor, the conduct of the Opposition in the Himachal Assembly, on the occasion of the address by Himachal Governor, was praised all round. An editorial in the *Tribune*, one of the historically most respected English Dailies of India, aptly summed this up in these words: "It is heartening to see legislators agreeing to such premeditated good behaviour. Considering the 'Parliamentary behaviour' of our legislators all over India, this must be quite an 'unparliamentary' precedent set by the Himachal Opposition by deciding to allow the orderly conduct of the House." The Opposition had stayed away rather than join the sitting and misbehave there. In the editorial the words "parliamentary" and "unparliamentary" have, obviously, been used sarcastically.

A noisy phenomenon called the zero hour has sprung up over the years in many legislatures of the country. Immediately after the question hour it is a free for all. Any number of the Hon'ble Members may stand speaking, shouting and gesticulating, all at the same time, the din and confusion at times being so great as not to leave anything spoken clearly audible even in the Press Gallery. The "Hon'ble Speaker" often has to yield the Floor to those so shouting, rather than the shouters respecting the fact that the Speaker is on his legs pleading in vain for the others to resume their seats and listen. The Himachal Pradesh Assembly is one of those few legislatures in the country where the zero hour is neither allowed nor practised.

Relating to atmospheric temperature we have the zero degree and then, corresponding to the scale above zero, there is a whole scale of sub-zero degrees. In this zero hour, respect for parliamentary procedure is, of course, always down to the zero. What is worse, here also the temperature not unoften dips to sub-zero degree scales.

Rule 311 of the Rules of Procedure and Conduct of Business of the Himachal Pradesh Legislative Assembly, 1973, allows special mention by raising any matter of public importance which is not a point of order. Presumably the other State Legislatures have also a similar rule. Handled well in a fair and reasonable manner by all concerned, the resort to this rule obviates any decent need for the zero hour. In Himachal Pradesh the Ministers have cooperated admirably and no occasion for a zero hour has arisen.

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Critical Functions of the House

D. Manjunath*

India has adopted the Parliamentary system of Government of the British type. In a Parliamentary system of Government, decision is taken in the Legislature after discussion and the minority is able to have its say and the majority its way. Parliamentary system of Government therefore is essentially a Government by discussion and debate.

The functions of the Legislature are legislative, financial and critical. Elaborate rules have been prescribed by the Houses of Legislature for the discharge of the various functions.

Critical functions are of various kinds. Members can put questions and elicit answers, call the attention of a Minister to a matter of public importance, move an adjournment motion to discuss a matter of urgent public importance, raise a discussion for short duration on a matter of public importance, move a no-confidence motion on the Ministry, move amendments to various motions and resolutions moved by the Government and others, give notice of resolutions urging the Government to do something or not to do something and participate in the discussion on matters brought by the Government and others. The primary function of the Legislature is to examine Government activities in relation to the policies adopted by the Legislature.

Asking questions has become an important feature of the Parliamentary system of Government. In the British House of Lords the first question was put in 1721. In British India, Legislative Council was established in 1853 under the Charter Act of 1853. Though the main object of the Council was legislative, members began to put questions on the propriety of the measures of the Government. This embarrassed the British Government. Sir Charles Wood while piloting the India Council Bill in 1861 in the House of Commons said: 'The Council quite contrary to his intention had become a sort of debating society or petty Parliament. It was certainly a great mistake that a body of twelve members should have been established with all the forms and functions of a Parliament, they had standing orders nearly as numerous as the House of Commons had; it had impeded business, caused delay and assumed the functions of Parliament'.

In India, Legislative Councils were first established in 1861. Their function was strictly legislative. No questions could be put. With the Indian Councils Act of 1892, these Councils were given the privilege of putting questions to the Executive branch. While speaking in the House of Commons, Lord Curzon said that it was proposed to give the right of asking questions on matters of public interest. He added that it was desirable in the first place, in the interest of the Government, which at the present moment was without the means of making known its policy or of answering criticisms or animadversion or of silencing calumny and it was also desirable in the interest of the public of India who, in the absence of official information, were apt to be misled, to form erroneous apprehensions and to entertain unjust ideas. In the Indian Legislature the first question was asked in 1894. Though the members were given the right to put questions they were not given the right to put supplementary questions. Lord Morley recommended that asking of supplementary questions should be allowed as without these, a system of formal question met by formal replies inevitably tended to become unreal and ineffective and in an Assembly in which, under proper safeguards, free discussion and debate is permitted and encouraged there can be no sufficient reason for prohibiting that method of eliciting information and expressing indirectly the opinions and wishes of the questioners. Thus, under the Council Regulation of 1909, supplementary questions were permitted to be asked by the author of the original question. The other members were given the privilege of putting supplementary questions much later.

The object of questions is to elicit information. But its clever use has indirectly extended questions to a variety of other purposes, such as to expose abuses, to ventilate grievances, to extract promises and to embarrass the Government. These are some of the most effective methods of controlling the executive. The questions bring the work of the Departments into the public view. It makes them realise that they are functioning under a close public scrutiny which will continuously test their efficiency and honesty. It mitigates, even though it cannot wholly prevent, the danger of developing bureaucratic bottlenecks and lethargy in the service. Sometimes questions would reveal a defective state of affairs. The Minister is made aware that his answers have proved unsatisfactory. He feels that he must go further than the answer his Department is able to render.

Questions are either starred questions or unstarred questions. For the starred questions replies are given by the Ministers in the House. Supplementary questions could be put after the Minister's reply. In the case of unstarred

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questions the replies are placed on the table of the House. No supplementary questions can be put. A period of notice is prescribed for questions. If a Member wants a question to be answered earlier, he has to give a short notice question. If the concerned Minister doesn't agree to answer the question at short notice then the question will not be treated as short notice question.

If a member desires to have elucidation on a matter which has been the subject of a question whether starred or unstarred he may raise a discussion for half an hour.

The device of calling attention to matters of urgent public importance was introduced by the Lok Sabha in 1954. Prior to this, members had to resort to either putting questions or move an adjournment motion. The device has combined the asking of a question for answer with supplementaries and short comments where all points of view are expressed and the Government had opportunity to state its case. Members could criticise the Government and expose the failure or inadequate action on important matters.

Provision was made, in 1921 to move adjournment motions to discuss definite matters of urgent public importance. Apart from getting information from Government and raising discussion, an adjournment motion involved an element of censure. The test for admission of an adjournment motion is whether the subject matter of the motion has created an emergent situation of such a character that there is prima facie case of urgency and the House must therefore leave aside all other business and take up the consideration of the urgent matter.

An adjournment motion should relate to some matter where the Government had failed to do something which they should have done or done something which they should not have done. Without the involvement of Government's responsibility an adjournment motion cannot be admitted. Matters of day to day administration cannot be subject matters of adjournment motions. The matter should relate to a single specific matter and it should have factual basis. Further, the matter must be urgent. It should have arisen suddenly in the nature of an emergency. It must have happened recently and should be raised at the earliest moment. The matter should also be of public importance.

A member could raise a discussion for short duration on matters of public importance. If the Speaker is satisfied that the matter sought to be raised is urgent and is of sufficient importance, he would allow the matter to be raised. There is no motion and no voting takes place. There is only discussion.

Article 164 of the Constitution provides that the Council of Ministers is responsible to the Legislative Assembly. A motion expressing want of confidence in the Council of Ministers can be moved as the Constitution has provided for collective responsibility. The object of the no-confidence motion is not only to defeat the Government but also to expose the various acts of omission and commission of the Government. Leave of the House is necessary to decide on the admissibility of a motion of no-confidence. The discussion on such a motion is not confined to the matters referred to in the notice of the motion. Members can raise other matters also. If the motion is carried, the Ministry has to resign.

Sometimes censure motions disapproving policy of the Government in respect of a particular department can be moved by Members. Members can also move resolutions on matters of general public interest. The right of moving resolutions was conferred in 1909 on account of the Minto Morley Reforms. A resolution may be in the form of a declaration of opinion or a recommendation. It might record the approval or disapproval of the House of an act or policy of Government.

Resolutions of members are taken up for discussion on a day reserved for transacting non-official business. The relative precedence of resolutions to be taken up is determined by a ballot. Members can give notice of Bills. If it is a Money Bill the recommendation of the Governor is necessary for its introduction and consideration. In the case of a Financial Bill also the recommendation of the Governor is necessary for consideration. There are several cases where Bills brought by members have become law.

The Governor addresses the Legislature at the commencement of the First Session of the year. After the address, a motion expressing thanks to the Governor is moved and there is discussion on that motion. Members participate in the discussion. The scope of discussion is very wide and the entire administration is thrown open to discussion. Members can also move amendments to the motion of thanks. If an amendment of substantive nature is carried it would amount to censoring of Government policies.

The Finance Minister presents the Budget to the House. There is general discussion on the Budget when Members offer their general comments on the Budget. The demands for grants are taken up in the Assembly. Members can speak on these demands for grants and also move amendments called cut motions, to these grants. Members can also take part when the supplementary or additional grants are discussed. Cut motions can also be moved on the supplementary grants. After the demands for grants are voted by the Assembly, appropriation Bill is introduced, considered and passed. Members can participate in the discussion on the Appropriation Bill also.

Government, in pursuance of the election assurances or for keeping the administration going, brings Bills which may be original or amending ones. Members can participate in the discussion on those Bills and also move amendments. Government often moves motions or resolutions for approving particular acts or policies of Government. Mem-

bers can participate in the discussion on these motions and also move amendments.

In recent years a device called zero hour is often made use of. Immediately after questions members raise matters without giving notice in writing. Though there is no provision in the rules members are persisting in raising matters without notice.

Executive's power to govern should be matched by Parliament's opportunities and techniques for questioning, scrutinising, overseeing, controlling and criticising the Executive's use of its powers and exposing any shortcomings, abuse and misuse. However, Parliamentary control must not lead to frustration and ineffective Government. Parliament must influence but not direct power, give advise but not command, criticise but not obstruct, scrutinise but not initiate and ensure publicity and not secrecy.

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The common bonds which link the member-States of the contemporary Commonwealth are the ideals of universal peace and prosperity, democratic government and freedom, elimination of forms of colonial domination and racial oppression and discrimination and the progressive removal of wide economic disparities among nations.

—Fakhruddin Ali Ahmed

Centre-State Relations and the Federal Set Up

Sardar Surjit Singh Minhas*

The legislative sphere of the Union and States has been enshrined in the Constitution of India. Indian Constitution being quasi-federal in nature has demarcated the spheres in which the Union and the States are to legislate. The guiding principle of division of powers in Indian federalism are the same which have been rightly described by Prof. Diecy in his book *An introduction to the study of the Constitution*:

> Whatever concerns the nation as a whole should be placed under the control of the national government. All matters which are not primarily of common interest should remain in the hands of several layers.

Accordingly the Constitution of India empowers Parliament to legislate for whole or part of the country and the State Legislatures to legislate for the States. These powers of both the Union and the States have been divided into three lists in the Seventh Schedule of the Constitution of India. There are lists I, II and III. List I is called the Union List with respect to subjects on which the Parliament has exclusive power to make laws. List II, known as State List, enumerates the matters on which State Legislatures are to make laws exclusively for their states. List III, known as Concurrent List, enumerates matters, with respect to which both the Parliament and the State Legislatures have powers to make Laws.

Like other Federations of the world a clear distinction is drawn by the Indian Constitution between the matters involving common concern of the whole country or matters of national importance and the matters which have only local significance. Like USA, Canada, Australia and Switzerland these powers have been elaborately specified in the Constitution. The powers concerning nation as a whole have been vested with the Union Government, powers concerning State matters are vested with the States and concurrent powers represent a common territory where both the national Government and the Governments of the States can operate.

The Government of India Act 1935 also had provided a unique feature regarding the distribution of powers. The Joint Committee on the Indian Constitutional Reforms (1934) aptly pointed out the underlying general principles behind the concurrent powers. There are certain matters which cannot be allotted exclusively either to the Central or Provincial Legislature and for which, though it is often equally necessary that the Central Legislature should also have a legislative jurisdiction to enable it in some cases to secure uniformity in the main principles of law throughout the country, to guide and encourage provincial efforts and to provide remedies for irritants in a State which may cause trouble in other States. In several fields of the governmental activities, the strict division of power between the Union and State administration is inconvenient because administrative efficiency demands a combination of local administration with national planning and coordination. The concurrent list is like a shock-absorber which enables both the Union and the States to go beyond their own exclusive legislative sphere, as necessity arises, to meet exigencies without transgressing the boundaries of each other.

However, there are certain areas where Union Government can initiate Legislation over two subjects included in the State List. Article 249 of our Constitution provides that if the Council of States has declared by resolution supported by not less than two thirds of the Members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for whole or any part of the territory of India with respect to that matter for a period not exceeding one year as may be specified therein. The Rajya Sabha, however, can extend the period for such a resolution for a further period of one year from the date on which it would otherwise have ceased to be in force.

Article 250 empowers the Parliament to make laws on any item included in the State List for the whole or any part of the territory of India while the proclamation of emergency is in operation. Any law made under this Article can remain in force for a period for which emergency remains in force and six months beyond that period.

Under Article 252 if two or more States agree by consent to request the Union Government to legislate on any of the matter with respect to which the Parliament has no power to make laws for the States except as provided in Articles 249 and 250 and if resolutions to that effect are passed by all the Houses of Legislatures of those States, it

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shall be lawful for Parliament to pass an Act for regulating that matter accordingly.

Article 253 empowers Parliament to make any law for the whole or any territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. This provision entitles Parliament to legislate even in respect of those subjects that are included in the State List.

Further, Articles 356 and 357 establish predominance of Parliament. If the President is satisfied that a situation has arisen in which the government of a State cannot be carried on in accordance with the provisions of the Constitution, he may declare that powers of the legislature of that State would be exercisable by or under the authority of Parliament. The effect of promulgation under Articles 356 and 357 would be that the legislature of the State in question would be dissolved or kept under suspended animation and the law making power would remain with the Parliament.

A number of States like Punjab, West Bengal, Tamil Nadu, and Karnataka have been demanding more powers for the States in order to attain financial autonomy and political non-interference by the Centre in the affairs of the State governments. The Tamil Nadu State took the lead by appointing a Centre-State Relations Inquiry Committee in 1969, popularly known as Rajamannar Committee. This Committee examined the question regarding relationship that should subsist between the Centre and the States in a Federal set up. The Committee recommended major amendments to the Constitution including omission of Articles 356 and 357, giving residuary powers to the States, making the States less dependent on the Centre.

The West Bengal Cabinet also passed a resolution on Centre-State Relations in its meeting held on 1 December, 1977. Like Rajamannar Committee, the West Bengal Resolution recommended that State Legislature should be empowered to enact laws with respect to residuary matters. It recommended insertion of the word 'federal' in the Preamble to the Constitution and omission of certain provisions from the Constitution which erode the federal basis of the Constitution.

In Punjab the Shiromani Akali Dal had also passed a resolution in the session of 18th All-India Akali Conference, held at Ludhiana in October, 1978, seeking more political, economic and fiscal powers for the States in the light of the Anandpur Sahib Resolution.

As there was a strong demand from the States especially governed by regional parties, the Government of India had set up a Commission in 1983 to go into Centre-State relations and to suggest remedial measures. It was headed by Justice R.S. Sarkaria. It submitted its report on October 27, 1987. The Commission sought detailed views of State Governments, Political parties and others on the Centre-State relations. The Governments of Karnataka and West Bengal in their memoranda demanded abolition of or amendment to Articles 249 to 252 and 254 so that no State could be deprived of any legislative power which belong to it without its prior concurrence. Some Governments complained that the scheme of distribution of powers was too much biased in favour of the Union and it required revision. The Shiromani Akali Dal through a memorandum demanded that to safeguard the fundamental rights of the religious and linguistic minorities, to fulfil the demands of the democratic traditions and pave the way for economic progress, it has become imperative that Indian constitutional infrastructure be given a real federal shape by redefining the Centre-State relationship on the aforesaid principles and objectives.

Some State Governments suggested that residuary powers should be vested in the States. Two of the State Governments and their supporting parties suggested abolition of the Concurrent List and transfer of all its items to the State List. The Commission did not agree with the suggestion and recommended "that ordinarily the Union should occupy only that much field of a concurrent subject on which uniformity of policy and action is essential in the larger interest of the nation, leaving the rest and the details for State action within the broad framework of the policy laid down in the Union Law. Further, whenever the Union proposes to undertake legislation with respect to a matter in the Concurrent List, there should be prior consultation not only with the Governments individually, but also collectively, with the Inter-Governmental Council, which, as we have recommended should be established under Article 263".

The Shiromani Akali Dal in its memorandum submitted to the Sarkaria Commission on Centre-State relations had pointed out that the Congress Party, right from its inception and throughout the struggle for national independence, had been pleading for a federal set up for free India. The Congress leaders, including Pt. Moti Lal Nehru, Mahatma Gandhi, Pt. Jawahar Lal Nehru, and Maulana Abul Kalam Azad, on different occasions had interpreted Swaraj as connoting grass-root powers for the people with greater authority vesting with the States.

On the very basis of the above said views, the Shrimoni Akali Dal in its resolution — known as 'Anandpur Sahib Resolution' demanded decentralisation of powers, with the Union retaining the federal functions in respect of Defence, Foreign Affairs, Communications, Currency and Railways. It is in consonance with what Pt. Jawahar Lal Nehru, Mahatma Gandhi and other national leaders had been urging before independence. The Shiromani Akali Dal suggested a number of measures on the Centre-State relations, the important being as under:

1. The Preamble to the Constitution should be amended so as to incorporate the expression "federal" to characterize the Republic of India as

such. This is essential to underline that the Indian system is basically of federal nature; this would halt the gradual drift towards unitarian set up;

2. There should be re-distribution of subjects among the Union List, the Concurrent List and the State List on the basis of federal principles, as sought by Shiromani Akali Dal in the Anandpur Sahib Resolution;
3. The residual powers should vest with the States;
4. The Centre should not have the power or competence to destroy or dilute the ethnic, cultural and linguistic self-identity of a federating constituent unit;
5. The members of the Rajya Sabha should be elected on the principle of equality of the States as autonomous units with equal representation. In other words the Rajya Sabha should become representative of the States. The diversity of nationalities and religious, linguistic, cultural and ethnic minorities should be adequately reflected in the composition of Rajya Sabha;
6. While restricting the imposition of emergency only in the event of exceptional circumstances (foreign aggression) it should be constitutionally ensured that during the proclamation of Emergency the federal set up remains intact;
7. The legislature of a State should have exclusive power and competence to legislate over matters given in the re-drawn State List.
8. Executive power in respect of matters included in the Concurrent List, irrespective of the fact as to whether legislation is by the Centre or by the State, should vest with the States;
9. The institution of Governor, his powers, functions and duties should be brought in line with a federal polity so that the Governor does not remain an executive agent of the Centre but becomes a truly constitutional Head of the State; and
10. Constitutional provisions which empower the Centre to dismiss a State Government and/or dissolve its Assembly should have no place in a federal framework. In the event of constitutional break-down in a State, there should be a provision for immediate holding of elections and installation of a new democratic Government. When there is no provision for the President to take over the Central Government in the event of failure of constitutional processes, then, there is no justification for the Presidential powers when a similar contingency arises in a State.

It is not only in India that States are demanding more powers and autonomy but it has become a universal phenomenon. Wherever the Unitary system exists, the States struggle to turn it into a federal and liberal structure.

Ours is a pluralistic society and it may be characterised, in the Nehru concept, as unity in diversity. It needs federal structure in real sense which is essential for ethno-political development of the minorities and for the growth of grassroot democracy which would ensure strong, prosperous and united India. We should see the happenings around us in the right perspective. Relations between federating States and the Centre should be re-defined by giving more powers and autonomy to the States.

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Constitutional Developments in Tripura

Jyotirmoy Nath*

Tripura, before its merger with the Indian Union in October, 1949, was an ancient princely State. The origin of the name of "Tripura" is shrouded in myth and legend. The popular belief is that a mythical king called "Tripur" named his Kingdom as "Tripura" after his own name. Some also ascribe the name to the Goddess "Tripura Sundari" of the State. According to the legend and myths, "Druhys", the son of "Yajati" of "Chandra" dynasty was the founder of the Kingdom. Tripura first entered the historical year in the 15th Century during the reign of King Ratan Manikya as is evident from the inscription on a Coin of his reign. The "Rajmala", composed by the courtiers of different Kings at different times, also does give a clear account of the administrative set up of Tripura. It, however, gives a chronological history of Tripura from which we find that 178 Kings of the same dynasty reigned in Tripura, the last being Maharaja Bir Bikram Kishore Manikya.

Geographically, Tripura is a land-locked State having an area of 10,477 Sq. Kms. It is the second smallest State of India after Sikkim. Four-fifth of its land frontier (839 Kms.) is enclosed by Bangladesh. Only on its north-eastern border, Tripura touches the Indian States of Assam and Mizoram. People are to depend mainly on the air services as a means of communication with the rest of the country. The land surface is mountainous and uneven. The whole terrain abounds in hills, plains, forests, valleys, rivers, lakes and brooks. The climate is neither too hot nor too cold. The tribal people living in hills practise shifting cultivation. The Government is trying to acquaint them with the modern system of cultivation. The people living in plains grow paddy and jute as the main crops. There is also no notable mineral resource in the State. Recently, the O.N.G.C. found a large quantity of Gas under the soil of Tripura. This may add a new hope to its economic growth. In spite of its economic backwardness and many other hindrances, Tripura, as Mr. R. Venkataraman, President of India, who recently visited Tripura, said, "is one of the most beautiful States of India."

After the death of the last Maharaja Bir Bikram Kishore Manikya on the 17th May, 1947, Maharani Kanchan Prava Devi ruled the State on behalf of her minor son, Kirti Bikram Kishore Manikya through a Council of Regency consisting of four persons, with the Maharani as the President of that council, till the 14 October, 1949 after which Tripura became a part 'C' State of the Indian Union. From the date of transferring the powers to the Indian Dominion on the 15th August, 1947 by the British Government, Maharani accepted the title of "Regent" or Representative of the Ruler on behalf of her son, Maharaj Kirti Bikram Kishore Deb Barma, and promised to introduce the constitutional reforms which had been enacted by her husband, Maharaja Bir Bikram Kishore Manikya in 1941. However, there is evidence to suggest that Tripura had already decided to join the Indian Union during the life time of Maharaja Bir Bikram Kishore Manikya itself. This is clear from the notifications dated 11 June 1947 and 3 July, 1947 and the telegram of the Chief Minister dated 14 July 1949, sent to Sardar Patel.

The Council of Regency was dissolved on the 19 January, 1948, and Maharani took over the Administration as the sole Regent. In view of the troubled internal condition and importance of its protection as a border State, the Government of India with an agreement between the Governor General of India and Maharani Regent took over the administration of the State of Tripura on the 15 October, 1949. Ranjit Kumar Roy, the Dewan of Tripura was appointed Chief Commissioner of the State and he became the head of the State in place of the Regent Maharani. Thus the age-old rule of what was known as the 'oldest dynasty' came to an end in Tripura.

Though Legislatures and Council of Ministers were set-up in other Six Part 'C' States, Tripura was deprived of the same in spite of Tripura having had a Council of Ministers working for about a decade from 1939 to 1948 and a proposed promised legislature under the Constitution of Maharaja Bir Bikram. But there were strong demands for a responsible and popular Government from the people of Tripura and the political parties were holding meetings in support of such demands. An electoral College of thirty members elected on the basis of adult franchise, was formed to elect a member for the Rajya Sabha from Tripura in 1952. This may be called the first general election held in Tripura. The President then appointed three advisers Shri S.L. Singha, Shri J.M. Deb Barma and Shri S. Sengupta with effect from 14th April, 1953 to aid and advise the Chief Commissioner. But this could not pacify the people for their demand for a representative Government as those advisers were not elected by the people. Besides, the power of the advisers were also limited and their position was not much better than that of the Secretaries.

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The State Reorganisation Act, 1956

There was a demand and movement for a long time for reorganisation of States on linguistic basis and subsequently a Commission was appointed to examine the question of reorganization of the states of the Indian Union. The Commission submitted its report to the Government of India on 30 September, 1955 and recommended the merger of Tripura with Assam. The people of Tripura vehemently opposed this and sharply reacted against this recommendation. As a result, after passing the States Reorganisation Act, on 31 August, 1956, Tripura became one of the five Union territories and as per amendment of Part (VIII) of the Constitution the "Chief Commissioner" of Tripura was called the "Administrator" in Tripura who would administer the Union territory on behalf of the President of India.

The Territorial Council

After the reorganisation of the States, the Parliament, as a course of gradual democratisation of the administration of Tripura and other Union territories, passed the Territorial Council Act, 1956 which was assented to by the President on the 30 December, 1956. The Government of India also provided the details of the Act in the Territorial Council Rules, 1957, framed by the Ministry of Home Affairs. Under the Act, each Union Territory was provided with a Territorial Council. The Tripura Territorial Council was composed of thirty-two members of whom thirty were elected on the basis of the adult suffrage and two nominated by the Government of India. The term of the Office of the members was five years. From among the members, two would be respectively the Chairman and the Vice-Chairman. The Chairman could be removed after one year by a majority of votes of the Members of the Council for which a notice signed by one third of the total members was to be delivered to the Secretary of the Administration.

Function of The Territorial Council

As many as 23 items most of which were of developmental nature were included in the Act for the Council to deal with. Other matters were directly under the control of the Administrator. The main functions of the Territorial Council were:

1. Construction, repair and maintenance of roads, bridges, channels, buildings and tanks under it;
2. Establishment, maintenance and management of Primary and Secondary Schools;
3. Establishment and maintenance of ponds, hospitals, dispensaries, markets and fairs; and
4. Preservation, protection and improvement of live-stock and Veterinary Services etc.

The Act also provided for appointment of a Finance Committee consisting of ten Members with the Chairman of the Council as the Chairman of the Committee also. Section 24 of the Act also provided for appointment of the Standing Committees for different functions with the previous sanction of the Administrator.

Officers and Staff

Section 32 (1) and (2) of the Act provided that there should be a Chief Executive Officer appointed by the Administrator for the Territorial Council. He could be removed by a resolution passed by a two-third majority of the total membership of the Council. The Council should appoint three Principal Oficers-in charge of: (1) Engineering, (2) Education and (3) Health Services with the approval of the Administrator. In addition to these Officers, one Animal Husbandry Officer in charge of Veterinary Services and one Revenue and Public Relations Officer were also appointed. Other necessary staff were also to be appointed by the Council.

Finance

The Council could levy taxes on various subjects, might fix and levy fees on different items. The Central Government might pay the Council (a) the net proceeds of the entertainment tax, (b) a percentage of land revenue, (c) net proceeds of motor vehicles tax, (d) net proceeds of taxes on transports and might make grants to the Council. The proposals for taxation passed in the form of resolutions were to be effective after the sanction of the Central Government which could abolish or reduce any tax imposed by the Council.

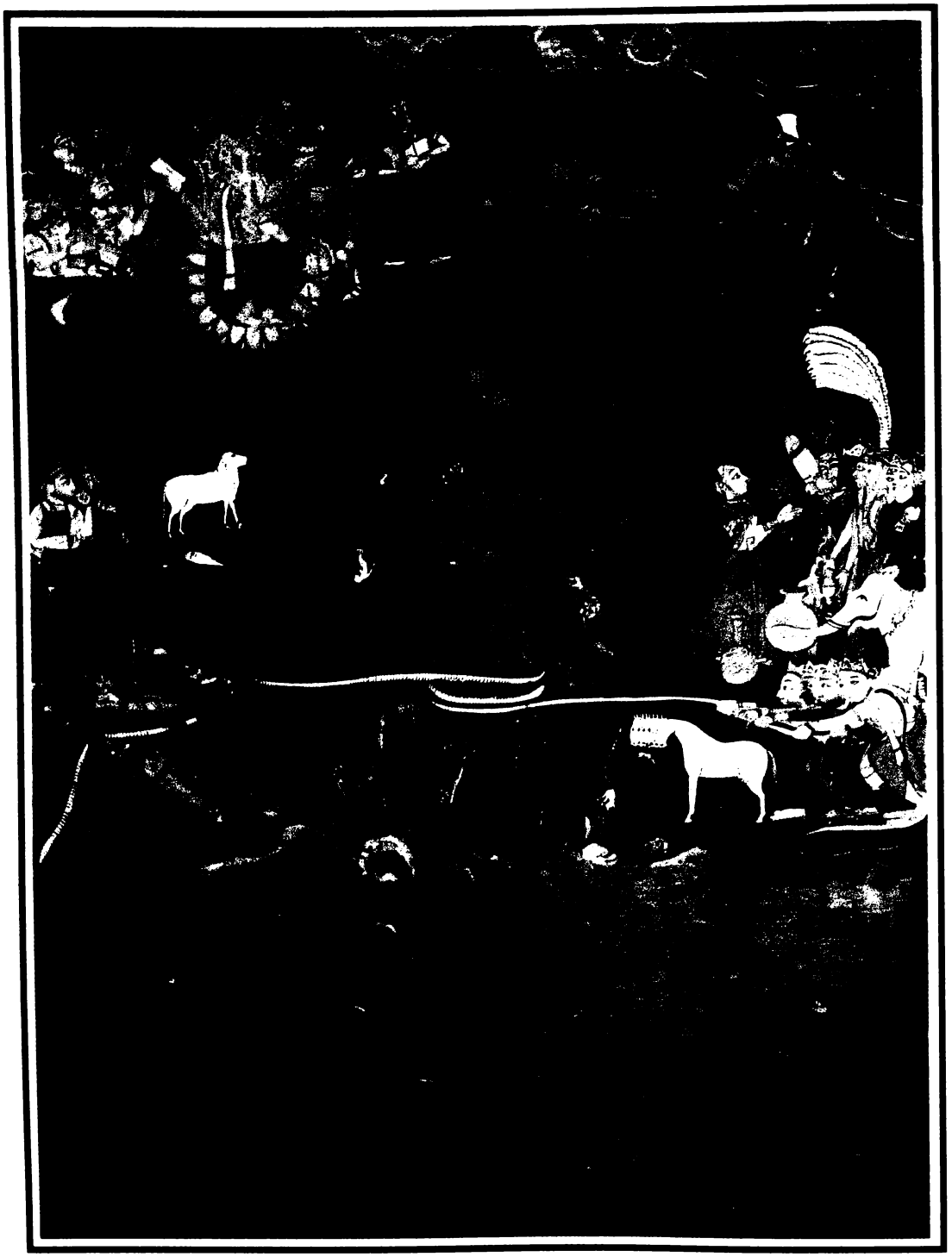
Budget

The Budget Estimates prepared by the Chief Executive Officer in consultation with the Principal Officers and Officers in charge of Animal Husbandry and Revenue and Public Relations Departments in accordance with the instructions of the Central Government had to be circulated to the Members of the Council with a copy to the Finance Committee. The Finance Committee after scrutiny and amendment of the Budget placed it before the Council. After the consideration by the council a copy of the Budget had to be sent to the Administrator by the 1st of March. The Administrator might send it back to the Council for amendment and the decision of the Council had to be reported to the Administrator before 31st March. Thus the Budget Estimate finally adopted by the Council was the Budget of the Territorial Council.

Legislative Powers

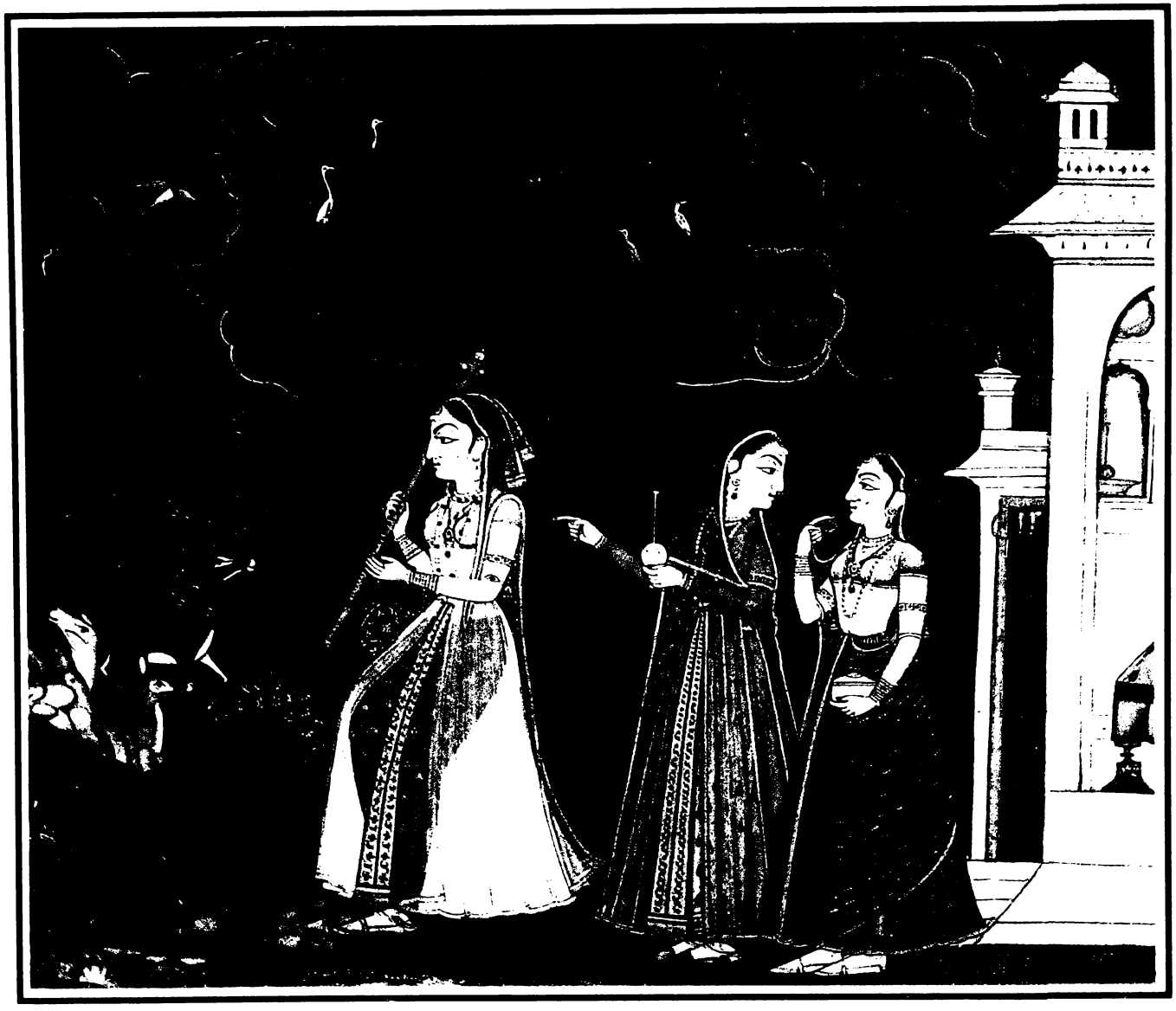
The Council's legislative powers were limited to 23 items. It

25 Wine party: Mughal, *circa AD 1620* *Courtesy*: National Museum



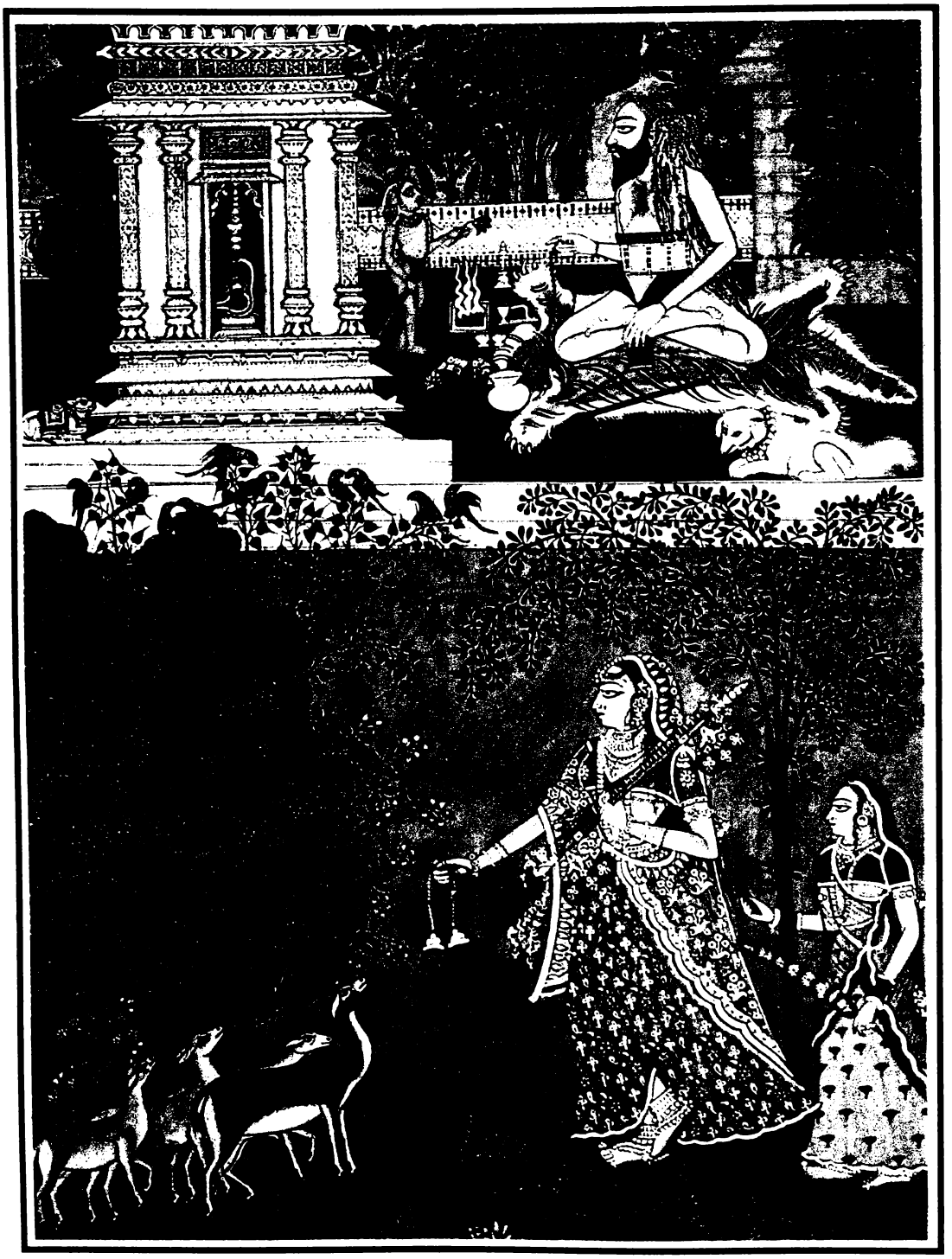
26 (Samudra Manthan) or The Churning of Ocean: Oudh, mid 18th Century

Courtesy: National Museum



Ragini Todi: Golkonda, Deccan, mid 18th Century

Courtesy: National Museum



28 Ragini Todi: Deccan, mid 19th Century

Courtesy: National Museum

could make bye-laws on those items subject to the confirmation of the Central Government. Breach of bye-laws and rules so made was punishable in the court of law and the punishment extended to a fine of one hundred rupees or imprisonment for fifteen days. Every decision of the Council was passed in the form of a resolution.

The Central Government could supersede the Council on the report from the Administrator or otherwise on being satisfied that the Council was not functioning well or abused its powers. Though it may be said that the Council was a representative body of municipal character controlled by the Central Government, it may be noted that with all its limited powers it was the first representative body constituted on the basis of adult suffrage. In this context, constitution of the Territorial Council was the first step towards democracy in the administration of the State. Two general elections were held during the seven years life-time of the Council and in both the elections the Indian National Congress emerged as the single largest Party in the State though for two Lok Sabha seats the results were different. In the first Lok Sabha Election in 1952 both the seats were won by the Communist Party of India and out of 30 only 10 seats were won by the Congress in the electoral college. In 1957, Congress won 15 out of 30 seats in the Territorial Council and shared the two Lok Sabha seats equally with C.P.I. With the help of two nominated members Congress captured the powers in the Territorial Council.

The Government of Union Territories Act, 1963

As a measure of second step towards further democratisation of the administration of Tripura, a Legislative Assembly and a Council of Ministers were introduced in Tripura along with the Union Territories of Himachal Pradesh, Manipur, Pondicherry and Goa, Daman & Diu, under the Government of Union Territories Act, 1963 passed by the Parliament. Under this Act the existing members of the Territorial Council became members of the Legislative Assembly with effect from 1 March, 1963. The Act provided for 40 elected members in the case of Himachal Pradesh and 30 in the case of any other Union Territory. The Central Government could nominate not more than three members. The administrative head was the Administrator of the Union Territory appointed by the President.

Powers of the Council of Ministers

The function of the Council of Ministers was to aid and advise the Administrator in the exercise of his functions in relation to matters with respect to which the Legislative Assembly had power to make laws except in so far as he was required by or under any law to exercise any judicial or quasi-judicial functions. In case of difference of opinion between the Administrator and his Ministers on any matters, the Administrator should refer the matter to the President whose decision would be final. In case of urgency or necessity for immediate action the Administrator was empowered to take action pending the decision of the President. The security of the border was the special responsibility of the Administrator and in that respect he was authorised to act in his discretion. In respect to any question as to whether any matter was within the jurisdiction of his discretionary power, the decision of the Administrator thereon was final.

Legislative Powers

The Legislative Assembly also had a Speaker and a Deputy Speaker elected from amongst the Members of the Assembly who also could be removed by resolutions passed by the majority of the Members.

The Legislative Assembly could make laws for the whole or any part of Tripura with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, in so far as any such matter applicable in relation to the Union Territory. In fact, it was a proto-type of a State Legislative Assembly. There were however, certain restrictions on laws passed by Legislative Assembly with respect to certain matters referred in Articles 286, 287 and 288 of the Constitution. Previous sanction of the Administrator was also necessary in respect of certain legislative proposals like (a) Constitution and organisation of the court of the Judicial Commissioner; (b) Jurisdiction and power of the Court of the Judicial Commissioner with respect to any of the matters in the State List or Concurrent List in the Seventh Schedule to the Constitution and (c) Financial Bills.

Annual Financial Statement

The Administrator of the Union Territory, with the previous approval of the President, caused, to lay before the Legislative Assembly every year, a Statement called the annual financial statement, containing the estimated receipts and expenditure of the Union Territory for the year. The expenditure was divided as "Charged" and "Voted". The charged expenditure was not put to vote but could be discussed in the House of the Legislature. Then an "Appropriation Bill" had to be passed to make expenditure out of the consolidated fund of the Union Territory. The Legislative Assembly also had the power to make grant in advance in respect of the estimated expenditure for a part of any financial year as "Vote on Account" pending the completion of the procedure for passing the Annual Financial Statement and the passing of the Appropriation Bill in relation to that expenditure. The Legislature could also make Supplementary Grant required in excess of the annual grant in the same procedure as in the case of the

Annual Financial Statement.

Legislature could also make Supplementary Grant required in excess of the annual grant in the same procedure as in the case of the Annual Financial Statement.

Rules of Procedures and Conduct of Business

The Legislative Assembly also had the power to make rules for regulating its procedure and conduct of business. The Act also provided that until rules are made, the rules of procedures and standing orders with respect to the Uttar Pradesh Legislative Assembly in force immediately before the Commencement of the Act should have effect in relation to the Legislative Assembly of the Union Territory subject to such modifications and adaptations made therein by the Adminstrator. The Tripura Legislative Assembly, however, did not make any such rules and followed the rules of the Uttar Pradesh Legislative Assembly upto the constitution of the State Legislature in 1972. The status of the Administrator was raised from "Chief Commissioner" to "Lt. Governor" with effect from 30.1.1970 and continued till 20.1.1972.

The Union Territory status of the State, however could not satisfy the feelings of the people of Tripura and they raised voice for more democracy and launched movements demanding Statehood. In the House of the Union Territory Assembly also all the Political parties were in favour of a state legislature.

On the eve of the Indo-Pak war over Bangladesh the Union Territory Legislature was dissolved on Ist November, 1971. After a few days the North-Eastern Areas (Reorganisation) Act, 1971 was passed by the Parliament and assented to by the President on 30th December, 1971 granting statehood to Tripura, Meghalaya and Manipur with effect from 21 January, 1972. Thus the long cherished expectation of the people of Tripura for full democracy was realized and Tripura became a state. Since then Tripura has been enjoying all the Constitutional rights and powers equally with other states of the country.

The 30 seated Legislative Assembly for the Union Territory of Tripura became 60 seated state Legislature as per provisions of the above Act and the Constitution. The first election for the State Legislature was held in March, 1972 and Congress won 41 seats. A Council of Ministers with five Ministers including the Chief Minister and three Deputy Ministers was sworn in on the 20th and the 31st March, 1972.

The Legislative Powers, budget and finance, Committee system and the rules of procedures and Conduct of Business in the Tripura Legislative Assembly are almost similar to those of other State Legislatures. There are forteen Committees, such as (1) Business Advisory Committee, (2) Public Accounts Committee, (3) Committee on Estimates, (4) Committee on Petitions, (5) Rules Committee, (6) Committee on Privileges, (7) Committee on absence of Members from the sittings of the House, (8) Committee on Delegated Legislation, (9) House Committee, (10) Library Committee, (11) Committee on Government Assurances, (12) Committee on Public Undertakings, (13) Committee on Welfare of Scheduled Castes and (14) Committee on Welfare of Scheduled Tribes. In addition, the House may constitute on ad-hoc basis a Select Committee to scrutinize a bill referred to it and submit report thereon.

Though it is not provided in the rules, the Chairmanship of the Public Accounts Committee is offered to the Opposition. No Minister can be a member of any Committee. Only in the case of Select Committee the Minister-incharge of the Bill becomes a Member.

Thus the long process of Tripura's reaching the status of full Statehood with the full rights and powers granted by the Constitution of India was completed. But it has to go a long way for its many-sided developments with special emphasis on the economic growth and communication facilities.

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The Parliamentary System in Bihar

Umeshwar Prasad Varma*

The democratic system of governance was prevalent in ancient India too; The Lichchivi rule of Vaisali in Bihar was known as an admirable democratic form of Government and drew great praise and admiration from the Buddha. As Indira Gandhi once rightly said, "democracy was not new to India, for we have long had elected village Councils..." But the parliamentary system, in its present form, is a modern development. And in Bihar, in particular, its history dates back to the separation of Bihar from Bengal. During the British regime, national leaders and some intellectuals of Bihar had launched a movement for the separation of Bihar from Bengal and from 1880 onwards the movement gathered momentum. In view of the accelerated pace of the demand, the then Government of India in a despatch to the Secretary of State recommended the "creation of a Lieutenant Governorship in Council to consist of Bihar and Orissa, with a Legislative Council and a capital at Patna." While recommending the separation of Bihar from Bengal and the establishment of a Legislative Council, the despatch made some significant observations, as ground for the recommendation, which deserves to be mentioned.

As the ground for the separation of Bihar from Bengal and establishment of a Legislative Council, the despatch, besides saying other things, made this significant observation:

> "we are satisfied that it is in the highest degree desirable to give the Hindi-speaking people now included within the province of Bengal, a separate administration. These people have hitherto been unequally yoked with the Bengalis, and have never, therefore, had a fair opportunity for development. The cry of Bihar for the Biharis had frequently been raised in connection with the conferment of appointments, an excessive number of offices in Bihar having been held by Bengalis....There has, moreover, been a very marked awakening in Bihar in recent years, and a strong belief has grown up among Biharis that Bihar will never develop until it is disassociated from Bengal...."[1]

The Secretary of State for India considered the proposal for the separation of Bihar from Bengal rather favourably and wrote[2] back to Government of India:

> "....appreciating the balance sought to be maintained between the different races, classes and interests likely to be affected....I therefore give my general sanction to your proposals...."
>
> "I am commanded to inform you that at the Durbar on the 12th of December, 1911 His Imperial Majesty will be pleased to declare that a Lieutenant Governor in Council for Bihar and Orissa will be appointed."

On the 12th December, 1911 the Delhi Durbar was held and the King Emperor made the following announcements:

> "We are pleased to announce to our people that on the advice of our Ministers, tendered after consultation with our Governor General in Council, we have decided upon the transfer of the seat of the Government of India from Calcutta to the ancient capital of Delhi, and simultaneously, and as a consequence of that transfer, the creation as early date as possible of a Governorship in Council administering the areas of Bihar and Orissa, and of a Chief Commissionership of Assam, with such administrative changes and redistribution of boundaries as our Governor-General in Council, with the approval of our Secretary of India in Council, may in due course determine."

Three dates—25th of August, 1911 when the Government of India in its despatch to the Secretary of State for India recommended separation of Bihar from Bengal and establishment of a legislative Council, 1st of November, 1911 when the Secretary of State for India, in reply, responded favourably to the proposal and 12th December, 1911 when the announcement was actually made by the King Emperor—mark a landmark in the Parliamentary history of Bihar.

The formation of a new province of Bihar and Orissa as announced in 1912 by His Majesty the King Emperor at Delhi Durbar necessitated the establishment of a Legislative Council for the province which was constiuted under the Indian Councils Acts, 1861-1909 as amended by the Government of India Act, 1912 and which consisted of 43 members drawn from the following categories:

*Dr Umeshwar Prasad Varma, Chairman, Legislative Council, Bihar.

1. Members of the Executive Council	3 members
2. *Elected Members:*	
(a) By Municipal Commissioners	5 members
(b) By District Boards	5 members
(c) By Landlords	5 members
(d) By Mohamedan community	4 members
(e) By Mining community	1 member
(f) By Planting community	1 member
(g) Members Nominated by the Lieutenant-Governor with the sanction of Governor General who should not exceed 19 in number and of whom not more than 15 should be officials	19 members
Total	43

Additional Member

The Lieutenant Governor was empowered with the sanction of the Governor-General to nominate one person, official or non-official, having expert knowledge connected with proposed or pending legislation to be a member of the Council. The term of office for the additional member was fixed at three years, or such shorter period as the Lieutenant Governor might determine.[3]

The Council met in the Council Chamber, Bankipore on Monday, the 20th January, 1913 at 11 a.m.

All members before taking their seats, took the prescribed oath of their allegiance to the crown. The Lieutenant Governor while addressing the members made a reference about the composition of the Council and said,

> "As you are aware, the maximum number of the Council, exclusive of the Members of the Government has been fixed by statute at 50. It has, however, been decided that for the present a certain number of seats should be kept in reserve to meet the future requirements of what we trust will prove a rapidly developing province. The actual number of members has been fixed for the time being at 41 of whom 21 are elected and 20 nominated. At this moment there are 19 nominated members, one seat being kept vacant for the appointment from time to time of an expert to assist in the consideration of matters requiring special knowledge."

The break-up of the elected members from the different constituencies was fixed as follows:

Elected members:	
(i) By Municipal Commissioners	5 members
(ii) By District Boards	5 members
(iii) By Landlords	5 members
(iv) By the Mohamedan community	4 members
(v) By the Mining community	1 member
(vi) By the Planting community	1 member
Total	21

The first session of the Council which started on the 20 January, 1913 signified some important parliamentary processes and procedures. The non-official members, it appears, were expected to function as an opposition group to draw the attention of the Government to matters of public interest and importance and even be critical of the Government in its functioning and dealing with the problems of the province while also co-operating with the Government — a role the opposition at present is expected to play. This is corroborated by what the Leiutenant Governor said in his opening address to the Council —

> "....the fact that we look forward hopefully to the future in no way lessens the gravity and importance of the task before us or the necessity for doing our work to the best of our ability with a single eye to the public weal. That we shall always agree is not to be hoped or indeed to be desired, but what is expected of us is that sinking minor differences and respecting one another's honest convictions, we shall endeavour to arrive at the best possible solution of the difficult problems with which we shall have to deal. If we do this our success is certain. You gentlemen, the non-official Members of the Council, have a great opportunity for doing good by intelligent criticism, by advice and by co-operation with the Executive...."

Like the present day Question Hour in the House the Legislative Council, established in 1913, also had the practice of allowing members to seek information on matters of public importance by filing questions to be replied, by the Government, in the Council. It seems, even at that time rules were laid down that questions were to be filed at least ten days before the date fixed for the Council meeting. It was in this background that the Lieutenant Governor in his address to the Council said:

> "Another point which I desire to mention is that certain questions which the Hon'ble Babu Bishun Prasad and the Hon'ble Maharaj Kumar Gopal Saran Narayan Singh of Tikari desired to ask. I had

to request both gentlemen to postpone their questions till the next meeting of the Council, because notice of their intention to ask them had not been given ten clear days before the date fixed for the meeting of the Council. I took this action with regret, but I took it because the rule is a salutory one which it could have been invidious to enforce in some instances and waive in others in cases in which no special urgency was involved. Some of the questions, however, relate to matters of general importance regarding which it is desirable that the public should have such informations as is at the disposal of Government and I propose therefore to answer the more important of them in general terms."[4]

Besides the historical importance of the Legislative Council established and constituted for the newly created Province of Bihar and Orissa the first session of the Council had added importance for more than one reason. Questions about arrangement for the new capital, water supply project for Bankipore and Patna city, provision of proper educational facilities etc. were raised and replied to which demonstrates the anxiety of the House about matters of urgent public importance.

Referring to the question regarding the New Capital for the newly created Province, the Lieutenant Governor said,

"one matter on which information is very naturally desired is the arrangement for the new capital. In regard to this I may state that the necessary land has been demarcated and that acquisition proceedings are now in progress with the sanction of the Secretary of State. The plan for the station and buildings are being prepared and the estimates are now under the consideration of higher authority. The work will be commenced as soon as the sanction is received. The improvement of Bankipore and Patna city does not form a portion of the Scheme."[5]

On the question of water supply scheme, the Lieutenant Governor informed the House that water supply project for Bankipore, Patna city and the new capital area was "being prepared of which the estimated cost is $2\frac{1}{2}$ lakhs of rupees for the new station and 20 lakhs for Bankipore and the city. The financing of the major portion of the Scheme will be a matter of some difficulty as it is beyond the resources of the Municipality and assistance will be required from Government. What the extent of that assistance will be I am unable to say at present, but the Government fully realise the importance of the subject and the necessity from every point of improving the sanitation of the areas which form so large a part of the capital of the Province."

Members of the newly constituted Legislative Council, in 1913, were very concerned and conscious about the educational facilities to be available to young persons at the capital of the Province. The subject figured as a major question before the Council when it met for the first time. In reply to this question, the Lieutenant Governor made an elaborate statement[6] before the House. He said,

Another matter of great importance is the provision of proper educational facilities in the capital. In reply to an address presented to me recently by the Bihar Landholders Association I said that it had been decided to incur very large expenditure on the extension and development of the educational institutions at Bankipore and Patna. I am glad now to supplement this statement by telling you that question of establishing a University at Patna with the fullest possible provision for teaching and residence is under consideration and that as soon as possible a strong committee of which Mr. Nathan will be the President will be appointed to enquire into and report on the whole scheme....

Something like the present democratic parliamentary system of having financial Committees, laying before the House a financial statement and presentation of Budget to House was initiated and adopted right in 1913 when the Legislative Council was established.

Thus the election by non-official members of five members to serve on the financial Committee was on the agenda of the Council when it met for the first time on the 20th January, 1913. The Session was adjourned by the Lieutenant Governor until the 13th March, 1913. In the interval the Finance Committee met to consider the draft financial statement already circulated to the members and present its report to the Government.

Referring to the draft financial statement the Lieutenant Governor said in the House:

"A copy of the draft financial statement is already in the hands of the Hon'ble Members and I trust that those of you who have read it will agree with me that the condition of things which it discloses falsifies the gloomy forebodings and even definite assertions which have for some time past appeared in the Press as to the insolvency of the province and the despair of the unfortunate Lieutenant Governor in Council who is confronted with the task of making both ends meet...."[7]

Financial statement as approved by the Government of India was presented before the Council for discussion. The session was again adjourned until April, 1913 when the Budget was presented to the House for discussion.

The second phase of development in the Parliamentary system in Bihar came in 1917. By the declaration made by His Majesty's Government in 1917, *the increasing association of the people of India with the work of Government and the gradual development of self-governing institutions with a view to progressive realization of responsible Government in British India as an integral part of the Empire*, were declared to be the aims of the British Government. The principles thus enunciated in the 1917 declaration were embodied in the Government of India Act, 1919 which introduced several Reforms Scheme. Bihar and Orissa was declared to be a Governor's province with a Legislative Council known as Bihar and Orissa Legislative Council. Under the new Scheme of things under Section 72 A of the Government of India Act, 1919 the members of the Executive Council were ex-officio members of the Bihar and Orissa Legislative Council and under Rules framed under the Act the Legislative Council was made to consist of seventy six elected members, and such number of members nominated by the Governor as, with the addition of the members of the Executive Council, shall amount to twenty seven. Of the members so nominated not more than eighteen were to be officials and nine persons were to represent the classes or interests as specified below:

(a) Aborigines	2 Members
(b) Classes which in the opinion of the Governor were depressed classes	2 Members
(c) Industrial interests other than planting and mining	1 Member
(d) Bengali community domiciled in the province	1 Member
(e) Anglo-Indian community	1 Member
(f) The Indian Christian community	1 Member
(g) The labouring classes	1 Member

For the purpose of the election of 76 members the province was divided into 76 constituencies classified as 66 general Constituencies comprising:

Non-Mohamedan rural	42
Mohamedan Rural	15
Non-Mohamedan Urban	6
Mohamedan Urban	3

Besides these there were also 10 special constituencies—5 representing landholders corresponding to five Commissioners Division, 2 representing mining and 1 each representing European, Planting and University. In addition to these 103 members as detailed above two more persons could be nominated by the Government as expert members for the purpose of any Bill introduced or proposed to be introduced in the Legislative Council.

The special feature of the composition of the Legislative Council was that candidates to be elected were to belong to the male sex. Like the present day system elections could be challenged by filing election petition before the election tribunal specially constituted by the Governor.

The proceedings of the Council were regulated by (a) Bihar and Orissa Legislative Council Rules, 1920 made under Section 72 D(S) read with Section 129 A of the Government of India Act, 1919 by the Governor-General in Council with the sanction of the Secretary of State in Council and by (b) standing orders known as Bihar and Orissa Legislative Council standing orders made by Governor in Council under Section 72 D(G) of the Government of India Act, 1919. These standing orders could be amended by the Legislative Council after leave to amend, on a motion supported by at least 25 members of the House was obtained.

The present system of having a panel of members to preside over the House during the absence of the Chairman and the Deputy Chairman was also the rule of the Council at that time which provided that "during every session the President nominates from amongst the members of the Council a panel of not more than four Chairmen, any of whom may preside over the Council in the absence of the President and the Deputy President."[8]

According to the rule then existing, 25 members constituted the quorum.

For the maintenance of order in the House the President had the power to direct the withdrawal from the Council of any member whose conduct, in his opinion, was grossly disorderly. The President also could, in case of grave disorder arising in the Council, suspend any sitting for a time to be named by him.

The Question Hour system was also prevalent then and the first half[9] hour of every meeting was available for the asking and answering of questions, for which ten clear days' notice was necessary. Questions could be asked for the purpose of obtaining information on matters of public concern.

