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The

Journal of Parliamentary Information



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**The
Journal of Parliamentary Information
Editor**

M. N. Kaul, Bar-at-Law

T*he views expressed in the signed articles are those of the contributors.*

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Delegated Legislation

[Shri G. V. Mavalankar, Speaker of the Lok Sabha, addressed the Members of the Committee on Subordinate Legislation on the 7th December, 1954. Some of the important observations made by the Speaker about the functions, approach and achievements of the Committee on Subordinate Legislation are reproduced below—*Ed.*]

THESE days, when the nature of Government has changed and is changing, the duties of Parliament are also getting manifold and onerous. In our conception of the State as a welfare State, the administration pervades every walk and aspect of a citizen's life and naturally, therefore, the scope of legislation is very wide, and the number of laws that are required to be enacted is quite large.

In such a state of things, it is impossible for any body of legislators to deliberate upon, discuss and approve every little rule or regulation, which may be essential for the purpose of administering the various laws, schemes, etc. which Government sponsor.

Parliament can, therefore, lay down, even in the matter of legislation, only

broad aspects of a measure and leave the details to be worked out by the executive to give effect in the desired manner to the wishes as expressed by the legislature in an enactment.

The rule-making power thus vested in the executive by legislation has given rise to a kind of "new despotism" as experienced parliamentarians in the U.K. would say. It is for the purposes of keeping this new despotism under control, within due limits and proper lines that Parliament functions through the Committee on Subordinate Legislation. Members of the Committee are, therefore, in a sense the custodians of Parliament to watch as to how the power given by Parliament is being exercised in action and to keep the administration within the bounds intended by Parliament.

The Committee is not conceived in any sense as an opposition to the Executive Government or to the Administration. It is conceived as a body of persons who are in touch with the people and not being concerned in the actual administration are capable of taking independent and detached views.

The full text of the speech delivered by Shri Mavalankar is printed in the third report of the Committee on Subordinate Legislation, 1955, at pp. 15-17.

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They are the collaborators, the co-operators and the friends of the Administration and they approach the examination of the rules and regulations in that spirit.

Once a decision is taken, even though by majority, it becomes the decision of the House and every Member of the Committee is bound to work on the basis that the laws enacted and the policies laid down have emanated from the entire House; and therefore examination of the implementation of

those laws through rules, admits of no party considerations.

I am glad to find that the Committee has worked very well indeed, during the first year of its existence. It has taken great pains in examining large mass of rules and orders and done splendid work involving an amount of labour. I am glad that the work of the Committee is appreciated by all and Government have considered it fit to accept some of its recommendations on vital points.

Messages

[We reproduce below some of the messages that were received on the publication of the first issue of the Journal of Parliamentary Information.—Ed.]

W. S. MORRISON,

Speaker, House of Commons, London.

(To SHRI MAVALANKAR)

It is very gratifying to us all here to note that such great interest is being taken in parliamentary matters, and I do congratulate all concerned in the preparation and publication of the Journal.

I should especially like to compliment you, Mr. Speaker, on the excellent Foreword you have written. Democratic Government will certainly prosper in India as long as there are such wise counsellors as yourself to ensure that the spirit of democracy is understood.

I conclude with the expression of my best wishes to you personally and to everyone who will have a part in subsequent issues of the Journal of Parliamentary Information.

(To SHRI KAUL)

I received the first copy of the Journal of Parliamentary Information which you have been, I know very well, largely instrumental in producing. I should like to say how very favourably impressed I have been by the standard of the publication and how interested I have been to look through the various articles which are included. I am sure the Journal will

be of great value to your Members and to Officers of your Parliament, and to all who are interested, as all should be, in the legislature of their country.

* * *

SIR HOWARD D'EGVILLE,

Secretary-General, Commonwealth Parliamentary Association.

I am grateful to you for kindly sending me a copy of the Journal of Parliamentary Information. I think this is a most interesting and valuable production and will prove of great benefit as a means of strengthening Parliamentary democracy which is working so well in your country.