Resolutions from members could be admitted to be moved in the House for which 15 clear days notice was necessary but subject to the rules and standing orders, the President had the power to decide on the admissibility of resolutions. The Governor could disallow any resolution on ground of public interest or on the ground that the subject matter of the resolution primarily was not the concern of the local government. Every resolution was required to be in form of a specific recommendation addressed to the Government but no resolution could be moved on any subject on which questions could be asked.

The democratic parliamentary weapon of moving adjournment motions was available to the members even then. According to the rules and standing orders a motion

for an adjournment of business could be moved for the purpose of discussing a definite matter of urgent public importance with the consent of the President. But what was exceptional to the normal parliamentary practice, was that even the President of the Council was working under certain restrictions. Thus, unlike the present parliamentary procedure, the Governor had the power notwithstanding the consent of the President of the Council to disallow any motion for adjournment on the ground that it could not be moved without detriment to the public interest.

The third and the final phase of the development of Parliamentary System in Bihar entered in 1936 when Bihar became a separate Province. The Bihar and Orissa Legislative Council remained in existence from 1921 to 1936 and on the 1st April, 1937 Provincial Autonomy, as envisaged in the Government of India Act, 1935, was inaugurated. The unicameral legislature of the old Government of India Act, 1919 was replaced by a bicameral legislature, namely, the Bihar Legislative Council and the Bihar Legislative Assembly under the new Constitution. The Legislative Assembly then had the strength of 152 members chosen directly by the people voting in territorial and special constituencies in accordance with the extended franchise qualifications as embodied in the fifth and the sixth schedules of the Government of India Act, 1935. The strength of Legislative Assembly now is 324.

The new Legislative Council as constituted is a permanent body, not subject to dissolution as was the old unicameral Bihar and Orissa Legislative Council.

The roots of the Parliamentary System in Bihar, along with the whole country, have by now gone deep and is far spread than when the Parliamentary System was first initiated with the establishment of a Legislative Council for the Province of Bihar and Orissa in 1913.

END NOTES

1. Despatch dated the 25th Aug., 1911 from the Govt. of India to the Secretary of State for India.
2. Letter dated 1st November, 1911, a SOS to Government of India.
3. Bihar and Orissa, First Decennial Review (1912-1922) of the Administration and Development of this Province 1923, pp. 129-130.
4. Proceedings of the Legislative Council of the Bihar and Orissa, 1913 pp. 2-4.
5. Proceedings of the Legislative Council, 1913, pp. 2-5.
6. *Ibid.*
7. Proceedings of the Legislative Council, 1913, p. 4.
8. Bihar and Orissa: First Decennial Review (1912-22) of the administration and development of the province, p. 136.
9. As against the present system of one hour.

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Role of the State Governor in India: Some Random Thoughts

Ghulam Sarwar*

The Constitution of India provides that there shall be a Governor for each State. Proviso of Article 153 of the Constitution also provides that one and the same person may be appointed as Governor for two or more States. The executive power of the State vests in the Governor, which is exercisable by him either directly or through officers subordinate to him in accordance with the Constitution. He is appointed for a term of five years by the President by warrant under his hand and he holds his office during the pleasure of the President. Governor can be removed by the President. There are two qualifications for appointment as Governor:

(a) citizenship of India, and
(b) age of thirty five years or more.

He is under an oath to discharge his functions to the best of his ability to preserve, protect and defend the Constitution of India and the law and to devote himself to the service and well-being of the people of his State. The Governor is the Constitutional head of a State. He is also a Constitutional link between the Centre and the States. In other words he performs a dual role towards the Centre and also towards the State. The Report of the Administrative Reforms Commission on Centre-State Relationships correctly discussed this duality and observed:

> "This duality in his role is perhaps its most important and certainly its usual feature. It would be wrong to emphasize one aspect of the character of his role at the expense of the other, and the successful discharge of his role depends on correctly interpreting the scope and limits of both".

How A Casual Vacancy or Void by Governor's Absence to be filled up

Article 160 of the Constitution of India lays down that the President may make such provisions as he thinks fit for the discharge of the functions of the Governor of a State in any contingency. The Provincial Constitution Committee had suggested the provision of a Deputy Governor in each State. But the Drafting Committee of the Constitution of India turned down the proposal on the ground that a Deputy Governor will have no functions to perform, so long as the Governor is there. In the event of a temporary absence or incapacitation of the Governor, generally, the Chief Justice of the High Court officiates as the Governor.'

Special Address by the Governor

The Constitution of India is silent on the point as to who should read the address of the Governor in the case of his absence on ground of illness or for any other reasons.

Article 176(1) of the Constitution states that at the commencement of the first Session after each General Election to the Legislative Assembly and the commencement of the first Session of each year, the Governor shall address the Legislative Assembly or in the case of a State having Legislative Council, also both Houses assembled together and inform the Legislature of the causes of its summons.

It may be noted here that there are instances when the Governor was physically present before the joint sitting of the Legislature and read a part of the address and thereafter, he requested the Speaker to complete the same. There are also instances when the complete text of Governors address had to be read out to the Legislature by the Speaker.

In 1961, when the Governor of Rajasthan was ill he summoned the members to Raj Bhavan where the Governor's address was read by the Speaker of the Rajasthan Legislative Assembly.

In Andhra Pradesh Legislative Assembly there arose a controversy over the Speaker's reading the Governor's address to the joint sitting of the two Houses. On 20th March, 1967 at the commencement of the first session after the General Elections, two Houses of the Andhra Pradesh Legislature me at a joint sitting to hear the address by the Governor, Shri Pattam Thanu Pillai. Shri B.V. Reddy, read out a letter received by him from the Governor regretting his inability to personally attend and address the Legislature in view of his sudden illness and requesting the Speaker to read the address on his behalf.

Various constitutional and legal points were raised by members on the Governor's action to delegate to someone else his Constitutional duty to address the members of the Legislature and expressed doubt whether the Speaker could read the Address on behalf of the Governor. Absence of

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any specific provision in the Constitution to meet the eventuality of a Governor's unavoidable absence on such occasions was also pointed out and it was considered to be a lacuna in the Constitution. Some Members contended that Article 176 of the Constitution empowered the Governor alone to address the Legislature and as such in the absence of the Governor, any proceeding of a meeting of the Legislature, which is addressed by the Governor, were inconsistent with the Constitutional provisions.

The Speaker agreed with the contention that the Constitution was silent on the point as to who should read the Governor's Address in the case of his absence. He observed that this fact had been brought before the All India Presiding Officier's Conference in 1960. But no specific decision could be arrived at.

On the issue whether a point of order could be raised in a joint sitting of this kind and, if so, who was authorised to dispose it of, the Chairman of the Council or the Speaker of the Assembly, the Speaker expressed the view that since this was a joint sitting of the two Houses, no discussion could be allowed, no points of order could be raised and no rulings or decisions given either by the Speaker or by the Chairman.

Regarding the question of his reading the Governor's Address the Speaker was of the view that simply because the address was read by him, it did not cease to be an address of the Governor. He was also of the opinion that this did not vitiate the proceedings of the House because article 212 of the Constitution of India clearly lays down that no proceedings in the Legislature shall be called in question on the ground of any alleged irregularity of procedure.

Situations are likely to arise in Legislatures for which there may be no provision in the Constitution or in the rules. In such case, he observed, we have to create conventions, use our discretion and wisdom as to what we should do in the particular circumstances. He, therefore, did not think, it made much difference if the Governor, who, for reasons of ill-health, was not able to come had authorised some-body else to read the address.

After having given his opinion, the Speaker read the Governor's Address.

In the Parliament of India the President R. Venkataraman read his address in English and Hindi version of his address was read by the Vice President of India on behalf of the President and the same was never questioned.

Is the Governor bound to accept the advice of the Chief Minister to dissolve the Assembly?

According to Article 172 of the Constitution every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly. But under the provision of Article 356 of the Constitution the Assembly may be dissolved earlier than five years by the President of India and under the provision of Article 174(2)(b) the Assembly may also be dissolved earlier than five years by the Governor. Here the questions which arise are:

Is the Governor bound to accept the advice of the Chief Minister to dissolve the Assembly and thus clear the way for the legislators to seek fresh mandate of the people? Or can the Governor refuse to dissolve the Assembly?

Constitution of India is silent in this regard. There are divergent views on the question of dissolution. One view is that the Governor must follow the advice of the Chief Minister to dissolve Legislative Assembly because such a practice is well established in the United Kingdom on the pattern of which Parliamentary System of Government has been incorporated in the Constitution of India. In United Kingdom a defeated Prime Minister has got the right to ask the Queen to dissolve the Parliament. There are many instances in U.K. when the King dissolved the Parliament on the advice of the Prime Ministers. A.B. Keith in his book "Commonwealth" stated that "the King may refuse to dissolve when advised" but he hastens to caution that the power to dismiss a ministry and refuse dissolution of Parliament are "Power of high importance and seriousness, not to be lightly used. Ivor Jenning expresses his view in his book 'Cabinet Government' that there has been a persistent tradition that the King could refuse a dissolution if the necessary circumstances arose".

According to Constitutional experts the Governor should not grant dissolution on the advice of the Chief Minister who has lost majority in the Assembly and in such a case should explore possibilities for forming an alternative government. As long as an alternative government can be formed, the power of dissolution should not be exercised. But if a Chief Minister who enjoys the majority support in the Assembly advises the Governor to dissolve the Legislative Assembly, his advice should be accepted.

Administrative Power of the Governor

The Constitution has given certain Administrative Power to the Governor where he is not supposed to act on the advice of his Council of Ministers. Article 239(2) of the Constitution of India provides that "...the President may appoint the Governor of a State as the administrators of an adjoining Union Territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers".

Conclusions

President Giri, inaugurating the Annual Conference of Governors on 23 November, 1973, reminded them that in

their relations with Councils of Ministers and in the discharge of their respective duties under Constitution they necessarily functioned "in a certain anonymity". The Press and the public, he said, were not their forum. Although Giri did not refer to the conduct of any particular Governor his observations were interpreted to imply strong disapproval of Governor's public statements which can have political implications or general controversies. Asking the Governors to be "wise and sagacious counsellers" to their respective Council of Ministers he maintained that much depended on their determination to ensure the proper working in spirit as well as the letter of the Constitution. The Governor and the Council of Ministers were not functioning in competition with each other. They had to function in close association and harmony and in complete mutual trust and confidence. While there was ample room for exchange of views between the Governor and the Council of Ministers, in the last resort he was bound to accept its advice.

Governor is a Constitutional head of the State. As a Constitutional head he may take decision to dissolve the Assembly. This decision is described as the prerogative of a Constitutional head exercisable in his discretion. But the office of the Governor should remain free from public controversy. The Governor is not bound by the ministerial advice of his Council in all cases. Article 163(2) of the Constitution of India makes it clear that the decision taken by the Governor in his discretion shall be final and the validity of anything done by the Governor in his discretion shall not be questioned in any Court of Law.

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Ordinances

S.M. Krishna*

Before the advent of the Parliamentary system of Government, Monarchs had the power of making laws. With the passage of time, Legislatures took over this power. Yet some vestiges of the absolute power are found with the Head of the State even to this day. This means both the Head of the State and the Legislatures are exercising concurrent powers.

The Ordinance-making power of the Head of the State can be traced to the Indian Councils Act of 1861. This Act empowered the Governor General, in case of emergency, to promulgate Ordinances which were to remain in force for not more than six months. This provision has been continued in the subsequent constitutional enactments. The Government of India Act, 1919 and the Government of India Act, 1935 also had provided for the promulgation of Ordinances. Section 42 and Section 88 respectively of the Government of India Act, 1935 have empowered the Governor General in the case of the Federation and the Governors in the case of Provinces to promulgate Ordinances during the recess of Legislature. When India became a Dominion in 1947, the federal part of the Government of India Act, 1935 was brought into operation and Sections 42 and 88 dealing with Ordinance-making power of the Governor-General and the Governors were adapted by the India (Provisional Constitution) Order, 1947.

The Constitution-makers have borrowed provisions regarding Ordinance-making from the enactments made by the British Parliament. Article 123 in the case of Union of India and Article 213 in the case of States deal with the powers of promulgating Ordinances during the recess of Parliament and State Legislatures respectively.

The Ordinance-making power of the Governor arises as soon as the Assembly is prorogued. If there are two Houses then the power arises as soon as either House is prorogued. It is an absolute condition for the exercise of the power that the Legislature or either House thereof must not be in session at that time. An Ordinance cannot be promulgated before the order of prorogation is made and notified. Otherwise the Ordinance will be invalid. In Bihar, in 1950, an Ordinance was declared invalid as it had been promulgated before the order of prorogation was notified.

Sometimes House is prorogued with the object of promulgating Ordinances. This cannot be challenged in a court even if the Ordinance was not made in good faith. The courts cannot question the jurisdiction either as to the occasion or purpose or the subject matter of an Ordinance. In an Allahabad case, the validity of an Ordinance was upheld even though the Assembly was in session and the Council had been prorogued just a few days before the promulgation of the Ordinance.

An Ordinance may amend or repeal not only another Ordinance but also any law passed by the Legislature itself.

An Ordinance can be promulgated to enforce the provisions of a Bill pending before a House. It can also be promulgated to enforce the provisions of a Bill already passed by one House and pending in the other House. It could be promulgated on an entirely new matter to be replaced subsequently by a Bill.

The Governor cannot promulgate an Ordinance without instructions from the President —

1. if a Bill containing the same provisions would have required the previous sanction of the President for introduction in the Legislature;
2. if he would have deemed it necessary to reserve a Bill for the consideration of the President;
3. an Act of the Legislature containing the same provisions would, under the Constitution, have been invalid unless having been reserved for the consideration of the President, it had received the assent of the President.

An Ordinance will have the same force and effect as an Act of the Legislature assented to by the Governor.

The courts cannot question the validity of an Ordinance made by the Governor on the ground that there were no sufficient reasons for promulgating an Ordinance or that it was made *mala fide*, for example, to circumvent judicial decisions. The only questions with which the courts are concerned are —

1. Legislative Competence;
2. whether the Legislature or either House thereof was not in session when the Ordinance was promulgated.

The Patna High Court has observed that a court is not concerned with policies or politics; it is only concerned with the question whether the Ordinance is within the Constitutional power of the Governor and if so whether the Ordinance is in whole or part a valid exercise of that power.

From the mere fact that as soon as the Bihar Act V of

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1947 was declared invalid by the Federal Court, the Governor of Bihar promulgated Ordinance II of 1949 and when the latter was declared invalid by the High Court, the Governor of Bihar enacted the impugned Ordinance with the same provisions, it is impossible to infer that the Governor had acted in bad faith. On the contrary the general rule that everything is presumed to be rightly and duly performed until the contrary is shown should prevail in such cases. There is a general presumption of law that in the absence of proof to the contrary credit should be given to public officers who have acted prima facie within the limits of their authority for having done so honestly and with discretion. It is obvious that in promulgating the Ordinance IV of 1949 the Governor has not acted beyond his legislative competence and therefore the Ordinance is not *ultra vires*.

An Ordinance can have retrospective effect even from a date when the Legislature was in session. Every Ordinance has to be laid before the Legislative Assembly and if there is a Legislative Council in the State before both the Houses.

An Ordinance will cease to operate at the expiry of six weeks from the reassembly of the Legislature. If the Assembly and the Council are summoned on different dates the period of six weeks will be reckoned from the latter of the dates. Also if the Ordinance is not placed before the House it would cease to operate at the expiration of six weeks from the reassembly of the Legislature. It does not affect the initial validity of the Ordinance.

It will cease to operate if before the expiry of six weeks, a resolution disapproving it is passed by the Assembly and if there is a Legislative Council then agreed to by the Legislative Council. The Governor may withdraw an Ordinance at any time.

If the provisions of an Ordinance are to be continued for a longer period or are to be made permanent then a Bill to replace it has to be brought. Whenever a Bill seeking to replace an Ordinance with or without modification is introduced in the Houses, a statement explaining the circumstances which had necessitated immediate legislation by Ordinance has to be laid on the Table of the House along with the Bill.

A resolution seeking to disapprove an Ordinance cannot bar the progress of a Bill which seeks to replace the Ordinance. The resolution for disapproving an Ordinance and the motion for the consideration of a Bill seeking to replace the Ordinance may be discussed together. The resolution after discussion is put to vote first. If the resolution is adopted it would mean disapproval of the Ordinance and the Bill would automatically fall through. If the resolution is voted down then the Bill could be proceeded with. No amendment can be moved to a resolution disapproving an Ordinance.

An Ordinance embodying wholly or partly or with modifications the provisions of a Bill pending before the House can be promulgated and a statement explaining the circumstances which had necessitated immediate legislation by Ordinance has to be laid on the table of the House.

No Ordinance can be issued for the appropriation of money out of the Consolidated Fund if the demands for grants had not been considered and assented to by the Assembly.

An Ordinance is generally promulgated whenever there is an emergency situation and legislation had to be enacted quickly and it is perceived that there will be some delay in getting it processed through the normal Legislative procedure. However, unfortunately, the Ordinance making power is often misused in India. In one particular case the same Ordinance has been reissued 14 times. The method adopted is that before the expiry of six weeks after it has been laid before the House, the Legislature is prorogued and the Ordinance is reissued. This is not a stray case, as there are several instances in a number of States where Ordinances have been reissued. It is, therefore, imperative to modify the rules in this regard, to ensure that this power of the executive is not misused for narrow political considerations.

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Employment Guarantee Scheme Committee in Maharashtra

M.D. Chaudhari*

Government of India has recently introduced the Jawahar Rojgar Yojana in an endeavour to solve the chronic problem of rural unemployment. The Employment Guarantee Scheme launched on 1st May 1972 as part of the 15-point programme of Maharashtra Government was a novel step in the direction of generating rural employment. Perhaps no better way could be found to review the scheme than the Reports of the Employment Guarantee Scheme Committee constituted by the State Legislature on 13 August 1975.

On 29th March 1972, the then Chief Minister V.P. Naik made a policy statement in the House that the scheme would come into force from 1st May 1972. He further pointed out that the scheme was an effort, however small, towards the fulfilment of the Directive Principles embodied in Article 41 of the Constitution. A Government Resolution was also placed on the table on 20th September 1974. On 20th December 1974, he placed before the House the draft plan of the scheme and an amendment to the Government Resolution of 20th September 1974 and requested the House to agree. It is noteworthy that this resolution was unanimously adopted by the House. Similarly, the House also passed unanimously the "Profession Tax Bill" meant for raising funds for the scheme. In 1978, the Employment Guarantee Scheme Act was also passed unanimously. It thus had the blessings of the entire House, a unique phenomenon in parliamentary history.

The Employment Guarantee Scheme provides for employment to all adults residing in rural areas who are prepared to work. It has been stipulated that at least 50 persons must be prepared to work to start a new work. In tribal areas, however, new work may be started even if the number of workers is less than 50. The scheme aims at creation of durable assets for the community. The scheme has given employment to the landless labourers and small land-holders. The scheme has made it possible for the unskilled adults in rural areas to get employment within 5 kms. from their place of residence. Only in rare cases they are required to go beyond.

The Collector of the District is responsible for the working of the scheme. A special cell has been created to co-ordinate the works in the district. Necessary technical staff has also been made available. The Collector is required to prepare a list of works to be undertaken and a blue print of each work has to be prepared keeping in view the requirements for the next two years. The works to be undertaken should be of sufficiently longer period. All the works should be carried on departmentally and not through any contractor.

There are Committees to supervise and inspect the works at the Panchayat Samiti level, the District level and the State level. Members of Parliament, the Legislature, Presidents of the Zilla Parishad, Chairmen of Panchayat Samitis in respective areas have been associated with these Committees. The Committee at the State level is headed by the Chief Minister and Ministers for Agriculture, Finance, Industries, Labour, Revenue, Public Works, Planning, and Secretary to the Planning Department, are Members. This Committee will take policy decisions and will review the scheme constantly with a view to evaluate the scheme.

Composition of the Committee

The Committee consists of 25 Members, 20 of whom are nominated by the Speaker from the Lower House and 5 are nominated by the Chairman of the Upper House. The Speaker nominates the Chairman of the Committee from amongst the members nominated by him.

Functions of the Committee

The Committee examines and evaluates the working of the Scheme, points out the shortcomings and suggests ways and means to improve the scheme so as to get the best results.

Recommendations of the Committee

The Committee has made wide ranging recommendations covering almost all the aspects of the scheme. When the scheme was begun, its scope was not properly defined. There was lack of planning and co-ordination and no effective control over the scheme. The Committee has defined the scope of the scheme in detail. It has also recommended the rate of wages to be paid to the workers, their hours of work. It has also suggested that the workers be paid their weekly wages a day before the 'Bazaar day' in the area. Arrangements to provide medicines and first aid treatment, sheds for the children of women-workers, supply

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of drinking water should also be made. The Officers at the Taluka (Tehsil) level are authorised to withdraw money so that the weekly payment could be made to the workers. Steps have, however, been taken to have strict control so that these powers are not misused. Government has accepted these recommendations. Government has made available the technical staff on the recommendation of the Committee. Many positive steps have been taken by the Government in pursuance of the recommendations of the Committee. Another important recommendation is regarding the preparation of "Manual" for the scheme to ensure that the Officers and staff who are required to implement the scheme have no doubts left in their minds regarding the role they are expected to play.

The scheme, has immensely benefited the landless labourers and small and marginal farmers. It is playing a vital role in the development of the State economy. World Bank Study teams have also praised the scheme. The Central Government has appreciated the scheme and has decided to implement it throughout the Country. Jawahar Rojgar Yojana is a step in this direction.

The scheme, as reviewed from time to time by the Employment Guarantee Scheme Committee of the Legislature, will go a long way in overcoming the problem of rural unemployment. Improvement in the working of the Scheme is to a great extent the result of the Committee's recommendations.

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Office of the Speaker in Indian Polity

Brij Mohan Mishra*

The Speaker plays a very crucial and pivotal role in Parliamentary practice. Great prestige, dignity and power are attached to the office of the Speaker in every Parliamentary democracy. The smooth and orderly functioning of the House is basically his responsibility. Within the legislature and in all matters concerning the legislature the Speaker is the final arbiter.

In general, the position of the Speaker in India is analogous to that of the Speaker of the House of Commons in the United Kingdom, where the powers and privileges of the Speaker have evolved through a long and turbulent period of intense struggle in its constitutional history. However, the story of the office of the Speaker in India is not very old; it began only in 1920 with the passing and implementation of the Government of India Act, 1919. Prior to that the Head of the State used to preside over the deliberations of the legislature. The first incumbent of the chair of Speaker (then known as 'President') was Sir Frederick Whyte, who prior to this assignment, was a Member of the British House of Commons. He helped in the evolution of many healthy conventions in the conduct of the House. It was Sir Frederick Whyte who introduced the practice of the introduction of the Annual Finance Bill and its discussion by the members of the Legislature. The first elected President of the Assembly was Vithalbhai J. Patel who held the office from 1925 to 1930. He also helped in the carving and consolidation of many healthy conventions. He discouraged the Government members from transacting official business on non-official days.

The Government of India Act, 1935, changed the name of the presiding officer, from 'President' to 'Speaker', although, because of the non-implementation of the said Act, no one was appointed as the Speaker of the Assembly. It was only in 1946 that G.V. Mavalankar was elected the Speaker of the sixth Legislative Assembly. He held the office during very turbulent times from the colonial days through Constituent Assembly days to the Constitution days—from 1946 to 1956. He was succeeded by Ananthasayanam Ayyangar, Hukam Singh, Neelam Sanjiva Reddy (two times), Gurdial Singh Dhillon, Bali Ram Bhagat, K.S. Hegde, Balram Jakhar and Rabi Ray. These great Speakers have upheld the dignity of the House and have helped in carving out many new traditions and conventions.

Certain specific provisions in regard to the office of the Speaker have been enshrined in the Constitution of India. The Speaker is elected by the Lok Sabha from amongst its members. His conduct cannot be discussed in the House except on a substantive motion. And for that a special notice of fourteen days is required to be given to the House to seek his removal from office. Even after the dissolution of the House, he continues in office until the first meeting of the new House after such dissolution. He ranks higher than all the cabinet Ministers other than the Prime Minister himself and his salary is charged on the Consolidated Fund of India. All these expedients have been provided to make the Speaker truly independent and impartial.

In conducting the business of the House and regulating its proceedings the Speaker brooks no rival. In all Parliamentary matters his word is final. In respect of matters not specifically provided for in the rules, the Speaker holds residuary powers. His ruling is final. Although a request for reconsideration may be made to him, his decision cannot be questioned or challenged. This power has been tested again and again.

The question whether a Speaker after being elected to the august office should relinquish his party membership and office is a debatable one. In Great Britain, the convention is that the Speaker, once elected, always remains a Speaker and that is why he sheds his party affiliations. This complete severence of political and party affiliations is extremely difficult in Indian conditions. As things stand today there is a certainty in the minds of most members that the Speaker is a partisan appointee who in any difficult situation will be sympathetic to, if not actually partisan of, the government. To obviate this position a question arose after Independence that like his British counterpart the Indian Speaker should also relinquish his party affiliations after being elected Speaker. This issue is still unresolved even after the expiry of four decades. Now before coming to a decision we should look at the British conventions in this regard. In the United Kingdom, the Speaker's seat is not contested in the general elections by the major political parties, although some independent candidates or minor political parties may contest against him. Secondly, after his election as a Member of Parliament, the sitting Speaker is re-elected irrespective of any change in the party which forms the government. In a word the Speaker does not go with the government. Once a Speaker always a Speaker is the theme of the system in the U.K. In India, on the contrary, no such conventions have developed, so far. Under such circumstances it is not possible for a Speaker to cut himself off completely from the political party on whose

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ticket he was elected. How can a person who has been in the forefront of political affairs throughout his life suddenly severe all relations with his political organization where he will have to go again for securing Party ticket to contest election? In these circumstances it is neither practicable nor feasible for the Speaker to cut himself off from his political party, unless an understanding is reached that the Speaker's seat would not be contested and that he would be re-elected to that office.

In India the Speaker relinquishes membership of the Legislature Party but remains a member of the political party on whose ticket he is elected to the legislature. He does not attend or participate in any party meetings except on ceremonial or social occasions. To a great extent he keeps himself aloof from the camaraderie of Parliamentary life, though he always remains accessible to his colleagues. In the history of the Indian Parliament the only Speaker who resigned from the party to which he belonged on his election as the Speaker, was Neelam Sanjiva Reddy during the years 1967-69. Speaker Hukam Singh who held office from 1962 to 1967 did not resign from the Congress party although on being elected he assured the Members that he did not belong to any political party or group at all. Many members were not satisfied with this assurance and on 24 August 1966 after he rejected a privilege motion against a Minister the demand was again raised. The following day Speaker Hukam Singh denied that he was member of the Congress and stated: 'The position is that as soon as I was elected I said that thenceforward I shall not be a member of any political party. I had said that since then I have not paid a single pie even as a primary member as my subscription.' Nevertheless no evidence is available to show that Speaker Hukam Singh formally resigned from his party. Speaker Gurdial Singh Dhillon also did not resign from his party though he resigned from its executive Committee and the Congress Parliamentary Party. Under the prevailing conditions the convention of the Speaker completely divesting himself of his party affiliations is unlikely to develop.

However, another healthy convention seems to be emerging in this sphere whereby a person sponsored and supported by the ruling party is elected unopposed as the Speaker and a person unusually sponsored and supported by the opposition groups is elected to the office of the Deputy Speaker.

Since the Speaker is the Presiding Officer of the legislature he is expected to be above board. Hence he is debarred from voting in a division like any other member of the House. If in such a division the votes are equal the Speaker has the privilege of his casting vote so that the deadlock might be resolved. In article 100(1) of the Constitution the words used are 'shall exercise.' This makes it obligatory on the Speaker to use his casting vote. In the use of the casting vote British convention is worthy of note. In the case of a deadlock the British Speaker is also enjoined to cast his vote. If we look at the use of the casting vote in the United Kingdom the following rules emerge:

(i) that the Speaker should always vote for further discussion, where this is possible;
(ii) that where no further discussion is possible, decisions should not be taken excepting a majority; and
(iii) that a casting vote on an Amendment Bill should leave the Bill in its existing form.

In order to avoid the least impression of being called partial, the Speaker votes in such a manner as not to make the decision of the House final. In India such cases when the Speaker has been required to cast his casting vote on any major issue have not come up yet. But it is hoped that the British model will be followed in India.

Today, the Speaker is the most strained person in the House. He is a helpless victim of disorderly scenes in the House. Again and again charges are hurled at him and his impartiality questioned in the midst of rumpus and chaos. Unless both the ruling and opposition parties realise that the Speaker has to conduct the House according to the Rules framed by the House itself, dignity of the office of the Speaker cannot be maintained.

It is the need of the hour that the dignity of the institution of Speaker is reaffirmed. This can be achieved only when the political parties put a check on the unruly behaviour of the members in the House. The political parties should also reach an understanding so that the Speaker is elected as a member without contest and his constituency is properly nursed.

Free debate, objective deliberations and healthy criticism are the *sine qua non* of parliamentary democracy. And it goes without saying that it is the onerous duty of the Speaker to further these objectives. Despite divergent views, all Members of the House have one common object and it is the progress, prosperity and well being of the people and the State. As such, it becomes a pleasant duty of the Speaker to conduct the business of the House in such a way that tempers are not frayed and a pleasant atmosphere prevails in the House so that the ultimate goal of people's welfare is achieved.

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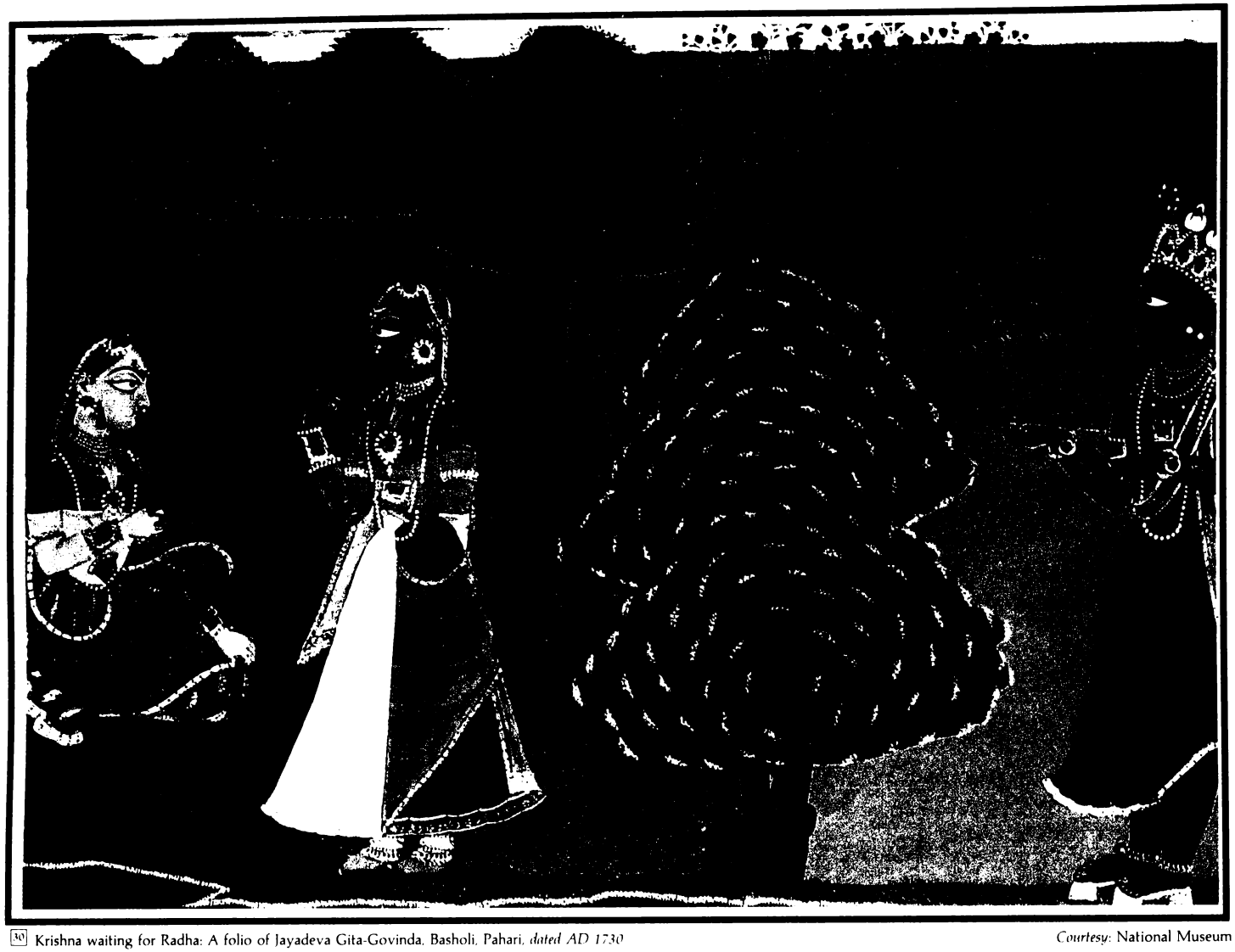
29 Krishna with gopies: A folio from Jayadeva Gita-Govinda, Basholi, *dated AD 1730*

Courtesy: National Museum

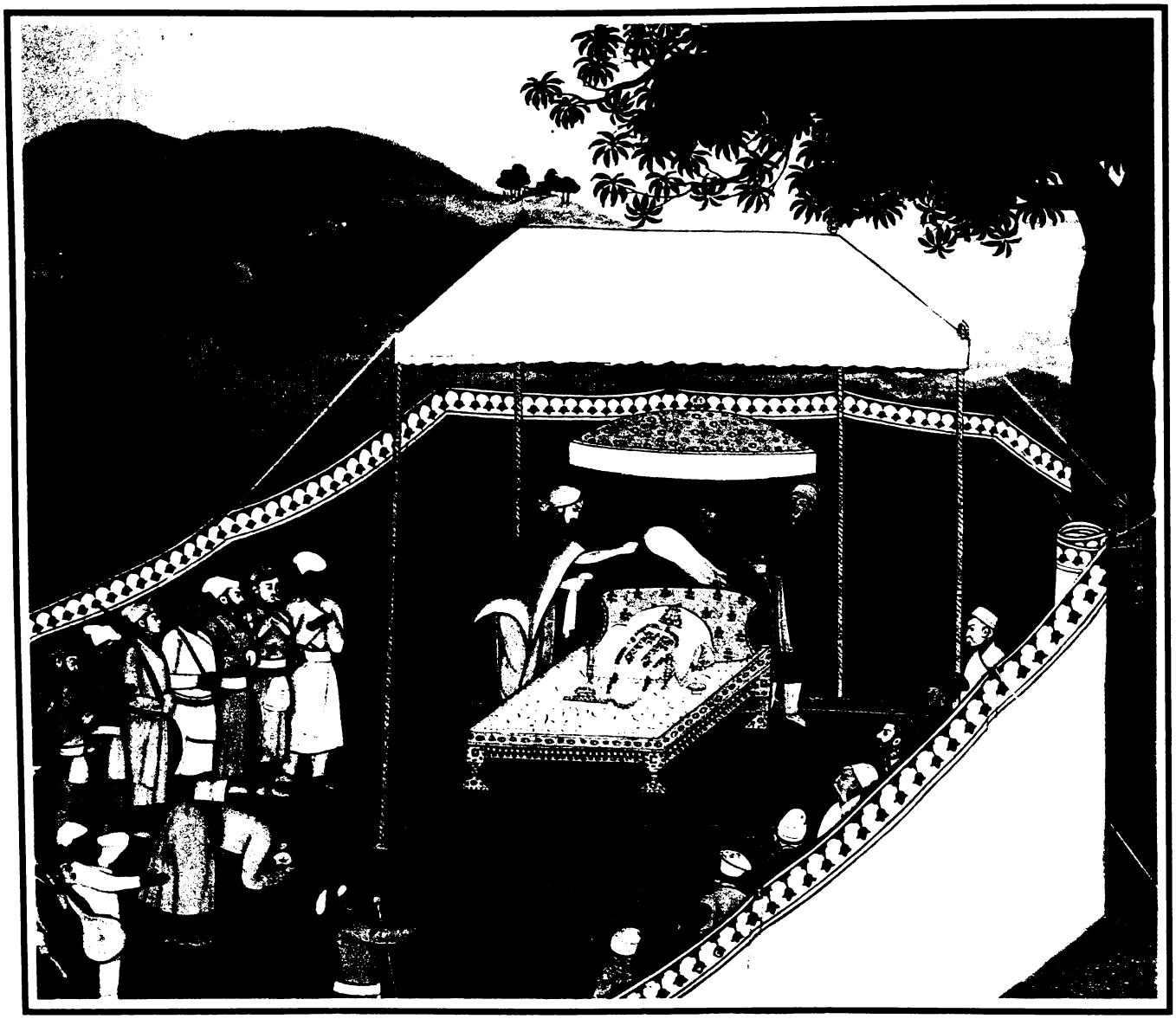


[30] Krishna waiting for Radha: A folio of Jayadeva Gita-Govinda, Basholi, Pahari, *dated AD 1730*

Courtesy: National Museum

35 The love pavilion. Guler, Pahari *circa* AD 1760

Courtesy National Museum



32 Bharata worshipping Rama's Sandles: Kangra, Pahari, *circa AD 1785-90* *Courtesy:* National Museum

Functions of Parliament and State Legislatures

Hari Shankar Bhabhra*

Parliament is not merely a law making body. It has acquired the status of a multi-functional institution today. It performs variety of roles. As an eminent Scholar puts it: "Any attempt at a comprehensive identification of roles and analysis of functions of present day Parliament in the language of modern Parliamentary political science may be quite misleading and may even amount to pettifogging—it may befog more and enlighten less." With a view to identifying the concepts, roles and functions of Parliament and State legislatures, we should trace the historical background of Parliamentary system in India.

In ancient India also, parliamentary democracy prevailed, but its format was quite different, i.e., local panchayats, community panchayats and, at the apex, rulers and nominees of the rulers functioned as policy and decision makers.

Our present parliamentary democracy is adopted from the British practice. Our Constitution makers decided that the future constitutional set-up of the Indian polity should be federal in nature under the shadow of a unitary type of Constitution with a parliamentary character.

Prior to Independence, during the days of our struggle for freedom, certain parliamentary traditions had developed in the country. Our Constitution makers, therefore, thought that this was the best system that should be adopted for the country and accordingly a Parliamentary system of government was established in India.

In a democracy, the people make laws which are binding on themselves. But it is not at all possible to involve everybody in law making process. Therefore, we have adopted the system of representative democracy. Representatives, belonging to different Parties, are elected by the people. The largest single Party or the majority Party forms the government. If there is no single party which commands an absolute majority, then a group or party with the support of other groups/parties, forms the Government. The Government remains in power so long as it enjoys the confidence of the Lok Sabha (in case of Central Government) or State Legislative Assembly (in case of respective State Government). If the supporting groups/parties join in the Ministry also, then it is known as a coalition government. Otherwise, they may support the ruling group/party from outside only.

Under the Constitution, there are three Legislative Lists known as (i) The Union List, (ii) The Concurrent List, and (iii) The State List. Under the Union List are those subjects on which only the Parliament can legislate, e.g., Defence, Foreign Affairs, Currency etc. Similarly, in the State List are those subjects on which the State Legislatures may pass laws, e.g. Law and Order, Public Health and Sanitation, Agriculture etc. In the Concurrent List come those subjects on which both the Parliament as well as the State Legislatures may legislate, e.g. economic and social planning, social security and social insurance, education etc. Every Legislature, whether at the Centre or in the State has full authority for subjects allotted to them under the Constitution.

A comprehensive analysis of the functions of Parliament and State Legislatures is given below:

Financial and Political Control

Executive is responsible to the Parliament. This is termed as Parliamentary control over the Government. There is a provision in the Constitution about collective responsibility of the Council of Ministers to the Parliament and the Parliament's control over the Budget.

The Executive, according to the Constitution, prepares an annual statement of the estimated receipts and expenditure (Budget) to be placed before the Parliament/Assembly. The Executive is free to propose the expenditure and specify the purposes for which money is required. Simultaneously, it has full freedom to suggest the means of revenue to meet the expenditures. Thus, the entire initiative in financial matters is with the Government. Nevertheless, Parliamentary control over the public finance is one of the most important checks against the Executive. There can be no taxation without the sanction of Parliament and no expenditure without the approval of Parliament. Thus, parliament exercises financial control over the Executive.

This is the theoretical aspect. But in fact and practice, it is the Government which controls Parliament through its majority in the House. According to S.C. Kashyap, "The operative reality of politics today is that the real power resides in the Prime Minister and his or her Cabinet and not in Parliament. The Prime Minister is the leader of the majority party in Lok Sabha and also the head of the Government. The Council of Ministers, with the Prime Minister at its head, controls both Government and Legislature, not the least because it has extensive patronage and the power to take and implement decisions."

The Parliament is the supreme institution of people in India. Its primary function is to keep a vigilant eye on the Government to ensure that laws and policies are implemented efficiently and effectively in a manner that

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causes no injustice and undue hardship to any one or a section of the society. Thus, Parliament is expected to exercise effective check over the actions of the Government. But in fact, as long as the Government commands a majority in Parliament, the power of Government is practically unlimited. Notwithstanding this, parliamentary overseeing of the Government is always there. There have been a number of occasions in the parliamentary history, when a debate or discussion in Parliament forced the Executive to change the policy or course of action on a particular issue.

In 1962, Pandit Nehru had to bow before the supremacy of Parliament by seeking resignation from the then Defence Minister, Shri Krishna Menon. Other examples are appointment of an Enquiry Commission against Punjab Chief Minister, Shri Pratap Singh Kairon, withdrawal of Defamation Bill in 1988 by Government of India and the withdrawal of the Press Bill in 1982 by Government of Bihar. In 1989 also the Government had to yield under mounting pressure of Parliament, and the Prime Minister announced in Lok Sabha that Thakkar Commission's Report would be laid on the Table of the House on 27th March, 1989. The Panchayat Bill attracted severe criticism from the opposition in Parliament and Government was forced to postpone its passing to the monsoon session. Then, the Bill, which was passed by the Lok Sabha, was not approved by the Rajya Sabha.

Therefore, however powerful the Government may be, it cannot afford to ignore the public opinion both inside and outside the Houses of Parliament and Assemblies. The most important check on Government is the existence of a vigilant legislature which, if it feels that a particular measure is against the national interest, can compel the Government to change its policy. Thus, the Parliament exercises political control over the executive.

Administrative Control

Administration is run by the personnel of civil services. Parliament directly does not interfere with the day to day business of administration. Parliament is also not supposed to control the administration. Accountability to it is through the Ministers.

Under the present system, once policy is drawn, law is enacted and money is sanctioned, it is the responsibility of the administration to execute and implement the policy as laid down by the legislature.

But the Parliament has to keep an eye over the administrative behaviour. Parliament can enquire and examine whether the administration has acted in conformity with its obligations within the approved policies and exercised the powers conferred on it for the purposes for which they were intended, and whether the money spent was in accordance with Parliamentary sanction.

This would ensure that the officers function in the healthy awareness that they would be ultimately subject to Parliamentary scrutiny and answerable for what they do or fail to do. But in order to be able to conduct meaningful scrutiny and call the administration to account, Parliament must have the technical resources and information wherewithal.

The various procedural devices like the system of Parliamentary committees, questions, calling attention notices, half an hour discussions etc., through which the Parliament gets informed, also constitute very potent instruments for effecting Parliamentary surveillance over administrative action. Significant occasions for review of administration are provided by the discussions on the Motion of Thanks on the President's or Governor's address, the budget demands and particular aspects of Government policy or situation.

Legislation

Now-a-days Parliament is required to interfere in almost every aspect of social activity and a plethora of law have to be passed. According to Professor Robson "the law touches our lives from 'Womb to tomb'."

During the last 60–70 years, a new phenomenon has occurred in Parliaments all over the world which is known as "Delegated Legislation" or "Subordinate Legislation". Parliament/Assembly prepares the main framework of law and delegates the powers to the executive to frame rules under the Act which go into the details of how to implement the policy laid down by the Act. This is called "Delegated Legislation" or "Subordinate Legislation". The Delegated Legislation touches our lives at every point and time.

Law making is the traditional function of a Legislature. The Constitution provides that Parliament at the national level and Assemblies at State level are supreme Legislative bodies.

The main thrust of legislation in India has been on social legislation. It has been aimed at social change and economic development. In fact Parliament has been in the forefront of social reforms. Since the commencement of the Constitution, a number of social reform laws have been passed by Parliament and State Assemblies regarding special consideration, guarantees and benefits to backward and ill treated sections of the society in the form of reservations, social security, removal of disabilities, minimum wages, old age pensions, housing, etc.

While legislature's role in law making is of immense value, there is another side of the coin. In real sense, Parliament does not make laws. Initiative in legislation is taken by the executive and Bills are drafted by the departments of administration. Parliament only discusses, scrutinizes, approves and passes the Bills.

Parliament is not the single law making body. It is one of the many. As an eminent authority on Parliamentary Procedures puts it Law is a process — "beginning in the

pre-natal social urges, the first felt need demands for action, conception of the policy makers and the play of political forces and various interest groups, involving role of the concerned department and the Law Department in drafting the bill, the ruling party, the concerned minister and the cabinet, the House of Parliament, Assembly and their committees and the President, Governor and proceedings as to making rules and regulations and then actual implementation by the administration and, in case of dispute, interpretation and judicial review by courts. At every stage law is being made and in effect, modified. Thus, the act of law making cannot be attributed to any one body. All the three organs of State — the executive, the legislature and the judiciary — have a participating role in legislation".

Amending the Constitution

Article 368 of the Constitution of India deals with provisions for amendment of the constitution. Parliament is the repository of the constituent powers of the Union. The procedure for the amendment, as laid down in that Article clearly mentions that Parliament's constituent capacity has certain distinctive features.

First of all, an amendment of the Constitution can be initiated "only" by the introduction of a Bill in Parliament. Initiative in the matter of amendment of Constitution is exclusively reserved for Parliament.

An amendment to the Constitution can be passed only by a majority of not less than two thirds of the members of each House present and voting. An amendment to certain Articles of the Constitution also requires that the Amendment Bill, having been passed by each House of Parliament with the prescribed special majority, has to be ratified by the legislatures of not less than half of the States.

In the case of a Constitution Amendment Bill, as duly passed/ratified, the President's assent is mandatory and, unlike in the case of ordinary legislative Bills, the President has no option to withhold his assent or return the bill to the House for reconsideration.

It is significant that none of the provisions of the Constitution is "unamendable". Parliament can amend or repeal any provision of the Constitution. Any amendment cannot be questioned in any court of law on any ground whatsoever unless it tends to alter or violate what may be considered as the basic features of the Constitution.

Since the commencement of the Constitution as many as 68 (Sixty Eight) constitutional amendments have been passed in exercise of the Parliament's constituent powers.

Grievance Ventilation

Ventilation of public grievances is the most important function of the Parliament. There are various ways by which the people's grievances are ventilated in Parliament or assemblies e.g. questions, adjournment motions, no-confidence motions, half-an-hour discussions etc.

The aspirations, urges, expectations, anxieties and frustrations of the people come on the floor through the representatives by these motions. Parliament is the mirror of the masses and barometer of their mood, mind and pulse rate.

"The Parliament of India more and more truly mirrors the mosaic of Indian society. Parliament is becoming more representative of the people of India, of the level of their political awareness, of their lack of sophistication and of their problems, hopes and aspirations. Elitist politics is gradually giving way to a healthy ruralized politics. The polished urban lawyer is being replaced by the village farmer or the political/social worker with his innate commonsense and acute awareness of the needs of the people.

An average Member of Parliament/Assembly himself views his duty to be that of representing the people and giving expression to their difficulties, problems and grievances and seek their removal and redressal. The Member of Parliament or Assembly bridges the gap between the people, the Parliament and the Government. He also plays a role of communicator and educator. This, the Members try to achieve by making full use of the various procedural devices available and snatching every possible opportunity in the House, and through the Petitions Committee and Parliamentary Committees.

During debates and discussion on Bills, Finance Bill, motion, Government policies, motion of thanks of President's/Governor's address, budget etc., members are free to say what is good for the nation and what changes are required in the existing policies. The Parliamentary debates remind the administration of their duties and obligations. While the administrators have complete freedom to implement the policies approved by Parliament in the best manner possible, they are nevertheless haunted and guided by the various view points expressed on the floor of the House. And this may be called the advisory role of Parliament.

Leadership

Parliament is to throw up Leadership. It is a very important function of Parliament. Every Minister in the Government has to be a member of State Legislative Assembly or either House of Parliament. He can continue as Minister without being a member of either House for a maximum period of six months. Parliament or Assembly, therefore, does provide a forum where leadership is thrown up. Thus it serves as a national nursery of political leadership. It recruits and trains the members to become ministers. Their performance in Parliament or State Legislative Assembly helps the Prime Minister or Chief Minister to select the best among those who are in the Houses. After serving in various Parliamentary Committees as members, they acquire working knowledge and get expertise in specific fields. It helps them

to make good Ministers.

In India the function of creating the leadership is performed satisfactorily because of the inbuilt system of Constitutional provision that the Prime Minister/Chief Minister must be a Member of the Legislature. Under the parliamentary system, the majority party chooses the Leader who becomes the Prime Minister and He or She forms the Government. The Government remains in power so long as it enjoys the confidence of Lok Sabha or Assembly. Thus it is the Lok Sabha/Assembly which creates, sustains and destroys the Ministry. According to Hindu mythology, the Trimurti, i.e. Brahma, Vishnu and Mahesh, create, sustain and destroy the world. Similar is the function of Lok Sabha/Assemblies.

Right to Information

Information is vital to Parliament and Assemblies. They get information in many ways and through a variety of sources. To call for information is the prerogative of Parliament and Assemblies. Right to get information is unlimited excepting the information which is likely to prejudice vital national interest or the Security of the State. It is the duty of the Government itself to feed Parliament/Assembly with information. This is done by the Ministers making statements in the House, laying reports and papers on the Table of the House.

The most effective and well known method, through which members get information, is that of asking Questions in the Houses. It is said that during the Question Hour—"a piercing searchlight is thrown in every nook and corner of the vast length and breadth of administration and nothing falls outside the scrutiny of Parliament." The Minister may be put to a test by means of searching supplementaries which may be so framed as to expose the weakness of administration. The Ministers sometimes get better information about the departments through the Questions of Members and, as such, weak spots are exposed requiring priority attention.

An incomplete answer to a Question is followed up by a member demanding a 'half-an-hour discussion'. Matters of urgent public importance may be raised by the members through 'Short Notice Questions' and by another device of Calling Attention Notices by which a member may call the attention of a Minister to a matter of urgent public importance to make a statement on the subject.

Member can also write to the Ministers asking for the information they may need. Another method of getting information is to get feedback through the reports of various Parliamentary/Assembly Committees. Committees ask searching questions and get valuable information from Government Departments, Public Undertakings etc.

For Parliamentarians, the press also plays an important information role. Though Press has to follow its own code of conduct, often the Press digs out the administrative weaknesses and lapses, scandals, shortcomings etc. and gives expression to public grievances and difficulties. It also highlights how the policies are being carried out. In India, a major part of the raw material of Questions comes from the press columns. The press also keeps the masses in touch with the day to day Parliamentary activities. Thus the press has a two way traffic and contributes towards building a strong link between the public and Parliament.

The information given by the Government sources sometimes get slanted or biased and may not be complete, factual and objective. Hence the Parliament/Assemblies need independent information reservoir and specialized dissemination system. Parliament Liabrary and its Research, Reference, Documentation and Information Services fulfil this objective. In State Assemblies such institutionalised information system is in the developing stage. "Since legislators are busy men with multifarious pressures on their time, the information has to be precise, to the point and in easily digestible and readily usable form."

National Integrational Role

The Parliament has a very important role to play in the national integration. Parliament does help the forces of integration in the country. If one sits in the Public Gallery of Parliament Houses or Central Hall, one would observe the members wearing various dresses and speaking different languages. It is miniature India, persons from various States intermingling very freely, chit-chatting, taking tea and coffee in the Central Hall and so on. Here members, irrespective of caste, creed, region or religion, meet informally and discuss in groups or with individual's problems which affect the country as a whole. It helps in creating feelings of national integrity.

Parliament in India is the legitimate arena for power struggle, for crystallization of political activity and for acting out the conflicting roles and interests with the Parliamentary rules and procedures facilitating eventual reconciliation. Instead of fighting each other, the Parties tend to agree to disagree and to accommodate or tolerate each other. It is on the Parliament/Assembly floor that some very delicate problems are resolved. The integrational and conflict-resolution role of Parliament is significant in the context of our multifold society.

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Glimpses of Arunachal Legislature

Lijum Ronya*

Arunachal Pradesh—the land of the dawn-lit mountains—is a sprawling mountainous territory spread over 83,743 Sq. Kms and inhabited by more than 7.5 lakh people. Bounded by Bhutan to the West, China to the North and North-east, Burma to the East and the plains of Assam to the South, Arunachal Pradesh is the home of more than twenty major tribes and acknowledged to be one of the most splendid, variegated and multilingual tribal areas of the world.

The people retain a vital interest in the art of living, expressed eloquently in their gesture and motion, song, dance and ritual. Their feel for nature is instinctive a consequence of the symbiotic relationship which has existed between man, animal and forest through centuries. This instinct finds expression in the cult of Donyi-Polo, the worship of the sun and moon, which prevails amongst the Nishis, Tagins, Apatanis and Adis. The Khamptis, Singhphos and Tangsas of Lohit and Tirap districts profess the Hinayana form of Buddhism, while their brethren in Kameng and Siang, the Monpas, Sherdukpens, Membas and Khambas have embraced the Mahayana form. This diversity of religious belief has left a profound impression upon the temperament of the people, ranging from the deeply religious and restrained personality at one end to the joyous and irrepressible one at the other.

Constitutional Evolution

For long years has Arunachal Pradesh remained inaccessible and hidden, remote and unknown, save for a privileged band of administrators, explorers and anthropologists. The veil began to lift in the early part of this century, hesitantly at first, and with greater rapidity thereafter, especially after the country attained Independence in 1947. The last forty years have seen the territory pass through various stages of constitutional and political evolution. The pace of development has also quickened, and it would not be an exaggeration to say that the people of Arunachal Pradesh have traversed many centuries within the span of a few decades.

Arunachal Pradesh acquired an identity of its own for the first time in 1914, when some tribal areas were separated from the then Darrang and Lakhimpur districts of the province of Assam to form the North East Frontier Tract. The North East Frontier Tract, was further subdivided into the Balipara Frontier Tract Lakhimpur Frontier Tract, Sadiya Frontier Tract and the Tirap Frontier Tract during various stages of evolution between 1914 and 1946. These Frontier Tracts, together with the Naga Tribal area were collectively renamed the North East Frontier Agency, NEFA, in 1951.

In 1954, the North East Frontier Agency, was reconstituted into the Kameng Frontier Division, Subansiri Frontier Division, Tirap Frontier Division, Siang Frontier Division, and Lohit Frontier Division and Tuensang Frontier Division. The Tuensang Frontier Division was separated from NEFA in 1957 and merged with the newly constituted Naga Hills. Tuensang area now forms the State of Nagaland. Administrative responsibility for Arunachal Pradesh passed from the Ministry of External Affairs to the Ministry of Home Affairs of the Government of India in 1965, consequent to which the five Frontier Divisions of the territory became the five original districts. These districts have been further sub-divided with the passage of time, and the territory presently has eleven districts.

Arunachal Pradesh acquired an independent political status in 1972, when it was upgraded as a Union Territory. The territory ceased to be a tribal area within the State of Assam, and the Governor of Assam, who until then had administered the area as an agent of the President, also ceased to function as such. The Agency Council, which had been at the apex of the Panchayati Raj System in the territory, was replaced by a Pradesh Council in 1972, by granting union Territory with 33 seats in the Assembly House on 20th January, 1972, which in turn was converted into a Provisional Legislative Assembly in 1975. A Council of Ministers was sworn in on 15th August, 1975 and the Union Territory of Arunachal Pradesh ripened into maturity in the fullness of time, and the people of Arunachal Pradesh have at last come to occupy their rightful place in the Indian Union after attaining Statehood with 60 Seats in Assembly House on 20.2.90.

It is, however, gratifying to note that Arunachal legislature has made a promising start, notwithstanding its age of advent in handling Legislative business, thanks to the will and devotion of the Legislators in democratic principles. For obvious historical reasons, this Legislature is yet to develop special features and innovations. Legislative business is divided into two broad headings viz. Government business and Private Members business. The Rules of Procedure and conduct of business are, by and large, in conformity with the practice and procedure of Parliament of India, the apex Legislative body with some deviation to

*Hon. Lijum Ronya, Speaker, Legislative Assembly, Arunachal Pradesh.

suit the special needs of the House. The financial business transacted by the House mainly consists of presentation and discussion of Budget, Supplementary and Excess Grants and introduction, consideration and passing of connected Appropriation Bill. The items of business like Private Members' Bill, Private Members' Resolution etc. in Private Members time are generally taken up on every Tuesday and Friday or on such other day as the Speaker may fix.

Every year, there are 2 (two) Sessions of the House—generally in March and September. The March Session has its own significance in as much as it commences with the Governor's Address. A day is fixed for moving the 'Motion of Thanks' on the Governor's Address. On this Motion, Members are afforded opportunity to discuss the policies of the Government outlined in the Governor's Address as well as any other matter which the Address fails to take into account. Another important feature of this session is that the annual budget is presented during this session. Hence, it is also called the 'Budget Session'. Sittings of the House ordinarily commence at 10 AM and conclude at 5 PM with a break for lunch between 1 PM to 2 PM. The hours of sittings are notified in the relevant bulletin from time to time. The Speaker has the power to extend the usual hour of conclusion of the sitting but when the House has to sit late, consent of the House is normally taken.

Budget and Finance, at times, pose irritants to government. There are two types of budget for the Legislature viz. charged and voted. Due to overall financial constraints, difference of opinion crops up over the extent of voted grant. An innovation has, therefore, been made that budget projected by the Legislative body is to be accepted in toto without any pruning. If there is difference of opinion between Legislature, Secretariat and the State Finance Department which cannot be resolved otherwise, it is referred to the Statutory Board consisting of Chief Minister/Finance Minister and the Speaker. Generally, such a situation is averted.

Like Parliament of India, the Arunachal Legislature transacts a great deal of its business through Committees and possesses an organised system of Committees. Presently, it has the following Committees, classified in terms of their fuctions.

(i)	Committee to inquire	Committee on Privileges Committee on Petition
(ii)	Committee to scrutinize	Committee on Govt. Assurance & Committee on Subordinate Legislation
(iii)	Committee relating to day-to-day business of the House	Business Advisory Committee, Rules Committee
(iv)	Committee concerned with provision of facilities to Members	House Committee Library Committee
(v)	Committee to Control financial & Administrative powers of the Government	Estimate Committee Public Accounts Committee

While Members of Committees on Public Accounts and Estimates are elected by the Members of the House every year according to the principle of proportionate representation by means of single transferable vote, Members of other Committees are nominated by the Speaker from amongst the Members of the House. In keeping with the convention, Chairman of Finance Committee is nominated from among Members not belonging to the ruling party. These Committees are constituted and functions defined in the Rules of Procedure and Conduct of business in respect of Arunachal Pradesh Legislative Assembly.

There is adequate scope for Private and Public Bills. However, in view of the existing composition of the House, the incidence of such Bills is not much.

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Origin and Growth of Uttar Pradesh Legislative Council—A Glimpse

Shiva Prasad Gupta*

Originally, the idea of establishing a separate Legislative Council for Uttar Pradesh goes back to the Act of 1833 which provided for the establishment of a Separate Presidency at Agra, though the provision did not come into operation then. In the year 1835, a new province, known as 'NORTH-WESTERN PROVINCE' (a part of the present Uttar Pradesh), was created with its legislature in Calcutta. The other part of this province was under the rule of the Nawab of Oudh. In 1853 a Separate Legislative Council for the British Territories in India was created with the Governor-General as its head.

By the notification dated January 5, 1887, issued by the Lieutenant-Governor, with the sanction of Viceroy and Governor-General nine persons were appointed for the Council of the North Western Provinces and Oudh. Out of these nine members five were non-official and four were official members. Actually the normal term was two years but it was extended for two more years. The Council held five sittings during the year 1887. Its first meeting was held in Thornhill Memorial Hall, Allahabad on the 8th January, 1887 with the Lieutenant Governor-General Sir Alfred Omyns Lyall, presiding. The fifth sitting was held on 17th November, 1887. On the first day the rules for the conduct of business were laid on the table of the House. The Lieutenant Governor made his inaugural address and the House was adjourned. Thereafter, for over three years, no sitting could be held and the sixth sitting was held in February, 1891. The Council was to meet at the mercy of the Lieutenant Governor and its meetings were generally held at the Thornhill Memorial Hall, Allahabad, or the Chhatar Manzil, Lucknow. The first measure passed by the Council was Act No. 1 of 1887, The North Western Provinces and Oudh General Clauses Act, in its meeting held on Saturday the 19th February, 1887. The other important Acts were Act IX of 1889 requiring land lords to contribute to the pay of patwaris, Act XX of 1890—regarding reorganisation of the territorial limits of administration of the province and Act 1 of 1891—regarding the Municipal Waterworks. Pandit Ajoodhia Nath, Bireshwar Mittal and Kali Ram Chaudhari, (Indian members) took active part in the debates.

The British Parliament, vide Indian Councils Act, 1892, passed on November 3, 1891, reorganised the Legislative Councils in India. Thus the membership of the Legislative Council for North Western Provinces and Oudh was raised from nine to fifteen, out of which eight were elected by various institutions and subsequently recommended to the Lt. Governor for nomination, whereas seven were directly nominated by him. The term of membership was two years. The Act provided for the right of asking questions after due notice and the right to discuss the budget in the House, but no division was allowed. Motion for adjournment was also not allowed. The first question in the United Provinces Legislative Council was asked by Raja Ram Pal Singh on December 3, 1893. The Lt. Governor used to preside over the sittings of the Council. One notable fact was that the Lt. Governor, being President of the Council, used to take part in the debates justifying governmental measures and policies.[1]

In the year 1902, the name of the Province was changed from 'North Western Provinces and Oudh' to 'United Provinces of Agra and Oudh'. The Strength of the Council was increased to 46 under the provisions of Indian Councils Act, 1909. Out of these forty six members, twenty were official and twenty six were non-official members. Out of twenty six non-official members, twenty were elected and six were nominated. The elected members were to be elected from Allahabad University, various Municipal Boards, Zila Parishads, Muslim Community, Upper India Chamber of Commerce and Zamindars. Now the elected members were not required to be nominated under the provisions of the above mentioned Act. The non-official members were given the right to elect their representatives for the Finance Committee. Of the non-official members of the Council, Raja Rampal Singh, Babu Sri Ram, Pt. Madan Mohan Malviya, Lala Nihal Chand and Munshi Lal took very active part in the House.

The term of membership was raised from two to three years. In 1912, one elected seat was increased and thus the total strength of the House became 47.

In the year 1915, a consolidating statute, known as the Government of India Act 1915, was enacted which replaced nearly all previous enactments. The sittings of the Council were held thereafter under the provisions of the above mentioned Act. The third Council was inaugurated on 25th April, 1916. On July 19, 1916, the Hon. C.Y. Chintamani moved a resolution for early and full victory of Britain in

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the World War. His resolution was passed unanimously.

With the coming into force of the Government of India Act 1919, the 'UNITED PROVINCES' became a 'GOVERNOR'S PROVINCE' and the strength of the House was raised from 47 to 123, out of which 100 were elected members and 23 were nominated by the Governor. Out of these 100 elected members, 60 were to be elected by Non-Muslims, 29 by Muslims, 6 by Zamindars, 3 by Commercial Institutions, 1 by Allahabad University and 1 by Europeans. This Act widened the field of the electorates for the Council giving about one-tenth of the adult (male) population the right to vote. Now the Governor was no longer a member of the Legislature and he ceased to preside over the Council, but he had the right to vote.

During the period 1910-1919 there were very important enactments of the Uttar Pradesh Legislative Council related to Local Bodies, Civil Courts, Co-operative Societies, Primary Education, Prevention of Adulteration, Land Revenue and Tenancy. Dynamic Indian personalities, who took very active part were Mahamana Madan Mohan Malviya, Pt. Motilal Nehrun, Hon'ble C.Y. Chintamani, Tej Bahadur Sapru, Jagat Narayan, Syed Raza Ali and Ganga Prasad Verma.

The elections for the reorganised Legislative Council in Uttar Pradesh were held in October 1920 and came into existence on 3rd January, 1921. The first President was to be nominated by the Governor till the Council elected its President. The Council's first meeting was held on 22nd January, 1921 and M. Keane, I.C.S., who was appointed as the President, was in the Chair. The Council elected Rai Bahadur Anand Swaroop as its Deputy President.

For the first time the Council was given the power to introduce non-official bills and to move cut motions to demands for grants for various departments. The Council was also authorised to constitute the Finance Committee and Public Accounts Committee. Later on the Finance Committee became the Committee of the Council (which so far was the Governor's Committee) having the power to scrutinise and recommend expenditure to be included in the Annual Budget.

The Council adopted a resolution recommending the appointment of a Standing Committee on Privileges on the lines of the House of Commons. A resolution was also passed empowering the members of the Council to inspect Government Institutions established in their constituencies.

Among the legislative measures adopted by the Uttar Pradesh Legislative Council, important Acts were—The Oudh Courts Act 1925, The U.P. Opium Smoking Act 1925 and the U.P. Board of Revenue Act 1925.

The next Council was elected in the year 1926. Its first meeting was held on January 10, 1927 under the Chairmanship of Rai Bahadur Lala Sita Ram. New members were Sworn in and the House elected Rai Bahadur Lala Sita Ram as its President. Sri Mukandi Lal was elected Deputy President on 24th January, 1927. There was a National Party led by Hon. C.Y. Chintamani and Swaraj Party led by Pt. Govind Ballabh Pant.

In February, 1928 the National and Swaraj Parties forced an issue by moving a boycott resolution in the House and the same was passed by one vote. In September, 1928 when the Government moved a resolution for the election of a Committee by the House to work with the Simon Commission, the Swarajists and Nationalists staged a walk out and the resolution was passed unanimously in their absence. Next day for the first time in the history of the U.P. Legislative Council a no-confidence Motion was moved in the House. The motion was passed by the casting vote of the Hon'ble President, Rai Bahadur Lala Sita Ram. Before casting his vote Hon'ble President observed:

> 'This has cast on the chair the duty of giving a casting vote. Under the law the chair can not shirk it and can not avoid it but give a vote this way or that way, as the House has not given any clear verdict on the motion. I think I am right in saying that the 'NOES' vote include the vote of the Hon'ble the Minister for Education himself.....If that vote, however, is not taken into calculation as that of the person interested the verdict of the House would be 57 for and 56 against.....Hon'ble members ought to realize the grave responsibility which I am feeling in giving my casting vote at this Juncture.
>
> The chair is supposed to be the custodian of the Freedom and liberty of the members of this House. The Chair is also supposed to interpret the wishes of this House as they are. The Chair has no conscience; the Chair has no convictions; the Chair cannot go into the personal merits of the case. I believe I am not wrong in thinking that the wishes of the House are in favour of the motion. I, therefore, give my casting vote with the 'AYES' under the circumstances."[2]

The Council during its term, passed several Bills of which the most important once were the Uttar Pradesh Land Revenue (Settlement) Act 1929, and the Naik Girls Protection Act, 1929. The extended term of the Legislative Council expired on 31st August, 1930.

The New Legislative Council was elected in September/October, 1930 which met on 18th November, 1930 and Rai Bahadur Lala Sita Ram was elected Chairman of the Council for the third time and Nawabzada Muhammad Liaqat Ali Khan was elected the Deputy President. That time five parties emerged in the Legislative Council viz, Constitutionalists, Democratic, Progressive, Nationalists and Independents.

The Council passed a historic resolution on 3rd

November, 1932 recommending to the Government to the effect that in the New Constitution for the State, a Second Chamber should be established of the size and with the functions as proposed by the Franchise Committee. In March the British Government published a White Paper containing the proposals of the Government indicating the lines on which the future constitutional set-up of the country was to be based. Three days were allotted in the Council. Official Members took no part in the debate. The White Paper evoked condemnation and criticism from most of the Indians.

The Government of India Act 1935 came into force and a bicameral legislature came into existence in the United Provinces. Thus the Council, understood today as an upper Chamber, came to be established for the first time only after the Government of India Act, 1935.

Under section 61 of the Government of India Act, 1935, the composition of the Legislative Council was laid down in the Fifth Schedule of the said Act and it was also stipulated that the Legislative Council shall be a permanent House not subject to dissolution, but as nearly as may be one third members thereof shall retire in every third year.

In this respect the Governor of United Provinces in Council, in exercise of powers conferred by paragraph 18 of the Fifth Schedule to the Government of India Act, 1935 read with paragraph 14(1) of the Government of India (Commencement and Transitory Provisions) order, 1936, notified on September, 1936, that the term of office of some of the members of the United Provinces Legislative Council shall be curtailed under Section 61(3). Term of office of a member was nine years. Upon the first constitution of the Council, the Governor in his discretion was to make by order such provisions as he deem fit, by curtailing the term of office of some of the members then chosen, for securing as nearly as may be, one-third of the members holding seats of each class shall retire in every third year thereafter. A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office.

Under Fifth Schedule the allocation of seats for Council of United Provinces was made as given below:

Total no. of Seats	General Seats	Mohammadan Seats	European Seats	Indian Christian Seats	Seats to be filled by Legislative Assembly	Seats to be filled by Governor
Not Less than 58	34	17	1	—	—	Not less than 6
Not more than 60	—	—	—	—	—	Not more than 8

The division of the members of every constituency into each of the three groups, viz General (Rural & Urban) Mohammadan (Rural & Urban) and European, and number of Seats thereto was allocated as indicated below:

Constituencies		Total number of elected seats	Number of seats to be for		
			9 years	6 years	3 years
1		2	3	4	5
General	...	34	11	11	12
Mohammadan	...	17	6	6	5
European	...	1	1	—	—
Total	...	52	18	17	17

Under this Act the Legislative Council of the United Provinces could function for about three years, viz from July 31, 1937 to November 2, 1939 and from April 1, 1946 to August, 1947, because during this intervening period i.e. from November 3, 1939 to March 31, 1946 the Legislature remained suspended and the Province was under Governor's rule due to the breakdown of the Constitutional machinery. On April 1, 1946 the legislature was restored and since then, with certain changes, it has continued to exist.

Afterwards the Fifth Schedule of the Government of India Act, 1935 was Substituted. Accordingly, the allocation was changed as under:

Total no. of Seats	General Seats	Mohammadan Seats	Indian Christian Seats	Seats to be filled by Legislative Assembly	Seats to be filled by the Governor
Not Less than 57	34	17	—	—	Not less than 6
Not more than 59	59	—	—	—	Not more than 8

Under the United Provinces (Joint Sittings and Communication) Rules, a provision was made that whenever it appears to the Governor that under the provisions of Sub-Section (2) of Section 74 of the Government of India Act, 1935, both the Houses should meet in a Joint Sitting and a notification to the effect be made fixing the date, time and place for the meeting of the House, such Joint Sittings are also held.

It is note-worthy in the context of the fact that the Constitution of India had provided for a bi-cameral legislature for Uttar Pradesh, that a resolution was passed on 3rd July, 1935 recommending to the Government to provide accommodation for the Legislative Council. Consequent upon the decision of the House, the chamber for the Council adjoining to the Legislative Assembly Chamber, was constructed in the year 1937 and it was inaugurated in November 1937. Pending the completion of the extension, the Sittings of the Legislative Council used to be held in the Legislature Congress Party Hall, Vidhan Bhawan, Lucknow.

On the commencement of the constitution of India, on January 26, 1950, the Government of India Act, 1935 stood repealed. A bicameral legislature was provided for the United Provinces also which was later on came to be known as 'UTTAR PRADESH'. Formerly, the Legislative Council was constituted on the basis of community representation but later it was made on the basis of political and professional representation. The allocation of Seats in the Legislative Council of Uttar Pradesh was revised under Section 10 of the Representation of the People Act, 1950. It contained in Schedule III to the above Act. The position was as below:

		Number to be elected or nominated under article 171 (3)				
Name of State	Total number of seats	Sub-clause (a)	Sub-clause (b)	Sub-clause (c)	Sub-clause (d)	Sub-clause (e)
1	2	3	4	5	6	7
Uttar Pradesh	72	24	6	6	24	12

Under Article 171 of the Constitution of India, the total number of members in the Legislative Council of a State was not to exceed one-fouth of the total number of the members of the Legislative Assembly of that State and the minimum membership would not be less than 40. One-third of the membership was to be elected by the members of various municipalities, district boards and such other local authorities to be specified by law. Likewise, one-twelfth of the total was to be elected by an electorate consisting of persons residing in the State who were for atleast three years graduates of any University or having qualifications equivalent to that of a graduate of any University; again another one-twelfth was to be elected by an electorate consisting of persons who were for atleast three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a Secondary School. The members of the Legislative Assembly of the State would be required to elect about one-third of the total members of the Legislative Council from amongst the persons, who are not members of the Legislative Assembly. The remaining Seats would be filled up from those nominated by the Governor having special knowledge or practical experience in respect of Literature, Science, Art, Co-operative Movement and Social Service. It also provided that the territorial constituencies for the purpose of electorate relating to local authorities, graduates and teachers would be prescribed under the law to be made by the Parliament and the election of persons by the members of the Legislative Assembly would be in accordance with the system of proportional representation by means of the single transferable vote.

In accordance with the above provisions and in accordance with the provisions of the Representation of the People Act, 1950, the Council of Uttar Pradesh had 72 Seats out of which 60 members were elected and 12 were nominated by the Governor. Out of these 60 elected members, 24 were elected by the Uttar Pradesh Legislative Assembly Constituency, 24 from Local Authorities, 6 from Graduates' Constituency and 6 from Teachers' Constituency. The Legislative Assembly then consisted of 228 members and its tenure was fixed for five years.

The term of office of a member of the Council has been laid down in Section 156 of the Representation of the People Act, 1951 and that is for six years. It also provided that upon the first constitution of the Council, the Governor shall, after consultation with the Election Commission of India, make by order such provision as he thinks fit for curtailing the term of office of some of the members then chosen in order that as nearly as may be, one-third of the members holding seats of each class, shall retire in every second year thereafter. That a member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office. The Governor by his Order published Vide Notification No. E 2059/17-402-52, dated April 28, 1953, provided that of the members elected to the Legislative Council from various constituencies, one-third for two years, another one third for four years and the remainder one-third for six years. The members elected from Local Authorities were divided into three groups viz

(1) Uttar Pradesh North-West and Uttar Pradesh Central-North East Local Authorities Constituencies. (2) Uttar Pradesh West and Uttar Pradesh Central Local Authorities Constituencies and (3) Uttar Pradesh South and Uttar Pradesh East Local Authorities Constituencies. These three groups were placed in three categories and each group was to be determined by *'draw of lot'* by the Secretary of the Legislative Council, members of category I were to hold office for two years, category II for four years and the III for six years. Likewise, members elected from the Graduates' Constituency were also to be placed in category III, two members from the Uttar Pradesh West Graduates' Constituencies and Uttar Pradesh East Graduates' Constituencies—whom the Secretary of the Legislative Council would determine by *draw of lot*—were to be placed in category I and the third member of that Constituency and one member of the other constituency were to be placed in category II and the remaining two members were to be placed in category III. The term of members representing the Teachers' Constituencies was also to be determined likewise.

Of the 24 members to be elected by the members of the Uttar Pradesh Legislative Assembly constituency, eight members were to be placed in category I, another eight members in category II and the remaining eight members in category III. Members to be placed in category I and II were to be as determined by the Secretary of the Legislative Council by *draw of lots*. Members placed in category I, II and III were to hold membership for two years, four years and six years respectively.

In the same manner the term of office of the nominated members were also fixed by the Governor so that four of the nominated members were to retire after two years, another four members after four years and the remaining four members after six years.

By the Constitution (7th Amendment) Act, 1956 the total strength of members became 108, out of which 96 are elected and 12 nominated. Out of 96 elected members, 39 are elected by the members of the Legislative Assembly, whereas 39 through Local Authorities Constituency and 9 from Teachers' Constituency. This strength still exists.

Party Position (As on 30.4.1991)

The Political complexion of the U.P. Legislative Council is as given below:

Janata Dal (Samajwadi)	—	31
Congress Party	—	37
Janata Dal	—	12
Bhartiya Janata Party	—	06
Akhil Bhartiya Lok Dal	—	01
Shikshak Dal (Non-Political)	—	08
Independents	—	12
Vacant	—	01
Total	—	108

It was for the first time since 1977 that the House is in its full strength.

Legislative Council Committees

Sl. No.	Name of Committee	No. of Members	Year in which first constituted
1.	Business Advisory	11*	
2.	Rules Revision	11	11.2.1950
3.	Government Assurances	11	31.7.1958
4.	Petitions	11	14.8.1956
5.	Privileges	11	6.2.1950
6.	Parliamentary Studies	11	12.7.1978
7.	Parliamentary Social Goodwill	11	27.12.1980
8.	Financial Administrative delays	11	24.12.1970 to 1974 & again w.e.f. 10.2.83 continuing
9.	Compilation of Rulings from the Chair	11	15.5.1965
10.	Question & Reference	11	26.5.1984

*Usually the number is increased to keep the representation of each party/group of the House.

Joint Committees of Both the Houses in which Members of the Council are Associated

Sl. No.	Name of the Committee	No. of Members
1.	Public Account	5
2.	Public Undertaking	10
3.	Estimates	4
4.	Welfare of Scheduled Castes & Tribes	4
5.	Delegated Legislation	4
6.	Library	5
7.	Accommodation	6

In addition to the above Committees there are 30 Standing Committees of the Legislative Council.

Few Important Enactments

The Uttar Pradesh Language (Bills and Acts) Bill 1950 was passed on February 7, 1950 which provided that the language to be used in bills brought before the House for consideration and passing shall be Hindi in Devanagri Script. In 1951 the Uttar Pradesh Official Language Act was enforced.

In 1950, a substantive legislation, the Uttar Pradesh Zamindari Abolition And Land Reforms Bill, 1950, was taken up by the Legislative Council after it had been passed

by the Legislative Assembly. It was debated in the House for 27 days, about 500 amendments were made in the Bill, and was finally passed on November 30, 1950. Almost all the amendments made by the Council were agreed to by the Legislative Assembly. This was a historical legislation in Uttar Pradesh in the field of Land Reforms.

The Uttar Pradesh Legislative Council has on record the example of expeditious disposal of legislation before it when the Legislative Council referred to a Select Committee. The Allahabad University (Amendment) Bill, 1954, which was transmitted by the Legislative Assembly. In a couple of days, the Select Committee presented its report in the House and it was passed on the very next day with certain amendments by the Council. Likewise The Uttar Pradesh High School and Intermediate College (payment of Salaries of teachers and other employees) Bill, 1971, was referred to the Select Committee of the House. The Committee devoted its full energy and even met on gazetted holidays and reported back to the House with extensive amendments within five days and the House passed the Bill on the same day. There had been occasions of the Council meeting till midnight.

Questions

The 'Question Hour' had been an inseparable part of the business of the Legislative Council. During all these years many questions were asked. Each question carries its importance and relevance to the time it was asked. In 1936, Rao Krishna Pal Singh asked a question relating to the official Liquidators appointed by the Allahabad High Court during the preceding two years, their names, qualifications and experience etc. The question was listed and answered in March, 1936 on the basis of a draft reply received from the High Court. The Government replied that, in so far as the names, qualifications and experience of liquidators were concerned, they had no information. On May 13, 1936 a newspaper named 'LEADER' published a statement of the full text of that question along with the draft reply sent by the High Court to the Government stating that it has received the same for insertion in the newspaper from the Registrar of the High Court. That statement showed the strong exception taken by the High Court to the part of the question asking for the names, qualifications and experience of the liquidators on the ground that the appointments were made under judicial orders passed by the Company Judge in open court. Since the exercise of those judicial powers was beyond the control of the Government and rule 33(1) of the Manual of Business and Procedure of the Uttar Pradesh Legislative Council also seemed to prohibit such a question, the Chief Justice regretted that he must decline to answer the question. A reference to this episode was made by the President in the House on June 16, 1936 and he observed that:

> "The mere asking of information cannot be said to be any interference in the judicial powers of the Hon'ble Company Judge."
>
> He regretted "that a press communique issued by the Registrar of the High Court should have contained a reflection on the Chair."

He further observed as follows:

> "The Chair is also compelled to take exception to the withholding by the Hon'ble High Court of information from the Legislature where both the government and the public are represented, while a part of it was subsequently communicated to the press. The Chair hopes that this unfortunate incident will now be taken as closed."[3]
>
> The matter came up again in the House on November 10, 1936 when the President made the following observation:
>
> The Legislature has no direct connection with the High Court which, under the Constitution, is called upon to interpret and administer laws made by the Legislature, both being independent of each other in their respective spheres. While there is not the least desire on the part of the Chair or of anybody else in the Council to trespass in any way on the dignity and the independence of the Hon'ble High Court, the Chair would be failing in its duty to the House were it not to see that the dignity and independence of the Legislature are also not impaired and that the privileges of the members of the House are respected."[4]

END NOTES

1. Uttar Pradesh Legislature—A Historical Sketch PP. 11-12 Legislative Assembly Secretariat.
2. Uttar Pradesh Legislative Council proceedings September 22, 1928 p. 254
3. Uttar Pradesh Legislative Council Proceeding, Vol. 72, 16.6.1936, P. 18.
4. Uttar Pradesh Legislative Council Proceedings, Vol. 73, 10, 11, 1936., P. 503.

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Gujarat Legislative Assembly— An Appraisal

Himmatlal T. Mulani*

At the root of every political theory lies the common goal of providing more and more comfort, facilities and security to the people. In order to attain this goal, each country chooses its own system of government, keeping in view the history, political circumstances, education, discipline, customs and nature of its people. After independence, the framers of the Indian Constitution faced this problem and after careful study of the British Parliamentary Democracy, they decided to accept a similar system for India i.e. Parliamentary system. Parliament is the heart of the parliamentary system of governance, because the executive derives all powers necessary to run the administration from Parliament. On its failure to administer the functions properly, Parliament has power to remove the executive. The word Parliament is derived from the French word 'PARLER' which means to talk and also from the Latin word 'Parliamentum'.

Gujarat Assembly

Consequent upon the bifurcation of the former bilingual Bombay State, the State of Gujarat came into being on Ist May, 1960 and the Gujarat Legislative Assembly was constituted of 132 members elected to the Bombay Legislative Assembly from the constituencies of Gujarat. As there was no separate Capital for the new State of Gujarat, Ahmedabad was made its provisional Capital and in absence of a separate building for the Legislative Assembly and the Legislature Secretariat, some accommodation was allotted in the New Civil Hospital situated in Aserwa area. The first sitting of the newly constituted House was held on 18th August, 1960 at 1.00 p.m. In the morning at 8.30 a.m. a full size portrait of Mahatma Gandhi was unveiled in the House in a simple function presided over by Ravi Shankar Maharaj. Later on when the newly constructed city, Gandhinagar was made Capital of Gujarat, Legislative Assembly and its Secretariat were shifted on 11th February, 1971 to the Central Library Building at Sector-17 after making some suitable modifications therein. Later on the then President of India, Dr. Neelam Sanjeeva Reddy had, on 20th March, 1978, laid foundation stone of 'Vithalbhai Patel Bhavan', the proposed permanent building of the Legislative Assembly, at Sector-10 and the name of the first Indian Speaker of the Central Assembly Late Shri Vithalbhai Patel was associated with the permanent building of the Gujarat Assembly.

Vithalbhai Patel Bhavan

The present building of the Gujarat Legislative Assembly has been constructed by employing the modern RCC technique. Light pink stones of Dholpur are fixed in the outer portion of the building. This magnificient edifice, the symbol of power, stands erect on a nearly five metre high square platform of 133/133 metres in the midst of circular water pool having a diameter of nearly 200 mtrs. This building is connected with the Ministerial Secretariat on both the sides by means of bridges. The total built up area of this square platform is 17689 sq. metres. While the constructed area of the building is 8100 square metres, this is a four storied building covering 43350 sq. mtrs. built up area. The height of the building inclusive of the dome is 33.45 metres. It is a centrally air-conditioned building. 'Vithalbhai Patel Bhavan' bagged the first prize in the competition organised by the Guild of Practicing Architects in 1985.

Financial Control

Supremacy of Parliament is the essence of Parliamentary Democracy. Therefore, it is one of the foremost duties of the Parliament to keep vigil on the Executive so as to ensure that the powers vested in the Executive are exercised properly and within the ambit of the authority granted to it by the Parliament. The Legislatures in India have resorted to various methods for establishing control over the Executive. One of them is the financial control. The essence of the financial control is that the government cannot spend a single paise without the sanction of the Legislature and cannot even levy or collect any tax except by authority of an Act passed by the Legislature. Thus both, in the matter of taxation and expenditure, government has to approach the Legislature for sanction. After presentation of the budget, money has to be asked for by way of demand for grants. The budget is discussed in two stages — (1) general discussion and (2) demands for specific grants. The general discussion of the Budget can commence soon after its presentation and the duration of the discussion is not more

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than four days. Thereafter the demands for grants are being discussed. The duration of this discussion is not more than 18 days. During the discussion on demands for grants, members are free to table a notice for cut in the demands i.e. cut motions. After all the demands are voted by the Assembly, an Appropriation Bill is introduced authorising withdrawal of the total amount of the budget from the consolidated fund and in its schedule it specifies the amount which has been granted under each demand. In this way, the Assembly establishes its financial control over the Executive.

Legislation

Draft legislation takes the form of a Parliamentary Bill and the passing of Bills is one of Parliament's chief functions. The Assembly is not at liberty to pass a Bill on the subject it wishes. Constitution has distributed various subjects for the State Assembly and Parliament and State Legislative Assembly can legislate on the subject allotted to it by the Constitution. There are various stages of passing the Bill, i.e. introduction, first reading, second reading, clause by clause reading and third reading. The members of the House are entitled to participate in the debate on the Bill at each stage of the Bill subject to the provisions of the Rules of the House. If any member desires any modifications in the proposed legislation, he is at liberty to table a notice to that effect. The Gujarat Legislative Assembly has passed 779 Government Bills and two non-official Bills upto Ist April, 1991.

Questions

Questions are very important means to keep control over the day-to-day administration of the Executive. Every day the first hour of the sitting of the House is normally the question hour. During this hour, the members test the readiness and wit of the government machinery and the Ministers by asking supplementary questions. There are three modes of questions—starred questions, unstarred questions and short-notice questions. Notice of starred questions can be tabled during the session of the Assembly. However, the notice of unstarred questions can be tabled at any time during the year. If a member wants a reply in a very short period, he can ask a short notice question. From 1960 to 1990, notices of 58872 starred questions, 17914 notices of unstarred questions and 1114 notices of short notice questions have been admitted in the Gujarat Assembly.

Motions

There is an established practice that there would not be any discussion in the House without a motion. If some important or untoward incident took place in the State, the same is definitely raised by one way or the other in the House. Keeping the seriousness of such incidents in view, notices for discussions are tabled. It may be calling attention notices, raising discussion notices, adjournment motion, statutory motion, last day motion, etc. Motion for no-confidence can also be tabled. During the history of the Gujarat Legislative Assembly, nine motions expressing no confidence in the Ministries have been discussed, but none has been passed. Two motions expressing confidence in the Ministries were tabled by the Government and were passed after prolonged discussions.

Zero Hour

There is a provision in the Rules of Procedure for calling attention of a Minister to any matter of urgent public importance, giving two days' notice. However, members are allowed to raise a matter of urgent public importance in the House, without any formal notice, during zero hour. But, a member wishing to raise a matter has to take the previous consent of the Speaker and the minister concerned. Such matters are raised after the question hour is over and before the regular business is taken up. This period is known as zero hour. There is no concept like zero hour in the House of Commons.

Committee System

The system of Parliamentary Committees is one of the best systems to have proper vigil on the Government. It is as old as the Parliament itself. There are 19 Committees in the Gujarat Legislative Assembly. Of these, four Financial Committees are very important Committees, namely, Public Accounts Committee, Public Undertakings Committee, Estimates Committee and Panchayati Raj Committee. These Financial Committees keep a close watch on the expenditure of the Government. The Subordinate Legislation Committee keeps vigilance as to whether the Government has framed rules and regulations, etc. in accordance with the powers delegated to it by the House. There are three Welfare Committees, namely, Committee on Welfare of Scheduled Castes, Committee on Welfare of Scheduled Tribes and Committee on Welfare of Socially and Educationally Backward Classes. These Committees keep a constant vigil on the welfare activities of the State. With a view to provide infrastructure to these committees, three furnished committee rooms are provided, so that these Committees can work without any hindrance.

Legislature Secretariat

As provided in Article 187 of the Constitution of India there is a separate Secretariat for the Legislative Assembly. The main function of this Secretariat is to assist the Speaker and Committees of the House. As this Secretariat has to assist the House and the Committees of the House in

establishing control over the Executive, it is not under any Minister or Government Department. It directly works under the Speaker. There is a sort of misconception generally that there is no work for the Assembly Secretariat after the sitting of the House is over. But this is not true. After the session is over, the Assembly Secretariat is busy in the work of the Committees etc. The Legislature Secretariat is headed by its Secretary.

Parliamentary Bureau

With a view to imparting training to the various functionaries connected with the Parliamentary Democracy, a Bureau of Parliamentary Studies and Training has been established as an integral part of the Legislature Secretariat. Though the Bureau was created in 1982, it actually started functioning from 1986. It is a matter of pride that this Bureau has been named after Dada Saheb Mavalankar, the first Speaker of the Lok Sabha who belonged to Gujarat. The Bureau has so far organised 9 full time training courses for the members of the seventh Assembly, senior officers of the Civil Secretariat, Financial Controller of the various Boards/Corporations and Officers and Staff of the Legislature Secretariat. The Bureau has also organised training classes for delegates of Junior Chambers and Students of the North Gujarat University. Two full time training classes for the members of the Eighth Assembly and Seminar on 'Question Hour' for the Ministers and others were also organised. The Training Programme on 'Legislative Drafting' for the Officers of the Countries covered under SCAAP and Colombo Plan and Indian Parliament and State Legislatures also was organised from 7th to 11th January, 1991. The Bureau also proposes to organise training classes for the elected representatives of the Panchayats and other local bodies. This is first of its kind in the country.

Role of the Opposition

In Parliamentary Democracy the Opposition parties have a pivotal role. The Opposition is not merely to oppose, but they have to find out the lapses of the Government and suggest constructive measures for meeting with the lapses. In the Gujarat Legislative Assembly a convention has been established to appoint the Chairman of the Public Accounts Committee from the Opposition. In the same way, Deputy Speaker is also from the Opposition. In 1979, an Act giving Ministerial Status to the Leader of Opposition has been passed. He has been provided an office in the premises of the Legislature Secretariat with all necessary facilities.

Gujarat Legislative Assembly has been considered to be an 'orderly' House compared to others. Credit for this truly goes to the Leaders of the House and Leaders of the Opposition and other Parliamentarians and several citizens of Gujarat who have strived all their best even in the most crucial moments to maintain order in the House. Incidents of attempts of not obeying the orders of the Speaker or not respecting the Speaker's dignity are very rare in the history of Gujarat Assembly. All parties and all members of the Assembly have always maintained dignity of the Speaker and have extended their best co-operation to the Speaker in the House for the smooth transactions of the business of the House and for maintaining peace and order in the House.

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The Man in the Cockpit –Speaker— Myths and Reality

Purushottam Goyel*

The Speaker, in parliamentary democracy, is rightly deemed to be the nucleus around which the apex representative institution revolves, with the controlling key-lever in his hands. This office of great antiquity and dignity, which had its origin in 1689, in what was then known as the 'first commoner', the office of the Speaker has now been transformed into the prestigious office of the controller of proceedings in the House. Till the end of the 17th century, the Speaker had been a 'King's Man'—in fact nominated by the King though formally elected by the House. The Reforms Act of 1882 and 1887 took the Speakership out of party politics and the Speaker became an independent entity with enormous powers to run the House. The outstanding qualities of the Speakership, viz. its independence and impartiality, were developed over a period of over three centuries and these are now well established in the ethos of parliamentary democracy.

The institution of Speakership in India, with this nomenclature bestowed on it only in 1947, can boast of its history since twenties. Then called as President of the House in Central Legislative Assembly during the British days, he exercised more or less the same powers as are enjoyed by the Speaker today. President Vithal Bhai Patel's tenure as the presiding officer of the House is a glorious chapter in the Indian parliamentary history. His words—"As President elected by the Assembly, I am responsible to the Assembly and to no other authority", have become the sacred writ for the Speakers everywhere. Towards the end of his period in office in 1930, he succeeded in asserting the complete authority of the President (Speaker) over the maintenance of order and security in the precincts of the House. Against Government wishes, Shri Patel even ordered the closing of the galleries to visitors at one stage.

The Founding Fathers of the Indian Constitution built up a glorious edifice of popular rule which has survived various stresses and strains of time both internally and externally. Despite the vociferous apprehensions of the sceptics, democracy has come to stay in India. Our country has shown the path of democracy to many resurging nations. It undoubtedly goes to the credit of the Indian masses and the leadership that they have been able to keep the banner of democracy flying high when in most of the countries which attained independence after World War II, democracy has succumbed to the pressures of totalitarian forces.

Our Constitution has guaranteed certain Fundamental Rights, and laid down the Directive Principles of State Policy. The golden ideas of socio-economic justice, liberty, equality and democracy are enshrined in a fundamental resolve. Elections are held regularly. Press enjoys freedom, political parties have a free say and the judiciary is independent. Legislatures control the executive; opposition has a free chance to criticise the men in power and participate in the deliberations. But if one takes an overall stock of the situation the conclusion will be that all is not well with democracy here. One is reminded of the observation of Joseph Story—an eminent American jurist who remarked about the United States' Constitution: "The Constitution is capable of transmitting to their last posterity all the substantial blessings of life.....the structure has been erected by the architects of consummate skill and fidelity. Its foundations are solid.....its components are beautiful as well as useful.....It may nevertheless perish in an hour by the folly or corruption or negligence of its keepers".

The growing menace in our present political system is the fading faith in fair-play. If elections are rigged how can the winning candidate be truly a representative of the voters in the legislative bodies. Public accountability is gradually losing its real meaning. It is painfully obvious that the standards are deteriorating in public life. Populism has failed to woo the voters or convince the public. Political parties are busy in horse trading. Strategy of the opposition is more to install defeatism in the rank and file of the party in power. Negative and *ad hoc* coalition and the politics of defection cannot serve as the solid basis of unity. It seems that the persons in the opposition are trying to checkmate others to promote their individual claims to the seat of authority. Values in the public life are being gradually replaced by 'convenience' which is a dangerous sign. The fundamentals of a sound democratic system, processes and style of functioning are losing their credibility. This, if not stopped now, may in the long run disturb the political equilibrium.

Legislative bodies are the wheels which keep the democracy moving. These bedrock institutions of democracy act as effective forums for the expression of popular urges and expectations. As such these bodies should have in built mechanisms and devices to communicate with the common man and move the government machinery for

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fulfilling peoples' aspirations. It may, however, be said that the existing political ethos conditions the way a legislature functions as well as affects its output. The members who are the determinants of how these popular bodies function, what they produce, must observe the basic norms of the popular rule. What is happening in legislatures today leaves much to be desired.

The poser is who will keep the legislative bodies on the track. There is one figure in the House who is regarded as the conscience keeper and custodian of its collective authority—The SPEAKER. He is like an Umpire and must enjoy the faith of both the teams. But how can the fair play go on if both the playing sides do not observe the rules and the poor Umpire is dragged into controversies. The chances of his being misunderstood are greater if he had been an active player of one of the playing teams. The presiding officer like Ceasar's wife must be above suspicion. He is expected to have the justice of Solomon, and the wisdom of David. He is regarded as the living embodiment of the rules and traditions of our parliamentary system. He is supposed to keep his cool in the deafening noise and heated atmosphere of the House in which norms are frequently flouted. He is expected not to go for the pulls and pressures and not to allow his dignified office to be reduced to a political post. But the moot question is how long can the Speaker stand these pressures when the Treasury benches and the opposition together try to shoot over his shoulder. After all, the Speaker also is a product of the existing political milieu. Every political system emerges over the political realities of a society in the context of a particular point of time. It seems altogether illusory to hope that the Speaker's office can be insulated against current political winds.[1]

The author in his welcome address to the Conference of Presiding Officers of the Legislative Bodies in India (Old Secretariat, Delhi, dated 21-10-1986) had drawn the attention of the delegates to the problem. The institution of Speakership world over now-a-days is under great stress and strain. Our system really requires review, introspection, technical by-pass and the parliamentary mechanism. The irony of the present situation is that we are expecting a presiding officer to be impartial, objective and neutral; conditions actually determining his personality and position which now seem to be generally working to the contrary. The invisible hand that governs and tries to rule the roost creates a functional predicament for him. Operationally he finds it very difficult to perform the impossible which is expected of him in sorting out contradictions, situational anti-thesis and the stresses and strains which get reflected in unseemly situations threatening the decorum, serenity and dignity of the House.

The conventions and precedents of the British Speaker which make him non-partisan are:

(a) He gives up the membership of the political parties soon after his election;
(b) He protects the rights of the minorities in the House, irrespective of the political complexion and his own party affiliation;
(c) He serves the House and is bound by its direction;
(d) The convention of "once a Speaker always a Speaker" is followed and his tenure is not affected by the change in government. He is re-elected after general elections and no party uses its majority to remove a Speaker elected by opposite party. No party replaces the Speaker for political reasons;
(e) His seat is left uncontested and he returns unopposed;
(f) Usually a back-bencher of the majority party who has renounced all political ambitions is chosen.

Such traditions do not exist in India:

(i) Most Speakers at the Central or State levels have opted to continue as party members;
(ii) Selection of the candidates for this post is guided by various considerations. He is either to be accommodated or kept away from the position of real power, being politically inconvenient to the political bosses of the party in power or he is a trusted lieutenant enjoying confidence of the high-ups and can be relied upon to safeguard the interests of the party;
(iii) There is a written Constitution in India which is supreme and all the functionaries are bound by the mandate. They have defined fields of authority;
(iv) There is no convention of security of the tenure of a Speaker;
(v) This is an office of patronage, and honour bestowed upon by party leaders, so it is highly politicalised;
(vi) Speakers are selected as Chief Ministers, Ministers and Governors;
(vii) The seat of the Speaker is not left uncontested at the general elections; and
(viii) Speakers do not renounce political ambitions as unlike the British Speaker, they are relatively (especially in the States) younger politicians.

Thus Speakership in India is highly politicised. The Speaker has to guard his self interest in politics as the traditions of non-partisanship followed in Britain are absent in India. He depends on the tickets and support of the political parties. His re-election and chances of further rise depend on his equation with the high-ups. One cannot ignore these personal factors and political realities while

[1] A Ditcher's Diary in the Capital Vol. CLX, No. 40, 4006, April 11, 1948.

examining issues of non-partisanship. It is not a question of renouncing party membership only. The real test is that the Speakers do not permit their party affiliations to come in the way of conducting the business of the House in an impartial manner. Too much may be said of the parliamentary niceties, but the Speaker alone cannot be blamed for observing them. The Presiding Officers' Conference in 1951 and 1953 passed resolutions that 'It is desirable in the interest of the development of free democratic institutions in this country that a convention should be established to the effect that the seat from which the Speaker or the Chairman stands for re-election should not be contested in the elections that are held from time to time.[2] Now it is upto the political parties to lay down this tradition to make the Speaker more impartial and non-partisan.

There is growing trend to create scenes on the floor of the House to attract publicity. There are frequent occurences when scant respect is shown to the Chair and the Presiding Officer is intimidated by shouts and walk-outs by the opposition. Similarly Speaker faces embarrassing situations due to the short-cuts adopted by the party in power for the sake of 'ministerial convenience'. Opposition gets a sense of delight and vigour in attacking the government. Sometimes even the Speaker is not spared. Rulings are questioned if these are not to their liking. Motions of no confidence against the Speaker are introduced without specific charges more as an expression of the anger and sometimes to intimidate the Speaker. Such incidents will not help in making the Speaker impartial. There are occasions when Speakers have bitter experiences.

It is well known that within the walls of the House Speaker is supreme. The Chair is regarded as infallible. But even the Presiding Officer has his limitations. The Constitution does not attempt to comprehend the definition of the power and functions of the Speaker. These are detailed in the Rules of Procedure and Conduct of Business. But these, of course, are subject to the provisions of the Constitution. It is on this ground that his infallibility is challenged. He can interpret the rules, but not the Constitution which is not his prerogative. He cannot give rulings on legal issues. In certain matters the House is paramount. The Speaker cannot encroach upon the authority of the House. It is said that the Speaker of the House of Commons enjoys more authority than the powers. This was earned by him by observing meticulously all the norms of this high office.

Any responsible and watchful Speaker would not let the legislative domain of the State under his care to be encroached upon either by the executive or judiciary. The happenings in Utter Pradesh (U.P.) in 1964 (when a tussle between the Speaker and the High Court created an embarrassing situation which was later on amicably solved) raised a question about the authority of the Assembly vis-a-vis the Court. Recently in Delhi Metropolitan Council a situation cropped up when the Presiding Officer had to take a stand vis-a-vis the judiciary as the former was defending the authority of the House and also as the petitioner had not disclosed full facts to the Court.

Speakers are not islands and cannot be blamed for not following the democratic norms or for violating the spirit of the law or accused of exceeding their legislative authority. After all Speaker is a part and parcel of the process. In the words of Subhash C. Kashyap, 'it is not possible to analyse or assess the role of the Speaker without discussing the role of other partners in the great drama of democracy or in isolation from the reality of the political situation or legitimate problems and ambitions of the personality involved'. The office of the Speaker has, of late become highly politicised.

What can the Presiding Officer do if the motions of no confidence against him are brought in a light-hearted manner without specifying the charges. For self-preservation he has to fall back upon the ruling party. This affects his neutrality. The irresponsible behaviour of the legislators, also tarnishes his image. How can the rule of decorum be followed by him if the popular representatives are playing to the press gallery. The issue of the exercise of powers by the Speaker is not really so much a constitutional problem as a political or simply a human problem. 'It is not one which could be settled by any formalistic, legalistic or a historical approach or merely by reference to the high democratic principles'. One has to view the Speakership in a broader spectrum. If independent, non-partisan, impartial, neutral Speakers are a must for a smooth working of the democracy, the Speakers too need security of term, continuity in office unaffected by the change in Government, unopposed return in the general elections and full regard to the occupant of the Chair by the ruling as well as opposition parties. Let the myths enveloping the Speaker melt into a reality emanating from his personality.

As compared to Parliament in United Kingdom, Indian parliamentary traditions are still growing with specific reference to Indian ethos and attitudes. The fabric of democracy in our country needs a constant watch and Speaker in our democracy is to work as the eyes, the ears and the nose of Parliament—watching the the movements of members, listening to the under-currents of whispers in the House and smelling every odour that is likely to pollute the healthy democratic ideals. But for this he needs complete security to serve and unfettered freedom to function. Let him not look back over his shoulders with prying eyes to find if his party's draconian sword is waiting for him after he retires from Speakership.

[2]Journal of Parliamentary Information, 1, Vol. 1, 1955, pp. 66-67

Working of the Constitution of India during the Last 4 Decades

Murlidhar C. Bhandare*

On 26th January, 1950 the people of India gave to themselves the Constitution. Four decades and two generations later it would be appropriate to take stock of the working of the Constitution.

The Constitution was designed to serve the largest democracy in the world. The population on 26th January, 1950 stood at 350 million. Today it is about 840 million. What is far more significant is that India is a multi-racial, multi-religious, multi-communal, multi-cultural and multi-lingual society. Besides fifteen languages listed in the Schedule VIII to the Constitution, there are over hundred languages and hundreds of dialects used in India. India is a grand symphony of harmony and unity through diversity.

It was indeed a challenging task to unify the country despite these diversities. The task before the framers of the Constitution was to structure a Constitution to serve a democracy rooted in rule of law, forge unity and integrity of the country, bring about a socio-economic revolution to minimise inequalities, to ensure human dignity and foster a spirit of liberty, equality and fraternity. The Constitution, therefore inter-alia, provided for a preamble—its cornerstone, Fundamental Rights and Directive Principles of the State Policy, Federation based on an intricate and delicate balance between the Union and the States, particularly as regards their legislative, administrative, financial and other relations, universal franchise, Independent Judiciary, special provisions for the Scheduled Castes and Scheduled Tribes and other provisions including the emergency provisions. At the time of its adoption, it was the longest Constitution in the history of the world. Today, however, only the Yugoslavian Constitution has overtaken it.

The working of the Constitution is best assessed by examining a few critical and basic features of the Constitution and to find out how the Constitution has withstood the test of time. Has it helped the citizens and the country to achieve the constitutional goals or has it failed to do so?

Preamble

The preamble is not only a basic structure of the Constitution but it also sets the goals to be achieved through the Constitution. It declares India to be a Sovereign Socialist, Secular, Democratic Republic. It is an expression of firm resolve to secure to all its citizens, justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation.

The Fundamental Rights and Directive Principles

The working of the Constitution has preserved and enriched the basic human rights and fundamental freedoms. The core of the Constitution is the individual in the society.

Part III of the Constitution, elaborately guarantees the various basic human rights and fundamental freedom. These include Right to Equality (Arts. 14-18), Right to Freedom (Arts. 19-22). Right to Freedom of Religion and Conscience (Art. 25-28), Cultural and Educational Rights (Art. 29.-30), removal of Untouchability (Art. 17). The Socio-economic rights are provided through the Directive Principles in Part IV of the Constitution, which is a solemn assurance for every man to live in the country in freedom not only from fear but also from want. The Directive principles impose an obligation on the State to take positive action for creating socio-economic conditions in which there will be an egalitarian social order with social and economic justice to all, so that individual liberty will become a cherished value and the dignity of the individual, a living reality not only for a few privileged persons but for the entire people of the country. Thus both the Fundamental Rights and the Directive Principles are inter-dependent for the purpose of achieving the constitutional goal of liberty, equality and fraternity. Civil and political rights and the socio-economic rights are indivisible and inter-dependent. They constitute an integrated whole canvass of human rights. Without the enjoyment of economic, social and cultural rights, there may not be a meaningful enjoyment of the civil and political rights and *vice-versa*. A debate is still on in the country as to what extent they are inter-dependent and whether the Directive Principles take supremacy over the Fundamental Rights.

Human rights are meaningless unless they are enforceable. Art. 13 therefore, injuncts the State from making any law which takes away or abridges the Fundamental Rights and any law in such contravention, shall to the extent of the contravention, be void.

Article 32, in part III of the Constitution guarantees the

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fundamental right to move the Supreme Court by appropriate proceedings for the enforcement of the fundamental rights conferred by this part. This is in addition to the right of judicial remedy given under Article 226 to approach a High Court for an appropriate Writ, order or direction, or directions, orders or writs including writs in the nature of *habeas corpus, mandamus, quo warranto certiorari* and prohibition in the enforcement of the fundamental rights or for any other purpose.

Article 32 according to Dr. Ambedkar is the heart and soul of the Constitution. Thus the protection, promotion and enforcement of the basic human rights and fundamental freedoms is fully assured and ensured in the Constitution.

Secularism and Freedom of Religion

India is a secular State. But her secularism is inspired by her ancient traditions of religious freedom coupled with freedom of belief and expression. It is based on "SARVODHARMA SAMBHAV." "Equal Respect for all Religions...Nehru rightly described India as a secular state which is not based on religion. India gives freedom of conscience to every one." And as Radhakrishnan has said, "we are a multi-religious state and therefore, we have to be impartial and give uniform treatment to different religions."

The Constitution provides a wide base to the broad concept of freedom of religion prevalent in India. The freedom of religion conferred by the Indian Constitution is not restricted to citizens of India but extends to all persons including aliens and individuals exercising their rights individually or in community with others, and in public or private.

Right to propagate faith was specifically included in Article 25. However, the 'right to propagate' does not include a right of forcible conversion. Conversion by free choice is protected.

Freedom of religion is not restricted to freedom of religious opinion only but is viewed liberally in India and extends to the rituals, ceremonies and religious practices according to religious tenets.

Freedom of Religion guaranteed under the Indian Constitution includes—

Freedom of Conscience and the right freely to profess, practice and propagate religion (Article 25);
Right to every religious denomination or any section thereof

(a) to establish and maintain institutions for religious and charitable purposes;
(b) to manage its own affairs in matters of religion;
(c) to own and acquire movable and immovable property; and
(d) to administer such property in accordance with law (Article 26);

Freedom from payment of any taxes, the proceeds of which are specifically appropriated on payment of expenses for the promotion or maintenance of any particular religion or religious denomination. (Art. 27);

Freedom to attend or not to attend religious instruction or worship in any educational institution recognised by the State or receiving aid out of the State funds (Art. 28). Cultural and educational rights of all citizens are protected under Articles 29 and 30. They include:

(a) Their right to conserve one's own language, script or culture (Art. 29/1).
(b) Right not to be denied admission into any educational institution maintained by the State or receiving aid out of State Funds on grounds only of religion (Art. 29/2), race, caste, language or any of them;
(c) Right of all minorities, religious or linguistic, to establish and administer institutions of their choice [Art. 30(1)];
(d) Right of a minority educational institution not to be discriminated in matters of state aid to educational institution Art. 30/2.

Freedom of conscience and religion is subject to—

(i) public order, morality and health;
(ii) other provisions of Part III of the Constitution of India which include other basic human rights and fundamental freedoms like right to life which means right to live with dignity, right to equality and equal treatment before the law, right to freedom of speech and expression, right to assemble and to form association or move or reside freely in any part of India;
(iii) any existing law relating to restricting any economic, financial, political and other secular activities which may be associated with religious practice;
(iv) a law providing for social welfare and reform;

Thus, the freedom of religion does not authorise the outrage of religious feelings of another class since it is subject to public order.

Protection of Weaker Sections

Special provisions for affirmative action and positive discrimination have been made for the weaker sections of the society like Articles 15(4), 16(4), 46, 330 and 332.

Article 15(4) permits the state to make special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes or the scheduled tribes; and

Article 16(4) enables the State to make provisions for the reservation posts in favour of any backward class of

citizen, which in the opinion of the State, is not adequately represented in the services under the State.

Article 46 requires the State to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes and protect them from social injustice and all forms of exploitation.

Article 330 and 332 provide for reservation of seats for the Scheduled Castes and Scheduled Tribes in Parliament and State Legislatures respectively.

Federalism

Without any doubt every member of the constituent Assembly felt that a strong centre with equally strong states should be the major premises of our federal polity. Dr. Ambedkar described our Federalism in the Constituent Assembly in the following words:

> "The Constitution is a federal Constitution in as much as it establishes what may be called a dual polity which consists of the Union at the Centre and the States at the periphery endowed with sovereign powers in the fields assigned to them respectively by the Constitution.... Yet the Constitution avoided the tight mould of federalism in which the American Constitution was caught. Indian Constitution is both unitary as well as federal as per the requirements of time and circumstances."

Thus ours is not a classical federal Constitution in which the federal and state governments are independent. It may loosely be called quasi-federal or more appropriately as a constitution based on 'cooperative federalism' wherein there is increasing inter-dependence of the federal and state governments without destroying the federal spirit.

Over the years the boundaries of the States have been adjusted to create linguistic States in response to the aspirations and urges of the people. The linguistic states have been formed in Andhra Pradesh, Assam, Gujarat, Kerala, Karnataka, Maharashtra, Madhya Pradesh, Punjab and Tamil Nadu. The Statehood has been conferred on several remote parts like Arunachal Pradesh, Himachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura. Today India comprises of twenty-five States and seven union territories.

Legislative Relations

Federalism in India is different from that in U.S.A or Canada or Australia. Legislative field between the Union and the States is well demarcated in the three lists contained in the Seventh Schedule of the Constitution. Parliament has exclusive power to make laws with respect to any of the matters enumerated in the List-I called the Union List; State Legislature has the exclusive power to make laws for the State with respect to any of the matters enumerated in List-II called the State List and lastly there is List-III, the Concurrent List, on which both Parliament and State Legislatures have power to make laws.

The residuary power of legislation, unlike in U.S.A., is vested in the Parliament under Art. 248, read with Entry No, 97. of list-I. Besides vesting the residuary powers of legislation in the Union under Art. 248, there are several provisions in the Constitution enabling the Union to legislate on any matter in the State list. Thus under Art. 249 if the Council of States has declared by a Resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the Resolution, Parliament gets full power to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force. Under Article 250 Parliament, while a proclamation of emergency is in operation, has all the power to make laws for the whole or any part of the country with respect to any of the matters enumerated in the State list. Article 252 gives power to Parliament to legislate for two or more states with the consent of such States in the exclusive legislative field of those States. Such laws may be adopted by any other legislatures by an appropriate resolution. In cases of any repugnancy or inconsistency between State law and law made by Parliament, the former ceases to be operative during the existence of the latter. Even in regard to an entry in the Concurrent List, if there be laws made both by Parliament and State Legislatures, in case of repugnancy the law made by Parliament prevails over the State Law (Article 254).

There have been repeated demands by the States to enlarge their legislative field. There is considerable force in this demand. Residuary power of legislation now vested in the Union List ought to be transferred to the Concurrent List, thus making it available to the Union and the State although by the exhaustive enumerated entries in the three lists, very little power is left in the residuary field. There are other areas where, in national interest, the Union assumes control over State subject. These areas need to be reduced. This will only help the States to achieve self reliance early.

Administrative relations

Article 256 casts an obligation on the State to comply with the laws made by Parliament and empowers the Union to giving such directions to a State as may appear to the Government of India to be necessary for that purpose. These provisions have, by and large, secured proper co-ordination between the Union and the States for effective implementation of Union laws and the national policies.

Presidential Rule

There are two other provisions which have not only been controversial but also subjected to strong criticism. They are articles 365 and 356.

Article 365 provides that where any State has failed to comply with any of the directions given in the exercise of the executive power of the Union under any of the provisions of the Constitution it shall be lawful for the President to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. The consequence of this provision are contained in Article 356 under which a President, who in effect means the Union Cabinet, is satisfied that the Government of the State cannot be carried on in accordance with the provisions of the Constitution, the imposition of the Presidential rule may be accompanied or followed by the dissolution of the State Legislative Assembly.

The power under Article 356 has been used to impose presidential rule in states on more than 40 occassions.

There is considerable force in the demand that Article 356 should be sparingly used. The imposition of the presidential rule should strictly be restricted to cases where any Government is defeated and an alternative stable government is not possible. It may also be imposed where there is a law and order situation demanding the interference by the Central Government in discharge of its duty under Article 355. In 1977 unfortunately 9 state assemblies were dissolved by the then Janata government on the facile ground that the Governments had lost their mandate. The exercise was repeated in 1980. In 1977 the Supreme Court in the Rajasthan Case upheld this exercise of power. Not only the judgement in the Rajasthan case requires reconsideration, but it is desirable that such large scale exercise of power is not repeated.

Moreover a State Legislative Assembly ought not be dissolved either by the Governor or the President before the proclamation issued under Article 356(1), has been laid before the Parliament and it has an opportunity to consider it. In addition the material facts and grounds on which Article 356(1) is invoked, should form an integral part of the proclamation.

Governor

The imposition of the presidential rule has evoked considerable critcism against the Governor's role from time to time. The office of the Governor is a symbol of unity and cooperation between the Union and the State. He is a vital link between the Union and the State and not a mere agent of the former. However on many occasions in the past the Governors have neither been conscious of their constitutional role nor have they acted with objectivity or independence. What is necessary is to appoint men of stature and eminence to this high posts. There should be effective consultation with the State Chief Minister in the selection of a person as the Governor by a procedure incorporated in Article 155 itself. However, the solution seems to be more in setting up healthy precedents and conventions in the appointment of the Governors. There is a strong case that the tenure of the Governor should be fixed. But then his appointment will have to be made not by the Government of the day but by a broad-based appointing board including President, Vice-President, the Speaker, the Prime-Minister, the Home Minister and the leader of the opposition. Alternatively he may be elected by both Houses of Parliament as in the case of Vice-President.

Financial Relations

In financial relations the area for collection of revenues by the states is extremely limited as against the vast area provided for the Union. Article 280 provides for the setting up of Finance Commission for the purpose of making a recommendation regarding the distribution between the Union and the State of the net proceeds of the taxes which may be shared between them. This has however, not removed the main complaint of the states that they have limited resources and unable to meet their ever growing expenditure. The states are clamouring for greater share of the taxes and duties collected by the Union.

Forty years after independence, the states do deserve greater financial independence for them to grow on their own. As at present, it is more a case of the size of the cake remaining the same with the number of sharers ever increasing and the incentive to produce a larger cake ever diminishing.

Emergency Provisions

In situations of grave emergency threatening the security of the country either by war or external aggression or armed rebellion, the President may make a proclamation of emergency. Emergency was declared for the first time in October 1962 following the Chinese aggression. It continued to remain in force during the Indo-Pakistan Conflict (1965) and was revoked only in January, 1968. Emergency was again proclaimed in December, 1971 in connection with the external aggression. Thereafter proclamation of emergency on the ground of internal disturbance was issued in June, 1975. Both these emergencies were vacated in March, 1977. The propriety of the action under Article 352 on the ground of internal disturbance and the suspension of the enforcement of certain fundamental rights by orders under Article 359 were major issues in mid seventies. The Constitution 44th Amendment Act, 1978 has made extensive modifications in the emergency provisions and the expression 'internal disturbances' has been replaced by

'armed rebellion'. The public opinion has asserted itself to control the use of this provision. This goes to show how the Constitution has adjusted itself to the needs of the situation.