* * *

OWEN CLOUGH,

Formerly Clerk of the Senate of the Union of South Africa and Editor, Journal of the Society of Clerks-at-the Table in Empire Parliaments.

It is indeed a splendid production and does great credit to all concerned. Especially is it a tribute to you personally, to whose energies it is no doubt largely due. . . With its 24 legislatures, 4471 members and their 160 million electors representing over 300 million people the Parliament of Bharat is indeed a gigantic machine and the pooling of information in connection with their operation of Parliamentary government in all its spheres must be of great usefulness.

* * *

R. C. BHARGAVA,

Speaker, Ajmer Legislative Assembly.

The Journal has fulfilled the long felt need in our Parliamentary and Legislative world.

I hope the Journal would go a long way in strengthening the democratic set-up which our country has chosen for building up its future. I also earnestly hope that this magazine would jealously guard the Parliament and the Legislatures—big or small—from apparent or concealed encroachments of the Executive, for independence of Legislature is as necessary as that of Judiciary for building up a healthy democracy.

* * *

SHYAMA PRASAD SINHA,

Chairman, Bihar Legislative Council.

The only journal which we used to have so far was that of the Society of Clerks-at-the-Table in the Empire Parliaments. But this did not give us all the information that we needed. I often thought that there should be a Journal on matters affecting parliamentary practices and procedures as now evolve in the various Legislatures in India in order that we may have the advantage of the experience and knowledge gained at other Legislatures. The Journal of Parliamentary Information not only gives us short notes on procedural matters but contains valuable articles of lasting importance. This Journal, therefore, fulfils a long felt need and I heartily welcome it.

* * *

B. S. KUSHALAPA,

Speaker, Coorg Legislative Assembly.

Indeed you deserve congratulations on the publication of the Journal of Parliamentary Information. The articles inserted serve admirably well the objects with which the Journal has been brought into existence. All the Legislatures have the necessary rules of procedure and the presiding officers are exercised in applying those rules and in correctly interpreting them, when cases arise. The 'Short Notes' and 'Some Parliamentary Activities at a Glance' are very useful in that respect. I would like the Journal to devote more space on these aspects.

I have no doubt this Journal could be read with profit by the Legislators as well. Parliamentary Democracy in India is young as yet and every effort to build up healthy conventions deserves full support. This Journal has started on such a useful career and I wish it all success.

* * *

JAIWANT RAM,

Speaker, Himachal Pradesh Vidhan Sabha.

It is a platitude to say that the parliamentary system of Government in the form in which it has been adopted in our country is, at any rate, to some parts of this country, an entirely new thing. But as far as one can see, this is the only form of Government which is best suited for the solid development of our country during the times through which we are passing. The working of parliamentary system therefore bristles with difficulties. Problems arise demanding immediate

Messages

solution. Often there is no trustworthy guidance at hand. Apart from it, the legislatures also desiderate an atmosphere of thought compatible with the new system. The Journal of Parliamentary Information will provide that atmosphere and the required guidance. It has fulfilled a long-felt need. As time moves, its value will be realised more and more.

* * *

K. R. VAIDYA,

Speaker, Hyderabad Legislative Assembly.

The Journal of Parliamentary Information issued by the Lok Sabha Secretariat is a very useful publication from the parliamentary point of view. The Journal at once aims at educating the voter and informing the expert. In view of the paucity of material on parliamentary affairs especially in a country like India which has only recently embarked on Parliamentary democracy, such a Journal serves a very useful purpose. With the commencement of the Constitution, several Legislative Bodies came into being to run democracy within their specified sphere. The need for co-ordinating parliamentary activities in various States and also furnishing information on points of Parliamentary Procedure and Practice became all the more pressing. I am sure this Journal will be like a guide, friend and philosopher to those involved and interested in parliamentary activities.

* * *

J. SIVASHANMUGAM PILLAI,

Speaker, Madras Legislative Assembly.