Judiciary

Common judiciary and a set of common laws has been a great unifying feature of the Indian Constitution. Along with the executive and the legislature it constitutes the third pillar of Indian Democracy. It is through Courts that the rule of law is preserved. A significant feature of the Constitution has been to provide for High Courts as the Apex Court within the States and the Supreme Court as the Apex Court of the land. The law laid down by the Supreme Court is under Article 141 of the Constitution binding on all courts. The Supreme Court has a plenary power under Article 136 to grant Special Leave to appeal from any judgement, decree, determination, sentence or order in any case or matters passed or made by any court or tribunal in the territory of India. Under Article 32 the Supreme Court has power to enforce fundamental rights and so also the High Courts under Article 226. By judicial interpretation State, as defined under Article 12, includes every organ, agency and instrumentality of the State including a public sector undertaking or a society controlled by the Government. Likewise Article 14, which is the sheet anchor of equality, has been liberally interpreted. Every action, which is arbitrary, contrary to reason, fairplay and natural justice attracts the frown of Article 14. It is no exaggeration to say that the Indian Supreme Court with such wide jurisdiction of judicial review over legislative and executive action of the State is the most powerful court in the world.

From the middle of 1970s we have witnessed the growth of new form of litigation which is known by the name of Public Interest Litigation or Social Action Litigation. Primacy in this kind of litigation is given towards protecting the rights and interests of those vulnerable groups and sections of the society who, due to ignorance, poverty and lack of opportunities, do not have access to justice. In fact, in India the Judges of the Apex Court, went to the extent of triggering jurisdiction merely on receipt of a letter or a telegram. This form of jurisdiction has no parallel in the law system.

However, there is also a negative side to this picture. Today the picture of the arrears in Courts is frightening. The proliferation in legislation and litigation have been enormous. In fact the litigation explosion has overtaken the population explosion. In 1950 when the country had a population of 330 million. Today we have a population of 840 million. In 1950 the cases instituted in the Supreme Court consisted of 175 Civil Appeals, 73 Criminal Appeals and 352 other appeals. There were 654 Special Leave Petitions (SLPs) filed of which 200 were civil, 454 were criminal and 670 were writ petitions.

As on Ist March, 1991, the arrears of pending cases in the Supreme court were staggering 1,08,500 of which 33,646 Ordinary Civil Appeals, 676 Constitutional Civil Appeals, 5444 Criminal Appeals, 47,157 Special Leave Petitions (Civil), 6,439 Special Leave Petitions (Criminal), for final hearing 5,457 Writ Petitions (Civil) and 89 Writ Petitions (Criminal), for preliminary hearing 7457 Writ Petitions (Civil) and 2135 Writ Petitions (Criminal).

At the time of the commencement of the Constitution the strength of the Supreme Court was 7 judges. Today it is 26. The causes for such delays are many with multi-tier provision of appeals and failure of the Government to discharge its constitutional obligation to appoint the High Court and Supreme Court Judges on time, There cannot be a greater misfortune for a citizen than being compelled to go to a Court of Law. One wonders whether a major legacy in the years to come for our citizens could be that the cases their fore-fathers instituted in the courts decades earlier would be concluded during their life-time.

Elections

The entire country is knit together by a single citizenship and the universal franchise. The age of voting was reduced from 21 to 18 by Constitution 61st Amendment Act, 1989. Quite a few of the constituencies have as many as a million voters. Our general elections, involving half a billion voters is a unique phenomenon in the world. The ten elections and the consequent changes in the Government in India can rightly be considered as a political wonder of the modern democratic world. The magnitude of this democratic process may be realised by the fact that during the first election in 1952 the number of voters was over 173 million and for the election to the 10th Lok Sabha it was over 514 million.

Amendment of the Constitution

The Constitution, according to Dr. Ambedkar provides the most facile arrangement for amendment unlike in Canada where it denies to the people the right to amend or subject to extraordinary terms and conditions as in U.S.A. and Australia.

The Constitution may be amended when the amendment bill is passed in each House of the Parliament by the majority of total membership of that House and by a majority of not less than 2/3rd of the members of that House present and voting. There are certain entrenched provisions mentioned in the provisions to Article 368, which require a ratification by the legislature of not less than 1/2 of the States by resolutions to that effect.

The power of amendment has been a matter of hot debate. In the earlier cases of Shankari Prasad Vs. Union of India, AIR 1951 SC 458 and Sujjan Singh Vs. State of Rajasthan, AIR 1956 S.C. 845 the Supreme Court held that no part of our Constitution is unamendable and the

Parliament may, by passing a Constitution Amendment Act, in compliance with the requirements of Articles 368, amend any provision in the Constitution including Fundamental Rights and Article 368 itself. However in Golaknath's case (AIR 1967 S.C 1643) by a slender majority of one, the full court held that the Fundamental Rights included in Part III of the Constitution cannot, by their very nature, be subject to the process of amendment provided in Article 368 and that if any of such rights has to be amended, a new Constituent Assembly must be found for making a new Constitution or radically to change it. The decision created fierce confrontation between the Parliament and the Judiciary. However in India it is the Constitution, which is supreme. The decision in Golaknath's case was reviewed and overruled by the full court in Keshwananda Bharati's case (AIR 1973 SC p. 1461). But the Supreme Court held that the amending power cannot be exercised so as to destroy a basic feature of the Constitution. Thus the supremacy of Parliament to amend the Constitution has been held with the healthy safeguard of preserving the basic structure. By the application of the principle of basic structure the Supreme Court in Smt. Indira Gandhi Vs. Raj Narain 1976 (2) SCR 347 struck down clause 4 of Article 329(k) of the Constitution introduced by the Constitution of India (Thirty-Ninth Amendment) Act which freed the disputed election of the Prime Minister and the Speaker to the Parliament from the restraints of all election laws. The Supreme Court held that the particular article violated the principle of free and fair elections, which is an essential postulate of democracy and which, in turn, is a part of the basic structure of the Constitution.

In Minerva Mills Ltd. Vs. Union [1 SCR p. 203 S.55(4) 1981] the Supreme Court held that the Constitution (Forty second Amendment) Act, 1976 which provided that 'No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this Article shall be called in any court on any ground' was struck down, as it took away the power of judicial review thereby destroying a basic feature of the Constitution. Similarly S.55(5) of the same Constitution amending Act which declared that there shall be no limitation whatsoever on the constituent power of the Parliament to amend by way of addition, variation or repeal the provisions of the Constitution, was struck down as transgressing the limitations on the amending power of Parliament.

The Constitution has been amended till date sixty eight times. Amendments have been made not only to restrict the right to property but ultimately to remove it as a fundamental right and provide it as a vested right under Article 300-A.

It is generally recognised that the removal of absentee landlordism transferring the land to the actual tiller has been a major factor in ushering in the green revolution and making the country self-sufficient in food. This amending provision, thus, operates as a safety-valve and provides resillence in the Constitution so very necessary to meet the changing aspirations of the people.

The success of India's mature democracy can be guaged by the failure of democracy to take root or survive in several countries in the region. However, the Constitution alone does not preserve democracy. It must be backed up by economic advancement providing a decent standard of living to the people in the country. In the world of today too few share the resources of this planet at the cost of too many. Too much is spent on high tech, arms and ammunitions which today has a potential to destroy the whole world. There is comparatively too little development of human resources. What should be utilised for development is frittered away on destruction. In spite of alarming increase in population and dismal poverty the Constitution continues to help the people of this country to breathe the fresh air of liberty and provides a hope to achieve equality of status and of opportunity. However, there are areas which need constant watching and readjustment. A time has come to decentralise power from the State level to the district level, the taluka level and panchayat level. There has to be a re-adjustment of the Centre State relations to allow the states to grow freely without constraints. In the forty years of its working, it can safely be said that the Constitution has helped India to grow to its full stature as a free and open democratic society.

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Subject Committee System in Kerala

Varkala Radhakrishnan*

Prof. K.C. Wheare described 'Parliamentary Government' as 'Government by Committees'. Such is the importance of Committees in Parliamentary democracy. The basic principle underlying Parliamentary system of Government is executive accountability to the Legislature. In fact, one of the foremost duties of Parliament is to keep a constant vigil on the Executive and to ensure that the powers vested in the Executive are exercised properly and within the ambit of the authority granted to it by the Parliament and the Constitution. The Parliamentary Committees have a vital role to play in ensuring executive accountability. With Committees as its eyes, the Legislature sees every nook and corner of the administration. The Committee can work more efficiently, quietly and effectively because it is removed from the pressure of other business. Further, the members of a Committee are more free to take a dispassionate view of the matter referred to them and can arrive at a more balanced judgment.

In 1980, Kerala initiated an experiment in Parliamentary reform by introducing a system of Subject Committees. We have ten Subject Committees dealing with different subjects, mostly based on the subject areas of Government Departments. They include between them all members of the Assembly. The Ministers in charge of subjects falling within the jurisdiction of a Committee are the ex-officio members of the Committee. Excepting the Ministers, no member will be a member of more than one Subject Committee. The Speaker nominates members to each Committee and also appoints one of the members of the Committee to be its Chairman. Ministers are the Chairmen of the Subject Committees. The term of the Committee is two years.

The important functions of the Subject Committees are to scrutinise the demands for grants, to examine legislation and to consider the draft of the rules to be framed by the Government or other authorities in pursuance of the rule making powers delegated by an Act of the Legislature. The Committee can also study and report on a specified area of governmental activity in the wider public interest, or a project, scheme or undertaking intended for the general welfare. The Government can at times consult these Committees on a question of policy or legislation. The Committees are also free to discuss generally and formulate views on (a) the state's five year plan programme and their implementation, (b) centre-state relations in so far as they concern the state, (c) reports of Public Service Commission, (d) reports of Public Undertakings, (e) reports of statutory or other bodies including any Commission of enquiry which are laid before the Assembly.

As already stated we have ten Subject Committees, each Committee dealing with a specified Subject area. The different Subject Committees and the subjects assigned to them are as follows:

Committee I—"Agriculture and Integrated Rural Development"—Agriculture, Minor Irrigation, Soil and Water Conservation, Government Plantations, Commercial Crops, Special Agricultural Development Programme, Area Development, Animal Husbandry, Dairy Development and Community Development.

Committee II—"Land Revenue, Forest and Fisheries"—Land Revenue, Land Reforms, Relief on account of Natural Calamities, Forests, Fisheries and Fishing Harbours, All Marine Products.

Committee III—"Irrigation and Power"—Major and Medium Irrigation, Flood Control, Anti-Sea Erosion, Electricity.

Committee IV—"Industry and Minerals"—Large and Medium Industries, Village and Small Industries, Small Scale Industries and Industrial Estates, Handloom and Powerloom, Khadi and Village Industries, Handicrafts, Coir, Cement, Iron and Steel, Bricks and Tiles, Mineral Development.

Committee V—"Public Works, Transport and Communications"—Public Works, Ports, Light Houses and Shipping, Road Transport, Water Transport, Railways, Air Transport, Communications, Tourism.

Committee VI—"Social Services"—Education including Technical and Professional Education, Arts and Culture, Science and Technology, Health, Family Welfare, Women and Child Welfare, Welfare of the Physically Handicapped, Old Age Pension, Social Welfare, Nutrition, Harijan Welfare and Welfare of other Backward classes.

Committee VII—"Food, Housing and Labour"—Food and Civil Supplies, Urban and Rural Housing, Labour, Employment and Unemployment, Employees State Insurance.

Committee VIII—"Economic Affairs"—Economic Development, Excise, Commercial Taxes and Agricultural Income Tax, Lotteries, Chitties and Chit Funds, Credit Institutions, Insurance.

Committee IX—"Local Administration and Co-operation"—District Councils, Municipal Corporations and

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Municipal Councils, Panchayats, Co-operation, Town Planning and Urban Development, Sewerage, Water Supply.

Committee X—"Home Affairs"—Police and Jails, Administration of Justice, Elections, General Administration including all Service matters, Sports and Games, All other subjects not included in any other Committee.

The introduction of the Subject Committees has brought about some major changes. Previously the budget demands were discussed only on the floor of the House. But now the demands for grants are subjected to close scrutiny in the Subject Committees before they are discussed and voted upon in the House. The main objective of this scrutiny is to ensure that the available resources in a budget year are prudently allocated among the different services, and that such allocations conform to actual or probable needs. However there is one constitutional restraint. Under article 203(2) of the Constitution while the Legislative Assembly may refuse to assent to a demand, or assent to it subject to a reduction of the amount specified therein, it may not increase the demand. Thus, while a Subject Committee may in examining a demand under its various sub heads, recommend variations from one sub head to another, such variations shall not have the effect of increasing the total allocation under the demand. If an increase is to be made under one sub head, a corresponding saving has to be shown under another sub head within the same demand. A Subject Committee may however recommend an enhancement or a new service. Such enhancement or new service has to be affected either by reappropriation where possible or through a supplementary demand.

There have been some doubts as to how far the Subject Committees can be effective in the scrutiny of budget demands as there are constitutional restraints in altering the structure of the budget. I can say that our experience so far has allayed these fears. A number of recommendations have been made by the Subject Committees for increasing allocations and in certain cases the Committees have suggested even new service. The Government have promptly responded to these recommendations by issuing instructions and guidelines to the Departments to effect variations in allocations within the framework of the rules and standing orders. Our experience has clearly shown that substantial contribution can be made by the Subject Committees through the scrutiny of the budget estimates in shaping the budget. There has been another advantage also. The discussions that take place in the Committees during the scrutiny of the budget gives the Government an idea of the needs and aspirations of the people and the urgent schemes to be taken up etc. This would help the Government in the formulation of a more realistic and needbased budget for the ensuing year.

Every Bill, other than a Money Bill, is now subjected to examination by the Subject Committees before it is considered and passed by the House. The scrutiny of subordinate legislation is done by the Committee on Subordinate Legislation and this Committee examines rules etc. after they are laid on the table of the House. Now all statutory rules go before the appropriate Subject Committee in the draft form for scrutiny before they are promulgated. By examining the rules in the draft stage, the Committee can remarkably contribute to the process of subordinate legislation and the House can thereby gain more effective control over the great volley of rules, regulations, by-laws etc. issued by the Government from time to time.

The working of the Subject Committees is not completely free from defects. Now we have Ministers as the Chairmen of the Subject Committees. For obvious reasons, the Ministers cannot find time to convene the meetings of the Subject Committees in time and this leads to delay of urgent and important work in the Committees. The heads of the executive government, i.e. the Ministers becoming Chairmen of Parliamentary Committees entrusted with the function of overseeing the administration does not reconcile with the basic scheme of Parliamentary control over the executive. In the United Kingdom and many other countries, non-official members are invariably Chairmen of such Committees. Another draw back is that since the duration of the meetings of the Subject Committee is short, there is not much scope for a deep and elaborate discussion in the Committee.

The Subject Committees in Kerala have been functioning as effective instruments of the Legislature in overseeing the administration. In its ten years of performance the Subject Committees have created a lot of interest in other state Legislatures and in Parliament. Many Legislature Committees from other states came here to study the functions and prospects of these Committees. I am happy to say that the deliberations and reports of the Subject Committees during the last ten years have enriched the Committee system and shown that properly worked, the Committees would become the most effective instrument of the Legislatures' control over the Executive.

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The Haryana State Legislature — An Anatomy

H.S. Chatha*

The Haryana State was carved out of the erstwhile Punjab State on Ist November,1966, under the Punjab Reorganisation Act, 1966. It has a unicameral Legislature right from its inception. The total membership is 90 and there is no nominated member in it. Under Article 172(1) of the Constitution of India, the normal tenure of the State Legislative Assembly is five years from the date of its first meeting unless sooner dissolved.

Legislative Powers

The main legislative power of the State Legislature is to enact laws, amend laws and pass Budget. The legislation in the present era cannot be authorised without the consent of the representative Assembly. Although law is the will of the people expressed through their elected representatives in Assembly, yet another source of law has also gained importance i.e. the judge-made law. Customary laws are also being reprocessed through the Acts of Legislature.

The Budget is presented by Minister. The details of Budget documents which are presented to the House are as under:

1. Haryana Budget at a Glance.
2. New expenditure for the year (Vol. I) (Plan Scheme Memoranda).
3. Memorandum Explanatory on the Budget.
4. Budget (Year.....) Detailed Estimates of Revenue and Receipts.
5. Detailed (Budget) Estimates of Plan Scheme for the Year.... (As laid before Vidhan Sabha)
6. Budget (Year.....) (Vol. II) (Demands for grants with detailed estimates of expenditure)

Date of Presentation of Budget— Convention/Practices

The Annual Financial Statement or the statement of the Estimated Receipts and Expenditures of the Government of the State in respect of every financial year is presented to the Assembly on such day as the Governor may appoint. Under the Rules, the Budget is dealt with by the Assembly in two stages, namely:—

(i) A general discussion; and
(ii) the voting of demand for grants.

On a day or days to be appointed by the Speaker in consultation with the Leader of the House, subsequent to the day on which the Budget is presented and for such time as the Speaker in consultation with the Leader of the House may allot for this purpose, the Assembly is at liberty to discuss the Budget as a whole or any question of principle involved therein but no motion is moved at this stage nor can the Budget be submitted to the vote of the Assembly. The Finance Minister has a general right of reply at the end of the discussion. The Speaker may, if he thinks fit, prescribe a time-limit for speeches.

The demands for grants are arranged in such order as the Leader of the House may intimate. Of the days allotted, not more than two days are usually taken up by the Assembly for discussion of any one demand. As soon as the time for discussion is over the Speaker forthwith puts every question necessary to dispose of the demand under discussion.

On a day, allotted for the voting of demands for grants, no other business is taken up before the normal hour of interruption of business except with the consent of the Speaker, provided that nothing in this rule is deemed to prohibit the asking and answering of questions during the time allowed. On the last day or days so allotted, the Speaker allots one and half hours before the normal hours of interruption of business to put every question necessary to dispose of the demands under consideration and puts, one by one, all the outstanding demands for grants for vote.

After the demands for grants are passed, then an appropriation Bill is introduced in the House. With the passing of the appropriation Bill, the Budget is passed.

Committees of the Haryana Vidhan Sabha

The Rules of Procedure and Conduct of Business of the Punjab Legislative Assembly were adopted by Haryana Legislature immediately on the formation of the Haryana State Legislature in 1966. At the time of constitution of the first Legislative Assembly, the following Committees were also constituted:

1. Public Accounts Committee.
2. Estimates Committee.
3. Committee on Government Assurances.
4. Committee on Subordinate Legislation.
5. Business Advisory Committee.

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6. Committee on Petitions.
7. Committee of Privileges.
8. Library Committee
9. House Committee.
10. Rules Committee.

The Committee on the Welfare of Scheduled Castes and Scheduled Tribes was constituted in the year 1973 and the Committee on Public Undertakings in the year 1978.

Present Committees

1. Public Accounts Committee.
2. Estimates Committee.
3. Committee on Public Undertakings.
4. Committee on Welfare of Scheduled Castes and Scheduled Tribes.
5. Committee of Privileges.
6. Committee on Subordinate Legislation.
7. Committee on Government Assurances.
8. Library Committee.
9. Rules Committee.
10. House Committee.
11. Committee on Petitions.
12. Business Advisory Committee.

The Members of the first four Committees are elected by the Members of the House according to the principle of proportional representation by means of single transferable vote. The term of members of the Committee is one year.

The Members of the other 8 Committees are nominated by the Speaker. The term of each Committee has been specified in the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly.

The Chairmen of the Committees are appointed by the Speaker. However, if the Deputy Speaker is a member of any Committee, he/she is appointed as the Chairman of that Committee. In the case of Business Advisory Committee, the Speaker is the Ex-Officio Chairman of that Committee.

As specified in the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly, each Committee is dealt with by an Officer assisted by a Superintendent, an Assistant and a Clerk.

While there is no bar on discussing the Reports of Committees in the House, by convention, these Reports are not discussed in the House. There is only one instance when the Report of the Public Accounts Committee was discussed in the year 1974.

In Haryana Legislature, there are three Financial Committees *i.e.*, Public Accounts Committee, Estimates Committee and Committee on Public Undertakings. These Financial Committees are designed to ensure on behalf of the Legislature the executive accountability in regard to the Budget and its implementation by Government Departments and Public Undertakings. With the proliferation of Governmental activities consequent on our embarking on a planned socio-economic development of the country, the scope of the work of financial committees has enlarged a great deal. The Committees review the activities of the Government. The Estimates Committee is to examine and report on the Budget as a whole before it is approved by the Legislature. The Public Accounts Committee examines the Accounts and Audit Reports of the Departments. The Committee on Public Undertakings examines the working of the public undertakings. These Committees see that the money is spent for the purpose for which it is laid down and keeping in view the ends of economy and optimum efficiency. These Committees also endeavour to undertake the task of detailed scrutiny of governmental spending and performances.

Business Advisory Committee is the other important Committee of the House. The main function of this Committee is to recommend the time that should be allocated for the discussion of the stage or stages of such Government business as the Speaker, in consultation with the Leader of the House, may direct for being referred to the Committee. It also performs such other functions as may be assigned to it by the Speaker from time to time.

There are certain items that can be taken up without entry in the List of Business such as:—

1. Announcement regarding Bills which have been passed by the Haryana Vidhan Sabha and have since been assented to by the Governor/President.
2. Announcement to be made by the Speaker in respect of panel of Chairmen nominated for that session.
3. Announcement regarding the resignation of Members/arrest and detention of Members etc.
4. Adjournment Motion.
5. Calling Attention Notice.
6. Communication of a message from the Governor.
7. Ruling given by the Speaker.
8. Question of Privilege etc.

Every item entered in the List of Business or the item which is taken up without the entry in the List of Business is governed by a separate rule (as mentioned in Rules of Procedure and Conduct of Business in Haryana Legislative Assembly).

As there is no Committee on Private Members, Bills and Resolutions in the House, the Business Advisory Committee considers the matter regarding allotment of time for Private Members' Business also.

Government Bills, Private Members' Bills Etc.

The Parliament and the State Legislatures make the laws. A Bill which is introduced by a Minister is known as a

Government Bill and the Bill introduced by a Private Member is known as a Private Members' Bill. The requirements for both the cases are almost same. However, in the case of Private Members' Bill, the relative precedence among them is determined by a ballot, the procedure for which is set out in Schedule I of the Rules of Procedure and Conduct of Business in the Haryana Legislative Assembly.

In all cases, fifteen days, notice has to be given of the intention to move for leave to introduce a Bill and every such notice has to be accompanied by four copies of the text of the Bill together with a full statement of Objects and Reasons of the Bill duly signed by the Member giving such notice in English and Hindi.

The Speaker may, for sufficient reasons, allow the motion for leave to introduce a Bill at a shorter notice than fifteen days. After the leave is granted by the House, the Bill is introduced and published in the official Gazette. However, with the permission of the Speaker, a Bill can be straightaway introduced without asking for the leave of the House. But such Bill is pre-published in the Gazette. When a Bill is introduced, it brings an end to the first stage of the Bill.

The second stage is the consideration of a Bill. It starts with the general discussion of the Bill, when the principle underlying the Bill is discussed. At this stage it is open to the House either to refer a Bill to a Select Committee of the House or to circulate it for the purpose of eliciting opinion or to straightaway take it up for consideration.

Afterwards the Bill is considered clause by clause. Discussion takes place on each clause and the amendments, if any, are moved at this stage. When all the clauses, the Schedule, the enacting formula and short-title of the Bill and the amendments have been put to vote and disposed of, the second reading is deemed to be over.

When the second reading of the Bill is over, the Member-in-charge of the Bill can move for the third reading of the Bill by moving a motion that the Bill or the Bills as amended, as the case may be, be passed.

Amendment to Bills

Notice of proposed amendment has to be given two clear days before the day on which the consideration of the clause to which the amendment is proposed to be commenced. However, the Speaker may allow the amendment to be moved at any time of the various stages of consideration of the Bill. The Speaker may allow verbal amendments at the time of the consideration of the Bill clause by clause. The Speaker may postpone the consideration of the clauses to give reasonable time for the proper drafting of an amendment. A member signing the report of a Select Committee on a Bill without a minute of dissent cannot move an amendment to the Bill when it is under consideration in the Assembly. Copy of Notice of amendment is also made available for the use of every member.

While deciding the validity of an amendment, the following yardstick is adopted:—

(i) An amendment shall be within the scope of the Bill and relevant to the subject matter of the clause.
(ii) It shall not be inconsistent with any previous decision of the Assembly on the same question.
(iii) It shall be intelligible and grammatically correct.
(iv) It shall not be frivolous or meaningless.

An amendment moved, with the leave of the House can only be withdrawn with the permission of the House and not otherwise.

The members of a Select Committee on a Bill are appointed by the Assembly when a motion that the Bill be referred to a Select Committee is made. The Select Committee does not consist of more than fifteen members except with the leave of the Assembly. In that case the membership can be raised upto 25 members. The concerned Minister, member-in-charge of the Bill, the Advocate-General and either the Deputy Speaker or a member of the panel of Chairmen, always remain the members of every Select Committee. The Select Committee may appoint a Sub-committee to examine any special point.

As soon as may be, after a Bill has been referred to a Select Committee, the Select Committee meets from time to time in accordance with its relevant rules and make a report thereon within the time fixed by the Assembly. If the time is not fixed for making of the report, the report is not made sooner than two months from the date of first publication of the Bill in the Gazette. The report may be either preliminary or final. The Debate on the motion that the Bill as reported by the Select Committee be taken into consideration is confined to the consideration of the report of the Committee, and the matter referred to therein. After the motion that the Bill, as reported by the Select Committee, be taken into consideration has been voted and carried, the Bill is taken up for consideration clause by clause.

In brief, the Select Committee has to discharge various kinds of functions. It has to analyse the particular legislative measure with great care and caution. It plays a pivotal role on behalf of the whole House and represents the will of the people for a very limited period. Therefore, it is pertinent to say here that this Committee plays a significant role in our democratic institution.

When a Bill is passed by the Assembly, the Secretary sends the Bill as passed, signed by the Speaker, through Law Department for submission to the Governor for his assent. If the Governor returns the Bill for reconsideration by the Assembly then it is put before the Assembly by the Speaker and is discussed and voted in the same manner as amendments to a Bill.

When a Bill relates to a matter which falls in the Concurrent List, then the Governor reserves the Bill for the

consideration of the President for his assent. The Governor may either assent to the Bill, withhold his assent or return the Bill if it is not a Money Bill with a message for reconsideration of the Bills. So far, there has been no such instance when the Governor withheld his assent to any Bill passed by the Haryana Legislative Assembly.

The State of Haryana has been the hub of politics since its inception. The multi-dimensional aspects of its politics have not only influenced the Haryana State but the entire Indian politics.

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Unique as the Commonwealth is as an association of independent and sovereign nations, we, in India, look at it and prize it as a conscious attempt to translate into action the concept of the brotherhood of man held aloft in the Upanishads *and* Rishis, *the great Seers of our ancient past.*

—B.D. Jatti

The Uttar Pradesh Legislative Assembly

Hari Kishan*

The state of Uttar Pradesh has played a decisive role in India's political development, during the struggle for Independence, in the framing of the Constitution of India and in building.

Uttar Pradesh has a bicameral legislature. The Legislative Assembly has 426 members, out of which 425 are elected and one is nominated by the Governor from the Anglo-Indian community. At present the life of the Legislative Assembly is five years from the date of its first meeting after general elections, unless dissolved earlier.

Every member of the Legislative Assembly has to make and subscribe before the Governor, or any other person appointed by him, to an oath or affirmation according to the form set for the purpose. Soon after making of and subscribing to an oath or affirmation by the members, the Assembly elects from amongst its members two members to be, respectively, Speaker and Deputy Speaker, who hold office till they cease to be members of the Assembly or are removed from their office by a resolution of the Assembly passed by a majority of all the then members of the Assembly or they themselves resign their office by writing under their hand. The Speaker, however, continues to be in office even after the dissolution of the Assembly until immediately before the first meeting of the new Assembly.

The Assembly meets, when summoned, in its chamber in the Council House at Lucknow. The business of the House is transacted in Hindi language and Devnagari script. Legislative matters concerning the proposals of the Government or of an unofficial member are placed before the House in the shape of a Bill, which is first introduced by the leave of the House, then either considered by the House straightaway or sent to a Select or Joint Select Committee. After a clause-by-clause consideration by the House, the Bill, if passed, is transmitted to the Council which may either reject the Bill or pass it with amendments to which the Assembly need not agree, or keep it pending for a period of three months. In either case the Assembly may pass the bill again with or without such amendments and transmit the same to the Council. If the Bill, so passed for a second time by the Assembly, is rejected by the Council or is passed by the Council with amendments to which the Assembly does not agree, or if the Council keeps the Bill pending before it for a period of one month, the Bill is deemed to have been passed by both the Houses of the Legislature and is submitted to the Governor for his assent. However, a Money Bill cannot be detained by the Council for more than 14 days from the date of receipt, and if it is so detained, it can be deemed to have been passed by both the Houses and sent to the Governor for his assent.

In the matter of granting of moneys, the Governor causes to be laid in respect of every financial year, before both the Houses of the Legislature, a statement of the estimated receipts and expenditure showing separately the sums required to meet expenditure described by the Constitution as expenditure charged upon the Consolidated Fund of the State and the sums required to meet other expenditure. The estimates that relate to the charged expenditure are not put to the vote of the House, though a discussion can take place on them.

The other estimates are put to the vote of the House and, according to the rules, the House can take a maximum of 24 days for voting besides five days for general discussion. Estimates are put before it by the ministers, Department-wise, by means of motion of demands and are discussed by the House by means of cut motions moved by members who usually belong to the opposition. As soon as the Assembly votes the demands, a bill providing for appropriation from the Consolidated Fund is introduced in the Assembly as no money can be withdrawn from the Consolidated Fund except under appropriation made by law. Provision has been made in the Constitution to provide for supplementary or additional grants and for the regularisation of excess grants in case the amount authorised by law is found to be insufficient or the money has been spent in excess of the amount granted.

The Committee system has now become an integral part of the parliamentary mechanism. The U.P. Legislative Assembly also works through Committees. There are Committees to deal with legislative matters, like Select Committee on Bills or Delegated Legislation Committee to examine the rules, regulations and bye-laws framed by Government under powers vested in them through Acts or the Constitution. There are three important Financial Committees: the Estimates Committee, the Public Accounts Committee (PAC) and the Public Undertakings Committee. The Estimates Committee deals with the estimates presented to the House. The Public Accounts Committee examines the reports of the Comptroller and Auditor-General of India to see that the moneys spent were actually available and have been spent for the purpose for which they were meant to be spent in accordance with the

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wishes of the Legislature. Uttar Pradesh has been the first State in the country to accept the principle that the Chairman of the PAC should be elected from among the members of the Opposition. The State has been following this practice since 1948.

Public Undertakings Committee was set up with the coming into being of many Public Undertakings in the State. While keeping the autonomy of these institutions intact, their accountability to the Legislature has to be ensured. So the Public Undertakings Committee was set up to examine the working of these undertakings and to see that they function efficiently, economically and without any undue interference from the Government.

Besides the above Legislative and Financial Committees, the U.P. Assembly has other committees to keep its own House in order. The Assurances Committee examines the 'assurances' given on the floor of the House by the Government, the Privileges Committee examines any case of contempt or breach of a recognised privilege and the Petitions Committee goes into the 'petitions' submitted to the Assembly by the public. There is a House Committee to examine the conveniences available to members regarding their boarding and lodging. Another important Committee, known as the Business Advisory Committee, regulates and allots time for different kinds of business coming before the House. A committee has also been set up to look after the welfare of the Scheduled Castes and Scheduled tribes.

The other committees of the Legislative Assembly are the Rules Committee, the Questions and Reference Committee, the Library Committee and the Parliamentary Research, Reference and Studies Committee.

Innovations

An important and pioneering contribution to the democratic process that this State Assembly has made is the provision for the office of the Leader of the Opposition by an Act of 1969. His status has been equated with that of a cabinet minister. All other facilities befitting this status have been provided for. Another healthy parliamentary tradition established by this House is that the post of Deputy Speaker is traditionally given to a member of the opposition.

Though the House is guided by Rules of Procedure in regulating the internal day-to-day functioning, their rigidity often necessitates re-examination. During the recent past the U.P. Assembly has made several procedural innovations with a view to facilitate smooth functioning of the House.

According to the U.P. Legislative Assembly Rules of Procedure and Conduct of Business the presence of at least one-third members of a committee is necessary to constitute the quorum. But for the Privileges Committee the quorum has specifically been fixed at fifty per-cent. Often the meetings of this Committee could not be held due to want of quorum. As the committee often examines witnesses even they had to return back due to lack of quorum. So after a reference to the Rules Committee it was accepted and rules amended so that now witnesses can be examined even if only one member of that committee is present but when the discussions of the committee or draft report is under consideration then the quorum of fifty per cent is necessary.

Another innovation in the rules was made in June, 1987. Question Hour is now deemed to have been observed when the House stands adjourned after obituary references. Earlier different procedures were followed in this regard. When the death of late Prime Minister Charan Singh was condoled in the House it was considered expedient to provide that if the written answers to various questions listed for such a date are made available on or before such date then all such questions would be deemed to have been duly answered and they would form part of the proceedings alongwith their answers. There are similar other innovations made by the U.P. Assembly over the years.

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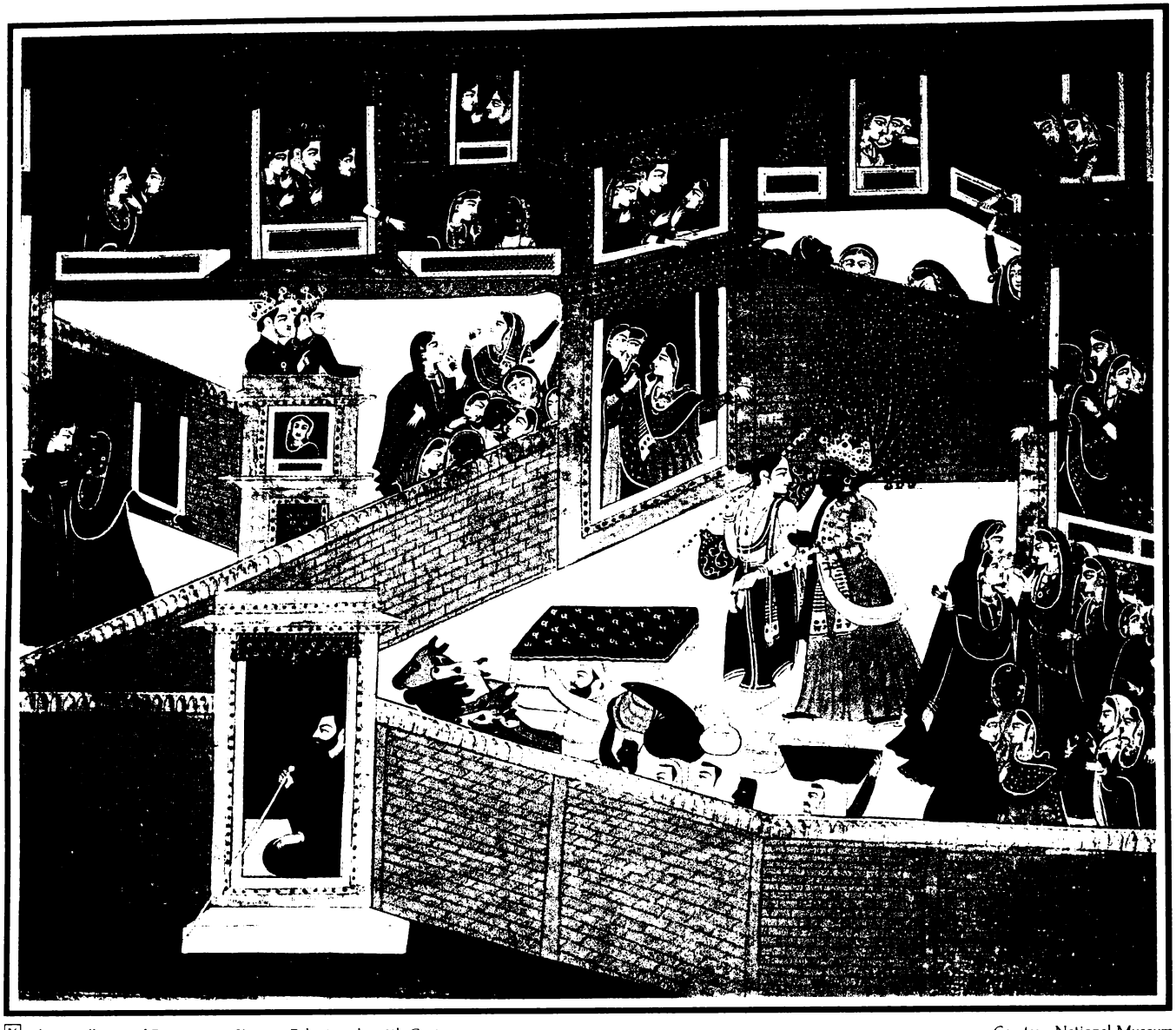
33 Ragini Sorath: Kangra, Pahari, *circa AD 1785-90* *Courtesy*: National Museum

34 Nanda with Radha and Krishna: Kangra, Pahari, *circa AD 1795* *Courtesy*: National Museum

35 Gopies searching for Krishna on river Yamuna: A folio of Bhagavata-Purana Kangra, Pahari, *circa AD 1785-90*

Courtesy: National Museum



36 The installation of Parijata tree: Kangra, Pahari, early 19th Century

Courtesy: National Museum

Rajya Sabha in the Indian Polity

Sudarshan Agarwal*

The existence of a Second Chamber in a Parliamentary system of government is an evolution accomplished over centuries of history. It is no new idea that needs to stand the test of time, nor is it one which needs to be proved afresh. It is often said that the Second Chamber, in some countries at least, is the symbol of all that is traditional and, hence, conservative, and a force resisting change. It is, however, an undeniable fact that the Second Chamber does tend to be cautious and meticulous in its deliberations. This is as it ought to be.

It was considered by the founding fathers of the Indian Constitution that the federal system was a convenient form of government for a vast country where a unitary system of government would be impracticable. Our Second Chamber was not born out of a contract between the federating units as in the United States of America, but was in fact a logical corollary of the background of historical continuity.

The Rajya Sabha, one of the organic constituents of Parliament and embodiment of the federal principle, has led the country in consolidating our democratic ethos and acted as a central lever of social engineering. In the process of performing its multi-functional role, Rajya Sabha has acquired a distinct place in the annals of history of Second Chambers of the world. Both in terms of the volume and contents of legislation and the time devoted to the transaction of business, Rajya Sabha has unflinchingly adhered to its constitutionally assigned position. The Rajya Sabha has played a crucial role as a deliberative and revising Chamber. It has very effectively demonstrated its legislative competence in umpteen areas. The analysis of the work of Rajya Sabha since its inception will clearly demonstrate its role in our political system. Since the year 1952, Rajya Sabha has witnessed the introduction of nearly 540 government bills and 600 private members' bills. A close examination of these bills will reveal that many of them have incorporated within their ambit important socio-economic issues. Some of the most important bills having far-reaching implications in the social and economic spheres which were introduced in Rajya Sabha are: The Hindu Marriage and Divorce Bill, 1952; the Hindu Minority and Guardianship Bill, 1953; the Hindu Succession Bill, 1954; the Monopolies and Restrictive Trade Practices Bill, 1967; the Medical Termination of Pregnancy Bill, 1969; the Code of Criminal Procedure Bill, 1970; the Prevention of Food Adulteration (Amendment) Bill, 1974; the Labour Welfare Fund Laws (Amendment) Bill, 1986; the Indecent Representation of Women (Prohibition) Bill, 1986; the Suppression of Immoral Traffic in Women and Girls (Amendment) Bill, 1986; the Child Labour (Prohibition and Regulation) Bill, 1986; the Essential Commodities (Amendment) Bill, 1986; and the Constitution (Scheduled Castes) Orders (Amendment) Bill, 1990. The long awaited Participation of Workers in Management Bill was also introduced in the Rajya Sabha in 1990.

Since a large part of Parliament's time is devoted to the handling of government legislative business, legislative initiatives by private members often do not succeed. However, at the initiative of the members of Rajya Sabha, five very important Private Members' bill have reached the statute book so far. These are: (i) The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Second Amendment Bill, 1954; (ii) The Hindu Marriage (Amendment) Bill, 1956; (iii) The Indian Marine Insurance Bill, 1959; (iv) The Orphanages and other Charitable Homes (Supervision and Control) Bill, 1959; and (v) The Indian Penal Code (Amendment) Bill, 1963.

The growing involvement of Rajya Sabha in the numerous legislative measures is a testimony to the fact that though a Second Chamber, it cannot be treated as the secondary Chamber. In matters of ordinary legislation, it has equal powers with Lok Sabha. In a number of cases, Rajya Sabha had recommended changes in the bills passed by Lok Sabha and those changes were, in fact, carried out eventually. The Income Tax (Amendment) Bill, 1961; the Prevention of Insults to National Honour Bill, 1971; and the Urban Land (Ceiling and Regulation) Bill, 1976 are such instances in which the amendments made by Rajya Sabha were accepted by Lok Sabha. Similarly; the Delhi Apartment Ownership Bill, 1986; the Goa, Daman and Diu Reorganisation Bill, 1987; the Prevention of Corruption Bill, 1988; the Bharat Petroleum Corporation Limited (Determination of Conditions of Employees) Bill, 1988; the Code of Criminal Procedure (Amendment) Bill, 1990; and the Commissions of Inquiry (Amendment) Bill, 1990 were also amended by Rajya Sabha in the recent past.

Rajya Sabha has not remained content with its role merely as a revising Chamber. In a number of cases it has, in fact, asserted itself. In 1970, the Constitution (Twenty-Fourth Amendment) Bill relating to the abolition of Privy Purses and Privileges of the Rulers of former Indian States was defeated in Rajya Sabha, which had already been

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passed by Lok Sabha. Rajya Sabha was able to introduce amendments in the Constitution (Forty-Fifth Amendment) Bill in 1978 which were accepted by the Lok Sabha and it became the Constitution (Forty-Fourth Amendment) Act, 1978. In 1989, the Constitution (Sixty-fourth Amendment) Bill and the Constitution (Sixty-Fifth Amendment) Bill pertaining to the Panchayat Raj and Nagar Palikas were defeated in Rajya Sabha. These were earlier passed by Lok Sabha. Rajya Sabha has even amended the Motion of Thanks on the President's Address. On 30 January 1980, an amendment to the Motion of Thanks on the President's Address was adopted in Rajya Sabha for the first time. This happened again on 29 December 1989 when Rajya Sabha adopted six amendments to the Motion of Thanks on the President's Address.

As far as the constituent power of Parliament is concerned, Rajya Sabha has as much power as Lok Sabha. A Constitution Amendment Bill can be introduced in either House of Parliament and has to be passed by each House. In case there is any disagreement between Lok Sabha and Rajya Sabha, the Constitution amendment bill naturally falls through, in other words, there is no provision of joint sitting to resolve a deadlock on a Constitution amendment bill. Similarly, there is no provision of joint sitting to resolve a deadlock on a Money Bill where Lok Sabha enjoys overriding powers. It is generally presumed that in case of joint sitting on ordinary bills, the preponderant majority of Lok Sabha will overshadow Rajya Sabha. Facts, however, do not support this contention. Out of the two joint sittings held so far—the first on the Dowry Prohibition Bill, and the second on the Banking Service Commission (Repeal) Bill amendments moved by the Rajya Sabha on the Dowry Prohibition Bill were adopted.

Apart from making laws and amending the Constitution, in several other matters too, Rajya Sabha enjoys equal powers with Lok Sabha. In approving a proclamation of Emergency (article 352) and in relation to a State coming under President's rule (article 356) and any other subsequent proclamations issued by the President during that period, Rajya Sabha has been assigned equal powers with Lok Sabha. It has been granted special powers in these matters especially when the Lok Sabha is dissolved. For instance, Rajya Sabha met in a brief Session on 28 February and 1 March 1977 to extend the period of President's rule in the States of Tamil Nadu and Nagaland. At that time Lok Sabha stood dissolved. Due to the dissolution of Lok Sabha, a Session of Rajya Sabha was also convened on 3–4 June 1991 to approve the Proclamation issued by the President under article 356 of the Constitution in relation to the State of Haryana. On its sitting held on 4 June, Rajya Sabha approved the Proclamation.

As an embodiment of the federal principle, Rajya Sabha has been assigned two special powers. Under article 249, if Rajya Sabha adopts a resolution by a majority of not less than two-thirds of members present and voting, stating that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State list specified in the resolution, Parliament will assume power to make laws for the whole or any part of the territory of India in respect of that subject.

Again, under article 312, if Rajya Sabha passes a resolution by a majority of not less than two-thirds of members present and voting declaring that it is necessary in the national interest to create one or more all-India services common to both the Union and the States, Parliament will acquire the power to create by law such services. In pursuance of a resolution passed by Rajya Sabha on 6 December 1961, the Indian Service of Engineers, Indian Medical and Health Service and the Indian Forest Service were created. A similar resolution for the creation of the Indian Agricultural Service and the Indian Educational Service was passed by the House on 30 March 1965.

Even though Rajya Sabha's role in exercising control over financial matters is not as intense and complete as that of the Lok Sabha, it does discuss both the Union and the Railway Budgets. It can make recommendations to the Money Bills also. Rajya Sabha, in fact, did recommend some substantial amendments in some of the Money Bills. Thus, amendments suggested by Rajya Sabha to the Travancore Cochin Appropriation (Vote on Account) Bill, 1956; the Union Duties of Excise (Distribution) Bill, 1957; and the Income Tax Bill, 1961 were accepted by Lok Sabha. Members of Rajya Sabha are also associated with two of the three Financial Committees, *i.e.*, the Committee on Public Accounts and the Committee on Public Undertakings, of Lok Sabha.

Innovations in the Rules of Procedure

As Parliamentary institutions widen their scope of operation and seriously devote to the task of nation building, the old Rules and Procedures need to be modified to meet the rising expectations of the people. Keeping pace with the time, Rajya Sabha has brought about changes in its rules of procedure. From 1964 onwards, the first hour of every sitting of the House was made available for the asking and answering of questions. Prior to this, questions were permitted on some specified days of the week. The application of revised Rules of Procedure in 1964 also brought about new changes. Innovations like Call Attention and Short Duration Discussion, which were then introduced, provided new opportunities to strengthen parliamentary control over the executive. Rules regarding petitions have also been changed. Previously, petitions relating to pending bills only were allowed. The altered rules incorporated more subjects on which petitions could be addressed to the House. The Committee structure of the Rajya Sabha was also revamped with a view to managing

growing parliamentary activities. Several new committees were set up. These were: the Committee on Subordinate Legislation; the Committee on Government Assurances and the Committee on Papers Laid on the Table of the House.

One of the objectives of setting up of a Second Chamber is to provide opportunity for the representation of seasoned and eminent people and facilitate dignified debate. Rajya Sabha has provided opportunities to persons having special knowledge and experience in various fields of activity to contribute towards nation-building and socio-economic reconstruction of the society. Many eminent persons have served as members of Rajya Sabha. Among them we find a galaxy of scholars, educationists, historians, scientists, artists, poets, litterateurs, jurists, engineers, economists, administrators and social workers of outstanding eminence. Dr. Zakir Husain was among the first panel of the nominated members of Rajya Sabha. Some other nominated members who have adorned the benches of Rajya Sabha are: Sardar K.M. Panikkar, Prof. Satyandranath Bose, Dr. Tara Chand, Maithilisharan Gupta, Dr. P.V. Kane, G. Sankara Kurup, Prof. Nurul Hasan, Smt. Rukmini Devi Arundale, Prithvi Raj Kapoor, Alladi Krishnaswami Ayyar, M.C. Setalvad, C.K. Daphtary, M.N. Kaul, B.N. Banerjee, Salim Ali, R.K. Narayan, M.F. Hussain, Smt. Nargis Dutt, Pandit Ravi Shankar and Smt. Amrita Pritam.

In the Indian context, the above principles coupled with the idea of federal representation have traversed a long way in realising the aims of the framers of our Constitution. Rajya Sabha has not only carved out an important place in our parliamentary set-up but has also become a model for many other countries. Its dignified atmosphere has been sustained, among other factors, by the towering personalities of those who occupied the seats of Chairman and Deputy Chairman.

Even from among the members of Rajya Sabha, many stalwarts have been included in the Union Council of Ministers. In 1966, when Shrimati Indira Gandhi was elected as the Prime Minister, she was a member of Rajya Sabha. Though in financial matters Lok Sabha has more powers compared to Rajya Sabha, for the past ten years, however, the portfolio of Finance has been largely held by those who were members of Rajya Sabha. The former Finance Ministers Shri Pranab Mukherjee, Shri S.B. Chavan, Shri Narayan Dutt Tiwari, Shri V.P. Singh, Shri Yashwant Sinha, all belonged to Rajya Sabha. Other important portfolios like Agriculture, Industry, Commerce, Planning and Programme Implementation and Tourism were also held at times by members belonging to Rajya Sabha.

Thus, a close scrutiny of the functioning of Rajya Sabha reveals that it has played a constructive and effective role in our society. Its performance in the legislative field and in the formulation of and in influencing Government policies has been quite significant. Rajya Sabha has, in fact, worked in a spirit of cooperation with the Lok Sabha. It has prevented hasty legislation and has served as a dignified Chamber representing the federal principle. Compared to many other Second Chambers in the world, Rajya Sabha has, indeed, given a good account of its performance. Neither weak like the House of Lords nor powerful like the Senate in the USA, Rajya Sabha has adhered to the time-tested middle path and, in the process, has become a precursor of many other Second Chambers in the Third World.

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India and the Commonwealth Parliamentary Association

K.C. Rastogi*

The Commonwealth Parliamentary Association (CPA), as its name implies, is an association of Commonwealth Parliamentarians. The objective of the Association is to promote knowledge and education about the constitutional, legislative, economic, social and cultural systems within a parliamentary democratic framework with particular reference to the countries of the Commonwealth of Nations and to countries having close historical and parliamentary associations with it. Regular consultations among Commonwealth parliamentarians have been made possible by the CPA, as it seeks to foster understanding and cooperation among them and also to promote the study of and respect for Parliamentary institutions. Sir Bernard Braine, who has contributed significantly during his long association with the CPA in various capacities, once remarked that the CPA is in fact "a powerhouse of ideas rather than an anvil upon which policies are hammered out". Inherent in the CPA, as an institution of Commonwealth countries, is an abiding commitment to the practices and traditions of parliamentary democracy.

Many an organisation has been formed to promote understanding and cooperation among member nations of the Commonwealth. Institutions like the 'Commonwealth Federation', 'The Association of Commonwealth Universities', 'The Commonwealth Fund for Technical Cooperation', 'The Commonwealth Foundation', and 'Commonwealth Telecommunications Organisation' were formed to deal with specific problems promptly and effectively. But, what makes the Commonwealth Parliamentary Association (CPA) markedly different from all these is that it is an association of parliamentarians who are the representatives of peoples, and, as such, are best placed to read the pulse of their people and know their attitudes and opinions about the Commonwealth. The annual CPA meetings provide opportunities to the representatives of people from Commonwealth Parliaments to exchange ideas and information on a variety of issues.

The Association, originally named Imperial Parliamentary Association (IPA), was born in 1911 when, at the time of the coronation of King George V, a meeting of representatives of five dominion Parliaments—Australia, Canada, South Africa, New Zealand and Newfoundland—was held in London. Since then, it has never looked back and has grown with every passing year, in size and strength, which speaks of its inner vitality and flexibility in shaping and adapting itself in tune with the changing times. The phenomenal expansion of the CPA, from just six branches in 1911 to 117 today, is an irrefutable testimony of the preferences of the people for the system of parliamentary democracy which is based on the twin principles of individual freedom and rule of law. The CPA, through its untiring and relentless efforts in promoting understanding and cooperation among Commonwealth Parliamentarians, has been able to give a tremendous fillip to the growth of parliamentary democracy. The contributions of the CPA have naturally not gone unnoticed and have been widely recognised. Acknowledging the importance and the continued relevance of the Association, the Communique issued at the end of the meeting of the Commonwealth Prime Ministers in January 1969 stated:

> "The meeting also expressed appreciation of the valuable contribution to the strengthening of Commonwealth cooperation and understanding being made by the Commonwealth Parliamentary Association. As an independent association of parliamentarians, it provides unique opportunities for the sharing of experience, the discussion of common problems and the development of personal links to the benefit of both its members and the people they represent."

Having an abiding faith in the indivisibility of peace and the principle of universal brotherhood, India has never missed even a single opportunity to work for peace. She greatly values, respects and associates herself with any organisation or association working for peace and prosperity. The decision of Burma in 1947, to become an independent sovereign republic outside the Commonwealth made many people sceptical of India's continued association with the Commonwealth since India too was free to leave the British Commonwealth with the attainment of her independence. The United Kingdom was, however, hopeful of India's continued involvement in the Commonwealth. As is well-known, India's subsequent decision to remain in the Commonwealth marked the beginning of a major change in the content of the organisation as a voluntary association of sovereign States.

*Mr. K.C. Rastogi, Secretary General, Lok Sabha.

The Second World War had brought about radical changes in the arena of world politics and the Commonwealth could not be an exception. It was widely felt that the IPA should undergo transformation to reflect the new developments and make it truly representative. The Indian Central Legislative Assembly, which was a member of the IPA since 1926 had ceased to function as India branch of the Association after the country became independent on 15 August 1947. Prior to this, the India branch in the Central Legislature had passed a resolution in March 1947 proposing that the name of the IPA be changed to the CPA, which was approved by the Association's General Conference meeting in London in October 1948. This was the year when the Association entered the threshold of a new era. The principle of equality among all the self-governing nations was recognised and a General Council, vested with the management of the affairs of the Association, was formed. All the branches of the Association were represented in the Council as equal members. The CPA witnessed a major transformation in the 1950s when branches were formed in many countries. Because of its resilience and the innate capacity to adapt itself to the fast changing situations now than ever, the Association today has branches in 117 national, state, provincial and territorial Parliaments/Legislatures, with a membership of more than ten thousand parliamentarians.

Following the change in the name and the constitution of the Association, India was keen to renew her membership. Shri G.V. Mavalankar, the then Speaker of the Constituent Assembly (Legislative), who was in regular touch with the Secretary-General of the Association, Mr. Harold D' Egville, conveyed to him in July 1949, the willingness to form a branch of the CPA in India. In pursuance of a motion adopted by the Constituent Assembly (Legislative) on 16 August 1948, the Indian Parliamentary Group (IPG), which functions as the India Branch of both the Inter-Parliamentary Union (IPU) and the CPA, was formed in 1949. Consequently, an Indian Delegation attended the CPA Conference held in Wellington, New Zealand in November-December, 1950. Since then, India has been playing a very active role in strengthening and reinforcing the Association. India's support to and trust in the Association is vividly manifested from the fact that today branches have been formed in 25 States and one Union territory of the Indian Union.

The Indian Parliamentary Group (IPG) which functions as the India branch of the CPA is an autonomous body having its own constitution and directing its own affairs. Membership is open to all members of Parliament. Former members of Parliament, members of the Provisional Parliament or the Constituent Assembly (Legislative) or the Central Legislative Assembly are eligible to become associate members and enjoy limited rights of membership. An Executive Committee oversees the affairs of the branch and its office bearers and members are elected at the annual general meetings. The Speaker of the Lok Sabha is the *ex-officio* President of the India Branch as well as of its Executive Committee.

The objectives of the IPG are clear and well-defined. It has always been in the forefront of promoting personal contacts among members of Parliament. It studies questions of public importance that are likely to come up before Parliament and arranges seminars, symposia, discussions and study courses and brings out publications aimed at dissemination of information to members. It also arranges lectures on political, defence, economic, social and educational problems by members of Parliament and distinguished persons. Visits of members of Parliament to foreign countries, with a view to developing contacts with their counterparts in other Commonwealth Parliaments, are also arranged. The main Branch of the CPA in India, located in New Delhi, plays host to the visiting members of the CPA from other Commonwealth countries, and arranges for their meetings with Indian dignitaries and parliamentarians.

During his visit to India in February 1955, Mr. Harold D' Egville laid emphasis on the objectives and activities of the Association and had wide-ranging discussions with the then Vice-President of India and Chairman of Rajya Sabha, Dr. S. Radhakrishnan, the then Prime Minister Jawaharlal Nehru and the then Speaker, Shri G.V. Mavalankar. Mr. D' Egville had then suggested that the next Commonwealth Parliamentary Conference should be jointly hosted by India and Ceylon (since renamed Sri Lanka) and his suggestion was well-received in India.

The General Council of the CPA, at its meeting held in Kingston, Jamaica, on 24 January 1956, unanimously elected Speaker G.V. Mavalankar as Chairman of the CPA but his untimely demise on 27 February 1956, left a void in the Association as he was widely respected and loved by all. At its meeting in New Delhi on 30 November 1957, the General Council unanimously elected Shri M. Ananthasayanam Ayyangar, who had succeeded G.V. Mavalankar as Speaker of Lok Sabha, as Chairman to preside over the Conference.

The Fifth Commonwealth Parliamentary Conference, held in New Delhi in December 1957 was jointly hosted by India, Pakistan and Ceylon. It proved to be one of the most successful of all the conferences of the Association held till that year. Hundred and six delegates representing 49 branches, besides a few observers, attended the Conference. The Indian Delegation was led by none other than Prime Minister Jawaharlal Nehru himself, assisted by Finance Minister T.T. Krishnamachari, Deputy Chairman of Rajya Sabha, S.V. Krishnamoorthy Rao, and Deputy Speaker of Lok Sabha, Sardar Hukum Singh. The Conference was inaugurated on 2 December 1957 by President Dr. Rajendra Prasad in the historic Central Hall of Parliament House and was marked by great fanfare.

The Seventh Commonwealth Parliamentary Conference held in London in 1961 was another memorable event in the sense that it was the first of the annual conferences of the CPA. At the General Council of the CPA meeting held in September 1960 in Kampala, all the branches of the Association, except India, were unanimous that the conference be convened annually. The India branch also revised its opinion later and decided to send delegates to the annual conferences.

The 1960s, which witnessed an acceleration in the process of decolonisation leading to the independence of a score of countries in Asia and Africa, brought in a change in the character of the Commonwealth itself because of the induction of many newly independent States into its fold. With the African States being more assertive and vocal, many issues like the expulsion of South Africa from the Commonwealth and the vexed question of Rhodesia began to engage the attention of the Commonwealth. The African countries clamoured for racial equality in the Commonwealth. The CPA could naturally not remain aloof from all these developments. It speaks volumes of the Association's inherent strength that it succeeded in preserving its unity with all the branches, including the African ones, not prepared to do anything that might affect the Association. At a time of tremendous stress and pressure within the Commonwealth, the CPA remarkably provided a forum where conflicting views and the resulting tensions could be freely discussed. As it could not remain oblivious to the problems that arose following the enlargement of the Association, a fresh effort was, therefore, made to revitalise the Association and an Executive Council of the General Council was set up in 1967 to further its aims and objects.

In recognition of India's efforts in promoting parliamentary democracy, peace and goodwill among nations, New Delhi was once again chosen to host the 21st Commonwealth Parliamentary Conference in 1975. The number of branches of the Association in India had, by then, increased to 19 from four in 1957. After a gap of 18 years, India once again got the privilege to host this prestigious Conference on its own, the earlier Conference having been co-hosted with Ceylon (Sri Lanka) and Pakistan.

The Conference, which was held in New Delhi from 26 October to 9 November 1975, was attended by 300 delegates and observers, representing as many as 90 branches of the CPA. Inviting President Fakhruddin Ali Ahmed to inaugurate the Conference in the Central Hall of Parliament House, the President of the Association and Speaker of Lok Sabha, Dr. G.S. Dhillon had said: "Political and parliamentary institutions all over the world are under tremendous pressure these days. The challenge which democracy faces at the present time is as to how far it can vindicate itself as an instrument of growth and social regeneration." In his inaugural address, President Fakhruddin Ali Ahmed observed that "India continues to value the Commonwealth link not merely because of past associations but because it has the capacity to advance the larger world causes to which we are committed—world peace, international understanding and development cooperation." The inaugural session was also addressed by the late Prime Minister Shrimati Indira Gandhi.

A significant feature of the 1975 Conference was the publication of a study, "The Commonwealth Parliaments". Specially brought out on the occasion, for the first time in the history of Commonwealth Parliamentary Conferences, the study carried valuable contributions from distinguished Presiding Officers, members of overseas Parliaments and learned Clerks/Secretaries-General of the various Commonwealth Parliaments and senior officers of the CPA on a wide range of subjects, and made useful reading in comparative parliamentary political science. A postal stamp bearing a facsimile of the impressive Parliament House Annexe in New Delhi which was formally inaugurated on that occasion, was released by India's Vice-President B.D. Jatti to mark the occasion.

The 1975 CPA Conference provided a useful occasion for interesting and high-level discussions on issues of concern in the political, economic and social fields comprehending almost every aspect of human life. Besides, continuing problems like commodity prices, environmental hazards, economic problems and world security, which were of interest to the Commonwealth countries and needed consistent efforts to be resolved, also formed part of the agenda of that Conference.

The Indian branches, through their participation in conferences, seminars, and study groups and promotion of the study of parliamentary affairs have made a significant contribution to the strengthening of the CPA. To provide better and efficient service to their members and the Parliament, the Bureau of Parliamentary Studies and Training (BPST) of the Lok Sabha Secretariat started an extensive training programme on Legislative Drafting in November 1985. Even though the programme was started to cater to the Indian needs, six seats were allocated for participants from overseas. India has also hosted four Regional CPA Seminars on Parliamentary Practice and Procedure, the last one having been held in Bangalore in December 1986 where the topics for discussion included, 'Role of Members of Parliament in Contemporary Society' and 'Parliamentary Devices to ensure implementation of Government Assurances'. While the Seminar held in October 1980 in New Delhi had selected topics like 'The Executive and Parliament' and 'Role of Private Members—How to make their contributions more effective?' for discussion, the Seminar organised in January 1982, in New Delhi, focussed on 'Question Hour—How to make it effective?' and 'Public Sector Enterprises—How Parliament should oversee their functioning?' The two issues discussed at the Seminar organised in New Delhi in January 1984 were 'Time of the

House—Focus on important Issues' and 'Financial Accountability to Parliament—How to make it effective?'

In 1986, India, for the second time, got the privilege to host the Eighth Conference of Commonwealth Speakers and Presiding Officers. India had hosted the Second Conference earlier in 1970. The 1986 New Delhi Conference provided yet another opportunity to the Presiding Officers to promote the ideas of consultation and cooperation. It was a great success as it was able to throw up some useful ideas for strengthening of the parliamentary institutions.

Many distinguished personalities like the Lord Chancellor of the United Kingdom, Rt. Hon. Lord Hailsham; Speaker of the British House of Commons, Rt. Hon. Bernard Weatherill; Speaker of the National Assembly of Zambia, Dr. R.M. Nabulyato, who had the distinction of attending all the eight Conferences, and the Secretary-General of the Commonwealth Parliamentary Association, Sir Robin Vanderfelt, adorned the Conference with their presence.

Inaugurating the Conference on 6 January 1986 at a colourful function in the imposing Central Hall of Parliament House, Shri R. Venkataraman, who was then the Vice-President of India, described the Presiding Officer as "the conscience-keepers of parliamentary democracy". He observed that the Treasury Benches and the Opposition "repose implicit faith in the Presiding Officers' judgement and impartiality", and emphasised that "their affiliations are to the rules of parliamentary procedure and their energies are directed to the unbiased application of those rules to the proceedings." Earlier, in his welcome address, Dr. Bal Ram Jakhar, the then Speaker of Lok Sabha and the Chairman of the Conference, advised the Presiding Officers "to gear up the legislatures by way of devising and adopting adequate procedures and working methods so that parliamentary institutions may be able to meet the emerging situations on national and international levels and justify themselves as instruments of peaceful socio-economic transformation."

A ten-item agenda was before the Conference for discussions. Some of the subjects like "The Declaration and Registration of Pecuniary Interests of Members", "Powers of Upper Houses and their Presiding Officers," "Facilities for Members of Parliament". "Problems of Parliamentary Privileges", "Political Position of the Presiding Officers", generated lively debates of a high order.

The Indian Parliamentary Group has been regularly organising Seminars and Symposia on contemporary issues and several other functions to provide opportunities for debates and discussions among parliamentarians and legislators from member States. Seminars have been organised on important issues like 'Privileges of the Legsilatures', 'Legislature and Planning', 'Role and Functions of Legislators inside and outside the Legislatures', 'The Legislative Process', 'Parliamentary Questions', etc. Symposia on issues like 'Our Constitution and Working of Parliamentary Democracy in India', 'Role and Functions of the Speaker', etc. have been organised under the auspices of the IPG. The Group, in collaboration with the Bureau of Parliamentary Studies & Training, organises Orientation Programmes in New Delhi as well as at other places to provide opportunities to new members to analyse and understand the nuances of parliamentary processes and procedures, familiarise themselves more closely with the operational mechanics of parliamentary institutions and exchange ideas and experiences. In order to provide a continuous flow of information on parliamentary activities in India and abroad, IPG maintains regular contacts with its members through its quarterly, IPG Newsletter, started since April 1986.

India has an abiding faith in parliamentary democracy. Indian democracy has, time and again, despite many challenges, demonstrated its inherent strength and resilience. The very fact that India is hosting the CPA Conference for the third time is proof of her commitment to parliamentary institutions.

The future of any organisation or association depends on its members. This is true in the case of the CPA too. The parliamentarians, as the representatives of the people and as the opinion makers, are in a unique position not only to influence their respective governments but also to shape public opinion. Thus, they have a special responsibility to work for reducing international tensions and ensure world peace and security through better understanding and cooperation. That is why a common link is established and maintained between the Parliaments of the Commonwealth through exchange of goodwill delegations, visits of individual members to other countries and regular correspondence. The parliamentarians play a significant role in securing and sustaining the active participation of their governments in the establishment and promotion of parliamentary institutions as well as advancement of world peace and cooperation.

In the last eight decades since the Association was founded in 1911, more particularly after 1948 when it was transformed into CPA, it has played a remarkable role in promoting understanding and cooperation among the nations of the Commonwealth. It is only because of the mutual understanding among parliamentarians that various differences that exist among Commonwealth countries have not been able to stand in the way of Commonwealth unity. The Association has absorbed innumerable shocks and withstood many a challenge arising from rivalry among nations, conflicting ideologies, discrimination on grounds of sex, race and faith. Each time, it has emerged with aplomb. And in an ever-changing world, where circumstances sometimes seem to drive nations apart, the ties which unite the Commonwealth remain firm and immutable.

This is not to hold that the CPA, is a perfect organisation. The Association may have some weaknesses of its own, but it derives its strength from the fact that its

members have never accepted that it is perfect in its form besides recognising that it must grow and that it must improve. It is all the more gratifying that the CPA, as the association of parliamentarians, has the ability to play a significant role in promoting cooperation, peace and security.

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I am unfeignedly glad that an impassable gulf has not opened between our famous past in India and our anxious present all over the world. I am sure that this will be a help for all in the future.

—Winston S. Churchill

Parliament and Policy Process

C.K. Jain*

With the ever growing sphere of the activities of the modern state, legislatures too have become multifunctional institutions performing a variety of roles. Yet, the nature and scope of parliamentary involvement in different fields varies not only from system to system but also from time to time within a given system depending upon a mix of factors. Broadly speaking, Parliament, being the supreme representative body of the people, is involved, in one form or the other, in all governmental activity including that of policy making, for the well being of the people of the country.

To have a proper understanding of the nature of parliamentary involvement in the policy process, it is necessary to have, on the one hand, a general idea of what the role of a Legislature is perceived to be, and on the other, a broad understanding of the issues which are commonly grouped under the heading "public policy".

Public Policy Process

National policy issues can be broadly divided, on the basis of content, into four categories. The issues dealing with the nation's economy — expenditures and revenues, planning and economic growth — can be classified into one group. A second category can be that of issues which also have economic implications, involving allocative and regulatory decisions, such as distribution of public benefits to individuals and groups, as well as policies aimed at social welfare, public health or environment. Matters of domestic and international security may be classified in the third category. The fourth broad category would include policies involving the rights of citizens, questions of language and religion, the approach to education and mass media, etc.

Within this broad classification, it is commonly observed that on certain policies relating to social and welfare issues, the role and participation of legislatures is greater as compared to some others pertaining to economic and security issues. Similarly, parliamentary involvement appears to be more pronounced at some particular stages of the policy making process.

The policy making process involves various stages. The *gestation* stage is the first covering the period generally of unspecific duration, that it takes for an issue or problem to become a general public concern. Once on the public agenda, it reaches the *proposal preparation* stage. The initiative can be taken by private citizens, interested bodies or pressure groups, semi-public bodies, by civil servants or by legislators. The *deliberation and decision* making stage is the next stage which comprises various sub-stages involving executive and legislative personnel, committees, deliberations on the floor of the House, etc. Informal processes such as lobbying and bargaining also have their play to some degree. The *implementation* stage, again of indefinite length, is the last stage, where the rules that govern peoples' lives are made and policies administered.

Some of the studies of legislative processes across the world seem to suggest that most legislatures do not make major policy decisions and that it would be erroneous to think that Parliaments have a key role in policy making. It is opined that by and large, it is the Executive or the Government which is the actual policy-making body and a more realistic assessment of the functions of legislatures would be that while policies are formulated within the executive wing of the Government, the impact of legislatures is seen in the way in which they influence subsequent stages of the policy process. There may, however, be exceptions to this general rule and there have been occassions when a debate or discussion in Parliament has forced the Government either to formulate a new policy or to modify the existing one.

Factors determining impact of Legislative activity

On the basis of cross national studies, political science analysts have identified certain variables that determine the capacity of parliaments to participate in the policy process. A great deal of variation persists across nations. The constitutional and political set-up of a nation, the stage of its economic development, the prevailing political ideology, the personality of the Chief Executive, the strength of the Opposition, the stature of parliamentarians in general, and the challenges and issues confronting the Government, — all create a specific environment within which any legislative body functions.

Some of the interesting findings of a few studies conducted by political scientists in this regard have been summarised by Michael Mezey** as follows:

(a) The policy activity of the legislature tends to be greater in presidential than in parliamentary sys-

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**See David Olson & Michael Mezey: *Legislatures in the Policy Process — The dilemmas of economic policy*, 1991, Cambridge Univ. Press.

tem, though in a presidential system with a strong military support the legislature is not too influential;

(b) The policy activity of the legislature is greater where the executive is open/decentralized, rather than closed/centralized;

(c) Legislative involvement is greater in a multi-party system than in a one party dominant system;

(d) Parliamentary influence on policy is greater if Committees are permanent rather than *ad hoc*;

(e) Policy activity of parliaments is greater on social and welfare issues, than on security and economic matters; and

(f) Parliamentary influence is greatest at the implementation stage and least in the formulation stage of policy.

Policy Making in India

The election manifestoes of the major political parties in India generally serve as policy statements. The electoral victory of a party is the endorsement of its policy perspectives, which the Government in power, through the Council of Ministers, seeks to pursue with Parliamentary approval.

Policies are given concrete shape in the Executive branch of the Government. The Prime Minister and his Cabinet are assisted in this task by the various standing committees of the Cabinet and advisors in the Prime-Minister's Secretariat. The interplay among these agencies normally determines the final outcome of public policies. The personal style of the Prime Minister and the political strength of his party are also important factors that influence the process. The policy planning cells set up in key ministries of Government—like Agriculture and Foreign Affairs—also influence policy development. Consultation with non-governmental bodies like industrial groups, well known economists, etc., are also held and the policies are often moulded in the light of suggestions so received. Various other agencies such as Planning Commission are also involved in major policy discussions and their implementation.

The Role of Indian Parliament in the Policy Process

The Constitution of India does not envision an antagonistic relationship between the Executive and the Parliament. The two are not seen to be competing centres of power. While Parliament does not interfere with the Executive in the day to day administration, it has almost unlimited right of information and criticism. Although it is for the Executive to decide major question of policy, Parliament as a whole, and members in their individual capacity can and do influence ultimate policy outcomes. Admittedly, the impact of Parliament is generally felt in the final stages of the policy process—i.e., in policy deliberation and adoption. For, as we have noted, the work of policy preparation belongs to the Cabinet and the specialists. Yet, we can not minimise the important role of the Parliament in influencing the policy formulation process. It must be remembered that the manner in which a policy is implemented crucially affects the general public and there is no doubt that parliamentary intervention can determine not only the contents of public policy but also the way in which it is carried out and how it affects different sections of the population, various interest groups and regions.

Embodying the will of the people, the Parliament has the powers to oversee the manner in which public policy is carried out so as to ensure that it remains consonant with the aims and aspirations of the nation as a whole. If the Parliament feels that a particular measure is against national interest, it can compel the Government to change its policy or course of action. Howsoever powerful the Government may be, it cannot afford to ignore the force of public opinion, both inside and outside the Parliament.

Parliamentary procedural devices

How does the Indian Parliament exercise this crucial function? The parliamentary procedure affords ample scope for the assessment of ministerial responsibility and for criticising and influencing Government policy. The well-known parliamentary devices like Questions (including supplementaries and Half-an-Hour Discussion), Adjournment Motions and Notices for Calling Attention enable information to be elicited and attention focused on various aspects of Governmental activities. Further, significant occasions for review of administration are provided by the discussions on the Motion of Thanks on the President's Address, the Budget, and on particular aspects of Governmental policy or decisions. Specific matters may be discussed through Motions on matters of urgent public importance, Private Members Bills and Resolutions and other Substantive Motions. Discussions take place on Annual Reports of Departments and Government actions in specific fields are discussed or local problems aired through cut motions. In extreme cases, the Government can be censured or a motion of no-confidence moved against it. The Indian Parliament is also well served by an integrated system of Committees which exercise a close and continuous check on Governmental activities.

Parliamentary Questions

The device of parliamentary questions has often been effectively utilised to influence policy matters. Experience

has shown that proper and effective use of question procedure has served as a valuable weapon in the hands of Members to subserve public interest and ensure parliamentary surveillance over the Administration. There have been a number of cases when persistent questions on a particular matter have compelled the Government to modify an existing policy or to issue policy directions or to review its decisions in deference to the public opinion expressed through questions.

To mention a few instances, the scope of Crop Insurance Scheme introduced by Government with effect from 1 April, 1985 (under which insured farmers were paid compensation in the event of crop failure as a result of drought, flood, etc.), was enlarged in 1989, after the matter had been pursued through questions. Further, enactment of the Consumer Protection Act, 1986, was the result of questions pertaining to need for legislation to protect the interest of consumers. Again, the gender based discrimination in the service rules of the two Air Corporations (Air India and Indian Airlines) was rectified in 1989, after the matter was pursued by members through questions. The demand for grant of Central University status to Jamia-Millia Islamia, New Delhi, was also voiced by members through questions in Parliament, from 1985. The Jamia-Millia Islamia Bill was finally passed in 1988, by the Parliament, granting University status to Jamia-Millia Islamia.

Parliamentary Committees and Policy Process

Experience has shown that parliamentary committees, both *ad hoc* and standing, have certain in-built advantages. Functioning away from public gaze and as a compact group, they are able to discuss important subjects in an atmosphere relatively free from political strains and partisan considerations. The reports of these committees have very often influenced not only the formulation of policies but also their implementation.

Among the *ad hoc* committees that discussed important policy matters and can be regarded as having influenced the policy making process, particular mention may be made of the committees for the consideration of the draft Second, Third and Fourth Five-Year Plans, the Joint Committee to examine the working of Dowry Prohibition Act and the Study Committee on Sports.

Besides the *adhoc* committees that are set up for specific purposes, Lok Sabha also have a number of Standing committees to oversee the administration. Among them the three Financial Committees, the Committee on Public Undertakings — constitute a distinct class by themselves and keep an unremitting vigil over governmental spending and performance. Over the years, these committees have made notable contributions and influenced the policy process in a variety of ways. We may briefly consider the impact of these committees on the policy process.

Public Accounts Committee

The PAC has contributed considerably towards streamlining financial administration and detection of financial irregularities. Since its constitution in First Lok Sabha, in 1952, to the end of its term in Ninth Lok Sabha, in 1991, the committee had presented as many as 1093 Original and Action Taken Reports. These incisive reports have made perceptible impact on the functioning of the executive by making the latter agree to institute inquiries in cases of frauds and financial irregularities; investigate leakage of revenue; streamline the functioning of various Departments and autonomous bodies and generally to improve procedures and tighten financial control. On many occasions the response of the Executive to the subject under examination has been exceptionally prompt. The amendment of the Income Tax Act in 1983, as well as amendment of law to correct a major lacuna in the scheme of excise concessions to small scale sector, are just two examples of the corrective action taken by the Executive.

Estimates Committee

Although intimately concerned with the annual budget estimates of the Government, the functions of the committee are not confined to the examination of 'estimates' alone. The scope of examination extends to the examination of any aspect of the organisation and working of any Ministry/Department of Government of India or of subordinate officers and bodies not specifically excluded from its purview by Rules of Procedure. During 9th Lok Sabha (1990-91), the committee took up for examination subjects relating to certain policies of the Government of India viz.

(i) Newsprint Allocation Policy;
(ii) Policy for Government advertisements;
(iii) Defence Lands and Land use Policy; and
(iv) Fiscal Policy Management of Deficits—External and Internal Debt;
(v) Railway Land and Land use Policy; and
(vi) Implementation of National Transport Policy.

Committee on Public Undertakings

This committee examines the Reports and Accounts of Public Undertakings to see whether their affairs are being managed in accordance with sound business principles and prudent commercial practices. Since its inception in May, 1964, and upto 1989-90 the committee have examined 104 public undertakings and have presented 213 Original Reports and 207 Action Taken Reports. The reports have highlighted cases of corruption, malpractices and irregularities, and pointed out instances of extravagant expenditure,

administrative/financial lapses of management, under-utilisation of capacity, escalation of cost of production and lack of cost control consciousness in certain undertakings. It may be mentioned that most of the Committee's recommendations have been accepted by the Government/ undertakings.

Committee on the Welfare of Scheduled Castes and Scheduled Tribes

Another important Committee, the Committee on the Welfare of Scheduled Castes and Scheduled Tribes has developed into an effective instrument for safeguarding the interests of Scheduled Castes and Scheduled Tribes. The Committee has made tremendous impact on the Government Ministries, Departments, Nationalised Banks and the Public Sector Undertakings insofar as the socio-economic development of Scheduled Castes and Scheduled Tribes and implementation of the directives regarding reservation of posts for Scheduled Castes and Scheduled Tribes is concerned.

Subject Committees

A significant development in the existing Committee system for better legislative control over the working of administration in diverse fields has been the appointment of three departmentally related specialised Subject Committees—one each on Agriculture, Science & Technology and Environment & Forests—embracing the entire spectrum of administration, for indepth and continuous study. These Committees will, *inter alia*, examine the activities of the concerned Ministries/Departments and will report as to what economies, improvement in organisation, efficiency or administrative reform, consistent with the policy approved by Parliament, may be effected.

The list of subjects selected by the Committee on Agriculture for comprehensive scrutiny and examination includes a wide variety of aspects of the Agricultural policy such as: Distribution of Agricultural Credit; Role of National Bank for Agriculture and Rural Development; Central Cattle Breeding Farms; Commission for Agricultural Costs and Prices; Inland Fisheries Development; National Dairy Development Board; National Horticulture Board; National Oilseeds and Vegetable Oils Development Board; National Seeds Corporation; Natural Calamities Management Programmes; State Farms Corporation of India; Indian Council of Agricultural Research; Fertilisers — Production and Distribution; Drought Prone Areas Programme and Desert Development Programme; Jawahar Rozgar Yojana and Rural Water Supply and Sanitation.

The Committee on Science & Technology is to study the policies and programmes of the Government in another vital area of Government activity and to oversee the implementation of various plans and programmes. A wide range of subjects including, Atomic Energy, Nuclear Programme, Space Programme, Bio-technology and a number of key industrial and technical Departments of the Governments would come up for examination by the Committee.

The Committee on Environment and Forests has also been constituted keeping in mind the urgent need for a massive national effort to check environmental degradation. The function of the committee is to examine all matters connected with Environment and Forests as are dealt with by the Ministry of Environment and Forests and allied Ministries and to report thereon from time to time.

It has been mentioned above that in legislatures across the world, legislative influence on policy process has been more pronounced on policy matters relating to certain areas than on others. We may consider briefly how far this applies to the Indian Parliament.

Parliament and External Affairs and Defence Matters

Parliamentary control in the field of External Affairs is acknowledged to be somewhat tenuous owing to the inherent complexities of the issues. However, Parliament has always been prompt to react where questions affecting the vital interests of the country or fundamental issues of human freedom are involved. The House has been taking note of important international issues and events and unanimously adopting resolutions on them. These resolutions are the embodiment of the sentiments of the members and the nation. Foreign policy issues have also been discussed time and again in the two Houses and the Government has been taking note of them while formulating the foreign policy of the nation.

In defence matters, Parliamentary control has been exercised through actual enactment of laws governing the armed forces, through Parliamentary Financial Committees and through the sanction of the defence budget every year. On occasions, Parliament has taken special interest in matters connected with defence. Vigorous debates in recent years on defence deal such as "Bofors" is a pointer to the vigilance shown by members in defence related matters. These debates do have an ultimate impact on the policy formulations.

Parliament and Economic Policy

Parliamentary influence in the formulation of complex technical aspects of economic policy has not been as pronounced as in other areas. To take an example, the *Electronics Policy* in India has been largely the initiative of the Executive although Parliament has prescribed or suggested certain new policy directions. The Prasar Bharati Act, 1990, which provides for the creation of an autonomous broadcasting and telecasting corporation in place of

the wholly owned and controlled electronic media was a unanimous legislation passed by the Parliament. Since the Act has not been implemented so far, the Government, irrespective of the party in power, has been under constant pressure for its expeditious implementation from all sections of the House. In reply to a recent starred question in the Lok Sabha, the Minister of Information and Broadcasting informed the Lok Sabha, on 17 July, 1991, that most of the activities essential to the formal establishment of the corporation have not been completed. Clarifying the electronic policy, the Minister added that the Government was committed to set up Prasar Bharati and introduce competition in the electronic media.

Agriculture being the backbone of the Indian economy, it is natural that members have raised the issue of the formulation of the *National Policy on Agriculture* on the floor of the Parliament. While no comprehensive Agricultural Policy Resolution has been placed before the Parliament in the recent past, the Minister of Agriculture informed the Lok Sabha on 18 July, 1991, that a draft of an Agricultural Policy Resolution, formulated in March, 1991, had been circulated to all the State and Union Territory Governments and Agricultural Universities, for eliciting their comments, and further action in the matter will be taken after receipt of the comments.

National Industrial Policy (The Industrial Policy Resolution) was formulated in 1948. Subsequently, the basic and general principles of a socialistic pattern of development were given a precise direction when Parliament accepted the socialistic pattern of society as the objective of social and economic policy and adopted a Resolution to that effect in December, 1954. In 1956, the policy was restated keeping in mind the developments since 1948. A major thrust to the policy was given in 1977 when it was decided to give a go by signal to multinationals. Since then the policy did not undergo any basic changes till a further restatement in 1980. More recently, far reaching changes in the Industrial Policy were announced in Parliament on 24 July, 1991. The new Industrial policy which lays adequate emphasis on modernisation of industries in general through a liberalised scheme of technological upgradation, has since been discussed in Rajya Sabha on 6-7 August, 1991. The *Trade Policy* has also undergone significant changes. These were announced in Lok Sabha by the Minister of State for Commerce on 13 August, 1991. Earlier on 4 July, the Minister had informed the Lok Sabha that the Government had brought about major structural changes in EXIM policy keeping in view the objectives of (a) reduction or elimination of licensing; (b) export promotion; and (c) optimal import compression.

The Lok Sabha was informed on 26 April, 1990, and 3 January, 1991, respectively, that the *'Transport Policy'* and the *'National Shipping Policy'* were being formulated.

A Committee under the Chairmanship of Shri Abid Hussain was appointed in 1985 to review the progress of implementation of the *Textile Policy*. The Minister of State for Textiles informed the Lok Sabha on 19 July, 1991, that the recommendations contained in the report of Abid Hussain Committee, which was submitted in January, 1990, were under active consideration of the Government and its decisions on the recommendations would be announced as early as possible.

Parliament's role in the field of Planning has been more significant. The suggestions and comments made in the committees and on the floor of the House have helped in the final formulation of Five Year Plans. The discussion on the Annual Financial statement every year offers a valuable opportunity to members to critically examine the economic policy of the Government. There have been several instances when parliamentary criticism has forced the Government to modify or desist from an unpopular policy measure.

Parliament and Social Legislation

The Indian Parliament has made particular impact on social and welfare issues. In the field of legislation, Private Members' Bills stand out as an index of parliamentary initiative. The range of issues covered by them has been extensive. A number of bills initiated by private members have been brought on the Statute Book — for example, the Muslim Wakfs Bill, 1954; The Hindu Marriage (Amendment) Bill, 1957; The Orphanages and other Charitable Homes (Supervision and Control) Bill, 1959; The Marine Insurance Bill, 1959, etc. There have also been particular pieces of legislation and ultimately succeeded in persuading the government to come forward with appropriate legislative measures.

Some recent examples of parliamentary legislation on social and welfare issues are: The Dowry Prohibition (Amendment) Act, 1986; The Suppression of Immoral Traffic in Women and Girls (Amendment) Act, 1986; The Child Labour (Prohibition and Regulation) Act, 1986; The Commission of Sati (Prevention) Bill, 1987; and the Maternity Benefit (Amendment) Act, 1988.

Matters relating to *Language Policy, Health Policy, Education Policy, Drug Policy, Environment and Forest Policy* have also evoked keen interest from members of Parliament. The debates on these issues have helped the Government in formulating its approach to these problems.

The question of evolving a *national policy on education* in its various aspects had come up before the Parliament time and again and the members had evinced keen interest on the subject. Moving a resolution in Lok Sabha on 1 May, 1964, on 'National Policy on Education' a private member, Shri Siddeshwar Prasad, charged the Government with not having paid the attention to education that it deserved. He

desired that a Committee comprising members of Parliament be set up to go into the question of a national policy on education in all its aspects. The idea of formulating a national policy on education was also supported by other members. Intervening in the debate, the then Minister of Education (Shri M.C. Chagla) agreed that there should be a national and coordinated policy on education. He announced that the Government had decided to go into all the aspects of education in the country. Following the setting up of the Education Commission — 1964-66, a Committee of Members of Parliament on Education was constituted by the Government of India in 1967. As a result of discussions on the recommendations of the Education Commission and the report of the Committee of Members of Parliament, a resolution on National Policy on Education was formally issued by the Government of India on 24 July, 1968. The economic and technological developments of the next two decades called for a change in the education system. A document 'Challenge of Education — A Policy Perspective' was prepared and presented to Parliament in 1985, to initiate a nationwide debate on the New Education Policy. The document formed the basis of the National Policy on Education, 1986, which was discussed and adopted by the Lok Sabha on 8 May, and the Rajya Sabha on 13 May, 1986. The National Policy on Education was reviewed by Acharya Ramamurti Committee which submitted its report on 26 December, 1990. The Minister of Human Resource Development informed the Lok Sabha on 27 February, 1991, that the Government had decided to seek the advice of the Central Advisory Board of Education before formulating its views in the matter.

There have been discussions in both Houses of Parliament on the 1986 *Drug Policy*. The Lok Sabha has recently been informed on 26 February, 1991, that the review of the 1986 Drug Policy is in progress. The Government also proposes to issue an Environment Policy statement as part of the National Conservation strategy as per written reply given in Lok Sabha to an Unstarred Question on 4 January, 1991.

Health and Human development are vital components of over all socio-economic development. A *National Health Policy* was, therefore, evolved as an integrated approach towards the future development of medical education, research and health services. It was keenly discussed in both Houses of Parliament, with 37 members participating in the debate, before its adoption on 22 December, 1983.

The *National Forest Policy* was reviewed by the Estimates Committee (1968-69) of the Fourth Lok Sabha, which in its 76th Report observed that a reappraisal should be made by an *ad hoc* body of experts in the light of experience gained during the years of development plans and the research and technological advancement made in the international field of forestry. Towards the end of 1980, the N.D. Tiwari Committee was constituted to examine the adequacy of the existing administrative, legal and institutional arrangements, for protecting environmental aspects. The National Commission on Agriculture, created on the recommendation of the Central Board of Forestry, recommended the framework for a revised forest policy, in 1986. After considerable discussions and deliberations the revised *National Forest Policy* was finalised and introduced in the Parliament on 7 December, 1988.

Conclusion

We have seen that the Indian Parliament has at its disposal important procedural devices to enable the effective performance of three cardinal functions — namely, legislation, check over the Executive and ventilation of grievances. In the discharge of these functions Parliament is able to ensure, by way of timely intervention in the national policy process, that in content and implementation, public policies remain congruent with the welfare aims of the nation at large.

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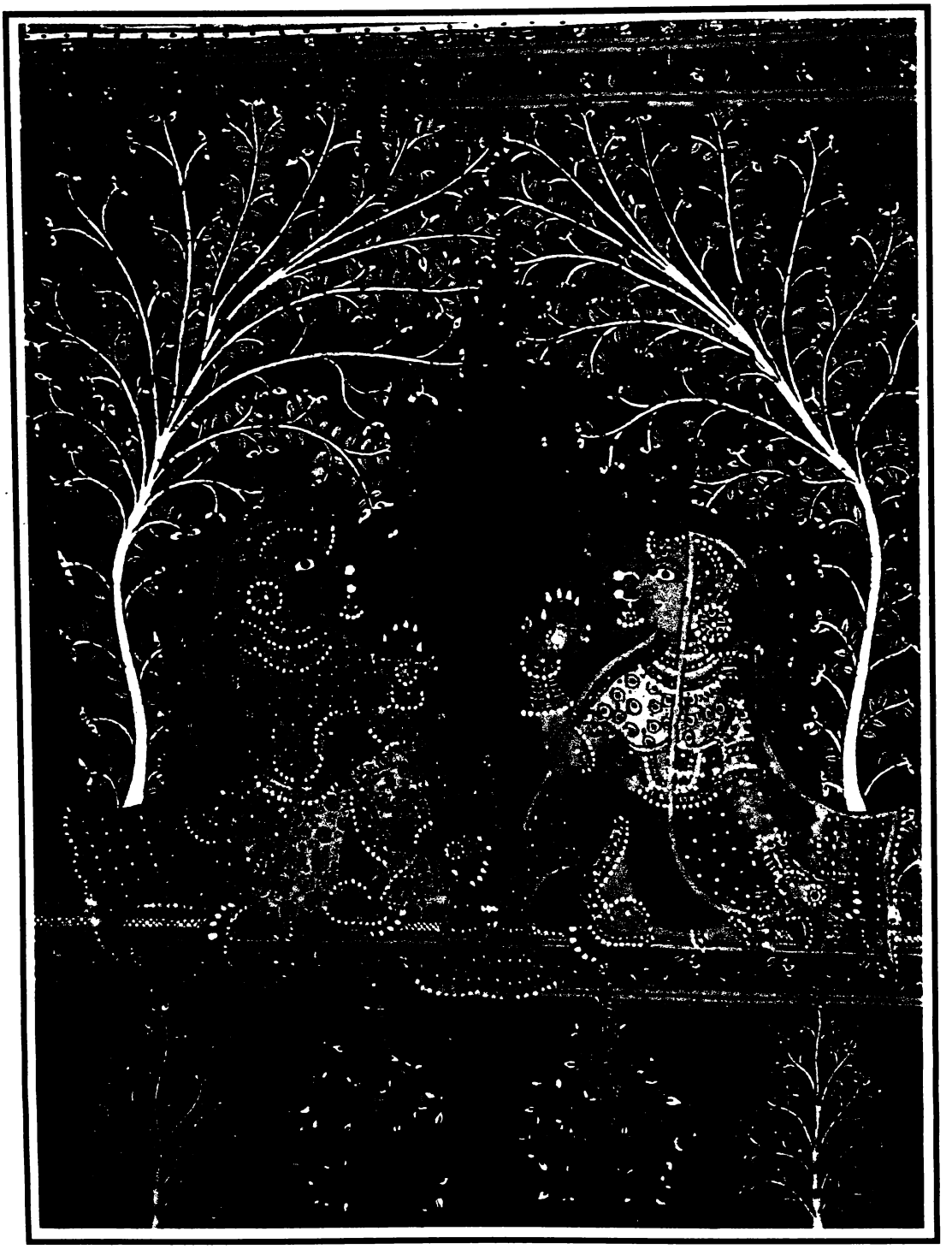
OTHER CONTRIBUTIONS

The month of Vaishakha, Kangra, early 19th Century

Courtesy: National Museum

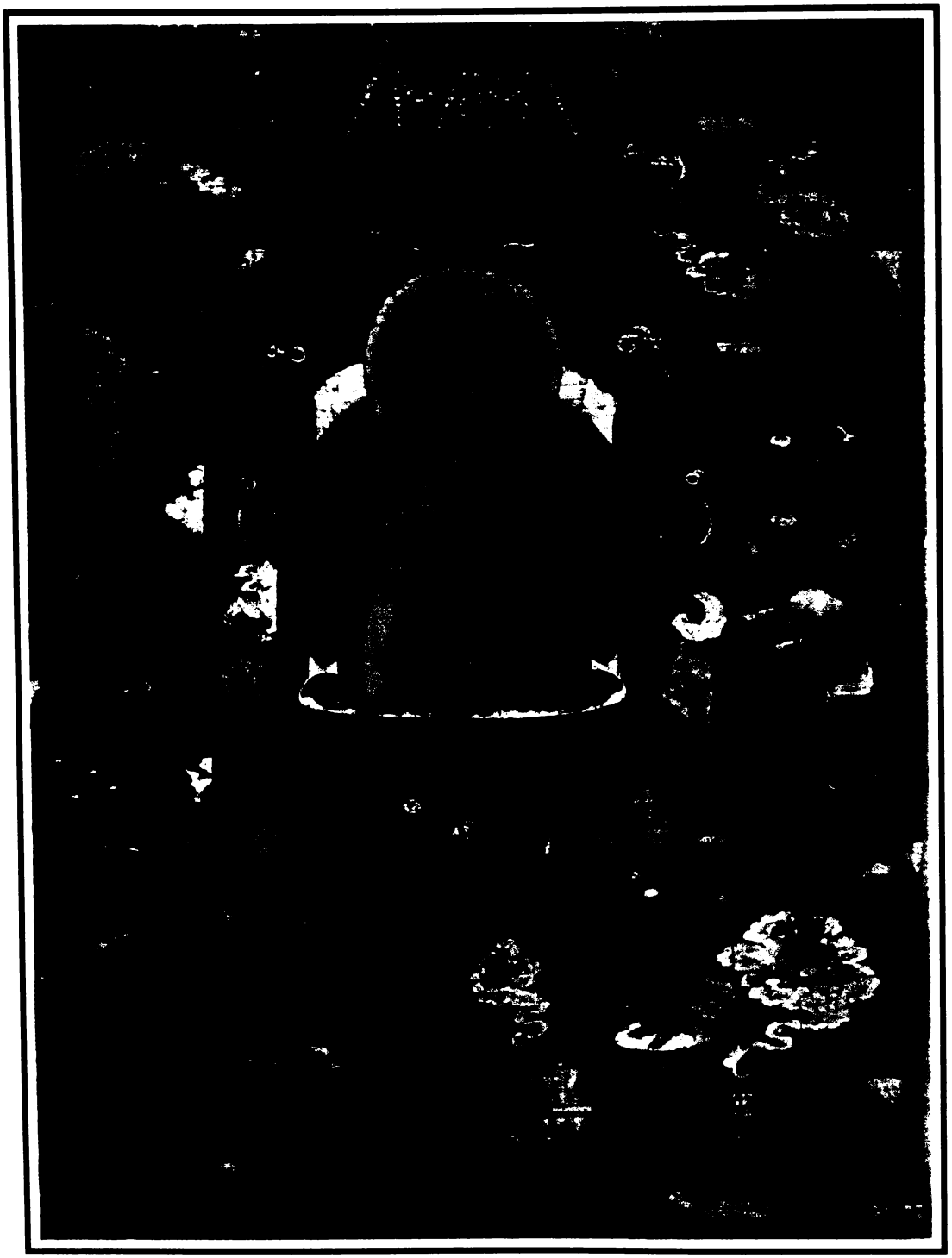


38 Radha with confidant: Orissa, 18th Century

Courtesy: National Museum

[39] Panchmukhi Hanuman: Tanjore, early 19th Century

Courtesy: National Museum



40 Buddha in Bhumisparsh Mudra: Tibet, (Tanka) early 18th Century

Courtesy: National Museum

Our Democratic Heritage*

Modern Parliamentary institutions in India grew gradually during the British rule as a result of people's struggle for freedom. But it would be wrong to assume that before parliamentary institutions were introduced by the British, India was politically sterile or that its people were not political minded.

India being a vast country and an ancient civilisation, it has over the centuries seen various forms of government, from tiny village commonwealths to mighty empires. It has known many a mutation of political institutions. Modern research has brought to light the widespread existence of democratic institutions in ancient India. Indeed the history of democratic institutions in India goes back to about 3000 years before the birth of Christ.

The studies of ancient literature of India such as Vedas, Brahmanas, epics, Sutras, etc. reveal an astonishing richness of political thought and practice. Haridítary monarchy was the common form of Government in ancient India but rudiments of non-monarchial and republican types of Government can definitely be traced to the earliest literary source, of the Aryans vis. the *Rigveda* and *Atharvaveda*. There are two terms which, used by ancients for non-monarchial republics-*Samgha* and *Gana*. The *Smritis* take *Gana* to mean an assembly of families. *Gana* literally means 'number'. *Ganrajya* will, therefore mean the rule of numbers or the rule by many. *Ganrajya*, according to K.P. Jaiswal, consequently denoted government by an assembly of Parliament.[1]

In the course of time the republics disappeared from the Indian scene and monarchy remained the only form of Government. However, the seeds of democratic traditions and principles continued, restraining monarchy from degenerating into autocracy. These traditions became deeply embedded in the monarchial system of Government and the result was benevolent monarchy.[2]

Though hereditary monarchy was the common form of Government but the King was sometime elected.[3] A passage in Rigveda:[4]

ता ईं विशो न राजानं वृणाना बीभत्सवो अप वृत्रादतिष्ठन्

seems to refer to the people (*Visas)* electing a King. Another passage in the Atharvaveda:

त्वां विशो वृणतां राज्याय

expressed the hope that King to be coronated may be elected by the people.[5] However, certain references in later vedic literature lead us to believe that it was not the whole population but its leaders like the *Kulpatis* and the *Vispatis* (leaders of local communities) who had a voice in the election of the King. People in general may have at most ratified the choice of *Vispatis*.[6]

In the hereditary monarchy also, the legitimate heir was put to test by the minister and in case they found him incapable, he was bypassed. People could banish wicked princes and instal the candidates of the choice in consultation with the ministers.[7] The Junagadh inscription of 150 A.D. refers to Rudradaman-I as "one who was elected King by all the *Varnas* for their protection."[8] It is stated in the Khalimpur plates of Dharmapala that the people elected *Gopala* in order to get rid of the prevailing anarchy.[9]

In spite of the growth of territorial Kingdom and power of the monarch in the later vedic period, the power of the King was restricted and constitutional in character. This is clearly brought out by coronation oath, "If I play thee false, may I lose my goods, deeds, my place, my life and even my progeny."[10]

King's powers were further checked by the theory that *Dharma* or Law was the real sovereign. *Dharma* embraced within its fold law, religion, duty, virtue, justice, in short all that was right. The essence of rulership lay in *Dharma*. The King was to realise that there was nothing higher than *Dharma*. *Dharma* was paramount over and above the King and the society. King was always to abide by it, as *Brihadaranayka* upanishad put it.[11]

तदेतत्क्षत्रस्य क्षत्रं यद्धर्मस्तस्माद्धर्मात्परं नास्ति

Mahabharata also says that the first King Vena had to take the oath that he would scrupulously follow *Dharma* prescribed in authoritative works on the subject and never act wilfully.[12]

The *Danda* was the sanction behind the law (*Dharma)* or the coercive force that enforced decree of *Dharma*. The King was representative of *Danda*. The *Danda* is defined as that by which *Dharma* is mainained. The *Danda* was not to be divorced from *Dharma*, may, it is to be a servant of the *Dharma* and was to further the cause of *Dharma*.[13]

There was also the notion that kingship was a trust and that treasury was not his personal property. It was a public trust to be utilised for public purposes. If a king misappropriated public fund, and diverted them to his personal use, he would be guilty of sin and be condemned to hell.[14]

The welfare of the subjects was the aim of the king. He was fountain of justice. The king, was, therefor, supposed to

*Contributed by Parliamentary Museum and Archives, Lok Sabha Secretariat.

be the best and the most excellent man in the state. There were numerous cases of kings, who having lost the support and loyalty of the people were expelled or deposed. For example Dustaritu of the Srnjayas King was deposed from a principality that had existed for ten generations.[15] To put it in nutshell, the king must regard his own happiness as indissolubly connected with that of his subjects.

The autocracy of Vedic king was limited by democratic checks. Popular assemblies controlling the Kings of numerous small states, were a prominent feature of the Vedic polity. The two popular assemblies called the *Sabha* and *Samiti* are mentioned in the Rigveda. The nature, composition and the distinction between the two bodies are not clear. However, there is no doubt that the powers of the King were checked by these popular bodies.[16] *Sabhas* and *Samitis* enjoyed a high prestige in Vedic age. Atharvaveda describes the *Sabha* and *Samiti* as[17]

सभा च मां समितिश्चावतां प्रजापतेर्दुहितरौ संविदाने

i.e. twin daughters of God Prajapati, indicating they were no less divine creations than the King.

It seems that there were *Sabhas* at different levels from village and town to the capital. The Sabha in the capital was attended by the King, probably elders and nobles comprised the *Sabha*.[18] References in *Atharvaveda* make it clear that *Samiti* usually referred to a political assembly at the central government. Samiti "as a powerful body, for very often fate of the king depended upon his ability to carry his *Samiti* along with him. If the *Samiti* assumed an obstructive attitude, the life of the king became miserable"[19] Vedic democracy also knew the vote of majority which it called *Narishta*, which is explained as "inviolable as the voice of the many" (*bahavah sambhuya yadi ekam vakyam vadeyuh tat hi na paraih atilanghyam).*[20]

King's power was also checked by great decentralisation and autonomy in the society. The vedic democratic tradition believed in self-government of the group. Scope for self-government was given to natural associations and groupings of people e.g. family, caste, guild and village community. Each of these groups had its laws within its sphere, which king had to respect. "The communities and town councils were to a great extent small republics where voice of the people prevailed. The activities of the tyrannical King, therefore, were not usually very effective much beyond his capital. The extensive decentralisation advocated and brought about in India was thus the most effective and practical check upon king's powers."[21] Monarchy had thus to reconcile itself to a subterranean democracy operating in different strata and stages of self-government down to village.[22]

Side by side with monarchy thus limited by popular rule, there also developed republican states, mention of which has been made in the Brahminical, Buddhist and Jain literary texts. The evidence is also found in the coin legends and in the testimony of contemporary Greek writers. These republican states were known as *Ganas* or *Samghas*. They also differed in their constitutions. Some of them were tribal oligarchies, some included only clans, and some others had democratic constitutions.[23] There were numerous republics dotting the country from the banks of the Indus on the West to the mouth of the Ganges in the East.[29] The Mallas and Lichchavis were the most important republican states. The sovereignty in these states vested not in one individual, nor in a small number of persons, but in a fairly numerous class. Vaisali was a small *Gana* state hardly covering more than two modern districts, and yet its governing class was made of an Assembly of 7707 persons. In the north-western republics, the members of the governing classes were numerous and they followed trade and commerce also in addition to the military profession.[25]

The Central Assembly of the republics elected not only members of the executive but also the military leaders. "The evidence of Buddhist literature shows that the Central Assemblies of the republics controlled foreign affairs entertained foreign ambassadors and princes, considered their proposals and decided the momentous issues of peace and war."[26] Generally speaking executive was under the complete control of the Central Assembly in Republican States.[27]

"It is but natural that some rules of procedure should have been evolved as far as the debates and working of the Assembly were concerned. But unfortunately they are not anywhere described by our political writers. We can however, get, some idea in the matter if we assume, as is very probable, that the rules of the procedure and the debates in the meetings of the Buddhist Samgha were modelled on those of the Assemblies of the *gana* or *samgha* states."[28] The assumption is based on the fact that Buddha came from an aristocratic republican background. The impact of republican ideas on him was distinct. In the background of such republican influence on Buddha the constitution of Buddhist *Samgha* becomes immensely important. It may yield vital information on the constitutional aspect of the republics, provided we remove religious robes worn by the republican principles incorported by the Master.[29] A Buddhist chapter required a quorum of 20; it is very likely that a similar rule may have prevailed in the meetings of the political *Samgha*. In the Buddhist *Samgha*, as in some modern legislatures, a motion was thrice proposed and passed. In the case of difference of opinion, votes were taken and the majority view prevailed. This procedure being obvious and natural one, must have been followed everywhere. The *Samghamukaya* or the President of the state presided over the Assembly and regulated its debate. He was to observe strict impartiality.[30] Matters when once properly and finally decided, were not allowed to be reopened.[31]

The Pali texts provide interesting details of practice and

procedure adopted in Buddhist *Samghas*. In fact, they anticipated their modern equivalents. For instance, *Samgha* or Assembly lacking quorum was called *Vyagara*, whip was called *Ganaburaka*, Resolution *Jnapti*, and decision by majority vote, *Bhuyasika Kirya*, etc. There was also a procedure to appoint committees to iron out serious differences and arrive at a unanimous decision. But if it was not possible, then as a last resort, recourse was taken to voting and the decision of the majority (*Yebbhuyyasikena*). Vote was called *chhanda* and voting was by tickets called *Salaka*.[32]

The republics disappeared by Circa 400 AD. There are different opinions on the causes of their decline and disappearance. Some writers believe that they were destroyed due to imperialism of Guptas, others believe that they declined due to invasion from without and the growth of empires from within. Still others believe that decline was due to increase in the size of the State. Management of large kingdoms through popular institutions would have become difficult. An other opinion holds that "the growing tendency to regard monarchy as divine may have induced the republics to accept the leadership of hereditary presidents styled as Maharajas."[33]

South India has a more continuous record of self-governing institutions than North India. The origins of democratic institutions in the south go back to the first or early second century AD and the institutions continued to exist down to the British conquest. There is also inscriptional evidence as to the existence of a complete system of autonomy from the sixth to the thirteenth centuries in different parts of South India like Tanjore, Tirunelveli and Masulipatnam.[34]

Inscription found at Uttiramerur in Chengalpattu district, Tamil Nadu reveal that during the period of the Cholas, qualifications and disqualifications had been set forth for candidates and voters taking part in the elections. The inscriptions are said to be of the years 919 and 922 AD.

The qualifications for candidates and voters for the village assembly *(sabha)* elections included: ownership of a piece of taxable land; possession of a house built on their own land; age not more than 60 or less than 30 years; moral and spiritual purity and rectitude.

The disqualifications according to the inscriptions, were: service as a member of the variyams *(sabha)* during the previous three years; corruption, violence and committing sins; and relatives of those who had committed sins; even those who had expiated for their sins were not eligible for membership of sabha for life.

It will thus be seen that ideas of popular sovereignty are by no means foreign to India. Even in the midst of foreign invasions and political convulsions that frequently shook the country, village assemblies and Panchayats continued to exist in some form or other and survived in the modern age.[35] What Rousseau claimed *Vox populi Vox dei* was first proclaimed by India-*Panchamukhi Paremeshwara* (the voice of the people is the voice of God).[36]

On such democratic foundations and traditions independent India has reared her present constitution.

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Role of Whips*

Edmund Burke, the eminent parliamentarian and orator is said to have coined the work 'Whip' about two centuries ago as a sarcastic expression for those who were overwhelmingly engaged in government's efforts to rally their supporters to the House. The metaphorical expression having its origin from the hunting field where hunters whipped in the straying hounds into a pack to join the chase, caught the imagination of parliamentarians, who ascribed the nick-name 'whips' to persons engaged in collecting supporters. Now, it is the most frequently used word in the parliamentary terminology and grown into an important institution in the parliamentary system of democracy.

And perhaps no other institution in the world of politics has undergone a sea change as 1 that of the modern institution of whips which has come to assume so much responsibility, power, prestige and privilege from a role summed up in a contemptuous expression 'whipers-in'. It is a fascinating story of the tremendous transformation of an utilitarian institution into an edifice of patronage which sustains and supports and is primarily responsible for smooth and successful working of the party machinery of Government in a mature and healthy democracy.

The importance of the institution of whips and the role they play in a parliamentary democracy cannot be over-emphasised. They have been described by various parliamentarians and political analysts as 'Chief Engineer of a big ocean steamer', 'The eyes and ears of the party leadership', 'producer-director-actor',—or 'Managing Director of the Party', 'Patronage Secretary', 'Teller', 'Guide, philosopher and friend of members', etc. In a multi-party and large democracy like that of India, encompassing diverse shades of opinions, the role of whips assumes still greater significance for achieving a degree of working coordination between various parties in order to keep a check on confrontation and confusion and ensuring smooth functioning of the legislature.

In India, the chief whip of the ruling party is also known as Govt. Chief Whip. He is usually the Minister of Parliamentary Affairs. the Govt. Chief Whip is also assisted by Deputy Chief Whips. They are designated as Minister of State for Parliamentary Affairs. Their function is not merely confined to the working of the House, but further, they are the only person through whom the Presiding Officers can be in close touch with the Ministers so as to understand the Government point of view. In the course of this work, they also keep in constant touch with the members of the House also so that they may convey their point of view and difficulties both to the Presiding Officers or Parliament and also the Government. In India, the institution of the Minister of Parliamentary Affairs is working excellently and is an invaluable liaison between the Parliament, the Government and the Members.

The Government Chief Whip, as the Minister of Parliamentary Affairs, heads the Ministry which liase with the Government Ministries/Departments on the one hand and Houses of Parliament on the other. Thus, the Government Chief Whip in India is a crucial link between the Executive and Legislature.

Another innovation which has emerged through the Ministry of Parliamentary Affairs which primarily functions as the office of Government Chief Whip is the constitution of consultative committees of Members of Parliament attached to every Ministry of Government to aid, advise and exercise Parliamentary control over the functioning of various Ministries. It is the Minister of Parliamentary Affairs who organises the meetings of such committees and constitutes such committees in consultation with other whips and the members concerned. He also pursues the matter is relating to the assurances given by the Ministers in the Houses of Parliament for their implementation by the Government.

The Minister for Parliamentary Affairs in his capacity as the Government Chief Whip is consulted by the Presiding Officers in two Houses before appointment of Members of Parliament belonging to the ruling party on various standing Committees and other bodies constituted by the two Presiding Officers. Similarly, he is also consulted for appointment of Members of Parliament on the Joint Select Committees constituted by either of the two Houses or jointly. The composition of the Parliament delegation sent abroad is also finalised through consultations with the Government Chief Whip. Members of Parliament are nominated on Committees, Commissions, Boards etc. constituted by the Government invariably with the approval/concurrence of the Government Chief Whip i.e. Minister for Parliamentary Affairs.

The various State Governments and State legislatures follow the pattern broadly on the lines followed by the Central Government and periodical Whips' Conferences organised by the Minister of Parliamentary Affairs have stressed adoption of a uniform pattern to be followed by all the State Governments in relation to their relationship with the State legislatures as it is obtaining at the Centre.

The most important role that the whips play is that of 'Making the House and Keeping the House'. To quote the Oxford Dictionary "A Whip is a member of a particular

*Contributed by the Department of Parliamentary Affiars, Government of India.

party in a parliament whose duty is to secure the attendance of member of that party on the occasion of an important division". He helps in maintaining the required quorum in the House. The present day legislatures are plagued with the malaise of absenteeism and quite a large number of legislators remain disaffected or disinterested in the daily business of the House. It is the business of the whip not only to summon the members of the party to the House but to know that they are there. A whip is expected to be able, at any moment, to tell just how large a majority the Government has within the precints of the House. For securing the attendance of the members, written appeals, also known as a 'whip' are issued by the Whips.

The whips also serve as usual channels of communication with the whips of other parties and members of his own party. They serve as a convenient device for acquainting members of the likely business to be transacted by the House. The arrangement of business is discussed between Government whips and opposition whips. It is by means of arrangement and understandings of this kind, carried on through the agency of the Government whips, that a great part of the business of the House is conducted. This cannot be achieved otherwise, so, for efficient and smooth functioning of the parliamentary institutions, the whips necessarily have to play a vital role. The whips are responsible for the organisation of various parties inside Parliament.

The whips also assist the Members of the parties in various ways, to be effective in a parliamentary sense, in the general interest of the party. Thus, the whip's office feeds the members who are to speak with material and guidance as to the line the party would like them to take. It is the whips who keep a vigilant eye on the proceedings of the House and they set the tone and tenor or the debate in the House. They determine it by selecting the speakers from his party—according to their interests, special aptitude, qualities and qualifications. He supplies the list of members of his party who are to speak on a particular issue to the Presiding Officers and thus make their job easy. He also supplies the Presiding Officers lists of Members to serve on standing/select committees of the House so far as his party is concerned.

The other important function that a Whip has to perform is that of 'eyes and ears' of the leader and to coordinate as an intermediary between the leader and the rank and file of the party. The whips keep in constant touch with the members of the party. It is their business to detect the least signs of disaffection or discontent, to know the disposition of every member of the party and to inform the leader about the moves, moods and tempers of the members of the party as well as of the other parties so that timely and correct strategies are planned. Thus the role of a whip is central and pivotal in the efficient and smooth running of the parliamentary machinery.

In the recent times, a disturbing trend is developing in almost every democratic set up i.e. the growth of the power of the party whip, the party machinery over the individual members of the legislatures. This has resulted in the steady reduction of the degree of freedom and spontaneity, in speech and vote, permitted to the back benchers who belong to the party and the corresponding 'robotizing' of politics. They can politically assassinate a non-conformist and promote the interests of those who comply with the whip.

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Important Questions*

'The right to information' and 'the right to call the executive to account' are the basic and inalienable rights of Members of Parliament in a Parliamentary democracy. These rights are exercised by the Members through a number of Parliamentary devices and among them the medium of 'the Parliamentary Questions' is the most sought after and a potent medium for fulfilment of both these rights.

Basically, 'Parliamentary Question' is a method of eliciting accurate and authentic information about the working of any Ministry/Department of Government of India which otherwise may not be available to the members and to the public at large. Whereas, members may use this information in their own way to support or to corner the Government for its various acts of omissions and commissions, the Government also gets a chance to state their position on a number of matters, affecting the public at large, which may have been the subject of uncalled for criticism at different forums.

In a large number of cases the real object of the members may not be merely to elicit information but also to pinpoint shortcomings of the executive, to ventilate public grievances and to draw the attention of the Government to public problems in the garb of seeking information. At times information is passed on to the Government about particular matters or issues affecting a particular area or people in order to help the Government either in policy formulation or in modification of an existing particular policy in the light of the problems highlighted through questions.

Experience has shown that proper and effective use of question procedure has served as a valuable weapon in the hands of Members to subserve public interest and ensure parliamentary surveillance over the Administration. There have been a number of cases, when persistent 'questions' on a particular matter impelled Government to modify an existing policy or to issue policy directions or to review its decisions in deference to the public opinion expressed through questions. Some such cases are discussed below.

A comprehensive Crop Insurance Scheme was introduced by Government w.e.f. 1 April, 1985 under which insured farmers were paid compensation in the event of crop failure as a result of drought, flood etc. But the Scheme had limited scope. It covered only the areas notified for coverage by the concerned State Governments and only those farmers who had availed of crop loans from Co-operatives and Commercial Banks for raising the crops listed in the Insurance Scheme. Thus a vast majority of farmers of the country could not take advantage of the Scheme. This was highlighted by members through persistent questions. On 6 April, 1987, Dr. B.L. Shailesh, M.P. asked a Starred Question No. 561 seeking to know whether any assessment had been made of the working of the Crop Insurance Scheme. In reply, the Minister stated that a High Powered Committee had been constituted to undertake an in depth review of the functioning of the Scheme with a view to suggest policy changes. This matter was constantly pursued by the Members through SQ. No. 3 dated 28.7.87; SQ. No. 912 dated 2.5.88; USQ. No. 203 dated 28.7.88 and SQ. No. 21 dated 3.11.88. The matter was thoroughly discussed through supplementaries on SQ. No. 21 dated 3.11.88. Finally, in reply to an Unstarred Question No. 443 dated 20 July, 1989, the Government gave details of the modified Comprehensive Insurance Scheme made effective from Kharif 1988.

Similarly, the question of supply of sub-standard material at exhorbitant rate had been agitating the mind of people for a long time. This led the Members of Parliament to table questions on the subject so as to impress upon the Government to take suitable measures in this regard. On 16 December, 1985, P.R. Kumaramangalam and Dr. Chinta Mohan, MPs asked an Unstarred Question No. 4134 that since the consumer law in the country was not adequate to give legitimate protection to the consumer, what steps Government proposed to take to cover the consumer needs. In reply, however, the Government gave the details of various laws under which protection was available to the consumers. Again on 4 April, 1986, Shantaram Naik, M.P. sought to know through Unstarred Question No. 5345 the measures Government proposed to take for consumer protection and the extent of help proposed to be given to the voluntary agencies during the Seventh Plan. In reply, the Government spelt out the measures proposed to be taken in this regard. On 4 November, 1986, in reply to a Starred Question No. 9 by Murli Deora and Yogeshwar Prasad Yogesh, MPs, the Government stated that they were examining various aspects of the legislation for protecting the interest of consumers. Finally, the Government enacted 'the Consumer Protection Act, 1986' which came into force w.e.f. 1 July 1987.