A Journal giving information on parliamentary procedure was long due

in our country. I am glad that a Journal giving information about Parliament has seen the light of the day and it is edited by Mr. Kaul, Secretary to Lok Sabha. The Journal contains very good information. This Journal will be of very great use to students of Politics and Constitution. I wish it all success.

* * *

P. V. CHERIAN,

Chairman, Madras Legislative Council.

I do congratulate you on this attempt. I am going through it and find it very useful. I am sure you will maintain the same standard of efficiency and usefulness in the future issues also.

* * *

KUNJI LAL DUBEY,

Speaker, Madhya Pradesh Vidhan Sabha.

Its get-up and contents are excellent and you deserve hearty congratulations for this venture.

* * *

A. S. PATWARDHAN,

Speaker, Madhya Bharat Legislative Assembly.

I have gone through the Journal and found it very useful. Since we are committed to a parliamentary form of Government, it is very necessary and desirable that the people should be kept informed of the Parliamentary activities both in the Central as well as the State Legislatures. This Journal will therefore fulfil this long felt need. Besides this, this Journal will provide an easy forum for the discussion and

expression of views on the Parliamentary practice and procedure which will help us in evolving a Parliamentary pattern most suited to our country. The Journal will also be very helpful in guiding the Legislators in our country, on whom rests the burden and responsibility of working the Constitution effectively and for the good of the people.

* * *

K. T. BHASHYAM,

Chairman, Legislative Council, Mysore.

It is more than eight years since the Parliamentary democracy came into being in our country and it is not a day too soon that a Journal of this kind has been started. I agree with you that this is a forum for the dissemination of authoritative knowledge regarding Parliamentary procedure and practice. I convey my heartiest felicitations to you and others concerned on this important venture begun under the blessings of great leaders like our revered President and Prime Minister.

* * *

NANDA KISHORE DAS,

Speaker, Orissa Legislative Assembly.

I have found it extremely interesting and instructive. The portions entitled "Short Notes" and "Some Parliamentary Activities at a Glance" interested me most and indeed personally speaking these provided very profitable reading to me. It reflects great credit on the Lok Sabha Secretariat that they have been able to bring out this Journal even in the midst of their multifarious work throughout the year.

* * *

R. S. MITAL,

Speaker, PEPSU Legislative Assembly.

Legislative Bodies are functioning in Part A States (formerly known as British India) for about 35 years, but it is only after attaining independence that they have acquired the importance they deserve. Legislatures have now been set up in almost every part of the country and our leaders' dream of *Swarajya*, i.e. self-government, is being put into practice through them. It also goes without saying that the efficiency of the administration of the country is closely linked up with the efficient working of our Legislatures and anything which helps in achieving this object is commendable and must be encouraged.

The Journal which you are bringing out is a step in the right direction and fulfils a real need. The first Number, which I had the privilege of going through, contains very useful and instructive information. The Editors appear to have taken great pains in including in the Journal topics dealing with the parliamentary life of different countries. I am sure our Legislators and the Parliamentary Officials, in fact all the persons having anything to do with parliamentary work, will be benefited by this Journal. I wish your Journal a very bright future.

* * *

GURDIAL SINGH DHILLON,

Speaker, Punjab Legislative Assembly.

I have gone through the Journal of Parliamentary Information very carefully. I congratulate the Lok Sabha Secretariat for having brought out such a Journal. By doing so they have done signal service to the parliamentary institutions in this country

by placing at their disposal information which is of incalculable value, both for procedure and for bringing about that harmony in the working of the different Legislatures which is essential not only for the unity of India but also for achieving democracy in all its fulness.

I am confident that the Journal, first of its kind in India and one of a very few in the world, will serve its great purpose as well by disseminating knowledge as by engendering in us the happy feeling that we all are, although in different States, one Grand Parliament of India, unitedly working for the benefit of the average man.

* * *

KAPOOR SINGH,

Chairman, Legislative Council, Punjab.

In a democratic system of Government knowledge of parliamentary procedure and affairs is indispensable. Its necessity was felt all these past years and I am glad to know that by bringing out this Journal this vacuum has been filled up. This issue of the Journal contains really very useful information about parliamentary matters and I am sure will continue to prove very helpful to the legislators, politicians and the general public. I wish the Journal every success.

* * *

NAROTTAM LAL JOSHI,

Speaker, Rajasthan Legislative Assembly.

This noble effort of yours really fulfils a long-felt demand in this country of ours, where about two dozens of Legislatures are functioning. A Journal of this type will be helpful in harmonising the various procedural mat-

ters and usages and conventions which are so vital to our parliamentary life.

Moreover this Journal will also go a great deal in serving as an organ of expression of different shades of opinion over various controversial issues. Some of the deliberations held in the Conferences of the Presiding Officers, of the Secretaries and of the Chairmen of Financial Committees are of so vital importance, that they might also find publicity in this Journal.

* * *

MAGANLAL B. JOSHI,

Speaker, Saurashtra Legislative Assembly.

I sincerely welcome it and trust that it will not merely be a useful record of important happenings in all the Legislatures in India but it will be a sort of forum for expressing our common experiences and knowledge and hope that it may contribute to the evolution of the best pattern of democracy in India. I wish this Journal all success.

* * *

SHIVANAND,

Speaker, Vindhya Pradesh Legislative Assembly.

I liked this Journal much

* * *

SUNITI KUMAR CHATTERJEE,

Chairman, West Bengal Legislative Council.

I am very pleased with the form and get-up of the Journal and I think it will serve a very useful purpose. Mr. Kaul can be congratulated on both the selection and disposal of the material and on the very attractive form in which the work has been printed.

Speeches on the Occasion of the Eightieth Birthday of Sir Winston Churchill

[Sir Winston Churchill who resigned the Prime Ministership of the U.K. on the 5th April, 1955 was presented with gifts by the Members of both Houses of the British Parliament on the 30th November, 1954 on reaching his eightieth year. In his speech in Westminster Hall, after he had been presented with gifts, Sir Winston Churchill referred to the wonderful honour that had been done to him. The speeches delivered by Mr. Attlee and Sir Winston Churchill are reproduced below—*Ed.*]

Mr. Attlee: You will, I know, be having on this happy occasion a family gathering, but this, too, is in a sense a domestic event, for the House of Commons is a family and we are paying a tribute of esteem and affection to the most distinguished member of the Parliamentary family. This is a unique occasion when, in an interval of the Parliamentary battle, friends and foes lay aside their weapons and unite in honouring one of their members.

Fifty-four years have gone by since you first entered this House but, despite your youth, you had already seen several warlike campaigns and had made notable contributions to literature. You soon became prominent as vigorous, even obstreperous backbencher taking the risk of crossing the floor. Old hands soon recognized in you a chip of the old block, the son of Lord Randolph Churchill whom you commemorated with filial piety in one of the finest biographies ever written. You overcame the handicap of being the son of the distinguished father.

In 1906 you left the back benches and, as an Under-Secretary, introduced into the House the great act of statesmanship which resulted in the creation of the Union of South Africa. It was not long before you were promoted to the Cabinet and ever since, save for a few absences due to the chances of our electoral system, have been a leading figure in the Parliamentary arena.

It is not for me this morning to recount in detail your career. I come not to bury Caesar but to praise him. Caesar indeed—for you have not only carried on war but have written your own commentary. It is enough to say that you held many high offices and in every one you brought your own distinctive touch. I recall your reforms of the prison system. You took your full share of the Liberal social reforms of the Lloyd George era and your winged words inspired the attacks on the other place in 1910.

Then came the war of 1914 and from Admiralty House you gave the order to mobilize the fleet, a fleet ready and concentrated in the right place. You had the conception of the Dardanelles campaign, the only imaginative strategic idea of the War. I wish that you had had full power to carry it to success. You urged the adoption of the tank, the only new tactical weapon of first importance in that war.

When the Coalition Government of Lloyd George broke up and you lost

your seat in 1922 there were those who thought that your career had already passed its climacteric. They little knew what Fate had in store, but indeed you had already done enough to earn a place in history. For twenty-two years you had been a leading figure in the political life of this country.