The enactment of 'the Jute Packaging Materials (Compulsory use in Packing Commodities) Act, 1987' was also the successful culmination of the efforts of various MPs who sought to save the Indian Jute Industry from the severe competition from the synthetic substitutes. It was on 14

*Contributed by the Question Branch, Lok Sabha Secretariat

November, 1986 that Shri Sudhir Ray, M.P. had asked an Unstarred Question No. 1790 regarding the steps that were being taken by Government to arrest the declining trend in jute goods prices. The matter was further pursued by various members. On 6 March, 1987, the Government, in reply to Unstarred Question No. 1557 by Shri Vijay N. Patil, M.P. spelt out the steps taken to improve the performance of the Jute Industry and stated that it proposed to enact an enabling legislation under which Government would notify the specified commodities which would mandatorily be packed in jute material.

The question of discrimination in service rules vis-a-vis their male colleagues had been causing resentment among the Air Hostesses of the two Air Corporations of the country for some years. On 30 April, 1987 Kishori Sinha raised the question of retirement age of Air Hostesses through an Unstarred Question No. 8600. In reply, the Government explained that the retirement age of Air Hostesses had been prescribed as 35 years against the general retirement age of 58 years keeping in view the nature of functions of Air Hostesses. On 21 November, 1988 Mamta Banerjee, M.P. through her Unstarred Question No. 1348 again raised the question of retirement age of Air Hostesses and the Government reiterated the stand they had taken earlier. Prof. Narain Chand Parasher, M.P. through his USQ. No. 1025 dated 25.7.89 wanted to know the decisions/judgements of the courts on the five grounds of alleged sex discrimination to which the Air Hostesses were subjected to. The Government while furnishing the details of the judgements inter-alia stated that the Supreme Court had upheld the retirement age of Air Hostesses at 35 years extendable upto the age of 45 years.

But ultimately Government agreed to raise the retirement age of Air Hostesses of the two Air Corporations as per report which appeared in the Hindustan Times dated 17 October, 1989.

The demand for grant of Central University status to Jamia-Millia Islamia was also voiced by the members through questions in Parliament. In reply to an Unstarred Question No. 2649 dated 8.8.85 by Mukul Wasnik, the Government informed that the proposal in this regard was considered by the University Grants Commission and it expressed its inability to accept the proposal. The matter was, however, persistently pursued by members through questions *viz* USQ No. 7622 dated 24.4.1986, SQ No. 423 dated 14.8.1986 and USQ No. 5381 dated 2.4.1987. On 22nd February 1987, the then Minister of Education (L.P. Shahi) in reply to USQ No. 623 stated that the proposal to declare Jamia Millia Islamia a statutory University under an act of Parliament was under consideration. Finally in 1988, the Jamia Millia Islamia Bill was passed by the Parliament granting University status to Jamia Millia Islamia.

A large number of questions were being received from the members regarding incentives by Government to spice growers and exporters. On 12 August 1988, P.J. Kurien, M.P. wanted to know whether Government proposed to reduce the export duty on spices. In reply the Minister stated that the matter was being studied. On 7.12.88, in the implementation report, it was stated that the black pepper had been exempted from the levy of export duty.

The economy of Jammu and Kashmir, depends largely on influx of tourists in that State. So the question of increasing the daily flights of Indian Airlines between Jammu and Srinigar was constantly raised by members through questions. Initially, Government did not agree to the demand. But on 27 February, 1989, in reply to USQ No. 712 the Government informed the House that there was a proposal to increase the number of daily flights between Jammu and Srinagar.

Thus there have been a number of such instances where Government made or revised its policy on the matter constantly pursued by members through 'Questions'. Because of the immense popularity enjoyed by the medium of Questions amongst members of Parliament, it is the first item on the List of Business of both Houses of Parliament. The fact that the members of both the ruling and opposition parties take equal interest in putting questions, bear eloquent testimony to the efficacy of questions.

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Subject Committees*

Evolution

In a parliamentary democracy like ours, the Committee system assumes great importance. Administrative accountability to the Legislature becomes the *sine qua non* of such a parliamentary system. The phenomenal proliferation of governmental activities has made the task of legislatures very complex and diversified. By its very nature, Parliament as a body cannot have a complete control over the government and the whole gamut of its activities. Modern Legislatures, therefore, have created, apart from other devices, a system of Committees through which they strive to achieve effective surveillance over the administration. In India, we have a network of Committees, most important among them being the three Financial Committees, namely, the Committee on Public Accounts, the Committee on Estimates and the Committee on Public Undertakings which play a significant role in ensuring administrative accountability to the legislature. However, since the very pattern of administrative functioning has undergone radical changes over the years, especially due to the increasing State involvement in the social and economic spheres, the policies, programmes and performances of all the Ministries do not come up for closer scrutiny even by these Committees. Besides, owing to the paucity of time, quite often the Demands for Grants of most of the Ministries get guillotined every year without any discussion. This has brought to the fore the need for suitable reforms in the existing Committee system for better legislative control over the working of administration in diverse fields. The most significant development in this direction has been the appointment of departmentally-related specialised subject Committees of the Legislatures embracing the entire spectrum of administration for indepth and continuous study.

The question of setting up specialised committees has been engaging the attention of our legislators for quite sometime. More than a decade ago, in pursuance of the decision take at the Presiding Officers' Conference held at Bhubaneshwar in January 1978, a Committee of Presiding Officers on 'Committee System' was constituted. The report of this Committee was considered and adopted at the Presiding Officers' Conference held in Lucknow in 1985. The issue of reforms in the Committee System was also discussed in detail during the Third Regional Commonwealth Parliamentary Association Seminar on Parliamentary Practice and Procedure, held in January, 1984. Shortly thereafter, a proposal to constitute *ad hoc* Budget Committees for pre-voting scrutiny of the Demands for Grants of all the Ministries was submitted for the consideration of the Rules Committee of Lok Sabha. This, however, could not materialise for want of consensus.

The Rules Committee of the Eighth Lok Sabha at its sittings held on 30 March and 9 May, 1989 considered and approved a fresh proposal that three Subject Committees, one each on Agriculture, Science & Technology, and Environment & Forests might be set up for ensuring effective Parliamentary surveillance over the working of the Ministries/Departments concerned. Necessary recommendations to this effect were made by the Rules Committee in its Second and Fourth Reports laid on the Table of the House on 2 May and 25 July, 1989 respectively. The rules relating to these Committees were finally approved by the House and the Committees were constituted with effect from 18 August, 1989.

Committee on Agriculture

Agriculture is the most dominant sector of economic activity in our country. Parliamentarians, therefore, have a natural concern for and interest in the problems of agricultural development with a view to ameliorating the lot of the peasantry who form the back-bone of the country's socio-economic system. Since there was no machinery through which the Parliamentarians could get a total picture of the governmental activities in the area of agriculture, it was felt imperative that Parliament should exercise a closer and constant watch on the working of the concerned Ministry and other allied Governmental Departments through a Standing Committee of its own. This was the *raison d'etre* behind the setting up of the Standing Parliamentary Committee on Agriculture.

Composition

The Committee consists of 22 Members—15 from Lok Sabha nominated by the Speaker and 7 from Rajya Sabha nominated by the Chairman, Rajya Sabha for being associated with the Committee. A Minister cannot be nominated as a Member of the Committee. If a Member after his nomination to the Committee is appointed a Minister, he ceases to be a Member of the Committee from the date of such appointment. The Chairman of the Committtee is appointed by the Speaker from amongst the Members of the Committee.

*Contributed by the respective Subject Committees on Agriculture, Environment and Forests and Science and Technology, Lok Sabha Secretariat.

Term

The term of office of the Members of the Committee on Agriculture is not to exceed one year from the date of its constitution.

Functions

The functions of the Committee on Agriculture, as enshrined in Rule 331C of the Rules of Procedure and Conduct of Business in Lok Sabha are:

(a) to examine such of the activities of the Ministry of Agriculture and allied Ministries as may seem fit to the Committee;
(b) to report what economies, improvements in organisation, efficiency or administrative reform consistent with the policy approved by Parliament, may be effected;
(c) to examine the Annual Reports of the Ministry of Agriculture and allied Ministries with a view to finding out whether the expenditure incurred was commensurate with the results achieved;
(d) to examine such of the plan projects/activities of the Ministry of Agriculture and allied Ministries as may seem fit to the Committee or are specially referred to it by the House or the Speaker; and
(e) to evaluate and suggest measures for modernisation and overall development of agriculture and agricultural industries with a view to enhancing their contribution to economic growth through supplies of food, raw materials and products for exports, etc.

As this Committee was constituted for the first time in the month of August, 1989 and soon after its constitution the House was dissolved, only two sittings could be held during the short period of about three months. At its first sitting held on 18 September 1989, the Committee discussed in detail its future course of action and suggested that detailed background papers to be called 'Green Papers' on subjects covering the entire gamut of the activities of the Ministry of Agriculture and allied departments/organisations might be prepared by the Committee Secretariat. Accordingly two 'Green Papers', namely, 'The Ministry of Agriculture—A Profile' and 'Agricultural Research and Education in India' were prepared later for use of the Committee. At its second sitting held on 12 October, 1989, the Committee had subject-briefing and exchange of views with the experts from the Planning Commission and the Commission for Agricultural Costs and Prices. The Committee, however, could not make much head-way during 1989-90 for want of time.

After the constitution of the Ninth Lok Sabha too, the constitution of the Committee was delayed for various reasons and it could be constituted only in the month of August, 1990. During the year 1990-91 too, the Committee could hold only two sittings. At the first sitting held on 31 August, 1990, the selections of subjects was discussed in detail and the following fifteen subjects were selected for comprehensive scrutiny and examination.

Ministry of Agriculture (Department of Agriculture and Cooperation) and Ministry of Finance (Department of Economic Affairs)

1. Distribution of Agricultural Credit—Role of National Bank for Agriculture and Rural Development, Ministry of Agriculture (Department of Agriculture and Cooperation).
2. Central Cattle Breeding Farms.
3. Commission for Agricultural Costs and Prices.
4. Inland Fisheries Development.
5. National Dairy Development Board.
6. National Horticulture Board.
7. National Oilseeds and Vegetable Oils Development Board.
8. National Seeds Corporation.
9. Natural Calamities Management Programmes.
10. State Farms Corporation of India. Ministries of Agriculture (Department of Agricultural Research & Education).
11. Indian Council of Agricultural Research. Ministry of Agriculture (Department of Fertilisers).
12. Fertilisers—Production and Distribution. Ministry of Agriculture (Department of Rural Development).
13. Drought Prone Areas Programme and Desert Development Programme.
14. Jawahar Rozgar Yojana
15. Rural Water Supply and Sanitation.

At its Second Sitting held on 26 September, 1990, the Committee discussed in detail the preliminary material received from the various Ministries/Departments in connection with the examination of the subjects selected. The Committee also selected one more subject namely, 'Agricultural Industries' for examination during the year 1990-91 alongwith the other fifteen subjects selected at its first sitting. however, as the Ninth Lok Sabha was dissolved on 13 March, 1991 the examination of these subjects could not be completed and no report could be produced by the Committee in the year 1990-91.

COMMITTEE ON ENVIRONMENT AND FORESTS

Introductory

With the rapid growth of the population, increasing industrialisation of the country and fast depletion of natural

resources, particularly the forest cover, the need for conserving the environment and enforcing the anti-pollution measures cannot be over-emphasised. The situation called for a massive coordinated effort to check the environmental degradation before the situation got out of control. While the Government did appear to be aware of the magnitude of the problem, the implementation of various schemes drawn up in this regard necessitated to devise an effective means of Parliamentary surveillance over the activities of the Government. It was, therefore, felt imperative that Parliament should exercise a closer and constant watch on the working of the concerned Ministry and allied Departments through its own standing committee which would examine all facts of the problem of environmental degradation, oversee the implementation of various programmes and make suitable recommendations to the Government. Hence the standing Parliamentary Committee on Environment and Forests was set up.

Composition

The Committee consists of 22 Members—15 from Lok Sabha nominated by the Speaker and 7 from Rajya Sabha nominated by the Chairman, Rajya Sabha for being associated with the Committee. A Minister cannot be nominated as a Member of the Committee. If a Member after his nomination to the Committee is appointed a Minister, he ceases to be a Member of the Committee from the date of such appointment. The Chairman of the Committee is appointed by the Speaker from amongst the Members of the Committee.

Term

The term of office of the members of the Committee is not to exceed one year from the date of its constitution.

Functions

Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha provides that there shall be a Committee on Environment and Forests to examine all matters connected with Environment and Forests as are dealt with by the Ministry of Environment and Forests and allied Ministries and to report thereon from time to time. The functions of the Committee are:

(a) to examine such of the activities of the Ministry of Environment and Forests and allied Ministries as may seem fit to the Committee;
(b) to report what economies, improvements in organisation, efficiency or administrative reform consistent with the policy approved by Parliament, may be effected;
(c) to examine the Annual Reports of the Ministry of Environment and Forests and allied Ministries with a view to finding out whether the expenditure incurred was commensurate with the results achieved;
(d) to examine such of the plan projects/activities of the Ministry of Environment and Forests and allied Ministries as may seem fit to the Committee or specially referred to it by the House or the Speaker; and
(e) to evaluate and suggest measures for the survey and conservation of flora, fauna, forests and wildlife, prevention and control of pollution, afforestation and regeneration of degraded parts of the environment.

The Committee on Environment and Forests was constituted for the first time in August, 1989. The term of the Committee expired on 27 November, 1989 with the dissolution of the Lok Sabha. During the short span of 3 months, the Committee held their first sitting on 17 October, 1989. It was suggested that detailed background papers to be called 'Green Papers' on subjects covering the entire gamut of activities of the Ministry of Environment and Forests and allied departments/organisations might be prepared. Accordingly, a 'Green Paper' entitled 'Ministry of Environment and Forest: A Profile', was prepared for the use of the Committee.

After the constitution of the Ninth Lok Sabha, the Committee on Environment and Forests was constituted in August, 1990. The Committee had five sittings during the year 1990-91. The Committee selected the following subjects for examination during the year 1990-91:

1. Social Forestry.
2. Budgetary Expenditure and Working of the Ministry of Environment and Forests.
3. Depletion of Himalayan Forests and Conservation of Forests.
4. Ozone Layer and Global Warming.
5. Environmental Pollution.
6. Environmental Clearance for Development Projects.
7. National Wastelands Development Board.
8. Wildlife Preservation.
9. Impact of Oil Slick in Gulf on Indian Environment.

The Committee also had subject-briefing and exchange of views with the experts on various aspects of environment, forests and wildlife.

Study Tours

A group of the Committee consisting of 8 members undertook a visit to some environmentally degraded areas in and around Delhi on 23 October, 1990. The Committee

visited slums and a factory and the Central Pollution Control Board and had discussions on various issues. The Committee was apprised of the measures that had been taken by the Government to ameliorate the conditions of the slum dwellers.

The Committee also undertook a Study Tour to Bombay, Cochin, Bangalore and Madras in January, 1991, to have a better understanding of the subjects under examination. The Committee held discussions with the representatives of the concerned State Governments and the various Institutions visited during the tour. Informal exchange of views with the people and various voluntary organisations also took place.

Due to the dissolution of the Ninth Lok Sabha on 13 March, 1991, the examination of the subjects selected for the year 1990-91, could not be completed. However, the official evidence on one subject, namely, 'Impact of Oil Slick in Gulf on Indian Environment' was completed and the report on the subject will be placed before the next Committee, after its constitution during Tenth Lok Sabha.

COMMITTEE ON SCIENCE & TECHNOLOGY

Introductory

One of the most distinguishing features of our modern age is the spectacular advancement made in the field of science and technology. The numerous scientific inventions and discoveries have changed human environment and outlook and are of immense social and economic significance.

The role of the State as a patron of science is well recongnised today. In India development of science and technology has been receiving special consideration from the government since independence. The advances in various spheres of science and technology have been so widespread that the Parliamentarians and others interested in the subject have been pointing out that there is no machinery through which members could get a total picture of the conduct of scientific and technological affairs of the nation by the Government. Therefore, in order to study the policies and programmes of the Government in such a vital area of Government activity and to oversee the implementation of the various plans and programmes, a standing Parliamentary Committee on Science & Technology has been set up.

Composition

The Committee consists of 22 members—15 from Lok Sabha nominated by the Speaker and 7 from Rajya Sabha nominated by the Chairman, Rajya Sabha for being associated with the Committee. A Minister cannot be nominated as a Member of the Committee. If a Member after his nomination to the Committee is appointed a Minister, he ceases to be a Member of the Committee from the date of such appointment. The Chairman of the Committee is appointed by the Speaker from amongst the Members of the Committee.

Term

The term of office of the Members of the Committee on Science and Technology, is not to exceed one year from the date of its constitution.

Functions

The functions of the Committee on Science & Technology as enshrined in Rule 331G of the Rules of Procedure and Conduct of Business in Lok Sabha are:

(a) to examine such of the activities of the Ministry of Science and Technology and allied Ministries as may seem fit to the Committee;
(b) to report what economies, improvements in organisation, efficiency or administrative reform consistent with the policy approved by Parliament may be effected;
(c) to examine the Annual Reports of the Ministry of Science & Technology and allied Ministries with a view to finding out whether the expenditure incurred was commensurate with the results achieved;
(d) to examine such of the plan projects/activities of the Ministry of Science and Technology and allied Ministries as may seem fit to the Committee or are specially referred to it by the House or the Speaker;
(e) to study the policies and programmes of Government in the field of Science and Technology development;
(f) to examine and evaluate Government sponsored or aided activities for the promotion of research and development and their application to industry and agriculture as well as to the security of the nation;
(g) to examine matters affecting scientific and technological institutions, e.g. financial, personnel purchase and import policies and practices;
(h) to examine the plans and programmes in biotechnology;
(i) to examine measures for development and utilisation of scientific manpower; and
(j) to suggest measures for promoting economic development through increased use of scientific and technological innovations.

The Committee was constituted for the first time in August, 1989. At the first sitting held on 6 October, 1989,

the Committee discussed the parameters of its jurisdiction and scope and suggested that detailed background papers to be called 'Green Paper' on subjects covering the entire gamut of the activities of the Ministry of Science and Technology and allied departments/organisations might be prepared by the Committee Secretariat. Accordingly, two Green Papers on 'Department of Space' and 'Ocean Development' were prepared for the use of the Committee.

The Members also suggested various subjects for a detailed study. These, *inter alia*, included:

(i) India in the year 2000 AD as far as Science & Technology is concerned;
(ii) Atomic Energy;
(iii) Nuclear Reactors: hazards of radiation;
(iv) Space Programme;
(v) CSIR (a) problems faced by young scientists
(b) functioning of CSIR laboratories;
(vi) Seventh Plan, performance report on Ministry of Science & Technology;
(vii) Approach and strategy in the Eighth Plan pertaining to the Ministry of Science & Technology;
(viii) Utilisation of exclusive economic zone; and
(ix) Accomplishment and research in bio-technology.

The Committee, however, could not make any further progress during 1989-90 as the Lok Sabha was dissolved soon afterwards.

After the constitution of the Ninth Lok Sabha the Committee was constituted in August, 1990. At the first sitting of the Committee held on 27 August, 1990 the selection of subjects for examination by the Committee was discussed in detail and the following six subjects were agreed upon by the Members of the Committee for comprehensive scrutiny and examination:

(i) Department of electronics: Imports and Indigenisation;
(ii) Department of Atomic Energy: Decommissioning of atomic power plants;
(iii) Department of Space: Indian National Satellite Programme;
(iv) Department of Ocean Development: Deep Seabed Exploration Programme;
(v) Department of Scientific and Industrial Research: Council of Scientific and Industrial Research — Review of Research Projects and Schemes;
(vi) Department of Biotechnology — Application of Biotechnology in agriculture.

At the second sitting of the Committee held on 24 September, 1990 the Committee discussed in detail the preliminary material on the six subjects selected and a study tour for the members of the Committee was approved. Accordingly, from October 23 to 30, 1990, the Committee visited the following establishments for the purpose of on-the-spot study:

(i) Bhabha Atomic Research Centre, Trombay, Bombay;
(ii) National Institute of Oceanography — Goa;
(iii) Department of Space, Bangalore;
(iv) Electronic Test and Development Centre, Hyderabad;
(v) Centre for Cellular and Molecular Biology, Hyderabad;
(vi) National Geophysical Research Institute, Hyderabad.

Three sittings of the Committee were held on 4, 5 and 11th March, 1990 for taking oral evidence of the representatives of the Department of Electronics on 'Department of Electronics: Imports and Indigenisation'. The report on this subject is under preparation. The sittings of the Committee for taking oral evidence of representatives of other concerned Departments, which were scheduled to be held subsequently in March-April, 1991 were cancelled as the Ninth Lok Sabha was dissolved on 13 March, 1991.

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Estimates Committee—Role and Functions*

Introduction

Financial control of and executive accountability to Parliament are the very essence of Parliamentary democracy. The former implies that there can be no taxation without people's consent and no expenditure without people's authority. In a parliamentary form of Government as we have in India, the will of the people is sovereign and the same is exercised through people's elected representatives in Parliament/State legislatures.

Hence the check that Parliament exercises over the executive stems from the basic principle that Parliament embodies the will of the people and it must therefore be able to have a final say in laying down public policies including fiscal policies as well as in overseeing the manner in which these are implemented. However, due to the magnitude and complexity of state activities, Parliament as a body cannot effectively scrutinise either the budget estimates or the expenditure there against. In fact it has neither the time for thorough examination or scrutiny of varied complex details of modern administration nor is it suited for such a task because of its very size. Experience of Parliaments in all parts of the world shows that in enforcing executive accountability, a well-developed system of Parliamentary Committees with adequate powers is the best suited system to scrutinize in detail and oversee the working of various departments.

Among the Standing Committees of the Lok Sabha which have been playing a very significant role in the scheme of Parliamentary oversight and control over the expenditure the three Financial Committees *viz* (i) the Committee on Estimates, (ii) the Committee on Public Accounts and (iii) the Committee on Public Undertakings are a distinct class by themselves as they keep an unremitting vigil over governmental spendings and performance.

Historical background

The question of setting up an Estimates Committee to examine the expenditure of the Government in greater detail had been raised in the Central Legislature from time to time since 1937 but the proposal was accepted by the Government only after independence in 1950.

The Committee was first constituted on 10th April, 1950 to examine the estimates with a view to suggest economies in public expenditure and improvements in organisation, efficiency, etc. It is well known that parliamentary control over public expenditure is not limited to voting of moneys required for carrying on the administration of the country but extends to ensuring that the expenditure is incurred in a prudent manner and that the objectives underlying the plans and programmes are achieved. This involves in-depth examination of estimates presented to the House and more particularly a critical appraisal of the plans and programmes of the Government as well as its performance in the field.

The Speaker of Lok Sabha, Shri G.V. Mavalankar, while addressing the first Estimates Committee on 18 April 1950 succinctly analysed the principal objectives, role and functions of the Estimates Committee as follows:

(i) To associate with and train as large a number of members as possible, not only in the ways in which the administration is carried on, but also to make them conversant with the various problems that Government have to meet from day to day;
(ii) To exercise control on the Executive so that they do not become oppressive or arbitrary;
(iii) To influence the policies of the Government and
(iv) To act as a liaison between the Government and the general public "The work of the Committee is very onerous and important. Unless the Committee closely studies and thoroughly grasps both the purpose as well as the machinery of executing the plan, the estimates of which are before it, it will not be able to examine fully and properly the relevant estimates and to suggest economies in money, time and energy. An efficient examination by the Committee will go to create consciousness in Governmental machinery that there is someone who will scrutinise what is proposed. This itself is a great check on the Executive. The examination of it, if properly carried out, will lead to general efficiency of the administration. The examination by the Committee may also be useful as a guide for both future estimates and future policies."

Composition

Initially, the Estimates Committee consisted of 25 Members elected by the Lok Sabha from amongst its Members according to the principle of proportional representation by means of single transferable vote. This system of election ensures that all major political parties and groups in the Lok Sabha are represented on the Committee fairly in proportion to their strength in Lok Sabha. In 1956, the member-

*Contributed by the Estimates Committee Branch, Lok Sabha Secretariat.

ship of the Committee was increased to 30.

A special feature of the Estimates Committee is that it consists exclusively of Members of the Lok Sabha. The reason appears to the that since the Constitution of India vests all financial powers almost entirely in the Lok Sabha, it is the Lok Sabha alone which could exercise the power to scrutinise the expenditure of the Government of India incurred against the budgetary grants made by the Lok Sabha and suggest economies.

Term

The term of the Committee is one year starting from 1st May to 30th April. However, consequent upon constitution of a new Lok Sabha, if the Committee is appointed later than 1st May, its term expires on 30th April, irrespective of the fact that it does not complete a term of full one year during that year. According to well established convention, the major parties nominate their members for election to the Committee for two consecutive terms. By another convention, the Chairman of the outgoing Committee, if re-elected to the Committee, is appointed by the Speaker as Chairman for the second term. These conventions ensure continuity in the functioning of the Committee.

Chairman

The Chairman of the Committee is appointed by the Speaker from amongst the Members of the Committee. The Chairmen so far appointed by the Speaker have been either from the ruling party or from one of its allied parties. The Committee has had the privilege of being chaired by eminent political luminaries like Sarvashri M. Ananthasayanam Ayyangar who was its first Chairman, Balvantray Gopalji Mehta, H.C. Dassapa, A.C. Guha, P. Venkatasubbaiah, M. Thirumala Rao, Kamala Nath Tewari, R.K. Sinha, Bhagwat Jha Azad, Satyendra Narayan Sinha, Dr. Baldev Prakash, Sarvashri S.B.P. Pattabhi Rama Rao, Bansi Lal, Chintamani Panigrahi, Smt. Chandra Tripathi and Shri Asutosh Law. Shri Jaswant Singh a leading light of the Bharatiya Janta Party which was supporting the then Government from outside, was the Chairman of Estimates Committee (1990–91).

Conditions of Membership

A Member, after his appointment as a Minister, ceases to be a Member of the Committee from the date of such appointment. A healthy practice established under the Speaker's direction is that no member can continue his/her membership if he/she is already a member or after his/her election to the Estimates Committee accepts membership of any other Committee appointed by Government without Speaker's approval. This provision is intended to keep the Committee free from any influence of the Government and enables it to arrive at conclusions, on the basis of facts which come to its notice, objectively without any fear or favour. It also helps the officials of the Government in expressing their views before the Committee with candour besides allowing the Committee to function in an apolitical manner.

Functions

The functions of the Committee as enshrined in Rule 310 of the Rules of Procedure and Conduct of Business in Lok Sabha, are as follows:

"(a) to report that economies, improvements in organisation, efficiency or administrative reform, consistent with the policy underlying the estimates, may be effected.

(b) to suggest alternative policies in order to bring about efficiency and economy in administration;

(c) to examine whether the money is well laid out within the limits of the policy implied in the estimates; and

(d) to suggest the form in which the estimates shall be presented to Parliament. Provided that the Committee shall not exercise its functions in relation to such public undertakings as are allotted to the Committee on Public Undertakings by these rules or by the Speaker."

The term 'policy' referred to in clause (a) above has been amplified by the following Directions issued by the Speaker:

1. the term 'policy' referred to in clause (a) of Rule 310 relates only to policies laid down by Parliament either by means of Statutes or by specific Resolutions passed by it from time to time.
2. It shall be open to the Committee to examine any matter which may have been settled as a matter of policy by the Government in the discharge of its executive functions.
3. With regard to clause (b) of Rule 310 the Committee shall not go against the policy approved by Parliament; but where it is established on evidence that a particular policy is not leading to the expected or desired results or is leading to waste it is the duty of the Committee to bring to the notice of the House that a change in policy is called for. The fundamental objectives of the Committee are economy, efficiency in administration and ensuring that money is well laid out; but, if on close examination, it is revealed that large sums are going to waste because a certain policy is followed, the Committee may

point out the defects and give reasons for the change in the policy for the consideration of the House.

The scope of the examination of matters of policy by the Estimates Committee was discussed in formative years by the Chairman, Estimates Committee Shri B.G. Mehta, with the then Speaker on 1 September, 1958. He spelt out the scope of examination with which the Speaker agreed, as follows:

> "With regard to the matters of policy to be considered by the Committee, I had in my mind all along during my discussions with the H.S. that the Committee had to consider matters of policy following from the considerations of economy, efficiency, uniformity, better output of work; greater satisfaction of people's needs and the best possible use of the people's money of which the Parliament and its Committee, the Estimates Committee, are custodians. I agree that the Estimates Committee may not consider a matter of policy by itself merely because it requires to be changed on merit. Such consideration should have some relation to the various points, I have enumerated above. There could not be such consideration without such relation. But it would be neither desirable nor practicable, to rule out all considerations of policy matters following from the above mentioned considerations."

To illustrate, the Estimates Committee (1990–91) selected some policy-oriented subjects for examination. These included subjects like Policy on Exploration of Oil and Natural Gas, Newsprint Allocation Policy and Defence Lands and Land Use Policy.

As is evident from the above discussion, the functions of the Estimates Committee are not confined to the examination of "estimates" alone but the scope of examination is quite comprehensive and extends to the examination of any aspect of the organisation and working of any Ministry/Department of the Government of India or of subordinate offices and bodies not specifically excluded from its preview by the Rules of Procedure. The Committee can as well inquire into any scheme, project or any other activity undertaken by the Central Government involving expenditure from the Consolidated Fund of India. The Committee, however, does not go behind the estimates and is not concerned with the process of formulation of estimates and their finalisation before their presentation to Lok Sabha. While the Committee may examine the "Budget Estimates" presented to Lok Sabha before the Demands for Grants are finally voted, the Committee's enquiry is in practice limited to subjects taken up for detailed examination which is necessarily a time-consuming process. The passage of the Budget is therefore not dependent on the completion of the Committee's work.

The Estimates Committee has been authorised under the Rules of Procedure to make detailed rules regulating its working and in exercise of this power, the Committee has framed Rules of Procedure for its internal working. The procedures so evolved in the course of working of the Committee for over 39 years have made the Committee an effective instrument of inquiry into the functioning of Government of India. The activities of the Government have become so vast and extensive involving expenditure on such a large scale that it is almost impossible for the Estimates Committee to examine all the Ministries/Departments of the Government of India in one year. The Committee, circumscribed as it is in the matter of time and resources at its command, is, therefore, obliged to select a few subjects for detailed inquiry during its term of office i.e. one year. It is not incumbent on the Committee to examine the entire estimates of any one year indeed, it would be well-nigh impossible.

Selection of Subjects

Immediately after its constitution every year, generally in the first week of May, the Committee conducts its first sitting for selection of subjects for examination during the course of the year. The subjects are selected after considering the various suggestions made by the Chairman and the Members. The Committee's endeavour has been to take up for examination subjects which are of importance to the common man or are of topical nature.

Study Groups

As soon as the Committee is constituted, it is divided into several Study Groups. These groups are appointed by the Chairman of the Committee after taking into account the consent of the Members to serve on them. The system of Study Groups enables the Members to apply themselves intensively to the study of subjects according to their apptitude and also encourages specialization among Members.

Collection of Material

The Committee has power 'to send for persons, papers and records'. The committee also has an elaborate system of collecting non-official organisations, institutions and experts on the subjects under examination. This is done by eliciting replies to questionnaires issued to institutions concerned.

After the subjects are selected by the Committee for examination, the Ministries/Department concerned are asked to furnish preliminary material on the subjects within

a specified time. For this purpose, a questionnaire on each subject is drawn up and supplied to the Ministry/Department concerned. After going through the preliminary material, the Members may suggest points on which further information is required by them. All the important points emerging as a result of study of the preliminary material and other literature on a subject, including the points suggested by the Members, are consolidated in the form of a questionnaire. After approval by the Chairman the questionnaire is sent to the concerned Ministry/Department for furnishing replies in writing. The Committee has also evolved a system of calling memoranda on the subjects selected by it for examination from leading non-official organisations and eminent individuals having special expertise or knowledge of the subject which could be of advantage and use to the Committee in its examination. If considered necessary, selected non-official organisations, institutions and individuals are also called by the Committee for oral evidence.

Study Tours

The Committee is usually divided into two Study Groups for undertaking tours for on-the-spot study of various institutions and establishments connected with the subjects under examination. The impressions gathered during these Study Tours and informal discussions held with local officials are of considerable use to the Committee.

Oral Evidence

The representative of the Ministries concerned with the subjects usually the Secretary of the Ministry/Head of Department is called to tender oral evidence before the Committee. The oral evidence of the representatives of the Ministries is based on questionnaires framed in advance after in depth study of the material and information collected from the Government and non-official organisations and during study tours. There may be certain points on which the witnesses are unable to furnish information to the Committee during evidence itself. In such cases, the Chairman may permit the witness to furnish replies subsequently in writing.

After the oral evidence of the representatives of the Government is over and all the information promised by Government during evidence is received, the report of the Committee on the subject is drafted.

Minister not called before the Committee

A Minister is not called before the Committee either to give evidence or for consultation in connection with the examination of estimates by the Committee. The Chairman of the Committee may, however, when considered necessary but after its deliberations are concluded, have an informal talk with the Minister concerned to apprise him of (a) any matters of policy laid down by the Minister with which the Committee does not fully agree, and (b) any matter of secret and confidential nature which the Committee would not like to bring on record in its Report.

Draft Report

The draft report is divided into Chapters and the Chapters into Sections, each dealing with related matters. The report generally consists of a narrative portion which summarises the material and evidence before the Committee followed by the observations/recommendations of the Committee.

The draft report is then placed before the Committee for consideration and adoption. A copy of the draft report, minus the recommendations/observations of the Committee, is sent to the Ministry concerned for factual verification. This is done to ensure that the facts contained in the report are absolutely correct.

After factual verification by the Ministry concerned the report is presented to the Lok Sabha by the Chairman. Thereafter, a Press Release, indicating some of the more important recommendations made in the Report, is issued by the Secretariat.

Action Taken Reports

After presentation, a copy of the report is sent to the Ministry concerned for taking follow-up action on the observations/recommendations of the Committee. The Ministries are expected to furnish the action taken replies within a period of six months. The action taken replies, when received, are examined by the Committee and a report containing the views and recommendations of the Committee on the action taken report by the Government is presented to the Lok Sabha. After its presentation, a copy of the Action Taken Report is also sent to the Ministry concerned to take action on the observations/recommendations contained therein and to report the action taken within a period of six months. The action taken as reported by the government is laid on the Table of the House in the form of Statements without any further examination, processing or comments. This completes the examination of the subject by the Committee.

Examination of Estimates relating to Ministry of Defence

A separate procedure has been laid down for examining the estimates the Ministry of Defence. The Examination of estimates relating to the Ministry of Defence is entrusted to a Sub-Committee of the Committee. The Sub-Committee on Defence has all the powers of the undivided Committee, among which the most notable are the powers to take oral

evidence and to draw up a report which is deemed to be a report of the whole Committee, if approved by the latter.

There is a great degree of harmony among the members during the deliberations of the Committee and various shades of opinion represented on the Committee having divergent views on different issues emanating before the Committee are synthesised to find a maximum area of rapprochement.

The reports of the Committee are consensus reports. There is no system of appending Minutes of dissent with the reports of the Committee. The objectivity reflected in the reports of the Committee and the consensus among members on its recommendations/observations, in a large proportion, accounts for the esteem in which recommendations/ observations of the Committee are held by the Government. It is, therefore, no wonder that the majority of the recommendations of the Committee find ready acceptance by the Government.

Since its inception and upto the year 1990–91, the Committee have presented more than 800 reports (original as well as Action Taken Reports) covering almost entire gamut of the Ministries/Departments of Government of India.

Quantum of work

An idea of the quantum of work handled by the Estimates Committee each year during the term of Eighth and Ninth Lok Sabha i.e. (from 1985–86 to 1990–91) can be had from the following Table.

Table

	1985–86	1986–87	1987–88	1988–89	1990–91
No. of sitting held	46	32	37	27	26
No. of hr. spent					
a) Hrs.	82	55	70	56	64
b) Minutes	30	55	55	50	35
Volume of material recd.					
(a) No. of memoranda recd. from non-officials					
(i) No.	34	6	44	44	50
(ii) Pages	286	61	664	664	631
(b) Preliminary material from Ministries (pages)	1831	1622	5029	5031	1629
Report presented					
(a) Original	9	8	8	10	6
(b) Action Taken	24	7	9	8	10

As mentioned earlier, the Committee has been selecting and reporting on subjects which are of topical nature or intimately affect the common man. For example, among the reports presented by the Committee during the year 1990–91 were the reports on Manpower requirements in Nationalised Banks (11th), Film and Television Institute of India (13th) and Board for Industrial and Financial Reconstruction (15th).

The important recommendations contained in some of the reports presented by the Committee to the Ninth Lok Sabha are given in Annexure.

A reference to some of these reports would reveal that the Committee has always had a positive and constructive approach in dealing with the subject examined by it. While pointing out and criticising the organisational inadequacies, inefficient execution of projects and schemes and expenditure incurred without realising the full value of money, it has at the same time given suggestions for corrective action to effect improvements in the working of Government Departments.

The Committee has in its 39 years of existence built up a wholesome reputation of being fearless and constructive. Its appraisal of the functioning of the various government departments has been objective and non-partisan. Its vigil over governmental spending and timely reports and constructive suggestions to plug the loopholes in the existing systems and policies have certainly resulted in improvement in the organisation and working of Government of India. The Committee also provides a forum for interaction between Government and Parliament and an opportunity for information to flow from the former to the latter and ultimately to the people. The Estimates Committee has certainly performed its role with vigour, objectivity, impartiality and a sense of fairness so as to inspire respect in the Administration and a trusting regard in the public mind.

ANNEXURE

Some of the more important recommendations contained in the reports of the Estimates Committee presented to the Ninth Lok Sabha:

Manpower Requirements in Nationalised Banks (11th Report)

Taking note of the fact that various public sector banks

currently employ over one million officers, clerks and other staff, the Committee emphasised the importance of establishing uniform norms for determining staff requirements in the entire banking sector. The Committee desired the banking division of Ministry of Finance to initiate early and appropriate study of this aspect. This ought also to include rationalisation of the officer-clerk ratio in different banks. The Committee noticed with concern the ad-hoc approach adopted by the banking sector towards the staffing of public sector banks. This tendency was rather pronounced in respect of appointments at higher levels as timely filling up of posts of Executive Directors and Managing Directors had not been uniformly ensured. Besides, unjustified delays in appointments had also been noticed. The Committee had also drawn the attention of the Government towards delays in declaration of results of examination conducted by the Banking Service Recruitment Board and consequent delays in filling up the vacancies. It also viewed the existence of two separate recruitment agencies viz. Central Recruitment Board and Banking Service Recruitment Board for SBI and non-SBI recruitment as unjustified. While noting that training has a close bearing on staff productivity and is a strong motivating force the Committee opined that public sector banks should increase their training infrastructure. It was also concerned about the backlog of untrained staff in various banks and had advised the Ministry for augmentation of training related infrastructure and inter-bank cooperation in clearing the backlog.

Film & Television Institute of India (13th Report)

An analysis of the facts placed before the Committee, and the opinions expressed led the Committee to the conclusion that at the root of various difficulties being experienced was the manner in which the Institute was constituted. The Committee advised the Government to grant the Institute statutory status. The Committee was also of the view that while giving the Institute a new legal status the existing objectives clause of the Memorandum of Association which it considered too long and defused needed to be revised. The Committee, therefore, recommended that the Memorandum of Association may be reviewed by the Institute in consultation with the Government of India. The Committee also recommended that the Government may consider reviewing the organisational structure of the Institute with a view to rationalising it taking into account the inherent and acquired organisation weaknesses of the Institute. It observed with concern the declining number of students entering the Institute and hoped that both the Ministry and the Institute would examine the underlying causes and take remedial steps. The Committee further found that the Institute had been receiving frequent requests from various organisations other than Doordarshan for training their personnel in video production. The Committee desired that the Ministry of Information and Broadcasting should undertake an exercise to assess the projected requirement of Doordarshan and other organisations and take necessary steps to augment the training capacity of the FTII during the 8th Plan period.

Board for Industrial and Financial Reconstruction (15th Report)

The Committee in its 15th Report cautioned the Government about the permissiveness in investigation of causes of mismanagement. In the opinion of the Committee inefficiency must invariably be investigated and enquiry conducted into the causes that led to the sickness of a unit. The Committee advised at the same time that necessary investigation in this regard should not be permitted to retard the progress of rehabilitation on sick units. The Committee expressed the hope that the Government would expedite its final decision on proposals that are already under consideration. At present the small scale and ancillary industrial units were outside the scope of BIFR. Rationale behind the exclusion of ancillary and small scale industrial undertakings from the purview of SICA was not clear to the Committee. Referring to pre-budget economic survey (1989–90) the Committee stated that it was disquieting to note that there had been 40% increase in the number of sick units between December 1986 and December 1987 and over 28% increase in the bank credits outstanding against such units. Besides, out of 22.27 lakhs borrower accounts in SSI sector as on 31st December, 1987, 2.04 lakhs were reported to be sick indicating that every eleventh SSI unit in the country was financially unhealthy. The Committee felt that the trend if not corrected would have very grave consequences on the national economy and hoped that the proposed legislation for such units would provide for a suitable mechanism under which they could also be helped through BIFR. Similarly, the Government would also have to take a positive view about bringing such public sector units within the purview of BIFR. The Committee has also hoped that the Government would initiate necessary steps for monitoring and upgrading the existing level of coordination. While appreciating the steps taken by the Government in approaching the Ministers of State for tackling the problem of industrial sickness, the Committee desired that the Government should also hold periodical conferences of concerned Chief Ministers/Industry Ministers to monitor the level of coordination with State Governments. It also noted that so far no review of the functioning of BIFR had been undertaken by the Government. In the absence of any such evaluation, a realistic and objective assessment about effectiveness of the procedures followed by the Board and its organisation

could not be ensured. In the opinion of the Committee a periodical evaluation study/ review of the activities of BIFR was very important. The Committee recommended that an annual report detailing the various activities of the Board during the year be brought about. Publication of yearly/half yearly reports of relief packages sanctioned by BIFR and their dispatch to Chambers of Commerce and Industries would also be a useful exercise.

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Apart from theory or idealism the practical choice offered to the world is to cooperate or perish. The choice is of peaceful co-existence or no-existence at all.

—Jawaharlal Nehru

Public Accounts Committee—Functioning and Achievements*

As per the provisions of Article 265 of the Constitution, no tax can be levied or collected except by authority of law. Further, Article 266(3) of the Constitution provides that no moneys shall be appropriated out of the Consolidated Fund of India or the Consolidated Fund of a State except in accordance with law and for the purposes and in the manner provided in the Constitution. In other words, no money can be drawn or spent by the Central Government without prior sanction and authority of Parliament.

Parliament grants hundreds of crores of rupees every year towards meeting the expenditure of various departments of the government and makes specific appropriations for this purpose under different heads. Financial sanctions provide checks on the dispensations of public funds by the Ministries and it is the prerogative of Parliament to see whether the sanctioned funds have been spent prudently, frugally and intelligently or any transgressions have been made and whether the money has been expended for the specific purposes for which it was granted. However, in view of its size and complexity of state activities coupled with paucity of time at its disposal Parliament cannot be expected to exercise that check itself. It has therefore delegated the task of scrutiny and control over public expenditure to the three financial committees namely the Public Accounts Committee, the Estimates Committee and the Public Undertakings Committee. In this article we deal in some detail with the functioning and achievements of the Public Accounts Committee which is the oldest of the three financial committees.

The Public Accounts Committee—Evolution

Public Accounts Committee was inaugurated in India in 1921. Though modelled on the pattern adopted in the British Parliament, until 1950 it functioned more or less as adjunct of the Finance Department. The Finance Member or Minister was the Chairman and his office functioned as Secretariat of the Committee.

With the adoption of the Constitution, Public Accounts Committee underwent a radical change and became a full-fledged Parliamentary Committee with a non-official Chairman appointed by the Speaker and the Secretarial assistance also provided by the Lok Sabha Secretariat.

The Committee now consists of not more than 22 members comprising 15 members who shall be elected by the Lok Sabha every year from amongst its members according to the principle of proportional representation by means of the single transferable vote and not more than 7 members of Rajya Sabha to be nominated by that House and being associated with the Committee. The Chairman is appointed by the Speaker from amongst its members. In the year 1967-68 the Speaker, for the first time, appointed a member of the Opposition as the Chairman of the Committee. This practice is being continued since then. A new Committee is elected every year before the expiry of the term of the office of the outgoing Committee. But they enter office only after the expiry of the term of the previous Committee. By convention no member is normally elected to the Committee for more than 2 consecutive terms.

Scope and functions of the Committee

Article 151 of the Constitution requires the Comptroller and Auditor General to submit his reports on the accounts of the Union and the State Governments to the President or the Governor as the case may be who will cause them to be laid before the Parliament/State Legislature. The Audit Reports, Finance accounts and Appropriation accounts after they are presented to the legislature stand referred to the Public Accounts Committee. The Public Accounts Committee thus primarily deals with the reports of the Comptroller & Auditor General. But it has inherent powers to take up for scrutiny any item relating to the management of the nation's finances.

The scope and functions of the Committee are enshrined in Rule 308 of the Rules of Procedure and Conduct of Business in Lok Sabha. The main functions of the Committee include examination of accounts showing the appropriation of sums granted by Parliament for expenditure of the Government of India, the annual Finance Accounts of the Government of India and such other accounts laid before the House as the Committee may deem fit. In scrutinising the Appropriation Accounts of the Government of India and the Reports of the Comptroller and Auditor General thereon, the Committee have to satisfy:

(a) that the moneys shown in the accounts as having been disbursed were legally available for and applicable to, the service or purpose to which they have been applied or charged;
(b) that the expenditure conforms to the authority which govern it; and

*Contributed by Public Accounts Committee Branch, Lok Sabha Secretariat.

(c) that every re-appropriation has been made in accordance with the provisions made in this behalf under rules framed by competent authority.

One of the duties of the Committee is to ascertain that money granted by Parliament has been spent by Government "within the scope of the demand". The functions of the Committee are not to go into the detailed accounts but to appraise the reports of the C&AG on such accounts, to investigate specific cases of losses, nugatory expenditure, financial irregularities and to see whether policies approved by Parliament were faithfully followed by the Government and its agencies with utmost economy and efficiency.

After independence, there had been tremendous increase in Governmental activities for achieving rapid growth of economy by undertaking process of planning and formulating various developmental and social welfare programmes. Revenue receipts and capital expenditure as well as public sector borrowings have been rising continuously year after year. This has greatly added to the responsibilities of the Public Accounts Committee. With the growing volume of public expenditure and consequently the greater need for Parliamentary surveillance over governmental spending, the Public Accounts Committee has started looking beyond the "mere formality and legality" of expenditure to its "wisdom, faithfulness and economy". It also examined how far the Executive is adequately discharging its financial responsibilities in regard to various schemes and ascertain whether the schemes are being implemented effectively and economically and efficiently and whether they are producing the desired results. While dealing with individual cases of lapses, the Committee tries to identify loopholes or lacunae in systems and procedures and makes suitable recommendations to rectify the same.

For purposes of administrative convenience and scrutiny, the Committee divides the Audit paragraphs under three categories i.e. category A—very important paragraphs, category B—important paragraphs and category C—comprises the remaining paragraphs. While oral evidence is taken in the case of category A paragraphs, written information is called for in respect of category B paragraphs and in respect of category C, the Ministries/Departments are required to communicate to the Committee through the Ministry of Finance, the corrective action taken or proposed to be taken within a period of 3 months of the laying of the relevant audit report on the Table of the House.

As stated earlier, the reports of the Comptroller and Auditor General of India form the basis of deliberations of the Committee. None-the-less scrutiny by the Committees is not confined to matters dealt with in the Audit Reports only. The Committee has on its own on several occasions initiated enquiries into various irregularities/issues which have become public even though no formal Audit Report was presented to the House on the subject. To illustrate, the Committee recently took up for comprehensive examination the issue of grant of refunds of Central excise duties in all aspects and presented its Report to the House on 11-3-1991 (22nd Report—9 LS). This enquiry was initiated on a reference made to the Committee by Hon'ble Speaker on a specific request made to him by the Minister of Finance. This Report was wholly the result of the Committee's own findings as this was not based on Audit Reports.

The Committee has taken up new areas for enquiry in recent years. The Committee examined some of the key sectors of the economy in a broad overall context such as poverty alleviation programmes. The Committee carefully selected the issues in the purview of the government which were at the same time matters of vital public importance. Attempts have been made to take an objective view of the various aspects brought out in the Audit Reports and give constructive suggestions. The findings of the Committee in regard to shortfall in performance and suggestions to improve financial and administrative systems are quite significant in as much as the findings bring out forcefully how improvements can be effected in systems and procedures so that the best is achieved of the moneys allocated to various programmes/schemes.

The Committee is not concerned with questions of policy as such. However, where the Committee finds during evidence that a particular policy is not leading to the desired results or is leading to waste, it is open to the Committee to report to the House that a change in policy is called for.

Excess over Voted Grants

One of the functions of the Committee laid down in the rules is to examine and to report on cases of expenditure in excess of Voted Grants. If money has been spent on a service in excess of the amount granted by the House for that purpose, the Committee examines with reference to the facts of each case, the circumstances leading to such an excess and makes such recommendations as may deem fit. Such cases are, therefore, required to be brought before the House by Government for regularisation in the manner envisaged by Article 115 of the Constitution. While emphasising that excess expenditure is "unauthorised expenditure" which betrays a lack of financial discipline, the Committee has laid down that the only contingency in which such expenditure is understandable is when a need for unavoidable expenditure has arisen suddenly which could not have been anticipated or foreseen and there is no time left for the Ministry concerned to approach Parliament for a Supplementary Grant/Appropriation. Even in such cases, advance from the Contingency Fund of India should be taken.

Examination of Revenue Receipts

Traditionally, Parliamentary control over revenue has been equated with Parliament's prerogative to vote taxes proposed by the Executive. Till early sixties Parliament had lacked the requisite wherewithal for a detailed scrutiny of the revenue receipts of the Government. Since 1962, the Comptroller and Auditor General has been submitting to Parliament, Audit Reports on Revenue Receipts on an annual basis. Accordingly, the Committee has been examining Audit Reports on Revenue Receipts also. Considering the tremendous increase in revenue receipts of the Central Government the importance of a thorough scrutiny of tax collections can hardly be over-emphasised. It is obvious that any laxity or inefficiency in the fiscal administration can result in sizable shortfalls in collection with all their grave implications and must therefore, be rectified promptly. In tune with this thinking, the Committee devote considerable time to examine Reports of the Comptroller and Auditor General on Revenue Receipts on Direct Taxes and Indirect Taxes. While examining such Reports the Committee endeavours to see whether there is any laxity, inefficiency or waste in tax administration; in particular whether there are any loopholes or lacunae in the tax laws or procedures in force which are being or may be taken advantage of by unscrupulous elements for tax avoidance. The Committee also scrutinises whether the various tax concessions/exemptions given by the Executive — which involve a heavy revenue sacrifice on the part of Government — are resulting in the achievement of the purposes for which these have been given. The Committee's Reports on Revenue Receipts have resulted in plugging many a loophole in tax administration.

Activities of the Committee during Ninth Lok Sabha

Eversince the Committee became a Parliamentary Committee under the control of the Speaker i.e. since 25th January, 1950, it has presented 1093 Reports. During the term of Ninth Lok Sabha the Committee on Public Accounts held 32 sittings of 75.30 hours duration. During this period, 7 Working Groups were constituted for intensive examination of various issues taken up by PAC. The Committee/ Study Groups of the Committee undertook five on-the-spot study tours during the course of which 46 Establishments/Organisations were visited. In all 22 Reports (2 Original and 20 Action Taken) were presented during 1990-91. The salient recommendations made by the Committee in some of the Reports presented during the Ninth Lok Sabha are given in the Annexure.

It would be seen from the annexure that though the Reports are generally based on audit paragraphs, the subject areas are wide ranging and encompass the functioning of several departments.

ANNEXURE

Recommendations made in the Original Reports— Refunds of Central Excise Duties

In the past, the Committee had had several occasions to examine the issue of grant of refunds under the Central Excise Act. For instance, in its 46th Report (Seventh Lok Sabha), the Committee pointed out that in the prevailing conditions of a sellers' market in the country, as a measure of consumer protection it was imperative to ensure that refund of central excise duty did not result in unjust enrichment of the assessee at the cost of the consumers. The Committee had, therefore, reiterated the recommendations made in para 1.25 of its 95th Report (Fourth Lok Sabha) that a suitable enabling provision should be incorporated in the Central Excise Act on the lines of section 37 of Bombay Sales Tax Act which permitted forfeiture of the tax collected in excess by a dealer in contravention of the provisions of that Act.

In January 1991, a reference was made to the Committee by Hon'ble Speaker on a specific request made to him by the Minister of Finance that a comprehensive enquiry on all aspects of the issue relating to refunds of central excise duties be made. Pursuant to this reference and on comprehensive examination of the issue, the Committee presented its 22nd Report relating to Refunds of Central Excise Duties, on 11 March, 1991.

In this Report the Committee traced the history of this subject at length and came to the conclusion that the Government had shown little interest in carrying into effect the earlier recommendations of the Committee although successive Governments, including successive Ministers of Finance, repeatedly assured Parliament and the people that suitable provisions would be made in the applicable laws to deny refunds in cases of unjust enrichment. Noting that time and again, the Ministry of Finance have taken shelter under a number of pleas, many of which are untenable and repeated consultations with the Ministry of Law even with the Attorney General of India have produced no results, the Committee felt that there had neither been the will nor competence in dealing with a matter of such great public importance involving large revenue which had been pending since 1969 and recommended that atleast after this Report, the Government will wake up to its responsibilities and introduce suitable legislation within six months from the date of presentation of the Report to Parliament.

Concern expressed over the phenomenon of excess expenditure

In its 11th Report (9th Lok Sabha) the Committee note that during 1987-88 an expenditure of Rs. 304.15 crores was incurred in excess of the aggregate provision of Rs. 16550.17 crores sanctioned under 21 grants/appropria-

tions. During the year 1985-86 the excess expenditure, respectively, was of the order of Rs. 441.72 crores under 29 grants/appropriations while in 1986-87 it amounted to Rs. 384.39 crores under 25 grants/appropriations. The Committee observed that the situation during the year under report i.e. 1987-88 was no better and expressed concern over the phenomenon of excess expenditure and yet year after year, Parliament is thus being presented with a *fait accompli* of unremitting excess expenditure. According to the Committee, there was need for a more accurate estimation of monetary requirements and better budgetary control by various Ministries so as to reduce the excess expenditure over voted grants/charged appropriations to the barest minimum. The Committee, therefore, recommended that the Ministries should evolve some mechanism through which the progress of expenditure is monitored so that timely action is taken to ensure that expenditure does not overshoot the limits laid down by Parliament.

Action Taken Reports

The recommendations of the Committee have far reaching effect in toning up financial administration. Implementation of their recommendations is watched by the Committee through the Action Taken Reports. Hence the Committee is always held in high esteem and most of its recommendations are accepted by Government and implemented. Some of the important recommendations culled out from the Committee's Action Taken Reports presented during the Ninth Lok Sabha which have either been accepted by the Government for implementation or are under consideration are brought out in the succeeding paragraphs. In case where the Committee is not satisfied with the reply of the Government, it reiterates the recommendation and urges the Government to reconsider the matter.

(a) Functioning of Valuation Cells and Valuation of Immovable Properties.

In its 116th Report (8th Lok Sabha), the Committee had observed that there was no systematic appraisal of the management control and valuation process of the valuation cells and it was not possible to exactly assess its overall performance. In their Action Taken reply, the Ministry of Finance furnished data covering a period of last two years regarding the total number of cases in which the assessees preferred appeal against valuation, the number of cases in which it was reduced and the number in which valuation of properties done by valuation cell was deleted by Appellate Authorities. It was also stated that the CBDT had already issued instructions to the officers of field formation for making appellate orders available to the Valuation Cell in each and every case. Observing that the data furnished by the Ministry showed adverse decisions by the Appellate Authorities in as many as 77% of the cases of the Valuation of Properties, the Committee in its Third Report (Ninth Lok Sabha) recommended development of an effective system for feedback of information regarding results of appeals at periodical intervals and valuation rules/methods modified wherever required so as to avoid adverse decisions by the Appellate Authorities.

(b) Warehousing and Relinquishment of title to imported goods.

In the 124th Report (8th Lok Sabha) the Committee had recommended that Government should make necessary amendments in the Customs Act whereby the owners of the imported goods who availed of the warehousing facility should not be given the right to relinquish such imported goods after proceedings were initiated under Section 72 for recovery of dues. The Committee had also recommended that Government should prescribe a time limit under Section 23(2) of the Customs Act within which only the owners shall be allowed to relinquish their title to the imported goods, in all cases. In their Action Taken reply, the Ministry of Finance stated that action had been initiated for amendment to Section 23(2) of the Customs Act to deny the facility of relinquishing the title of goods cleared for warehousing and that the proposed bill was under discussion with the Ministry of Law. Since the Ministry's reply was silent on the Committee's recommendation for prescribing a time limit under Section 23(2) within which only the owners shall be allowed to relinquish their title to the imported goods, in all cases, the Committee in its Seventh Report (9th Lok Sabha) desired that amendments to the above effect should also be incorporated in the proposed Bill and brought before Parliament at the earliest.

(c) Supply of Drinking Water to Problem Villages— setting up of Monitoring and Investigation Units.

In its 85th Report (8th Lok Sabha), the Committee observed that the scheme of setting up Monitoring and Investigation units for regular flow of information about execution and commissioning of various water supply schemes had not been implemented seriously and recommended that there should be a system of regular inspection and test check by a Joint Team of the officers of Ministry of Works and Housing and of the State Government to find out that the rural population of the problem villages reported to have been covered were actually receiving drinking water. In their Action Taken reply the Government stated that funds had been provided to the State Governments for purchase of a computer for proper monitoring and evaluation of the progress of programme implementation which would in turn be monitored by the Department of Rural Development. While appreciating the efforts in involving a suitable monitoring system to ensure the successful implementation of the scheme for supply of drinking water to problem villages, the Committee in its 17th Report (Ninth Lok

Sabha) regretted that the Government had not touched upon the main issue as to how far the people in the problem villages reported to have been covered, were actually receiving drinking water. The Committee urged the Government to undertake in depth study in this regard and desired to know the results alongwith details of problem villages identified as also the steps taken to provide drinking water facilities in these villages.

(d) Huge avoidable expenditure deprecated

The Committee observed in its 53rd Report (8th Lok Sabha) that inordinate delay on the part of the Department of Telecommunications in finalising the main order was the real cause for the suppliers' refused to accept the repeat order for the procurement of the optional quality of 1.7 lakh lines, which resulted in huge avoidable expenditure to the tune of Rs. 1264.01 lakhs. The Committee had, therefore, *inter alia* recommended institution of a high level enquiry to pin-point the responsibility for this lapse. In pursuance of the Committee's recommendation, the Government of India appointed Shri S.N. Ranganathan, Retd. Member (TD) Telecommunications Board as a one man Committee. The Committee did not agree with the conclusion arrived at by the one man Committee that the extra expenditure of Rs. 1264.01 lakhs that had to be incurred for the procurement of 1,70,000 lines was entirely due to the circumstances prevailing in the international markets and was not forseeable or avoidable.