That period has now passed into history. There are only three members of the House still serving who took part in it. In 1924 you returned. You are now playing your second innings and have scored 30 not out. I remember very well when you were Chancellor of the Exchequer wrestling with those adjectival dots that puzzled your father.

Then came your disagreement with your party. You did not go to the back benches but dug in on the front bench below the gangway, prepared for offence and defence against all opponents. Once again, the wise-^{aces} said, "Churchill is finished", but they had not reckoned on your remarkable powers of resilience. You did not choose to play the role of Achilles sulking in his tent: you appeared instead as Cassandra and, like her, your warnings were not believed.

In 1940 the hour of destiny struck and you became the leader of the nation in the most critical days that it had ever faced. Prime Minister, you have always been a figure of controversy. You are one who kindly gives and takes hard knocks. It can only be a very youthful member of Parliament who has not disagreed with you, and most of us have, at one time or another, been violently opposed to you.

Yet, it was found in 1940 in the hour of peril that members of all parties were glad to serve under you and recognized you as the daring pilot in extremity, through the storm that had struck, Britain required. Those days are fresh in our memory.

We who had the privilege of serving under you during those long days of war know well what the country owes to you and how you were able to inject into the national efforts urgency, force and enthusiasm.

We recall those stirring speeches in the House in which in a few sentences you expressed the will not only of Parliament but of the whole nation. You offered us only blood and sweat and tears and we gladly took your offer. I recall how often you said in those days that in difficult times we should draw support from the House of Commons. That battered arch called after your name through which members enter the House will remind future generations of this.

After the war you played a new and unaccustomed role in the House—that of Leader of the Opposition. We of the Government endeavoured to sustain your attacks with equanimity, whether they were delivered with the gravity of the elder statesman or, as sometimes happened, with the impetuosity of the cavalry subaltern of long ago.

Then we come to the present time, when we greet you on your birthday—Prime Minister at 80. Only Palmerton and Gladstone among your predecessors exceed this record but neither of them had to bear such strains as you have undergone.

We greet you to-day especially as a great parliamentarian, the last of the great orators who can touch the heights. You are, however, equally happy in the cut and thrust of controversy and at question time, when you seem at times, in the lighter moments of the House, to recapture the mischievous spirit of the boy.

I have spoken of your career as a statesman and of your work in Parliament, but I must spare a word for what I might call your extramural activities. If, like Caesar, you have written in imperishable verse your account of two great world wars and several small ones, you have, I believe, like Balbus, built with your own hands a wall.

You have written the life of your ancestor, the great Duke of Marlborough. You have been awarded the Nobel Prize for literature. You are a painter of pictures honoured by the Royal Academy. In your youth you were a polo player of note, and in your later years you have been a successful owner of race horses.

To-day in offering our congratulations to you we hope that you may have many more years of happiness with the gracious lady your wife who had so well sustained you through good and evil times.

You will realize that I should be in breach of my duty as Leader of the Opposition were I to wish you long continuance in your present office, but may I hope that you will live to see the beginnings of an era of peace in the world after the storms which it has been your lot to encounter. "Old age hath yet his honour

and his toil...some work of noble note may yet be done."

Sir Winston Churchill: My Lord Chancellor, Mr. Speaker, your Graces, my Lords, Ladies and Gentlemen, this is to me the most memorable public occasion of my life.

No one has ever received a similar mark of honour before. There has not been anything like it in British history, and, indeed, I doubt whether any of the modern democracies abroad have shown such a degree of kindness and generosity to a party politician who has not yet retired and may at any time be involved in controversy.

It is, indeed, the most striking example I have ever known of that characteristic British Parliamentary principle, cherished in both Lords and Commons: "Don't bring politics into private life."

It is certainly a mark of the underlying unity of our national life which survives and even grows in spite of vehement party warfare and many grave differences of conviction and sentiment. This unity is, I believe, the child of freedom and fair play fostered in the cradle of our ancient island institution and nursed by tradition and custom.