The Committee therefore, once again in its 19th Report (9th Lok Sabha) strongly deprecated the lackadaisical approach on the part of the Department of Telecommunications in processing their well established requirements and also their utter lack of concern for the financial interests of the country. The Committee desired that the Department going by the sad experience in this case should take all corrective steps in the light of the comments contained in its 53rd Report (8th Lok Sabha) so as to obviate the chances of recurrence of such cases in future.

(e) Reconciliation of Bank Accounts

In the 16th Report (Ninth Lok Sabha) while referring to the large arrears in the reconciliation of inter-branch accounts the Committee observed that 133.02 lakh entries involving a sum of Rs. 1,40,694.11 crores remaining outstanding were stupendous considering the total deposits in the banking system in the country as a whole. Such huge amounts of unadjusted/outstanding entries only reflect the poor state of affairs in the banking system. The Committee desired that the work relating to clearance of outstanding entries should be carefully monitored at an appropriate level and a time bound programme should be laid down for clearing the backlog. The Committee also desired that the entire question of continuing arrears in the work relating to reconciliation of inter-branch accounts of the public sector banks may be remitted to a High Powered Committee for making suitable recommendations for clearing the backlog as also for ensuring that there are always concurrent adjustments so that the accumulation of outstanding entries would not arise.

(f) Use of Foreign Technology in Fertiliser Plants

In its 167th Report (8th Lok Sabha) the Committee had noted that the technology of M/s. C.F. Braun had been recommended for two new plants by the Secretaries Committee but was recommended for only one of the two plants by an Expert Committee. The Cabinet sub-Committee was, however, reported to have rejected the technology of M/s. C.F. Braun for both the plants for certain specified reasons in favour of Haldor Topse technology. In the opinion of the Committee the decision to reject the technology of M/s. C.F. Braun was not based on any objective and proven criteria and had recommended that the entire issue may be thoroughly investigated by an Expert Committee.

The Committee had also noted that when in 1980 Government decided to adopt Haldor Topse technology the agreement had been entered into on the basis of transfer of technology but the Committee was surprised to note that the foreign exchange requirements continued to be at a high level of about 30%. The Committee had accordingly desired that the necessity for and circumstances under which the foreign collaboration had been continued should also be investigated by a Committee.

According to the Government, the recommendation of the PAC to the effect that the entire issue of technology may be thoroughly investigated by an Expert Committee was under consideration. The Committee has again emphasised in its 21st Report (9th Lok Sabha) that the entire issue of the kind of technology to be adopted should be remitted to an Expert Committee for thorough investigation without further loss of time and the outcome thereon may be reported to it at the earliest.

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Committee on Public Undertakings*

The character and functioning of Government underwent a radical change in our country after independence. With the increasing participation of the State in industry and trade, a large number of public undertakings have come into being. Public undertakings are important instruments of planned development. In December, 1990, there were 245 public undertakings with an investment of over Rs. 100 thousand crores. Since public enterprises are financed from public funds, it is essential that they must function within the confines of public accountability. The essential feature of this accountability in a democracy is direction and surveillance by Parliament. There is, however, no regular programme with a specific time schedule for discussion and review of the performance of public undertakings by the Parliament. The most effective form of Parliamentary surveillance over public sector is the examination by a Committee of Members of Parliament which is designated as the Committee on Public Undertakings.

The Committee on Public Undertakings, set up for the first time in 1964, is the youngest of the three Financial Committees, of Parliament. During its existence of twenty seven years, the Committee has significant achievements to its credit. Since its inception in 1964, the Committee has presented 431 Reports (215 Original Reports and 216 Action Taken Reports). Out of 215 original reports 28 were Horizontal Studies. During the Ninth Lok Sabha, the Committee on Public Undertakings held 37 sittings running into 77 hours and 40 minutes duration. The Committee constituted 5 sub-Committees/Study Groups and visited 39 establishments/organisations for on the spot study. The Committee presented 11 Reports in all during the Ninth Lok Sabha.

Constitution of the Committee

The Committee on Public Undertakings is constituted each year. It consists of 22 members comprising 15 Members elected by the Lok Sabha every year from amongst its Members, according to the principle of proportional representation by means of single transferable vote and 7 members of Rajya Sabha nominated by that House for being associated with the Committee. Thus, the membership of this Committee is drawn from almost all parties in Parliament in proportion to their respective strength and the system of election by proportional representation ensures this. Thus, the Committee constitutes a cross-section, not only of each House but of Parliament as a whole.

A Minister is not eligible to become a Member of the Committee. If a Member after his election to the Committee is appointed a Minister he ceases to be a Member of the Committee from the date of such appointment. The Chairman of the Committee is appointed by Speaker from amongst the Members of the Committee belonging to Lok Sabha.

Functions of the Committee

The functions of the Committee have been laid down in Rule 312A of the Rules of Procedure and Conduct of Business in Lok Sabha. These are:

(a) to examine the reports and accounts of the public undertakings specified in Fourth Schedule of the Rules;
(b) to examine the reports, if any, of the comptroller and Auditor General of India on the Public undertakings;
(c) to examine in the context of the autonomy and efficiency of the public undertakings whether the affairs of the public undertakings are being managed in accordance with sound business principles and prudent commercial practices; and
(d) to exercise such other functions vested in the Committee on Public Accounts and the Committee on Estimates in relation to the public undertakings specified in the Fourth Schedule as are not covered by clauses (a), (b) and (c) above and as may be allotted to the Committee by the Speaker from time to time.

The Committee is, however, precluded from examination and investigation of any of the following:

(i) matters of major government policy as distinct from business or commercial functions of the public undertakings:
(ii) matters of day-to-day administration; and
(iii) matters for the consideration of which machinery is established by any special statute under which a particular public undertaking is established.

Jurisdiction of the Committee

In terms of Rule 312A of the Rules of Procedure and Conduct of Business in Lok Sabha read with Fourth

*Contributed by Public Undertakings Committee Branch, Lok Sabha Secretariat.

Schedule to the Rules every government company whose annual report is placed before the Houses of Parliament comes within the purview of Committee on Public Undertakings. Thus all government companies incorporated under the Companies Act, 1956 in which Central Government is a member could be examined by the Committee. This is, not the case with the public undertakings established by special Central Acts. Only those undertakings set up under Central Acts which have been specified in Part I of the Fourth Schedule to the Rules can be examined by the Committee. Other undertakings can be brought within the purview of the Committee only through amendment to the schedule recommended by the Rules Committee and approved by the Lok Sabha as has been done on some earlier occasions. Some organisations like the Reserve Bank of India, State Bank of India and its subsidiaries, Nationalised Banks, National Bank for Agriculture and Rural Development and the Unit Trust of India are not included in Part I of the Schedule.

Working of the Committee

The Committee selects from time to time for examination, such Public Undertakings or such subjects as they may deem fit and as fall within their terms of reference. Keeping in view the constraints of time and staff, the Committee normally selects 7 to 10 undertakings for examination each year. The Committee may select for examination such Undertakings where comprehensive appraisals appear in the Audit Reports of the Comptroller and Auditor-General of India who assists the Committee in such cases in examination of the undertakings. The Committee may select on its own certain other undertakings/subjects for independent examination.

It has been a problem for the Committee to cope with the growing number of public undertakings. With a view to widen its scope of coverage, the Committee, in addition to the taking up of individual undertakings for examination, has taken up a horizontal study of one or more aspects of problem which are common to all the undertakings. The Committee had taken up the horizontal study on cost and time, overrun of projects undertaken by Public Undertakings' during the year 1990–91, but due to dissolution of Lok Sabha, the examination of the subject could not be completed.

Committee at Work

The Committee on Public Undertakings acts as the eyes and the ears of Parliament as far as the Public Undertakings are concerned. The reports of the Committee cover a wide gamut of activities and reveal the manner in which the public undertakings are functioning and suggest the areas where there is a tremendous scope of improvement.

The distinctive feature of the Committee's Reports is that they are concise, comprehensive and bring out in sharp focus the accountability of not only the Public Undertakings but also of the administrative ministries as well for efficient functioning of the undertakings. The Committee has tried to establish a nexus between the Plans of the Government and Public Undertakings. Short falls in physical, economic and financial terms are highlighted through the reports from time to time.

Besides, the Committee's appraisal is not only confined to financial performance of the Undertakings but includes wide range of important aspects which are crucial for the health of the Undertakings.

Project formulations and implementation has been a perpetually weak area in the management of Public Undertakings on which attention has been focussed by the Committee from time to time. The Committee has been recommending a vigilant control both by the management as well as the Government over factors causing time and cost overruns in the implementation of various projects. For instance in its *55th Report (Eighth Lok Sabha)* on Indian Oil Corporation Ltd.—Installation of two LPG Bottling Plants at Bangalore, the Committee had recommended that steps should be taken to ensure that projects are formulated realistically and completed by the scheduled dates and within estimated expenditure. The Committee desired that the Ministry should maintain un-remiting vigil over the projects undertaken by the undertakings under their administrative control. While the Government had accepted the recommendation of the Committee and had advised all oil companies to strengthen their system of project planning and implementation, the Committee after having taken into consideration the importance of monitoring system reiterated its earlier instructions again in the *Seventh Report* on Action taken by the Government on the above report.

The Committee's Reports have been unanimous and exposures of weaknesses and shortcomings have always been made in a constructive manner. The Committee not only criticises the Undertakings/Government for their deficiencies but also suggests corrective measures side by side. For instance in the 44th Report on Shipping Corporation of India the Committee had taken a serious note of the fact that there was no scheme for cargo support for Indian vessels at India Ports, as was the practice followed in many countries in the world. It had, therefore, recommended that in order to get the Indian Shipping enough cargo there was an urgent need to ensure compulsory support to Indian Ships through a legislation so that the Indian Shipping industry should remain in business. The Ministry, while replying to this recommendation had stated that though the Ministry of Surface Transport was in favour of Parliamentary legislation but apprehensions had been expressed in certain quarters that this may adversely affect Indian export trade. The Committee, however, expressed strong displeasure for

not having taken any action to bring about the proposed legislation, and re-emphasised the enactment of the same without any further delay in their 5th Report of Action Taken on Shipping Corporation of India.

The Committee appreciates the difficulties and constraints faced by the public undertakings and recommends suitable remedial action to be taken at the Government level. On the other hand the Committee is also critical about irregularities committed by any officer of the Undertaking/Ministry, however, highly placed, he or she may be. To cite an example, the Committee in its Ninth Report on ONGC—Avoidable payments of Rs. 89.06 lakhs made to a foreign contractor beyond the terms of the contract had expressed unhappiness over the manner in which the Member (Off-shore) had transgressed his authority and did not even care to inform the competent authority of the final results of negotiations carried out by him with the contractor. He was allowed to resign and the ONGC was not even aware of the irregularities committed by him. In the Committee's view this had cast a sad reflection on the working of ONGC and the Government. The Committee had, therefore, recommended that the responsibility for accepting the resignation of the Member (Off-shore) without having taken any action against him for irregularities committed by him should be fixed and the Committee appraised of the outcome.

The Committee also suggests corrective action where it finds that certain uncalled for deviations have been made from the laid down Acts or procedures. For instance in its 10th Report on Air India—Undue Benefit to Private Operators—the Committee observed that under the Air Corporations Act it is unlawful for any one other than the Corporations (Viz. Indian Airlines and Air India) or their associates to operate any scheduled air transport service which is provided by either of these Corporations. The Committee noticed that air taxis operations are being permitted to all airports in the country which are open to scheduled operations. The taxi operators have also got fixed time schedule for their flights. The Committee, therefore, did not consider these services under Air Taxis scheme as non-scheduled operations and have recommended a further examination of the matter in the light of the provisions of the Air Corporation Act.

Implementation of Recommendations

The Committee is not satisfied with only presentation of Reports. It has devised a system of watching implementation of its recommendations/observations. The Committee calls for replies from the Government within 6 months of presentation of Reports showing action taken by the Government on its various recommendations. A Sub-Committee of the Committee scrutinises these replies and prepares Action Taken Reports which, after approval by the main Committee is presented to both Houses of Parliament in the same manner as original Reports. In the Action Taken Reports, the Committee may accept the replies of the Government or may not accept. The Committee in the latter cases may reiterate its earlier recommendations and offer remarks/observations as is deemed fit.

Impact of the Committee's Report

Going by the comments that appear in the National Press from time to time, it can safely be said that Committee has been able to create an impact on the Public Sector, Government, and the Public. The Committee on Public Undertakings has not succeeded merely in its primary task of facilitating effective parliamentary oversight upon the functioning of public enterprises, but has undoubtedly filled a need. Its many Reports provided at one convenient point the fruits of critical and constructive examination of the Vast and multifarious experience that has already been gained in public enterprise administration and management.

The Committee on Public Undertakings is the only device available to the management whereby they are able to meet representative of the people directly and in-confidence giving them the opportunity to explain their problems and difficulties not only in management but vis-a-vis Government. But for this mechanism their point of view have to be put to Parliament through the agency of a Minister which is possible only to a limited extent. The Committee on Public Undertakings is again the only forum where Parliament, Executive and the management directly meet each other, face to face, as it were, and moved by a common purpose they endeavour to analyse the problems of public enterprises, and find out acceptable solutions for the better planning and management of these enterprises.

In short, the Committee on Public Undertakings has performed very useful function in giving substance to the concept of accountability of the public undertakings to Parliament. It is for that reason that the Committee is regarded as one of the most important and influential Parliamentary Committees.

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Committee on the Welfare of Scheduled Castes and Scheduled Tribes*

Under the provisions of Article 338 of the Constitution, a Special Officer designated as Commissioner for Scheduled Castes and Scheduled Tribes investigates all matters relating to the safeguards provided for Scheduled Castes and Scheduled Tribes and reports to the President upon the working of those safeguards. The reports of the Commissioner are laid before each Houses of Parliament. The Commissioner has so far submitted 29 reports.

The Reports of the Commissioner, on motion moved, can also be discussed in the house. During the course of discussion on the Fourteenth and Fifteenth Reports of the Commissioner in Lok Sabha in August 1967, suggestions were made by several Members that a standing Parliamentary Committee be set up with full investigating powers to look after the safeguards for Scheduled Castes and Scheduled Tribes and to ensure the implementation of recommendations made by the Commissioner in his reports. The suggestion was accepted by Government and a Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes was constituted in 1968. The term of office of members of the Committee was initially for a period of two years from the date of the first meeting of the Committee which was held on the 18 December 1968. the Committee was reconstituted in August 1971 and September 1973. Consequent on the incorporation of the provisions relating to the Committee in the Rules of Procedure and Conduct of Business in Lok Sabha in December 1973, the Committee became a Standing Committee and its term now does not exceed one year. The important functions of the Committee as given in Rule 331A of the Rules of Procedure of Lok Sabha, *interalia*, are to consider the reports submitted by the Commissioner for Scheduled Castes and Scheduled Tribes, to examine the measures taken by the Union Government to secure due representation of the Scheduled Castes and Scheduled Tribes in services and posts under its control (including appointments in the Public Sector Undertakings, Nationalised Banks, Statutory and Semi-Government bodies and in the Union Territories) having regard to the provisions of Article 335; and to review the working of welfare programmes for Scheduled Castes and Scheduled Tribes in the Union Territories and to examine such other matters as are specifically referred to it by the House or the Speaker.

After the constitution of Ninth Lok Sabha in November 1989 a motion was moved in Lok Sabha on 30 March 1990 for holding elections for constituting the Committee on the Welfare of Scheduled Castes and Scheduled Tribes for the year 1990-91. The Committee was constituted on 23 May 1990 for the term ending on 30 April 1991 and Shri Anadi Charan Das who had earlier been also Chairman of this Committee for the three consecutive terms, i.e. for 1982-83, 1983-84 and 1984-85, was appointed its Chairman by the Speaker. With the dissolution of the Ninth Lok Sabha on 13 March 1991, the tenure of the Committee came to an end.

The Hon'ble Speaker of Lok Sabha, Shri Rabi Ray, in his inaugural address in May 1990 appreciated the commendable work done by the Committee and observed that the recommendations made by the Committee had by and large, been accepted by the Government and appropriate measures taken to comply with these recommendations in letter and spirit. The Speaker further expressed the hope that the Committee would generate new ideas and hammer out fresh approaches which would help in ensuring effective implementation of the policies in regard to a very important area of Governmental activity.

The Committee selected, for examination in depth, subjects of varied interests pertaining to the welfare of Scheduled Castes and Scheduled Tribes. In selecting the subjects, the Committee gave due importance to the issues which had a bearing on the socio-economic conditions of Scheduled Castes and Scheduled Tribes. The Committee took up subjects such as representation of Scheduled Castes and Scheduled Tribes in services of Central Government Departments, Central Public Undertakings and Nationalised Banks credit facilities provided to Scheduled Castes and Scheduled Tribes by the Nationalised Banks and working of Integrated Tribal Development Projects. As a measure to oversee the implementation of recommendations made by the Commissioner in his reports, the Committee asked the Ministry of Welfare to furnish the action taken replies to the recommendations contained in the 28th and 29th Reports of the Commissioner.

By virtue of its terms of reference, the Committee have taken special care to elicit information or clarifications from the Government as to the action taken on the recommendations made by the Commissioner for Scheduled Castes and Scheduled Tribes.

*Contributed by SCTC Branch, Lok Sabha Secretariat.

In its short tenure during the Ninth Lok Sabha, the Committee held 18 sittings which lasted for 37.30 hours. In addition, five sittings of the six Study Groups constituted for detailed examination of the subjects selected for examination during the year 1990-91 were held which lasted for 04.30 hours.

The Committee presented 6 reports on various subjects as per details given in Annexure. Some of the important matters dealt with in these reports are mentioned below:

As an endeavour towards ensuring the representation of the Scheduled Castes and Scheduled Tribes on the Board of Directors of all the Nationalised Banks, the Committee had recommended in their 49th Report (1988-89) on Dena Bank that the process of selection of non-official Directors, including one SC/ST Director, for appointment on the Board of all the Nationalised banks might be completed without any further loss of time. This endeavour of the Committee succeeded in securing a positive response from the Ministry of Finance who in their reply, dated 12.10.1990, informed that SC/ST members had been nominated on the Boards of 12 Nationalised Banks. The Ministry further assured to the Committee that the SC/ST Directors on the Boards of the other nationalised Banks would be appointed as soon as vacancies on these Boards were filled up or the process of selection of non-official Directors for appointment on Boards of all the Nationalised Banks was completed. The Committee have also been consistently recommending for inclusion of one SC/ST member on the Boards of other Central Public Undertakings.

As housing is one of the basic needs of the people, the Committee have been recommending that the ceiling of Rs. 5,000/- for housing loan for Scheduled Castes and Scheduled Tribes who in general are economically vulnerable should be enhanced in the light of the fall in the value of rupee since 1979 when the scheme was introduced. The Committee have reiterated this view point in their Fifth Report (Ninth Lok Sabha) on Action Taken by Government on the 49th Report of the Committee on Dena Bank (Eighth Lok Sabha).

Keeping in view the existing backlog of vacancies reserved for Scheduled Castes and Scheduled Tribes in the technical posts, the Committee have emphasised the need for long term manpower-planning for SCs/STs for various technical posts.

As a measure to improve the intake of SC/ST candidates in the Banking industry, the Committee have recommended in their Fifth Report that the pre-recruitment training being given to SC/ST candidates by the banks should be so structured that it prepares them not only for written tests but for interviews also. Further, the banks should have a proper tie-up with the State Government institutions so as to provide accommodation and other facilities to SC/ST trainees who do not have means to make such arrangements for them in towns/cities.

The Committee have also gone into the procedural details in their reports in connection with the filling up the reserved vacancies and have suggested remedial measures wherever lapses or lacunae were observed in following the prescribed procedure for filling up the reserved vacancies.

The Committee divided itself into Study Groups and undertook tours for on-the-spot study of 44 Central Public Undertakings/Nationalised Banks/Other Bodies in connection with the representation of Scheduled Castes and Scheduled Tribes in services and providing of credit facilities to Scheduled Castes and Scheduled Tribes by the Nationalised Banks. Besides, during study tours specific schemes formulated for the benefit of Scheduled Castes and Scheduled Tribes by the Union Government such as 'Special Component Plan' for Scheduled Castes and 'Tribal Sub-Plans' for Scheduled Tribes were also discussed at length with the State Government officials in the States of Orissa, Andhra Pradesh, Madhya Pradesh, Uttar Pradesh, Maharashtra and Bihar and with the Administrations of Union Territories of Andaman & Nicobar Islands and Lakshadweep Group of Islands. The various socio-economic measures taken/proposed to be taken by the aforesaid State Governments, Union Territory Administrations were also discussed during the course of on-the-spot study visit by the Study Groups of the Committee. An on the spot study visit was also undertaken by the Committee in August 1990 to Agra and some other adjoining villagers to look into the cases of alleged mass atrocities inflicted upon Scheduled Caste population at these places.

During the Ninth Lok Sabha, the Committee laid on the Tables of the two Houses of Parliament, 7 Tour Reports on Study Tours performed in different parts of the country for understanding the problems of the Scheduled Castes and Scheduled Tribes.

298 representations from Scheduled Castes and Scheduled Tribe Employees' Welfare Associations and also from individuals regarding implementation of the reservation policy and a variety of other aspects were received and dealt with.

Over the years, the Committee has developed into an effective instrument for safeguarding the interests of Scheduled castes and Scheduled Tribes. The Committee have made considerable impact on the Government and the Public Sector Undertakings, Nationalised Banks in sofaras the socio-economic upliftment of Scheduled Castes and Scheduled Tribes is concerned. An awareness has also been created that there is a watch-dog Committee of Parliament to exercise surveillance on the implementation of the Constitutional safeguards provided for Scheduled Castes and Scheduled Tribes.

Annexure

List of Reports of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes (Ninth Lok Sabha)

Sl. No.	No. of Reports	Subject	Date of presentation
1.	1st Report	Action Taken by Government on the Recommendations contained in the 46th Report (8th Lok Sabha) on the Ministry of Tourism on Reservations for and employment of Scheduled Castes and Scheduled Tribes in India Tourism Development Corporation.	4.8.1990
2.	2nd Report	Action Taken by Government on the recommendations contained in the 48th Report (8th Lok Sabha) on the Ministry of Commerce on Reservations for and employment of Scheduled Castes and Scheduled Tribes in State Trading Corporation.	7.9.1991
3.	3rd Report	Action Taken by Government on the recommendations contained in the 47th Report (8th Lok Sabha) on the Ministry of Railways (Railway Board) on Reservations for and emplyment of Scheduled Castes and Scheduled Tribes in Eastern Railway.	9.1.1991
4.	4th Report	Reservations for an employment of Scheduled Castes and Scheduled Tribes in Indian Railway Construction Company Limited.	11.8.1991
5.	5th Report	Action Taken by Government on the recommendations contained in the 49th Report (8th Lok Sabha) on the Ministry of Finance (Deptt. of Economic Affairs—Banking Division) on Reservations for an employment of Scheduled Castes & Scheduled Tribes in Dena Bank and credit facilities provided by the bank to Scheduled Castes & Scheduled Tribes.	11.8.1991
6.	6th Report	Reservations for and employment of Scheduled Castes and Scheduled Tribes in Indian Airlines.	12.3.1991

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Conference of Presiding Officers of Legislative Bodies in India*

The Conference of Presiding Officers of Legislative Bodies in India has now become a permanent feature in the Parliamentary Democracy of our country. This Conference had its inception in 1921 in the wake of the Montague-Chelmsford Reforms. As many as fifty-five Conferences have been held so far, the last being held at Bhopal in September, 1989 under the Chairmanship of Dr. Bal Ram Jakhar, the then Speaker of Lok Sabha.

The idea of holding the Conference of Presiding authorities of all Legislatures in India originally emanated from the late Lord Montague, the then Secretary of State for India. Lord Montague, took keen interest in the establishment of parliamentary institutions in this country and was responsible for the famous declaration of the policy of the British Government towards India on August 20, 1917 envisaging the gradual development of self-governing institutions with a view to progressive realisation of responsible Government in this country.

The first Conference of the President of the Central Legislative Assembly and the Presidents and Deputy Presidents of the Legislative Councils in the Provinces was convened on September 14 and 16, 1921.

The first Conference, presided over by a nominated President, became since 1926 a Conference of elected Presidents. The late Shri Vithalbhai J. Patel who was elected President of the Central Legislative Assembly in 1925 gave a momentous impetus to the Conference during the term of his office. President Patel not only maintained the convention laid down by his predecessor Sir Frederick who with his wide and generous outlook did much for establishing sound democratic conventions in India but further secured to the Legislature the very vital right of independence of the Legislature Secretariat from the control, direct or indirect, of the Executive Government. The scope of the discussions at the Conference, was, however, then limited by the subordinate status and fewer powers enjoyed by the Central and the Provincial Legislatures. These Legislatures were partly elected and partly nominated and their role was mainly advisory. The application of the parliamentary form of procedure to the Legislature to which the Executive was not responsible, was obviously incongruous in substance though the usefulness thereof to a great extent could not be questioned.

On the introduction of Provincial autonomy in 1937, a new era started in which the Provincial Legislatures had more features in common with the British House of Commons than they used to have before. The character of Central Legislature in substance and spirit was entirely transformed first with the advent of the Interim Government in 1946 and then with the coming into force of the new Constitution in 1950. Under the new Constitution, responsible Governments were set up at the Centre and in the States. The Central and the State Legislatures became sovereign in respect of subjects assigned to them. It was a transition from form to substance. With the real introduction of democratic principles and of an Executive responsible to the Legislature at the Centre and in the State, the discussions at the Conference also acquired a different and real meaning. The late Shri G.V. Mavalankar who was elected Speaker of the Central Legislative Assembly in 1946 did much to maintain and indeed enhance the dignity and sovereignty of Parliament and of the State Legislatures. He laid strong foundations of Parliamentary democracy in India and strengthened the working of the Presiding Officers' Conference. With great imagination and foresight endowed as he was, Speaker Mavalankar guided the destinies of the Conference from 1946 till his death in 1956 and helped to put the working of the State Legislatures on sound and correct lines.

The Conference of Presiding Officers was convened periodically upto 1946. But Mavalankar, who found the Conference as a useful adjunct to parliamentary institutions decided to convene it annually. All the Presiding Officers thereafter met annually except on few occasions. They thus developed personal contacts, exchanged views and experiences and decided, in mutual consultations, upon a course which helped, the development of Parliamentary Government in India.

Speaker Mavalankar was of the view that it was necessary for Presiding Officers of Legislatures to meet annually to compare notes, take stock and discuss particular difficulties that arise from time to time in the working of democracy and gain from mutual experience and also to strengthen the conviction that the precedents that they were setting from time to time were sound ones. Such meetings were also necessary for personal contacts which inspire them to stand together and work with collective thought and strength for advance of democracy not merely in form but in substance.

The Conference of Presiding Officers has played an important part in bringing together people from all parts of India. From its inception to the year 1950 the venue of the

*Contributed by the Conference Branch, Lok Sabha Secretariat.

Conference was either Delhi or Shimla. In 1950, Speaker Mavalankar considered that the purpose of the Conference would be better served if it could be held at different centres in the various States instead of meeting always at one place. He was of the opinion that in this way various Presiding Officers would not only benefit by personal touch with different parts of the country but they would also do a great deal to foster a sense of national unity. His suggestions were accepted and appreciated by the Presiding Officers of State Legislatures and accordingly since 1951 the Conference was held at different places.

The object of the Conference, as stated in the Resolution adopted at the Third Conference held at Delhi in December, 1923 was "to secure the appropriate coordination of parliamentary procedure throughout India." Many revolutionary changes took place since the thirties in the functions of Government and powers of the Legislatures in India and thereby in the substance and the spirit of parliamentary procedure.

The aims, objects and scope of the Conference changed with the democratization of Legislatures and evolution of responsible Governments in the country. The changes in the aims and outlook of the Conference can be seen from the Memoranda submitted and addresses delivered by the various Chairman of the Conference from time to time.

Shanmukham Chetty, President of the Central Legislative Assembly observed that the purpose of these Conferences was to coordinate as far as possible, the procedure of all the Indian Legislatures to enable the Presidents to exchange in full and free confidence, their experiences and the general results of their work in their respective Chairs, and last but not the least, to ensure that Parliamentary institutions in British India should develop along the right lines.

Later Sir Abdur Rahim, President of the Central Legislative Assembly, while addressing the Conference held at New Delhi stated that the object of the Conference was to enable them to understand the different points of view and if possible to arrive at a sort of understanding as to what would be the right procedure to follow in a given case... if by this Conference they could arrive at a coordination of the practice of the different Houses it would be all to the good. They should try, as best as they could, to establish sound traditions and sound practice which would help the growth of responsible government in the country.

After the advent of the Interim Government in 1946 Mr. Speaker Mavalankar in his address to the Conference held in New Delhi, in January, 1947 spoke about the objects that such Conferences were to give opportunities of pooling resources as also of learning by experience and by exchange of views. They gave them an opportunity of personal contacts for comradeship in the service of country, and went a great way in enabling them to discharge their responsibilities more efficiently.

After the promulgation of the Constitution of India in 1950, the Conference not only discussed matters of procedure but also matters of importance due to changed political set up and very substantial question of the effective control of the Legislature over the Executive.

In December, 1960, Speaker Ayyangar in his address to the Conference held at Bangalore stated:

> "Hitherto at our Conference we had been discussing only points on parliamentary procedure and practice. I feel that we should also discuss some current topics of general interest with special reference to the working of democracy in our land. I, therefore, suggest that we might make a beginning this time in that regard. So, on the first day, i.e. today we shall not be discussing the procedural points received from various Presiding Officers. Instead we shall have a general discussion on the many points that have arisen inside and outside our country and in particular we shall discuss "Groups within parties in the Legislatures and their effect on the work of (a) Legislature, (b) Government, and (c) Administration." For the future Conferences I would expect you to suggest some general topics in addition to the points on procedural problems which you may have faced during the year."

Organization and working of the Conference

The Conference of Presiding Officers is now convened annually for 2 days at different places by rotation. The venue is settled in advance mostly at the previous Conference. The dates of the Conference are settled by the Chairman of the Conference in consultation with the Presiding Officers of the host State Legislatures after ascertaining the convenience of other Presiding Officers.

Agenda of the Conference is settled by a Standing Committee of Presiding Officers chaired by Speaker, Lok Sabha after inviting points for discussion from the Presiding Officers of State Legislatures. Besides the points on parliamentary procedure, matters of common interest are also discussed by the Conference.

In addition to the Speaker of Lok Sabha, the Conference is attended by the Deputy Speaker of Lok Sabha, Deputy Chairman of the Rajya Sabha and the Speakers, Chairmen, Deputy Speakers and Deputy Chairmen of all State Legislatures including Union Territories. Secretaries/Officers of State Legislatures attend as advisers to their Presiding Officers.

The Speaker of Lok Sabha is ex-officio Chairman of the Conference. The Secretary-General of Lok Sabha is ex-officio Secretary of the Conference and the Lok Sabha Secretariat functions as the Secretariat of the Conference.

Achievements of the Conference

The Conference of Presiding Officers has played a very important role in the evolution of Parliamentary Democracy in India. The Conference though started with a limited object of "appropriate coordination of parliamentary procedure throughout India," has gone a long way in establishing sound traditions of democracy and parliamentary procedure in all the Legislatures in the country. The Conference, besides providing opportunities for developing personal contacts between the Presiding Officers coming from all parts of the country has now become a forum for them to discuss their common problems and to find solutions therefore. It has enabled Presiding Officers to coordinate their work in the different Legislatures and compare notes so as to be able to evolve the best forms of procedure necessary or suitable in the light of their experience. The Conference has also played a very important part in the difficult task of establishing uniform and effective parliamentary conventions throughout India. The working of Legislatures in those States where Legislatures were new and had no previous experience, has been put on the correct lines through this Conference.

Conference of Secretaries of Legislative Bodies in India

Like the Conference of Presiding Officers of Legislative Bodies in India, the Conference of Secretaries of Legislative Bodies in India has also become a permanent feature in the country. The idea of this Conference was first mooted at Conference of Presiding Officers held in 1950. The Conference unanimously agreed with the proposal. The first Conference of Secretaries of Legislative Bodies in India was held in Gwalior in October, 1953 under the Chairmanship of Shri M.N. Kaul, the then Secretary of Lok Sabha. So far, 36 Conferences have been held, the last being held at Bhopal in September, 1989.

The purpose of holding this Conference, as summed up by M.N. Kaul was "to discuss matters of administration of Legislature Secretariats and technical questions of procedure at the Secretaries' level." Secretaries of Legislature facing problems and difficulties in the day to day discharge of their duties as Secretary of the House and as administrative head may come to a forum to discuss the matters and arrive at conclusions which may be beneficial to one and all.

The Conference of Secretaries is now convened annually before the Conference of Presiding Officers for one day. The date of the Conference is settled by the Chairman of the Conference in consultation with the Chairman of the Presiding Officers Conference.

The agenda of the Conference is settled by a Committee of Secretaries after inviting points for discussion from the Secretaries of State Legislatures. Besides, the points on administrative and parliamentary procedure, matters of common interest are also discussed by the Conference.

The Conference is presided over either by the Secretary-General of Lok Sabha or Secretary-General, Rajya Sabha.

After the welcome speech by the host Secretary, the Chairman of the Conference addresses the Secretaries highlighting *inter-alia* administrative decisions and/or advices tendered by him in the House on different parliamentary matters.

The Conference is held *in camera*. However, press release relating to the points discussed by the Conference is issued at the conclusion of the Conference.

The Conference of Secretaries has played a very important role especially in establishing Legislature Secretariats independent of Executive. The Conference also prepared reports on the Staffing pattern of Legislature Secretariats for effective secretarial assistance to the Legislature and its various committees in discharge of their duties, uniformity of question procedure, salaries to the Members; etc. The Conference has enabled Secretaries to develop personal contacts and to discuss common problems and to find solutions, therefor. It has also enabled them to coordinate their work so as to evolve best forms of procedure suiting to their requirements.

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Parliamentary Museum and Archives*

The foundation of Indian democracy was laid centuries ago. *Janata Janardana* (the people are God) *Panchamukhi Parameshwara* (the voice of the people is the voice of God) are sayings in India since times immemorial and these never ceased to inspire the people even after the democratic institutions like *Sabha* and *Samiti* of remote milleninia had vanished. The democratic ideas of *Dharma* (Rule of law) and King as *Dhirtavrata* (upholder of law) permeated the minds of men. And even in the midst of foreign invasions and political convulsions that frequently shook the country, the democracy continued to function at grass root levels; the villages had their assemblies and panchayats.

On such democratic foundations and the inspiration that it drew from the British and other liberal democracies and the experience that it gathered in operating the modern parliamentary institutions during British rule, did our Constitution makers erect the democratic structure after independence.

Parliamentary Museum and Archives which is a window to evolution of such democratic institutions seeks to preserve for posterity all the precious records, articles, and many historical items connected with the origin, growth and activities of parliamentary institutions and the Constitution of India. A visit to the Museum kindles in the people an awareness of their heritage. It also instils in our youth respect for our national leaders and the freedom fighters of yester years.

The Parliamentary Museum and Archives (P.M.A.) was inaugurated on 29 December, 1989 by the Hon'ble Speaker, Rabi Ray. Temporarily located on the First Floor of the Parliament House Annexe, we hope to find a permanent abode for the PMA in more suitable environs in the near future. Immediate arrangements for accommodating the PMA in administrative building were necessary to collect and preserve the material already available with Lok Sabha Secretariat with the parliamentarians and the families of such parliamentarians who are no longer alive or who did not have the means to preserve them from loss, destruction and decay.

The Museum has been thematically organised in three sections. Section one recalls the nature of the democratic institutions that existed as early as the Vedic age (Circa 3000 BC to 1000 BC). Among the various objects on display are a mural of King Mahameghava hana-Kharavela of Kalinga and his Jaina Council held at Udayagiri in 13th year of his reign (2nd century BC). The mural portrays the idea that rulers of those days were not despots but were guided by the advice of their ministers and counsellors. Another mural shows Buddha with Ananda and Vassakara, Prime Minister of the King of Magadha seeking Buddha's advice on the preparations for war with the Vajjians confederacy. Instead of replying to Vassakara directly, Budha asked Ananda as to whether Vajjians were holding full and frequent assemblies, maintaining internal concord in the assembly and administering them, avoiding sweeping laws and measures, following old traditions, honouring shrines, elders and women. To each of these queries, Ananda replied in the affirmative and the Buddha emphatically asserted that in that case they (Vajjians) may be expected not to decline but to prosper. The queries of Buddha are in fact conditions on which only, a republic can flourish. A photograph of a column of Sanchi Stupa Gate shows an assembly of elected representatives of one of the Republics which flourished during Buddha period.

The section also shows how representative institutions first grew up under British rule. It records various landmarks in progressive realisation of responsible government leading to independence the subsequent framing of the constitution and elections. The Section also shows how each House of Parliament was constituted from time to time, and the devices it employed to ensure accountability of the executive. Besides, photographs of distinguished freedom fighters, eminent parliamentarians, replica of cellular jail in the Andamans where freedom fighters were interned are also displayed. The personal collections of President Dr. Zakir Husain and Speaker G.V. Mavalankar are extremely evocative. The objects that engage the attention of the visitors most are the picturesque dress of the Marshal and the wig of President of erstwhile Central Legislative Assembly. These are the finest collections of souvenirs of British period in India. A Calligraphic copy of the Constitution and the Book of Rolls are other objects of interest and scrutiny of the visitors. Some of the most interesting documents among the many preserved in the Archives and on display here, relate to such illustrious figures of our nation as—Mahatma Gandhi, Jawaharlal Nehru, G.V. Mavalankar, C. Rajagopalachari and others. We find a letter written entirely in Indira Gandhi's hand and addressed to her aunt Vijaya Lakshmi Pandit. The display in this section follows a chronological order. Each display leads naturally to the next and both are visually and harmoniously linked together.

Section two throws light on Parliaments of the World. Photographs and models of buildings of various foreign Parliaments are displayed. Gifts and presents received from foreign Parliaments and dignitaries for Parliament of India

*Contributed by Parliamentary Museum and Archives, Lok Sabha Secretariat.

are also beautifully arranged in separate show-cases.

Section three is about Legislatures in the States. In this Section, impressive scale models and photographs of Legislature buildings, and other objects including publications pertaining to them are displayed.

The Portraits of distinguished freedom fighters and eminent parliamentarians which were unveiled in the Central Hall, Parliament House, from time to time, adorn a separate portraits Gallery in the Museum.

The Museum sets up from time to time temporary exhibitions ranging from activities of the Parliament to life and work of eminent parliamentarians. These have provided an excellent opportunity to bring such information to the attention not only of the Members of Parliament but the layman as well. The PMA has become a centre of attraction to our young boys and girls from all over India who come to Delhi on educational tours.

The Parliamentary Museum and Archives during its pre-inaugural period had diligently collected through correspondence and personal contacts objects, photographs, diaries and papers relating to Parliament and parliamentarians. Today it has a collection of about 6000 photographs, papers of 58 parliamentarians, besides films, tapes, video cassettes and gift items. It accepts private papers of parliamentarians irrespective of their political affiliations. Members wishing to hold their papers confidential for a specified number of years, are provided with the facility. At a future date the archives will be thrown open to public.

The immediate future programme of the Museum includes establishing an audio and video lounge where visitors can listen to important speeches or see the films relating to our freedom struggle, the life and work of important leaders and activities of the Parliament. Our planning for the future which can only materialise when the Museum has its own building, includes setting up of a gallery on the freedom struggle, arranging lectures, film-shows, seminars, workshops and parliamentary festivals, making galleries enjoyable through the use of colour, sound, light and animation and other modern exhibiting techniques, developing a store where one can buy souvenirs like small replica of Parliament House, portraits etc. In short our hopes, plans and even fantasies are many and varied.

The Parliamentary Museum is situated in a building which is under high security. It is open to public only during certain periods or by prior appointment. For a Museum this is not a happy situation. However, as long as it is within the security zone, such restrictions have to be observed. But despite this limiting factor, it has been able to attract a number of visitors, including high dignitaries from India and foreign countries. They have found the visits to the Museum rewarding.

The opening of the Museum before acquiring a permanent abode has in a way been beneficial. It will be possible to introduce refinements in the layout on the basis of observations and criticisms.

The Parliamentary Museum and Archives, however, needs patrons to make its dream come true. We want public figures, leaders, ministers, eminent parliamentarians as patrons, who can deposit their diaries, photographs, papers and others objects in our Archives.

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Perspective Approach to the Tamil Nadu Legislature*

The present Tamil Nadu was the residuary part of the erstwhile Madras Presidency, which was comprised of Tamil Nadu, present Andhra Pradesh excluding former native State of Nizam, South Kanara District and Kollegal of present Karnataka, Malabar District of present Kerala and a portion of Ganjam District of present Orissa as the composite State of Madras. On the 18th October, 1953 a separate Andhra State consisting of the Telugu-speaking areas in the composite Madras State was formed. The Madras city was however retained by the New Madras State. Subsequently, under the State re-organisation scheme, the Malabar District was merged with Kerala State. In pursuant to the resolution unanimously adopted and recommended by the Legislative Assembly during the Chief Ministership of Dr. C.N. Annadurai, the nomenclature "Madras State" was changed into "Tamil Nadu State". However, the capital city is still known by its old name, Madras.

The first independent Legislative Body, known as the Madras Legislative Council was set up for the Province of Madras in 1921, under the Government of India Act, 1919. The Council met for the first time on the 9th January, 1921 at Fort St. George, Madras. The important milestone in the Legislature history came in the guise of Government of India Act, 1935 by which a bi-cameral Legislature was constituted for the province of Madras in July, 1937, after a general election. Then came the Indian Independence Act, 1947 and subsequently the Indian Constitution came into force in 1950 allowing the existing Legislature to function as Provincial Legislature till a new Assembly was constituted after a General Election, in 1952. The first Legislature of the present Tamil Nadu State was constituted in March 1952, after the first General Elections based on Adult Suffrage.

In 1986, a Government Resolution, seeking to abolish the Legislative Council was moved and adopted by the House. Thereafter it was passed by both the Houses of Parliament and the Act came into force on 1st November 1986. Thus, the Bi-cameral Legislature established in Tamil Nadu in 1937 under the Government of India Act, 1935, became a unicameral Legislature from 1st November, 1986. The Government, however, brought forward a resolution on 20.2.1989 in the House to revive the Legislative Council and the same was carried in the Assembly. It has been pending with the Parliament for its approval.

Golden Jubilee of the Tamil Nadu Legislative Assembly

Though delayed by two years, the ninth Assembly had celebrated the Golden Jubilee of the Tamil Nadu Legislature function in 1989. On this occasion many Senior Legislators (former as well as the present) were honoured.

Special Features of Legislative Powers

Tamil Nadu Legislative Assembly is a forerunner in making progressive laws. During the last four decades or so, this august body had passed several historical enactments. To cite a few, it was during the Chief Ministership of Hon. Rajaji that this House had enacted an important Act conferring equal rights to all people, whether they are backward or forward, to enter all temples in the State and worship God. He was also responsible to pass the Sales Tax Act, the first of its kind in India.

During the Chief Ministership of Hon. Kamaraj, a significant Act was passed to give full protection to the farmers recognizing their rights and awarding them rent on 60-40 basis. As a true disciple of E.V. Ramasamy Naicker, C.N. Annadurai enacted the self-respect Marriage Act giving respect to the self-respect marriages.

M. Karunanidhi had brought out progressive enactments, such as, Slum Clearance Board Act, Nationalisation of bus routes, Land Reforms Acts, etc. during his first term as Chief Minister. His government during his subsequent tenure brought forth several important Legislations. Of these, the enactment conferring property right upon women merits particular mention. He also announced 20 per cent reservation exclusively for the Most Backward Classes in Government jobs and education. This was the first time that the Most Backward Communities were being given separate reservation within the 50 per cent reservation for backward communities.

Budget and Finance

The Annual Budget in the Legislature is presented every year on any date either in the last week of February or first week of March. General discussion on the Budget, not exceeding 10 days, and discussion on Demands for Grants, not exceeding 30 days, is held. The average period taken for the completion of the whole Budget process is 25 to 30

*Article prepared by the Legislature Secretariat, Tamil Nadu.

days. Policy Notes and Performance Budget of each Demand for Grants are placed before the House at the time of moving of each Demand for Grants to enable members to effectively take part in the discussion.

Committee System

There are 12 Legislature Committees in the Assembly. Of these, the three Financial Committees viz. Public Undertakings Committee, Public Accounts Committee and Estimates Committee play a pivotal role in ensuring executive accountability to the Legislature. The Estimates Committee has made several important recommendations which were accepted and implemented by the Government. For instance, accepting the recommendation of the Estimates Committee, the Government delegated the powers to the District Collectors to utilize the surplus funds over one lakh in the General Fund of the Panchayat Unions, for Panchayat Union School buildings. It was also pursuant to the recommendation of the Estimates Committee, that Higher Secondary Course instead of Pre-University Course was introduced from 1978-79.

On the recommendations of the Committee on Public Undertakings, the Annual Accounts and Annual Reports in respect of Public Undertakings are now placed on the Table of the Legislature without any delay. In pursuance of Delegated Legislation Committee's recommendation, all rules and notifications issued by Government are published in a separate part of State Gazette.

Procedural Innovations

The Tamil Nadu Legislature has always restrained itself in dealing with matters subjudice. It is very vigilant in not allowing debate over matters even when there is a possibility of a case in a court of law coming up at a later stage.

The Tamil Nadu Legislature, while maintaining its independence, does not allow any discussion involving a subject pertaining to Parliament or other Legislatures. For instance the Chair refused permission to discuss 'Thakkar Commission Report' laid on the Table of the Lok Sabha, in view of the opportunity available to the Members of Parliament elected from Tamil Nadu to voice their views and also to be in consonance with the well established Parliamentary conventions.

Business of the House starts after a 'Thirukkural', delivered by the Chair, which is the code of conduct for the entire humanity. It is a matter of pride that the 'Thirukkural' are now placed as blossoms of modern age. A 'Kural' mentioning the qualities of a good speech is given below:

> "Leaving Ripe fruits the raw he eats who speaks
> harsh words when sweet word suits".

It is significant that several Private Members Resolutions have been adopted by the House; many others have been discussed in detail in the House before being withdrawn. There was an occasion when even a Private Member's Bill was enacted by the House. It was the Madras Preservation of Parks, Playfields and Open Places Bill in 1958.

There is no restriction on the number of questions a member can give. In recent times, questions have been used for the purpose of focussing public attention to specific grievances or eliciting information regarding the Government's intention or Policy. Supplementary questions are allowed liberally depending on the importance of the subject. A provision has been made in the Tamil Nadu Legislative Assembly Rules that a notice to a question does not lapse on prorogation of the Session.

Salient Features of the Assembly Chamber

Tamil Nadu Legislative Assembly is one of the oldest Legislatures in Indian democracy. The present Legislative Assembly Chamber and the block was built in 1910. The Indian Councils Act of 1861 restored the Legislative power taken away by the Charter Act of 1833. The Legislature of Madras Presidency was given the power to make laws for 'Peace and the good Government'. Therefore, it must be construed that the Tamil Nadu Assembly was formed in 1861 itself. Nevertheless with few short spells, this Chamber has been in use till this time.

The Chair of the Speaker is similar to that of his counterpart in England, in its shape and decoration. Lord Wellington (a grandson of Mr. Brant who was formerly a Speaker of English Parliament) gifted this ornamental chair when he was the Governor of Madras.

The earlier proposal to construct a new building to house the Legislature had to go at a snails pace and finally dropped. However, the plan for air conditioning the Chamber of the Assembly has been approved.

Tamil Nadu Legislative Assembly has always stood for enhancing its reputation and preserving its dignity, decorum and usefulness. It can be confidently hoped that it will continue to uphold its virtues in the years to come.

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Indian Miniature Paintings—A Glimpse*

Every artist has tried to capture in his own medium and in his own style that immutable moment of revelation, the most precious and unforgettable in his life and inform his contemporaries and others to be born of his unique experience; for this moment had freed him for a fleeting span of time from the shackles of mutable existence and offered him a vision of the goal for which man has hungered and struggled from time immemorial. This is no less so in the case of painters and their medium, painting be it a miniature or its antonym.

In India, painting had its origin in prehistoric times. It has a long and hoary history with many an interregnum yet to be filled in. No doubt Indian painting has been influenced now and then by ancient; fox it is inevitable when foreigners establish their sway. But despite this, it never abandoned its own heritage and improved its patrimony by absorbing and amalgamating external inspiration. This is so far the reason that in an Indian painter, painting has divine elements as revealed by Vedic seers. Further he considers painting as an attribute of Vishnu, the Lord preserver and sustainer of the universe, on the authority of Veda Vyasa, the author of the encyclopaedia Mahabharata.

There is hardly any doubt that all artistic creations have done more for humanity with respect to the development of ethical behaviour than any other branch of knowledge. The painters of yore had to be *Sadhakas* and practise *Yama* and *Niyama* of *Astanga Yoga* as preliminaries before commencing their creations. Accordingly they created things of beauty in all animate and inanimate things for the fulfilment of human ideals. Such an inspired work of painting became an unceasing fountain of joy and enables the viewer to experience the ocean of ecstasy and the *amrita* (rasa). These creations quenched the thirst of aesthetic and spiritual longing of the people in medieval India, where daily life under alien rulers and offered an escape; for the paintings dealt with the introspective attitude of individuals or the luxury of the court, be they the illustrations of Jaina manuscripts, depictions of scenes from epics, with a predominance of Radha-Krishna legends, translations of verses from Jayadeva's *Gita-Govinda*, to Keshava Dasa's *Rasikapriya*, portraits of the rulers, hunting scenes or paintings based on the twelve months of the year or on any musical melodies.

The traditional small paintings known as miniatures are manifestations from the world of perfect physical forms with a celestial aesthetic of line and rhythm. Among the common people, the classification of lovers *(nayaka)* and the beloved *(nayika)* and the contrived love situations. The Hindi verses follow the tradition of the Sanskrit treatises on erotics (Plate No. 5).

Small in scale, the earliest known miniatures were painted on the strips of palm leaf in eastern India between 10th and 12th centuries. In Western India Jaina paintings developed with a remarkable record over five centuries (1100–1600). The introduction of paper that was now substituted for cloth and palm leaf, underlay the rise of new schools of paintings that fulfilled the demands of people seeking their own simple faiths and modes of expression with reformist zeal and ardour. How the passion of the soul and the poetry of the land could be subtly and sensitively translated in form and figures are illustrated in the history of world art by Indian miniatures. These paintings are distinguished by the smallness in size, containing decorative figures and short-statured men and women with angular faces and pointed noses. The main characteristic of Jaina paintings are the protruding further eye and profuse accessory details of ornamentation worthy of a goldsmith's art (Plate No. 1) These Jaina miniatures, however has a vital rhythm of movement and an angularity of active line.

The other important styles of Indian paintings are known as—Rajasthani, Mughal, Pahari and Deccani. The Mughal school is associated with the court of Mughal emperors such as Akbar, Jahangir and Shahjahan, Court scenes, portraits of kings, nobles and saints and fine depiction of birds and beasts and hunting scenes. Rajasthani and Pahari schools generally deal with the themes from epics, Radha and Krishna, Sjva-Parvati and Rama and Sita which appeal to all classes. (Plate No. 17). The artists from these schools painted with elegance the valley of lotuses in full bloom, meanderings streams and high mountains, the treelined river banks, pastures with cattle and ideal landscaper. Mughal paintings are rigorous, severe and methodical; Rajasthani and Pahari are lyrical, vivid and intense. The former is academic and conventional, associated with refinement and elegance. The latter is full of passion, vitality and poetic imagination, inspired with folk life, literature, music and love lyrics.

The steady play of light and shade, queer combination of motion and emotion, strange but unique and striking mixture of nature and humans, all harnessed and confined into an unbelievable small space and thus offering everyone a chance to elevate everyday life, though uncertain and fragile, to the lofty ideals of the scriptures.

Small in scale, the earliest known miniatures were painted on strips of palm leaf in eastern India between

*Dr (Mrs.) Daljeet, Deputy Keeper, National Museum.

the 10th and 12th centuries. In western India Jaina miniature painting developed with remarkable rapidity over five centuries (1100–1600). The Jainas, however, were traders, trading in Rajasthan, Central and Eastern India. As they were short of time got their religious texts illustrated with paintings. Thus large compositions (like Ajanta cave paintings) were reduced to miniatures in the manner of contemporary poetry where Muktaka (short poetic compositions) slowly replaced the *Kavya* (narrative poems), which had reflected the psychological make-up of the society. Poetry changed its course from the *Veeragatha Kavya* to the *Riti Kavya* through *Sant Kavya, Sufi Kavya* and *Krsnagatha Kavya.* In the eleventh century Sanskrit was being replaced by vernaculars in Indian literature and Vaishnavism was gaining ground after Ramanuja assumed its leadership.

In sufi thought soul (*atma*) yearns to unite with the great soul (Bramatma). Malik Muhammad Jayasi's *Padmavata* is a landmark and its contribution to *Baramasa* poetry is also valuable. The other cult of *Bhakti* movement was that of Krsna-Radha the archtype being of *Gita-Govinda* (Plate No. 30) of Jayadeva. His poem is an illuminating text on the union of song, music and dance and was effective in making a wider appeal to the common man. It ushered in socio-religious renaissance which spread far and wide in Northern India. Finally the *Rasikapriya* composed by Kesavadasa of Orchha in Bundelkhand in 1591 introduced new trends for Indian paintings. (Plate No. 4)

For about three centuries from the 16th and 18th three aspects of Indian art such as poetry, music and painting developed along close parallel lines. Such a phenomenon is rather rare in the history of the world's culture.

Rajasthani Paintings

The miniature paintings of Rajasthan are true representatives of its contemporary land and people, documenting four critical centuries of artistic systhesis, change and survival. Rajasthan, a land of festivals, is the great colour belt of India and every costume is an alluring delight with its red, green ochre, saffron, purple and magenta dotted with tiny mirrors, all from a living, a moving palette standing out sharply from and yet blending in with the background. The unique richness of warm and primary colours of Rajasthan has no comparison in any other school. The paintings from Rajasthan consists of a primitive vigour and directness of expression. Romantic love was depicted with some sensuous elegance and spiritual symbolism as in earlier Indian sculptures.

As regards themes in Rajasthani paintings of all the divine themes especially the Krsna legend became the most beloved as it allowed the artist unlimited opportunity to exercise his ingenuity, Krsna appears along with Radha in all possible moods. Other important themes are ragamala (with visual depiction of musical modes (Plate No. 11 and 22) *nayak-nayika bhed* (the moods of Hero and Heroine (Plate No. 14) baramasa (seasons or twelve months), love lyrics (Rasikapriya, Dholu-Maru) and Ramayana (the story of Rama) (Plate No. 32). Hunting scenes, portrait paintings, darbar scenes, processions and festivals were also very popular subjects in Rajasthani miniatures. These miniatures are the visual records of the people, who were instrumental in shaping its history.

The most important amongst the Rajasthan Schools of paintings is the Mewar school which influenced all other schools. The earliest tradition of religious and illustrated manuscripts, was resumed under Maharana Jagat Singh I (1628–52). But for the contribution of Sahibdin (Plate No. 2) the principal artist of Jagat Singh I, the Mewar school of painting would not have become the foremost amongst all the Rajasthani Schools. He gave this school a new vitality when the popular Mughal school was at its apogee. Against the monochromic background of Mewar paintings, the contrasting colour patches of the different incidents are set in bright colours yielding unusual, glowing effect. Short statured men and women have prominent noses, oval faces and fish shaped eyes. The emotional impact is established by judicious use of trees, hills and with simple architecture consists mainly of domed pavilions and turreted parapets in landscape. (Plate No. 3)

Above all the great Vaishnava renaissance affecting every walk of life in Mewar and the incomparable devotional songs of Mira to Lord Krishna brought prominence to the Vallabha cult of *Shri Nathji* and its great centre at Nathdwara (Plate No. 6). With the ascendance of Krsna, the Humanized Divinity, art gained a new dimension. Fascinated by the Krsna legend, the Nathdwara artists took it up and made their contribution, now well known throughout the country.

During the reign of Rao-Ratan (1607–31) Hara state of Bundi was divided into two as Bundi and Kotah. He established contacts with the Deccan courts, and strived for definite Deccan influence in Bundi paintings. Chhatrasal (1631–59) a powerful ruler, a favourite of Prince Dara Shikoh, built a most remarkable and large palace at Bundi fully decorated with paintings. His brave and wise great grandson, Umed Singh (1739–71) gained recognition as a patron of the arts, raised Bundi school to new heights among various schools of Rajasthani paintings of the 18th century. Some of the exquisite Bundi murals are still available on the wall of *Chitrasala* or Art Gallery.

The composition of Bundi paintings is well balanced and colours used are blue, red, yellow and green. (Plate No. 7). The delicate landscape full of naturalism gives strong feeling of movement. Systematically arranged trees with the green tones are enlivened with buildings in white. Kotah Kalam, an offshoot of Bundi style, is famous for the

depiction of vibrant forest life with waving branches of trees and other natural details and presence of wild animals. (Plate No. 9 and 10)

Ali Raza the famous artist of Raja Karan Singh Court came to Bikaner from Imperial Mughal Court and brought fine draughtsmanship and perfect technical execution of Mughal style. Soft colours with bright tones produced a new school known as Bikaner. Dominated by Rajasthani costumes the main subjects of Bikaner miniatures are portraits, court scenes and hunting. In addition Bikaner Court also encouraged portraiture of Mughal emperors. This school is famous for its depiction of clouds filled with blue, yellow and Indian red as dominating colours. Delicate and attractive female faces are more like Mughal with typical Rajasthani costumes. Male faces are full of vigour with stylistic turbans and long Jama (Plate No. 13)

Kishangarh state situated near Ajmer was founded by Kishan Singh (1609–15) younger brother of Raja of Jodhpur. It is surrounded by small hills, has its palace amidst an enormous lake and citadel. The main attraction of Kishangarh is its white palace located in the middle of the lake, accessible only by boat. It is said that during the reign of Raj Singh (1706-48) the art of painting flourished. Raj Singh, himself a painter and a devotee of the *Pushtimarga* (Path of pleasure) cult of Vallabhacharya, encouraged depiction of Krishna Lila. Among the artists who worked with him were Bhavanidas, Soorat Rama and Nihal Chand. (Plate No. 15)

Savant Singh (1699-1764) a worthy successor of Raj Singh was not only a painter and patron of art but a poet of deep religious inspiration known as Nagari Dasa. A new style of great romantic charm in miniatures influenced his poetry, emerged during the period which is known for its elegance. He wrote verses under the name of Nagari Dasa in his famous book *Bihari Jas Chandrika*. He was attracted by a young girl of seductive charm known as Bani-Thani who was employed by his step mother as a singer. Her sensuousness and facial features, including exceptionally elongated eyes inspired Kishangarh artists who heralded a new style unique in Indian miniatures. The Artists created the ideal of woman-hood modest and elegant with all perfection.

The other famous schools of Rajasthan are known as Jaipur, Jodhpur, Sirohi and Raghogarh (Plate Nos. 16, 18 and 19). Simultaneously the two important styles, Malwa and Bundelkhand in Central India flourished. Malwa Paintings are considered as pure classical statements of Indian abstract shapes with their simple composition, balanced yet intense. Malwa painters through their composition added grace and aesthetic to the life of a common man. There is no doubt that the painters of Malwa were master colourists (Plate No. 20)

Bir Singh Dev of Orchha was a close friend of Jahangir. A keen observer of art and architecture, he built many buildings in Orchha and Datia. The early Bundela wall paintings in these buildings are now in fragile condition. The miniatures from Bundelkhand are simple in composition but colourful. (Plate No. 21)

According to Comaraswamy, who was the first to assess the merits of the Rajasthani schools "works of the Rajput painters deserve to be given an honourable place amongst the great arts of the world".

Mughal Paintings

The Mughal painting, the art of the elite, flourished under three emperors Akbar (1556-1605), Jahangir (1605-27) and Shah Jahan (1627-58). The master pieces of this creative phase reveals classical touch marked by rich style and poetic imagination.

Akbar (Plate No. 23) succeeded his father Humayun in A.D. 1556 and built a new capital at Fatehpur Sikri near Agra. He appointed distinguished architects, writers, poets, musicians and painters known as nine gems in his court. For paintings a factory of hand made paper was established at Sialkot in Punjab. He placed the two Iranian artists Mir Sayyid Ali and Abd-as-Samad incharge of the paintings studio, where one hundred artists and painters were employed. But the work that emerged out of this studio was new and of a mixed style of Indian and Islamic elements with those of Imperial Safaoid Iran. It is this phase which witnessed the superb illustration from a *Harivamsa* manuscript painted around A.D. 1585. It shows the development of a freer, deeper space than found in any related pre-Mughal work. Other works illustrated during Akbar's time include the romantic tale of Laila and Majnu, Shahnamah, the epic of ancient Persia, *Khamsa of Nizami* a classic of Persian literature, Baburnama the memoirs of his grand father, Akbarnama the history of his own achievements during his kingship and the Persian translation of the Ramayana. (Plate No. 24) One of the greatest creations of this period was, however, the illustrated Mahabharata called Razm-Nama containing 169 paintings completed in A.D. 1589. It is said that a sum of rupees four lakhs was paid to the artists including the chief artist Dasawant.

According to Abdul Fazl "the work of all the painters are weekly laid before His Majesty. The general finish and mixing of colours and boldness in execution observed in paintings are incomparable". Mughal drawing is extremely rhythmic imbued with fine quality. Basawan, Dasawant, Nanha and Bishandas were among the most famous painters of Akbar's Court. The early Mughal art is mainly masculine for women were seldom portrayed.

Jahangir (1605-27) had a sharp eye, sensitive to beauty-both human and natural. The paintings of his time fully reflect the warmth of his heart. During his time the beauty

of line and delicacy of colours reached its perfection. His painters accompanied him everywhere and made drawings of birds and animals. Jahangir was a keen observer of nature and even his poetic imagery had super visual precision as "And each fountain the duck dipped his beak, like golden scissors cutting silk." His court art managed to establish contact with the life of nature. He encouraged his artists to draw nature and thus the Mughal painting under him acquired a new awareness. Another innovation is the gorgeous border, an outcome of two elements—one of an artist and the other of a decorator. This constitutes a definite contribution to the decorative formalism. (Plate No. 25)

Jahangir, the patron and critic was capable of expressing an informed opinion on works of art. Nurjahan introduced change in women's dress. The European influence is also evident in the paintings of his time. A very important study is that of Jahangir holding the picture of Madonna, a prized possession of the National Museum, New Delhi. The European technique of shading and three-dimensional effect began to be used in Mughal paintings to convey the impression of volume. Under the patronage and connoisseurship of Jahangir, the Mughal miniature painting had become a court art of subtle refinement.

Though Shah Jahan (1627-58) is generally famous for his Imperial ateliers with tremendous architectural activities, the artists of his time, while continuing the earlier traditions, had distinguished themselves with the influences of the Mughal illustrations. They also painted portraits, scenes of darbar, processions and festivals in colour with greater use of gold. Special mention may be made of the splendid darbar scenes of the emperor on the peacock throne. Painting of his time achieved a new delicacy and a romantic flavour. The peaceful and prosperous reign of Shah Jahan witnessed a change of attitude in every walk of life. The war and hunting scenes and animals fights were replaced by themes of love and romance. Thus the pleasure-loving emperor and the people found greater delight in the depiction of love episodes like those of Laila-Majnu, Baj Bahadur-Rupmati and Dara Shikoh Ranadil. In some paintings the charms of the Mughal princess are shown in disphanour muslim blouses seated on terrace enjoying the music, surrounded by female companions.

Aurangzeb's advent on the scene changed the course of Indian history. His austere and rigid life pattern was a great setback to the artists and painters. With the disintegration of Mughal empire soon after the death of Aurangzeb in A.D. 1707, the reverberations of Mughal splendour were felt in the works of the painters in the court of Oudh rulers. (Plate No. 26) In these paintings a large number of figures and deployed with a fine sense of rhythm and chorographic sense of grouping. Landscapes with the vast perspective and trees are depicted with great care. The refinement of line, delicacy of brush work, use of soft tones in colours and protrayal of luxury and grandeur are the legacies of the Mughal artists, that spread to different states in the years to come.

Deccani School

In A.D. 1570 a notable fusion of an early Deccan style with Islamic idiom took place at Ahmadnagar which was associated with historical personage like Chand Bibi Malik Amber. It is said that Chand Bibi a gallant equestrian and warrior, was herself an *artist of flower* and also a connoisseur of Art. This school has produced ragini paintings distinguished for their harmonious colour schemes and indigenous decorative patterns. On the other hand, some paintings definitely indicate as assimilation of Persian and European renaissance elements into an early Deccan classical Indian style.

Yusuf Adil Shah (1490-1510) the founder of the Bijapur dynasty invited artists from Persia, and Turkey. His successor, Ismail Adil Shah (1510-34), himself knew painting and continued patronizing this art. At Bijapur Court the earliest example of illustrated manuscript like *Niyumal-Ulma* is now in the collection of Chester Beaty, Dublin dated A.D. 1570. But the next phase, of Bijapur paintings was under Ibrahim Adil Shah II, who himself was a musician, calligraphist and a painter. He composed a book of lyrics, the *Kitab-i-Nawcas* (Book of the Nine Rasas) and wrote a treatise on chess describing various new and baffling moves. (Plate No. 27) Under his patronage paintings were produced by Mulla Farrukh Hussain Shiraji, the court painter of his times and his pupils. The Bijapur painters acquired the mastery of handling of erotic scenes not only on paper but also on cloth. With the foundation of Asaf Jahi dynasty by Mir Qamurddin Khan, Nizam-ul-Mulk, in A.D. 1724, the tradition of Golkonda style began in Hyderabad. The Mughal painters who migrated to the Deccan during the period of Aurangzeb, were responsible for the development of eighteenth century paintings of Hyderabad. Paintings which flourished there has mixed romantic fervour of the former Golkonda school and late Mughal style. The main features of the paintings of Hyderabad are decorative costumes (the white muslim coat with embroidery), Jewellery and typical Deccan hills with landscape, besides the balanced colour scheme. (Plate No. 28)

Pahari paintings

Pahari means "of the hills" *i.e.* something belonging to the hills. The landscape of the Sub-Himalayan mountain ranges has an attraction that fascinate poets and painters, pilgrims and travellers. The princely states of the hills where schools of painting flourished were Basohli and Chamba on the Ravi, Guler on the Banganga and Kangra on the Beas, Teri-Garhwal on the Alaknanda and Jammu on the Tavi river.

According to Princep, "Many others besides merchants such as artisans, also retired in to the hills where they could pursue their various callings in security and peace. The serenity and the picturesque setting of the hills inspired the artists to fully utilize their talents. The result was that the Pahari artists derived symbolism from nature and developed the superb sense of composition through which they expressed their deep feelings for human emotions." However, the experience and expression of each artist cannot be the same; as a result, the different principalities developed their respective idioms-distinctive traits of their own. Broadly speaking, these conform to four distinctive areas: Basohli, Guler, Chamba and Kangra.

Basohli on the River Ravi, founded by Bhogpal in A.D. 765, produced some of the earliest masterpieces of the Pahari paintings. The famous set of Rasamanjari dated A.D. 1695 of Bhanudutta was illustrated for Kirpa Pal (1678-95) by Devidasa, at the town called Basohli on the banks of River Ravi.

Like his father, Dhiraj Pal was also devoted to learning and painting and continued the hereditary tradition. More than one set of Ragamala and Ramayana were painted during his period. The famous dated set (A.D. 1730) of the *Gita-Govinda* (Plate No. 29) was painted under the patronage of Raja Medini Pal and the royal poetess Manaku wrote Sanskrit verses in Malini Metre. The keen interest taken by the royal ladies is significant in the field of literary achievements. These paintings use square format, draw double storeyed buildings with elaborate sikharas and take recourse to various decorative designs.

Guler is a small state bounded by Kangra and Nurpur. Haripur, the capital of Guler, was founded by Raja Hari Chand in A.D. 1405, while the school of paintings was established by Dalip Singh (1695-1743). J.C. French wrote in his book *Himalayan Art* "the colouring of Guler pictures of this period is extraordinarily delicate. The artist had the colours of the dawn and the rainbow on his palette". Significantly this style is represented mainly by the portraits of the local chiefs. However, Raja Govardhan Chand encouraged painters to explore the mystery and beauty of feminine charm. In spirit they breath different feeling and quality from those of the Mughals yet comparable in delicacy to the Mughal tradition. The face of Guler females are very natural. The delicate draughtsmanship and unusual refinement of lines with sensitive treatment landscape are noteworthy features of this school. (Plate No. 31)

Chamba derives its name from a princess Champavati, daughter of Raja Sahila Varman (A.D. 920) and a tree with fragrant golden flowers Champaka or Chamba as it is known in the hills, its botanical name being Michelia-Champaca.

Umed Singh, who patronized Chamba paintings visited Lahore Court in his childhood and it is quite likely that the artistic movement of Chamba started during his reign deriving inspiration from Lahore. Under the patronage of Raja Raj Singh (1764-94) Chamba style entered a new stage. Now the typical Chamba female is unmistakable, distinctive in as much as the people of Chamba, particularly ladies are noted for their good looks. The favourite colours of Chamba artists are blue and red and the technique of mixing them artistically was known to them. The trend started by Raj Singh was continued by his son Jit Singh (1794-1808).

Kangra was the biggest among the hills states and famous for its strong fortress. There is a proverb in the region that "He who holds the Kangra fort, holds the hills". According to Tuzuk-i-Jahangiri, Kangra fort was captured during the reign of Jahangir on 20th November, A.D. 1620.

Raja Sansar Chand of Kangra restored the lost glory of Kangra in A.D. 1768, but could not keep it for long and in A.D. 1810 it was captured by Sikh Raja Ranjeet Singh. The paintings made during the period of Raja Sansar Chand, especially his portraits, the most authentic examples of his court art, are products of high quality. The artists achieved the required technical maturity to express vividly the splendour and luxury of the Court. Indeed the art of the Kangra, acquires a deep meaning if viewed in its cultural perspective. (Plate No. 33 and 34) The style has a unique sense of freedom and is closely connected to the soil. These examples are nothing short of music in colour, vibrant with realism and marked with natural emotions.

The Kangra painters made preliminary sketches on handmade Sialkoti paper and used pure colours like yellow, red and blue. (Plate No. 35) The borders of paintings may be either plain or decorated. Careful brush work is found in depiction of the jewellery and in architectural details. The richness of landscape is relieved by patches of colour where human figures appear, their colourful costumes glowing, as it were against a Sea of green background. The treatment of trees and leaves is superb and the landscape created by the artists is as naturalistic as the valley of Kangra. The delicately chiselled features of Kangra women are delightful portrayal of beauty that blossoms and in serene quietude. (Plate No. 37)

Love is the major theme of Kangra painting and a favourite theme with these painters was Kesavadassa's *Rasikapriya*. Here the *Nayaka* is Krsna and *Nayika* is Radha the ideal lovers, symbolizing god and soul. The miniatures move close to the devotional-cum-love poetry of *Brajabhasha*, through which lyrical singers have poured forth their hearts in mingled strains of devotion and love. The Romance of Punjab like Sassi-Punnu, Heer-Ranjha and Sohni-Mahiwal were also very popular subjects with Kangra artists like Manaku and Nainsukh who were outstanding artists, by their own rights. In the words of Coomaraswamy "What Chinese art achieved for landscape is accomplished here for human love".

Indian paintings like all other fine arts of India have always preserved their spiritual quality which is its vital force. The paintings reveal that in this impermanent and transient world of ours, there are many aspects which do remain the same for ever and defy all attempts at being confined to oblivion. Their message is eternal and universal, transcending all barriers and ages, It is this that has assured them immortality.

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There cannot be many international organisations which are more Western or under greater Western influence, than the Commonwealth.

—Julius K. Nyerere

APPENDICES

APPENDIX I

Speech by Prime Minister Jawaharlal Nehru moving a Resolution for the ratification of the Commonwealth decision, delivered at the Constituent Assembly, New Delhi, on 16 May, 1949.

I have the honour to move the following motion:—

"Resolved that this Assembly do hereby ratify the declaration, agreed to by the Prime Minister of India, on the continued membership of India in the Commonwealth of Nations, as set out in the official statement issued at the conclusion of the Conference of the Commonwealth Prime Ministers in London on April 27, 1949."

All Honourable Members have been supplied with copies of this declaration and so I shall not read it over again. I shall merely point out very briefly some salient features of this declaration. It is a short and simple document in four paragraphs. The first paragraph, it will be noticed, deals with the present position in law. It refers to the British Commonwealth of Nations and to the fact that the people in this Commonwealth owe a common allegiance to the Crown. That in law is the present position.

The next paragraph of this declaration states that the Government of India have informed the Governments of the other Commonwealth countries that India is soon going to be a sovereign independent Republic; further that they desire to continue her full membership of the Commonwealth of Nations, accepting the King as a symbol of the free association.

The third paragraph says that the other Commonwealth countries accept this and the fourth paragraph ends by saying that all these countries remain united as free and equal members of the Commonwealth of Nations. You will notice that while in the first paragraph this is referred to as the British Commonwealth of Nations, in the subsequent paragraph it is referred to only as the Commonwealth of Nations. Further you will notice that while in the first paragraph there is the question of allegiance to the Crown which exists at present, later, of course, this question does not arise, because India by becoming a Republic goes outside the Crown area completely. There is a reference, in connection with the Commonwealth, to the King as the symbol of that association. Observe that the reference is to the King and not to the Crown. It is a small matter, but it has a certain significance. But the point is this that in so far as the Republic of India is concerned, her Constitution and her working are concerned, she has nothing to do with any external authority, with any king, and none of her subjects owe any allegiance to the King or any other external authority. The Republic may however agree to associate itself with certain other countries that happen to be monarchies or whatever they choose to be. This declaration, therefore, states that this new Republic of India, completely sovereign and owing no allegiance to the King, as the other Commonwealth countries do owe, will, nevertheless, be a full member of this Commonwealth and it agrees that the King will be recognized as a symbol of this free partnership or rather association.

Now, I am placing this declaration before this Honourable House for their approval. Beyond this approval, there is no question of any law being framed in accordance with it. There is no law behind the Commonwealth. It has not even the formality which normally accompanies treaties. It is an agreement by free will, to be terminated by free will. Therefore, there will be no further legislation or law if this House approves of this. In this particular declaration nothing very much is said about the position of the king, except that he will be a symbol. It has been made perfectly clear—it was made perfectly clear—that the King has no functions at all. He has a certain status. The Commonwealth itself, as such, is not a body, if I may say so; it has no organization through which to function and the King also can have no functions.

Now, some consequences flow from this. Apart from certain friendly approaches to one another, apart from a desire to cooperate, which will always be conditioned by each party deciding on the measure of co-operation and following its own policy, there is no obligation. There is hardly any obligation in the nature of commitments. But an attempt has been made to produce something which is entirely novel, and I can very well understand lawyers on the one hand feeling somewhat uncomfortable at a thing for which they can find no precedent or parallel. There may also be others who feel that behind this there may be something which they cannot quite understand, something risky, something dangerous, because the thing is so simple on the face of it. That kind of difficulty may arise in people's minds. What I have stated elsewhere I should like to repeat. There is absolutely nothing behind this except what is placed before this House.

One or two matters I might clear up which are not mentioned in this declaration. One of these, as I have said, is that the King has no functions at all. This was cleared up in the course of our proceedings; it has no doubt been recorded in the minutes of the Conference in London. Another point was that one of the objects of this kind of Commonwealth association is now to create a status which is something between being completely foreign and being of one nationality. Obviously, the Commonwealth coun-

tries belong to different nations. They are different nationalities. Normally either you have a common nationality or you are foreign. There is no intermediate stage. Up till now in this Commonwealth or the British Commonwealth of Nations, there was a binding link which was allegiance to the King. With that link, therefore, in a sense there was common nationality in a broad way. That snaps, that ends when we become a Republic, and if we should desire to give a certain preference or a certain privilege to any one of these countries, we would normally be precluded from doing so, because of what is called the "most favoured nation clause" every country would be as much foreign as any other country. Now, we want to take away that foreignness, keeping in our own hands what, if any, privileges or preferences we can give to another country. That is a matter entirely for two countries to decide by treaty or arrangement, so that we create a new state of affairs—or we try to create it—that the other countries, although in a sense foreign, are, nevertheless, not completely foreign. I do not quite know how we shall proceed to deal with this matter at a later stage. That is for the House to decide—that is to say, to take the right, only the right, to deal with Commonwealth countries, should we so choose, in regard to certain preferences or privileges. What they are to be, of course, we shall in each case be the judge ourselves. Apart from these facts, nothing has been decided in secret or otherwise which has not been put before the public.

The House will remember that there was some talk at one stage of a Commonwealth citizenship. Now, it was difficult to understand what the status of Commonwealth citizenship might be except that it meant that its members were not completely foreign to one another. That unforeignness remains, but I think it is as well that we left off talking about something vague, which could not be surely defined, but the other fact remains, as I have just stated: the fact that we should take the right to ourselves if we so chose to exercise it at any time to enter into treaties or arrangements with Commonwealth countries assuring us of certain mutual privileges and preferences.

I have briefly placed before this House this document. It is a simple document and yet the House is fully aware that it is a highly important document or rather what it contains is of great and historical significance. I went to this Conference some weeks ago as the representative of India. I had consulted my colleagues here, of course, previously, because it was a great responsibility and no man is big enough to shoulder that responsibility by himself when the future of India is at stake. For many months past we had often consulted one another, consulted great and representative organizations, consulted many members of this House. Nevertheless, when I went, I carried this great responsibility and I felt the burden of it. I had able colleagues to advise me, but I was the sole representative of India and in a sense the future of India for the moment was in my keeping. I was alone in that sense and yet not quite alone, because, as I travelled through the air and as I sat there at the Conference table, the ghosts of many yesterdays of my life surrounded me and brought up picture after picture before me, sentinels and guardians keeping watch over me, telling me perhaps not to trip and not to forget them. I remembered, as many Honourable Members might remember, that day 19 years ago when we took a pledge on the bank of the river Ravi, at the midnight hour, and I remembered the 26th January the first time and that oft-repeated pledge year after year in spite of difficulty and obstruction, and finally I remembered that day when standing at this very place, I placed a resolution before this House. That was one of the earliest resolutions placed before this Honourable House, a resolution that is known as the Objectives Resolution. Two years and five months have elapsed since that happened. In that Resolution we defined more or less the type of free Government or Republic that we were gong to have. Later in another place and on a famous occasion, this subject also came up, that was at the Jaipur session of the Congress, because not only my mind, but many minds were struggling with this problem, trying to find a way out that was in keeping with the honour and dignity and independence of India, and yet also in keeping with the changing world and with the facts as they were. Something that would advance the cause of India, would help us, something that would advance the cause of peace in the world, and yet something which would be strictly and absolutely true to every single pledge that we had taken. It was clear to me that whatever the advantages might be of any association with the Commonwealth or with any other group, no single advantage, however great, could be purchased by giving up a single iota of our pledges, because no country can make progress by playing fast and loose with the principles which it has declared. So during these months we had thought and we had discussed amongst ourselves and I carried all this advice with me. May I read to you, perhaps, just to refresh your minds, the Resolution passed at the Jaipur session of the Congress? It might be of interest to you and I would beg of you to consider the very wording of this Resolution:

In view of the attainment of complete independence and the establishment of the Republic of India which will symbolize Independence and give to India the status among the nations of the world that is her rightful due, her present association with the United Kingdom and the Commonwealth of Nations will necessarily have to change. India, however, desires to maintain all such links with other countries as do not come in the way of her freedom of action and independence and the Congress would welcome her free association with the independent nations of the Commonwealth for their commonweal and the promotion of world peace.

You will observe that the last few lines of this Resolution are almost identical with the lines of the declaration of London.

I went there guided and controlled by all our past pledges, ultimately guided and controlled by the Resolution of this Honourable House, by the Objectives Resolution and all that had happened subsequently also by the mandate given to me by the All India Congress Committee in that Resolution, and I stand before you to say with all humility that I have fulfilled the mandate to the letter. All of us have during these many years past been through the valley of the shadow; we have passed our lives in opposition, in struggle and sometimes in failure and sometimes success and most of us are haunted by these dreams and visions of old days and those hopes that filled us and the frustrations that often followed those hopes; yet we have seen that even from that prickly thorn of frustration and despair, we have been able to pick the rose of fulfilment.

Let us not be led away by considering the situation in terms of events which are no longer here. You will see that the Resolution of the Congress that I have read out says that because India becomes a Republic, the association of India with the Commonwealth must, of course, change. Further it says that free association may continue subject only to our complete freedom being assured. Now, that is exactly what has been tried to be done in this declaration of London. I ask you or any Honourable Member to point out in what way the freedom, the independence of India has been limited in the slightest. I do not think it has been. In fact, the greatest stress has been laid not only on the independence of India, but on the independence of each individual nation in the Commonwealth.

I am often asked, how we can join a Commonwealth in which there is racial discrimination, in which there are other things happening to which we object. That, I think, is a fair question and it is a matter which must necessarily give us some trouble in our thinking. Nevertheless, it is a question which does not really arise. That is to say, when we have entered into an alliance with a nation or a group of nations, it does not mean that we accept their other policies; it does not mean that we commit ourselves in any way to something that they may do. In fact, this House knows that we are carrying on at the present moment a struggle, or our countrymen are carrying on a struggle in regard to racial discrimination in various parts of the world.

This House knows that in the last few years one of the major questions before the United Nations, at the instance of India has been the position of Indians in South Africa. May I, if the House will permit me for a moment refer to an event which took place yesterday, that is, the passing of the Resolution at the General Assembly of the United Nations, and express my appreciation and my Government's appreciation of the way our delegation has functioned in this matter and our appreciation of all those nations of the United Nations, almost all, in fact all barring South Africa, which finally supported the attitude of India? One of the pillars of our foreign policy, repeatedly stated, is to fight against racial discrimination, to fight for the freedom of suppressed nationalities. Are you compromising on that issue by remaining in the Commonwealth? We have been fighting on the South African Indian issue and on other issues even though we have thus far been a Dominion of the Commonwealth. It was a dangerous thing for us to bring that matter within the purview of the Commonwealth. Because then the very thing to which you and I object might have taken place. That is, the Commonwealth might have been considered as some kind of a superior body which sometimes acts as a tribunal, or judges, or in a sense supervises the activities of its member nations. That certainly would have meant a diminution in our independence and sovereignty, if we had once accepted that principle. Therefore, we were not prepared and we are not prepared to treat the Commonwealth as such or even to bring disputes between member nations of the Commonwealth before the Commonwealth body. We may, of course, in a friendly way discuss the matter; that is a different matter. We are anxious to maintain the position of our countrymen in other countries in the Commonwealth. As far as we are concerned, we could not bring their domestic policies in dispute there; nor can we say in regard to any country that we are not going to associate ourselves with that country because we disapprove of certain policies of that country.

I am afraid that if we adopted that attitude, then there would hardly be any association for us with any country, because we have disapproved of something or other that that country does. Sometimes, it so happens that the difference is so great that either you cut off relations with that country or there is a conflict. Some years ago, the United Nations General Assembly decided to recommend its member States to withdraw diplomatic representatives from Spain, because Spain was supposed to be a Fascist country. I am not going into the merits of the question. Some times, the question comes up in that way. The question has come up again and they have reversed that decision and left it to each member State to do as it likes. If you proceed in this way, take any great country or a small country; you do not agree with everything that the Soviet Union does; therefore, why should we have representation there or why should we have a treaty of alliance in regard to commercial or trade matters with it? You may not agree with some policies of the United States of America; therefore, you cannot have a treaty with them. That is not the way nations carry on their foreign work or any work. The first thing to realize, I think, in this world is that there are different ways of thinking, different ways of living and different approaches to life in different parts of the world. Most of our troubles arise from one country imposing its will and its way of living on other countries. It is true that no country can live in isolation, because, the world as constituted today is progressively becoming an organic

whole. If one country living in isolation does something which is dangerous to the other countries, the other countries have to intervene. To give a rather obvious example, if one country allowed itself to become the breeding ground of all kinds of dangerous diseases, the world would have to come in and clear it up, because it could not afford to allow disease to spread all over the world. The only safe principle to follow is that, subject to certain limitations, each country should be allowed to live its own life in its own way.

There are at present several ideologies in the world and major conflicts flow from these ideologies. What is right or what is wrong, we can consider at a later stage, or may be something else altogether is right. Either you want a major conflict, a great war which might result in the victory for this nation or that, or else you must allow them to live at peace in their respective territories and to carry on their way of thinking, their way of living, their structure of State, allowing the facts to prove which is right ultimately. I have no doubt at all that ultimately it will be the system that delivers the goods—the goods being the advancement and the betterment of the human race or the people of the individual countries—that will survive and no amount of theorizing and no amount of warfare can make the system that does not deliver the goods survive. I refer to this because of the argument that was raised that India could not join the Commonwealth, because it disapproved of certain policies of certain Commonwealth nations. I think we should keep these two matters completely separate.

We join the Commonwealth, obviously because we think it is beneficial to us and to certain causes in the world that we wish to advance. The other countries of the Commonwealth want us to remain, because they think it is beneficial to them. It is mutually understood that is to the advantage of the nations in the Commonwealth and therefore they join. At the same time, it is made perfectly clear that each country is completely free to go its own way; it may be that they may go, sometimes go so far as to break away from the Commonwealth. In the world today where there are so many disruptive forces at work, where we are often on the verge of war, I think it is not a safe thing to encourage the breaking up of any association that one has. Break up the evil part of it; break up anything that may come in the way of your growth, because nobody dare agree to anything which comes in the way of a nation's growth. Otherwise, apart from breaking the evil parts of the association, it is letter to keep a cooperative association going which may do good in this world rather than break it.

Now, this declaration that is placed before you is not a new move and yet it is a complete reorientation of something that has existed in an entirely different way. Suppose we had been cut off from England completely and we had then desired to join the Commonwealth of Nations, it would have been a new move. Suppose a new group of nations wanted us to join them and we joined them in this way, that would have been a new move from which various consequences would have flowed. In the present instance, what is happening is that a certain association has been in existence for a considerable time past. A very great change came in the way of that association about a year and eight or nine months ago, from August 15, 1947. Now another major change is contemplated. Gradually the conception is changing. Yet that certain link remains in a different form. Now, politically we are completely independent. Economically we are as independent as independent nations can be. Nobody can be 100% independent in the sense of absolute lack of inter-dependence. Nevertheless, India has to depend on the rest of the world for her trade, for her commerce and for many supplies that she needs, today for her food unfortunately, and so many other things. We cannot be absolutely cut off from the world. Now, the House knows that inevitably during the past century and more all kinds of contacts have arisen between England and this country, many of them were bad, very bad, and we have struggled througout our lives to put an end to them. Many of them were not so bad, many of them may be good and many of them, good or bad, irrespective of what they may be, are there. Here I am the patent example of these contacts, speaking in this Honourable House in the English language. No doubt we are going to change that language for our use, but the fact remains that I am doing so and the fact remains that most other members who will speak will also do so. The fact remains that we are functioning here under certain rules and regulations for which the model has been the British Constitution. Those laws which exist today have been largely forged by them. Gradually, the laws which are good we will keep and those that are bad we will throw away. Any marked change in this without something to follow creates a hiatus which may be harmful. Largely our educational apparatus has been influenced. Largely our miltary apparatus has been influenced by these considerations and we have grown up naturally as something rather like the British Army. I am placing before the House certain entirely practical considerations. If we break away completely, the result is that without making sufficient provision for carrying on in a different way, we have a period of gap. Of course, if we have to pay a price, we may choose to do so. If we do not want to pay the price, we should not pay it and face the consequences.

But in the present instance, we have to consider not only these minor gains, which I have mentioned to you, to us and to others but, if I may say so, the larger approach to world problems. I felt as I was conferring there in London with the representatives of other Governments that I had necessarily to stick completely and absolutely to the sovereignty and independence of the Indian Republic. I could not possibly compromise on the question of allegiance to any foreign authority. I also felt that in the state of

the world today and in the state of India and Asia, it would be a good thing if we approached this question in a friendly spirit which would solve the problems in Asia and elsewhere. I am afraid I am a bad bargainer. I am not used to the ways of the market place. I hope I am a good fighter and I hope I am a good friend. I am not anything in between and so when you have to bargain hard for anything, do not send me. When you want to fight, I hope I shall fight and then when you are decided about a certain thing, then you must hold on to it and hold to it to the death, but about minor things I think it is far better to gain the good will of the other party. It is far more precious to come to a decision in friendship and good will than to gain a word here and there at the cost of ill will. So I approached this problem and may I say how I felt about others? I would like to pay a tribute to the Prime Minister of the United Kingdom and also to others there, because they also approached the problem in this spirit, not so much to score a debating point or to change a word here and there in this declaration. It was possible that if I had tried my hardest I might have got a word here and there changed in this declaration, but the essence could not have been changed, because there was nothing more for us to get out of that declaration. I preferred not to do so, because I preferred creating an impression and I hope the right impression that the approach of India to these and other problems of the world was not a narrow-minded approach. It was the approach based on faith and confidence in her own strength and in her own future and, therefore, it was not afraid of any country coming in the way of that faith, it was not afraid of any word or phrase in any document, but it was based essentially on this that if you approach another country in a friendly way, with goodwill and generosity, you would be paid back in the same coin and probably the payment would be in an even larger measure. I am quite convinced that in the treatment of nations to one another, as in the case of individuals, only out of goodwill will you get goodwill and no amount of intrigues and cleverness will get you good results out of evil ways. Therefore, I thought that this was an occasion not only to impress England, but others also, in fact to some extent the world, because the matter that was being discussed at 10 Downing Street, in London, was something that drew the attention of the entire world. It drew the attention of the world, partly because India is a very important country, potentially so, and actually so too. And the world was interested to see how this very complicated and difficult problem which appeared insoluble, could be solved. It could not be solved if we had left it to eminent lawyers. Lawyers have their uses in life; but they should not be spread out everywhere. It could not have been solved by those extreme, narrow-minded nationalists who cannot see to the right or to the left, but live in a narrow sphere of their own, and, therefore, forget that the world is going ahead. It could not be solved by people who live in the past and cannot realize that the present is different from the past and that the future is going to be still more different. It could not be solved by any person who lacked faith in India and in India's destiny.

I wanted the world to see that India did not lack faith in herself, and that India was prepared to co-operate even with those with whom she had been fighting in the past; provided the basis of co-operation today was honourable, that it was a free basis, a basis which would lead to the good not only of ourselves, but of the world also. That is to say, we would not deny that co-operation, simply because in the past we had fought, and thus carry on the trial of our past karma along with us. We have to wash out the past with all its evil. I wanted, if I may say so in all humility, to help inletting the world look at things in a slightly different perspective, or rather try to see how vital questions could be approached and dealt with. We have seen too often in the arguments that go on in the assemblies of the world, this bitter approach, this cursing of each other, this desire, not in the least to understand the other, but deliberately to misunderstand the other, and to make clever points. Now, it may be a satisfying performance for some of us, on occasions to make clever points and be applauded by our people or by some other people. But in the state of the world today, it is a poor thing for any responsible person to do, when we live on the verge of catastrophic wars, when national passions are roused, and when even a casually spoken word might make all the difference.

Some people have thought that by our joining or continuing to remain in the Commonwealth of Nations we are drifting away from our neighbours in Asia, or that it has become more difficult for us to co-operate with other countries, great countries in the world. But I think it is easier for us to develop closer relations with other countries while we are in the Commonwealth than it might have been otherwise. This is rather a peculiar thing to say. Nevertheless, I say it, and I have given a great deal of thought to this matter. The Commonwealth does not come in the way of our co-operation and friendship with other countries. Ultimately we shall have to decide, and ultimately the decision will depend on our own strength. If we dissociate ourselves completely from the Commonwealth, then for the moment we are completely isolated. We cannot remain completely isolated, and so inevitably by stress of circumstances, we have to incline in some direction or other. But that inclination in some direction or other will necessarily be a basis of give-and-take. It may be in the nature of alliances, you give something yourself and get something in return. In other words, it may involve commitments far more than at present. There are no commitments today. In that sense, I say we are freer today to come to friendly understandings with other countries and to play the part, if you like, of a bridge for the mutual understanding of other countries. I do not wish to place this too high; nevertheless,

it is no good placing it too low either. I should like you to look round the world and look, more especially during the last two years or so, at the relative position of India and the rest of the world. I think you will find that during this period of two years or less, India has gone up in the scale of nations in its influence and in its prestige. It is a little difficult for me to tell you exactly what India has done or has not done. It would be absurd for anyone to expect that India can become the crusader for all causes in the world and bring forth results. Even in cases that have borne fruit, it is not a thing to be proclaimed from the housetops. But something which does not require any proclamation is the fact of India's prestige and influence in world affairs. Considering that she came on the scene as an independent nation only a year and a half or a little more ago, it is astonishing—the part that India has played.

One more thing I should like to say. Obviously a declaration of this type, or the Resolution that I have placed before the House is not capable of amendment. It is either accepted or rejected. I am surprised to see that some Honourable members have sent in notice of amendments. Any treaty with any foreign power can be accepted or rejected. It is a joint declaration of eight—or is it nine countries?—and it cannot be amended in this House or in any House. It can be accepted or rejected. I would, therefore, beg of you to consider this business in all its aspects. First of all make sure that it is in conformity with our old pledges, that it does violence to none. If it is proved to me that it does violence to any pledge that we have undertaken, that it limits India's freedom in any way, then I certainly shall be no party to it. Secondly, you should see whether it does good to us and to the rest of the world. I think there can be little doubt that it does us good, that this continuing association at the present moment is beneficial for us, and it is beneficial in the larger sense, to certain world causes that we represent. And lastly, if I may put it in a negative way, not to have had this agreement would certainly have been detrimental to those world causes as well as to ourselves.

And finally, about the value I should like this House to attach to this declaration and to the whole business of those talks resulting in this declaration. It is a method, a desirable method, and a method which brings a touch of healing with it. In this world which is today sick and which has not recovered from so many wounds inflicted during the last decade or more, it is necessary that we touch upon the world problems, not with passion and prejudice and with too much repetition of what has ceased to be, but in a friendly way and with a touch of healing, and I think the chief value of this declaration and of what preceded it was that it did bring a touch of healing in our relations with certain countries. We are in no way subordinate to them, and they are in no way subordinate to us. We shall go our way and they will go their way. But our way, unless something happens, will be a friendly way; at any rate, attempts will be made to understand one another, to be friends with one another and to co-operate with one another. And the fact that we have begun this new type of association with a touch of healing will be good for us, good for them, and I think, good for the world.

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APPENDIX II

Speech by Prime Minister Jawaharlal Nehru in reply to the debate on India's decision to remain in the Commonwealth of Nations, delivered at the Constituent Assembly, New Delhi, on 17 May, 1949.

We have had a fairly full debate since yesterday and many Honourable Members have spoken in approval of this motion. In fact, if I may say so, some of them have even gone a little further than I might perhaps have gone. They have drawn some consequences and pointed out some implications which for my part I would not have approved or accepted. However, it is open to all of us and to each one of us to see the future in a particular way.

As far as this Resolution of mine and the Declaration of London are concerned, what we have got to see is this: One, that it fulfils, or at any rate it does not go against, any pledges of ours; that is to say, that it takes India forward, or does not come in the way of India going forward to her natural destination of a Sovereign Independent Republic. Secondly, that it helps India, or does not hinder India from making rapid progress in the other domains in the course of the next few years. We have, in a sense, solved the political problem, but the political problem is intimately connected with the economic condition of the country. We are being faced by many economic difficulties. They are our domestic concern, no doubt, but obviously the world can help or hinder any policy that we may adopt. Now, does this proposal which is contained in this Declaration help our speedy progress economically and otherwise or not? That is another test. I am prepared to admit that even without external help, we will go ahead. But obviously it will be a far more difficult task and it will take a much longer time. It is not an easy matter to do that.

The third test is whether in the world, as it is today, it helps in the promotion of peace and the avoidance of war. Some people talk about encouraging this particular group or that, this bloc or that. We are all, I am afraid, in the habit of considering ourselves or our friends as angels and others the reverse of angels. We are all apt to think that we stand for the forces of progress and democracy and others do not. I must confess that in spite of my own pride in India and her people, I have grown more humble about talking in terms of our being in the vanguard of progress or democracy.

In the last two or three years we have passed through difficult times, humiliating times. We have lived through them. That has been something in our favour. We have survived them. But I hope we have learned our lesson from them. For my part I am a little chary now of condemning this or that person or this or that nation, because the hands of no individual or nation are clean in such matters. And there is far too much of the habit of condemning other nations as the wrong-doers or the war-mongers, and yet doing exactly the same thing oneself.

If one looks round the world — of course, one favours certain policies — one is against some things and thinks that these are dangerous and might lead to war, but others are not. But the most amazing thing that strikes me is this: if you look back during the last 30 years or more which have comprised two wars and the period between these wars, you will find the same cries, changing slightly with the changed situation, of course, nevertheless, the same cries, the same approaches, the same fears and suspicions and the same arming on all sides and war coming. The same talk of this being the last war, the fight for democracy and all the rest of it is heard on every side. And then the war ends, but the same conflicts continue and again the same preparation for war. Then another war comes. Now, that is a very extraordinary thing, because I am convinced that hardly anybody in this wide world wants war, barring a few persons or groups who make profit by war.

Nobody and no country wants war. As war becomes more and more terrible they want it still less. Yet some past evil or *karma* or some destiny goes on pushing people in a particular direction, towards the abyss and they go through the same arguments and they perform the same gestures like automatons.

Now, are we fated to do that? I do not know, but anyhow I want to fight against that tendency of talking about war and preparation for war. Obviously, no country and no Government of any country dare allow its country to be unprepared for contingencies. We have to prepare ourselves unfortunately, unless we are brave enough to follow the policy that Mahatmaji laid down. If we are brave enough, well and good, we take the chance. I do believe that if we are brave enough that policy will be the right policy. But it is not so much a question of my being brave, or your being brave, but of the country being brave enough to follow and understand that policy. I do not think we have been brought up to that level of understanding and behaviour. Indeed, when we talk about that great level, I should say that in the last year and a half we have sunk to the lowest depths of behaviour in this country. So let us not take the name of the Mahatma in vain. Anyhow we cannot; no Government can say that it stands for peace and do nothing about it. We have to take precautions and prepare ourselves to the best of our ability. We cannot blame any other Government which does that, because that is an inevitable precaution that one has to take. But, apart from that, it seems to me that some Governments or many Governments go much further. They talk all the time of war. They blame the other party all the time. They try to

make out that the other party is completely wrong or is a war-monger and so on. In fact they create the very conditions which lead to war. In talking of peace and our love of peace we or they create the conditions that in the past have invariably led to war. The conditions that ultimately lead to war are generally economic conflicts. But I do not think today it is economic conflict or even political conflict that is going to lead to war, but rather the overmastering fear, the fear that the other party will certainly overwhelm one, the fear that the other party is increasing its strength gradually and would become so strong as to be unassailable and so each party goes on arming and arming with the deadliest weapons. I am sorry I have drifted off in this direction.

How are we to meet this major evil of the day? Some people may join up with the group which stands for peace while others may join up with the other group which, according to them, stands for some other kind of peace or progress. But I am quite convinced in my own mind that by joining up in this way, I do not help the cause of peace. That, in fact, only intensifies the atmosphere of fear. Then what am I to do? I do not believe in sitting inactive or practising the policy of escapism. You cannot escape. You have to face the problem and try to beat it and overcome it. Therefore, the people who think that our policy is a kind of passive negation or is an insane policy, — they are mistaken. That has not been ever my idea on this subject. I think it is and it ought to be our policy, a positive policy, a definite policy, to strive to overcome the general trend towards war in people's minds.

I know that in the huge problem before the world, India may not be a strong enough factor. She may be a feeble factor to change it or alter it. That may be so. I cannot claim any necessary results. Nevertheless, I say that the only policy that India should pursue in this matter is a positive, definite policy of avoiding the drift to war on the part of other countries and also of avoiding the atmosphere becoming so charged with fear and suspicion, and of not acclaiming this country or that, even though they may claim to make the world rational, but rather laying stress on the qualities of those countries which are good, which are acceptable and drawing out the best from them and thereby, in so far as it may be possible, to work to lessen the tensions and work for peace. Whether we succeed or not is another thing. But it is in our hands now to work with might and main in the direction we consider right, not because we are afraid or fear has overwhelmed us. We have gone through many frightful things and I do not think anything is going to happen in India or the world that is going to frighten us any more. Nevertheless, we do not want the world to suffer or go through another world disaster from which you and I cannot escape and our country cannot escape. No policy can make us escape from it. Even if war does not spread to this country, even so, if war comes from abroad, it will engulf India as well as the world. We have to face this problem.

This is more a psychological problem than a practical one, although it has practical applications. I think that in a sense India is partly suited to face it, because in spite of our being feeble and rather unworthy followers of Gandhiji, we have imbibed to some small extent what he taught us. Secondly, in these world conflicts you will see there is a succession of one action following another; inevitably one leading to another and so the chain of evil spreads; war comes and the evils that follow wars come and they themselves lead to another war and the chain of events goes on and each country is caught in the cycle of *karma* or evil or whatever you call it. Now, so far these evils have brought about wars in the West, because in a sense these evils were concentrated in the Western powers; I do not by any means say that the Eastern powers are virtuous. So far the West or Europe has been the centre of political activity, has dominated the politics of the world. Therefore, their disputes and their quarrels and their wars have dominated the world.

Now, fortunately we in India are not inheritors of the hatreds of Europe. We may like a person or dislike something or an idea, but we have not the past inheritance to crush us. Therefore, it may be slightly easier for us in facing these problems, whether in international assemblies or elsewhere, to deal with them not only objectively and dispassionately, but also with the goodwill of others who may not suspect us of any ill will derived from the past. It may be that a country can only function effectively if it has a certain strength behind it. I am not for the moment thinking of material or war strength — that, of course, counts — but the general strength behind it. A feeble country which cannot look after itself, how is it to look after the world and others? All these considerations I should like this House to have before it and then to decide on this relatively minor question which I have placed before the House, because I had all these considerations and I felt first of all that it was my duty to see that Indian freedom and independence was in no way touched.

It was obvious that the Republic that we have decided on will come into existence. I think we have achieved that. We would have achieved that, of course, in any event, but we have achieved that with the goodwill of many others. That, I think, is some additional achievement. To achieve it with the goodwill of those who perhaps are hit by it is some achievement. It shows that the manner of doing things — the manner which does not leave any trace of hatred or ill will behind it but starts a fund of goodwill is important. Goodwill is always precious from any quarter. Therefore, I had a feeling when I was considering this matter in London and later, in a small measure, perhaps, I had done something that would have met with the approval of Gandhiji. The manner of it I am thinking of, more than the thing itself. I thought that this in itself would raise a fund of goodwill in the world — goodwill which in a smaller sense is to our

advantage certainly, and to the advantage of England, but also in a larger sense to the advantage of the world in the psychological conflicts which people try to resolve by blaming one another, by cursing one another and saying that the others are to blame. May be somebody is to blame, may be some politicians or big men are to blame but nobody can blame those millions of men who will die in these catastrophic wars. In every country, the vast masses of human beings do not want war. They are frightened of wars. Sometimes this very fright is exploited to revive wars, because it can always be said that the other party is coming to attack you.

Therefore, I want this House to consider not only what we have achieved in any event, nobody would have been able to prevent us from achieving it—but what has a certain relevancy and importance is that we have achieved it in a way that helps us and helps others, in a way which does not leave evil consequences behind it, for otherwise when we think that we have profited at other people's expense, they think of that always and want to take revenge later. So that is the way and if the world acts in that way, problems will be solved far more easily and wars and the consequences of war will perhaps be fewer. They would be no more. It is easy to talk about the faults of the British or of the imperialism and the colonialism of other countries. Perfectly true. You can make out a list of the good qualities and the bad qualities of every nation today, including India. Even if you made that list, the question would still remain how anyone was going to draw the good from the other parties and yourself and lay the foundations for good in the future.

I have come to the conclusion that it does not help us very much either on the government plane or on the national plane to lay stress on the evil in the other party. We must not ignore it; we have to fight it occasionally. We should be prepared for that, but with all that, I do not think this business of maintaining our own virtues and blaming the other party is going to help us in the understanding of our real problem. It no doubt gives an inner satisfaction that we are virtuous while others are sinners. I am talking in religious phraseology which does not suit me, but the fact is that I do wish to bring this slightly moral aspect of this question before this Honourable House. I would not dare to do any injury to the cause of India and then justify it on some high moral ground. No Government can do that. But if you can do a profitable business and at the same time it is good on moral grounds, then obviously it is worthy of our understanding and appreciation. I do submit that what we have done in no way, negatively speaking, injures us or can injure us. Positively, we have achieved politically what we wanted to achieve and we are likely to progress, to have more opportunities of progress, in this way than we would otherwise have in the next few years.

Finally, in the world context, it is something that encourages and helps peace, to what extent I do not know; and, of course, it is a thing which in no way binds this country down to any country. It is open to this House or Parliament at any time to break this link, if they so choose. Not that I want that link broken. But I am merely pointing out that we have not bound the future down in the slightest. The future is as free as air and this country can go any way it chooses. If it finds this way is a good way, it will stick to it; if not, it will go some other way and we have not bound it down. I do submit that this Resolution that I have placed before this House embodying approval of the Declaration, the decision at the Conference in London, is a motion which deserves the support and approval of this House, not merely, if I may say so, a passive approval and support, but the active appreciation of all that lies behind it and all that it may mean for the future of India that is gradually unrolling before our very eyes. Indeed, all of us hitched our wagons to the star of India long ago. Our future, our individual future, depends on the future of India, and we have thought and dreamt of the future for a long time. Now, we have arrived at a stage when we have to mould, by our decisions and activities, this future at every step. It is no longer good enough for us to talk of that future in terms merely of resolutions, merely in terms of denunciations of others and criticism of others; it is we who have to make it for good or ill; sometimes some of us are too fond of thinking of that future only in negative terms by denouncing others. Some members of this House who have opposed this motion and some others who are not in this House, who have opposed this motion, I have felt, have been totally unable to come out of the cage of the past in which we all of us lived, even though the door was open for them to come out mentally. They have reminded us, and some of our friends have been good enough to quote my speeches, which I delivered 15 to 20 years ago. Well, if they attach so much value to my speeches, they might listen to my present speeches a little more carefully. The world has changed. Evil still remains evil, and good is good; I do not mean to say that it is not: and I think imperialism is an evil thing and wherever it remains it has to be rooted out and colonialism is an evil thing, and wherever it remains, it has to be rooted out, and racialism is an evil and has to be fought. All that is true. Nevertheless, the world has changed; England has changed; Europe has changed; India has changed: everything has changed and is changing: and look at it now. Look at Europe which for the last three hundred years has had a period of magnificent achievement in the arts and sciences and it has built up a new civilization all over the world. It is really a magnificent period of which Europe or some countries of Europe can be greatly proud, but Europe during those three hundred years or more has also gradually spread out its domination over Asia and Africa, has been an imperialist power and exploited the rest of the world and in a sense dominated the political scene of the

world. Well, Europe has still, I believe, a great many fine qualities and those people there who have fine qualities will make good, but Europe can no longer be the centre of the world politically speaking or exercise that influence over other parts of the world, which it had in the past. From that point of view, Europe belongs to the past and the centre of world history, of political and other activities, shifts elsewhere. I do not mean to say that any other continent becomes a dominating force, dominates the rest, not in that way. However, we are looking at it in an entirely changed scene. If you talk of British imperialism and the rest of it, I would say that there is no capacity left for imperialism even if the will were there; it will not do. The French are acting imperialistically in parts of Asia. But the fact remains that the capacity for carrying it off any longer is past. They may carry on for a year or two years, but not for very long. The Dutch may do so elsewhere and if you look at it in the historical perspective, all these things are hang-overs of something past. There may be strength behind imperialism today; it may last even a few years and, therefore, we have to fight it and, therefore, we have to be vigilant — I do not deny that — but let us not think as if Europe or England was the same as it was 15 or 20 years ago. It is not.

I was saying about our friends who have criticized us and taken a rather negative and passive view. I mentioned at another place that their view was static. I said that, in this particular context, it was rather reactionary and I am sorry I used that word, because I do not wish to use words that hurt and I do not wish to hurt people in this way. I have certainly the capacity to use language, clever language to hurt people, and dialectical language, but I do not wish to use it, because we are up against great problems, and it is poor satisfaction just to say a word against an opponent in an argument and defeat him by a word, and not reach his heart or mind, and I want to reach the hearts and minds of our people and I feel that whatever our domestic differences may be — let there be differences honestly felt — we do not want a cold regimentation of this country.

As far as foreign affairs are concerned, there may also be differences, I do not deny that, but the fundamental things before any man who is — whatever else he may be — an Indian patriot, who wants India to progress and the world also to progress, must necessarily be Indian freedom, that is, complete freedom, India's progress, economically and otherwise, India playing a part in the freedom of the world and the preservation of peace in the world. These are the fundamental things: India must progress. India must progress internally; we can play no part unless we are strong in our country economically and otherwise. How we should do so internally may be a matter of difference of opinion. Now, I think it should be possible for people who differ considerably in regard to our internal policy, it should be possible for us to have more or less a unified foreign policy in which they agree or mostly agree. May I make myself clear? I do not wish in the slightest to stop argument or comment or criticism; it is a sign of a healthy nation, but I do wish that argument to be the argument of a friend and not of an opponent who sometimes uses that argument, not for argument's sake, but just to injure the opposite party, which is often done in the game of politics. I do not see any major difference for any person in regard to foreign policy. I do see a major difference between those individuals or groups who think in terms of other countries and not primarily of India at all. That is a basic difference and with them it is exceedingly difficult to have any common approach about anything; but where people think in terms of India's independence and progress in the near future and in the distant future and who want peace in the world, of course, there will be no great difference in our foreign policy. And I do not think there is, in fact, although it may be expressed differently. Although a Government can only speak in the language of a Government, others speak a language which we all used to speak, of opposition and agitation. So I would beg this House, and if I may say so, the country to look upon this problem not in any party spirit, not in the sense of bargaining for this little matter or that.

We have to be careful in any business deal not to lose a thing which is advantageous to the nation. At the same time, we have to look at this problem in a big way. We are a big nation. If we are a big nation in size, that will not bring bigness to us unless we are big in mind, big in heart, big in understanding and big in action also. You may lose perhaps a little here or there with your bargainers and hagglers in the market place. If you act in a big way, the response to you is very big in the world and their reaction is also big. Because good always brings good and draws good from others and a big action which shows generosity of spirit brings generosity from the other side.

Therefore, may I finish by commending this Resolution to you and trusting that the House will not only accept it, but accept it as something, as a harbinger of good relations of our acting in a generous way towards other countries, towards the world, and thus strengthening ourselves and strengthening the cause of peace.

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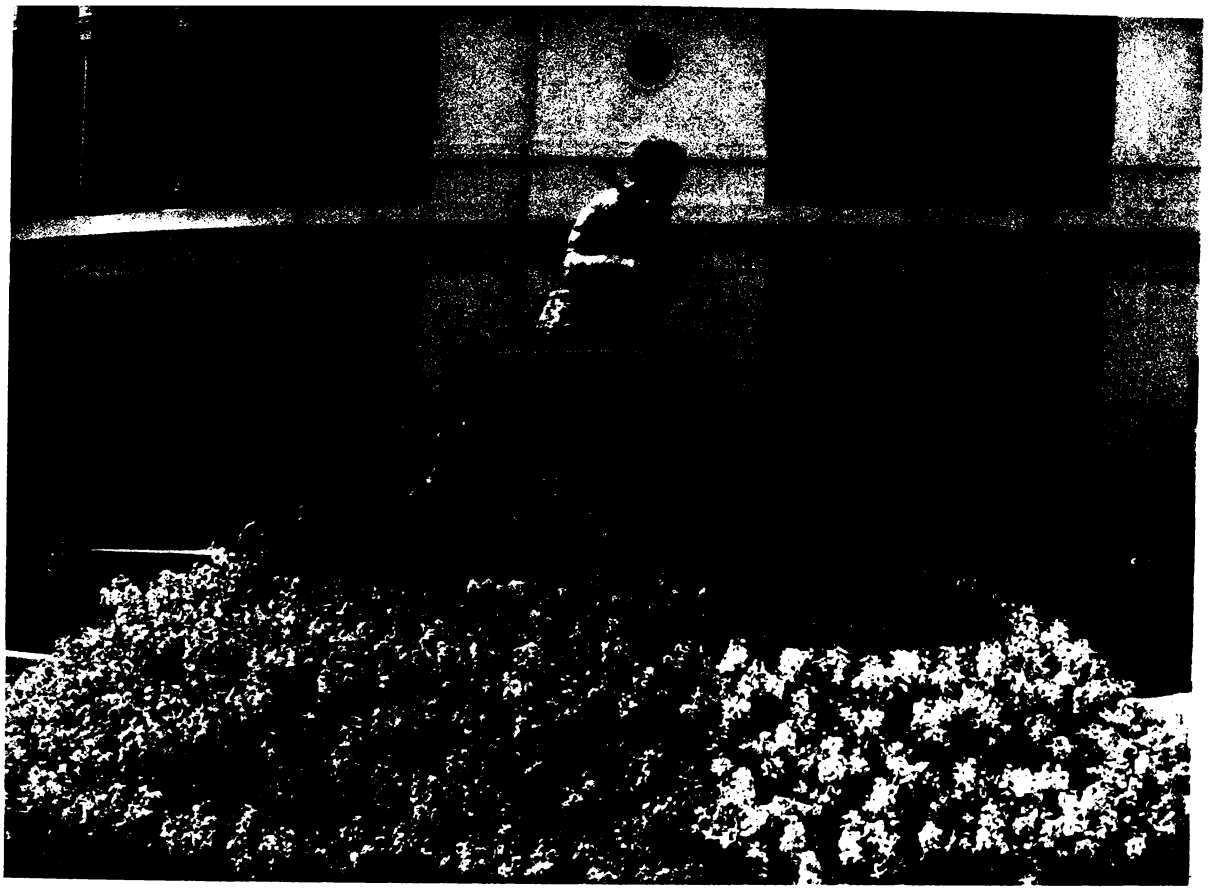
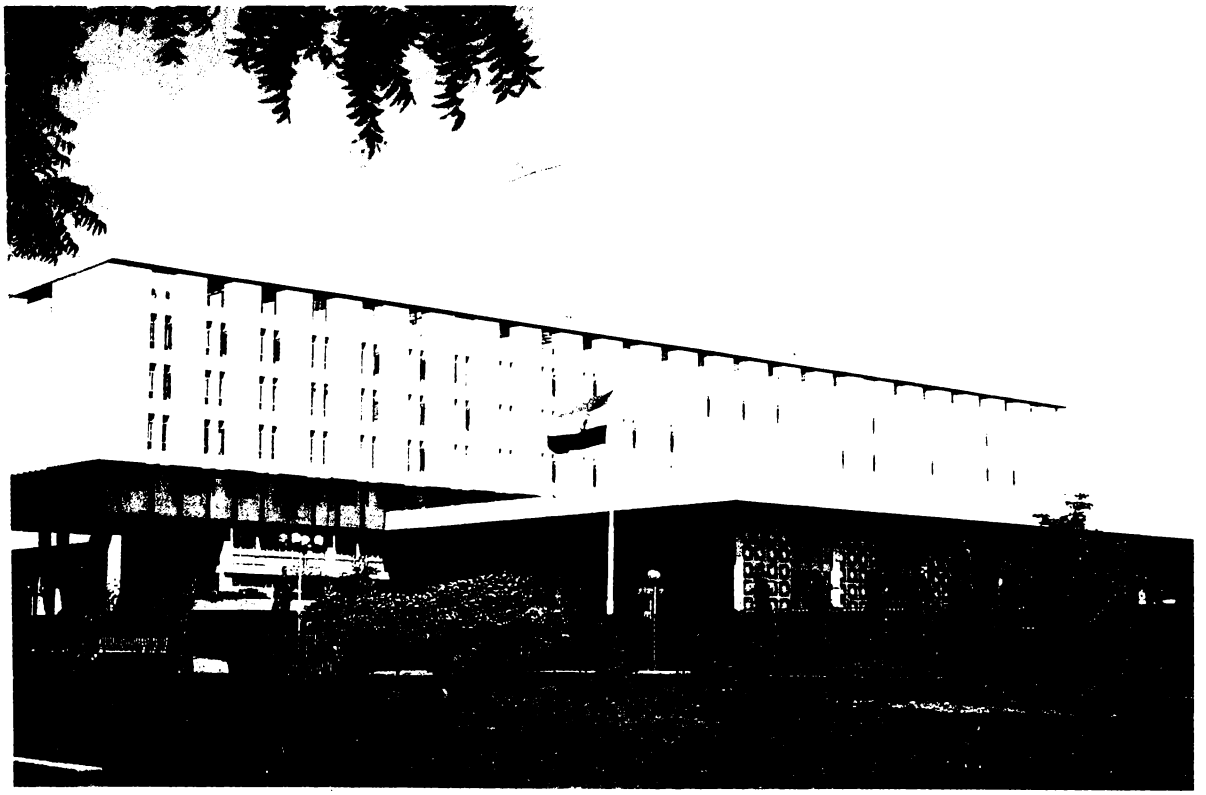


"Shepherd boy—Chandragupta Maurya dreaming of India he was to create".



Outer view of Parliament House Annexe