I am most grateful to Mr. Attlee for the agreeable words he had used about me this morning, and to the magnanimous appraisal he has given of my variegated career. I must confess, however, that this ceremony, with all its charm and splendour, may well be found to have seriously affected my controversial value as a party politician. However, perhaps with suitable assistance, I

shall get over this reaction and come round after a bit.

The Leader of the Opposition and I have been the only two Prime Ministers of this country in the last 14 years. There are no other Prime Ministers alive. Mr. Attlee was also Deputy Prime Minister with me in those decisive years of war when I had the great experience of being at the Head of a Government of all parties in the State.

During our alternating tenure we have seen many changes and faced many difficulties. Tremendous events have happened abroad and far-reaching changes have taken place at home.

There have been three general elections on universal suffrage and the activity of our Parliamentary party machinery has been absolutely free. Mr. Attlee's and my monopoly of the most powerful and disputatious office under the Crown all this time is surely a fact which the world outside may recognize as a symbol of the inherent stability of our British way of life. It is not, however, intended to make it a permanent feature of the Constitution.

I am sure this is the finest greeting any member of the House of Commons has yet received and I express my heartfelt thanks to the representatives of both Houses for the gifts which have been bestowed on me in their names. The portrait is a remarkable example of modern art. It certainly combines force and candour. These are qualities which no active member of either House can do without or should fear to meet.

The book with which the "Father" of the House of Commons has presented me is a token of the good will and chivalrous regard of members of both parties.

I have lived my life in the House of Commons, having served there for 52 out of the last 54 years of this tumultuous and convulsive century. I have indeed seen all the ups and downs of fate and fortune there, but I have never ceased to love and honour the Mother of Parliaments, the model of the legislative assemblies of so many lands.

The care and thought that has been devoted to this beautiful volume and the fact that it bears the signatures of nearly all my fellow members deeply touches my heart, and may I say that I thoroughly understand the position of those who felt it their duty to abstain. The value of such a tribute is that it should be free and spontaneous. I shall treasure it as long as I live and my family and descendants will regard it as a most precious possession... I was very glad when Mr. Attlee described my speeches in the late war as expressing the will not only of Parliament but of the whole nation. I have never accepted what many people have kindly said—nameily, that I inspired the nation. Their will was resolute and remorseless and it proved unconquerable. It fell to me to express it and if I found the right word you must remember that I have always earned my living by my pen, and by my tongue.

It was the nation and the race dwelling all round the globe that had the lion's heart. I had the luck to be called upon to give the roar. I also hope

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that I sometimes suggested to the lion the right place to use his claws.

Ladies and Gentlemen, I am now nearing the end of my journey. I hope

I still have some services to render. However that may be and whatever may befall, I am sure I shall never forget the emotion of this day.

“It has seemed to some students of the working of standing committees in Britain that their functions should be extended from the consideration of bills to the study of administration, and that they should be organised according to a division of subject-matter and authorised to deal with both legislation and administration in their allotted field. Though proposals of this kind have been put forward and supported by people of authority and experience, they have always been rejected, and usually emphatically. The Cabinet will tolerate no rivals to its authority in the House of Commons”

—K.C. Where in *Government by Committee*.

Role of the Committee on Assurances

[Shri G. V. Mavalankar, Speaker of the Lok Sabha, addressed the Members of the Committee on Assurances on the 6th April, 1955. Some of the important observations made by the Speaker about the functions, composition and achievements of the Committee on Assurances are reproduced below—*Ed.*]

PARLIAMENT exercises its control in various ways. The greatest is through the power to sanction the Budget and give the authority to raise funds. But, once the Budget is sanctioned and the taxes are authorised, the administration has a free hand to work within the limits of the policy and to spend moneys as sanctioned. It becomes, therefore, necessary to keep a continuous watch to see as to how far the administration is conforming to the policies, directions and wishes of Parliament in carrying on the Government of the country. We have, therefore, various Committees to watch the day to day administration in various fields.

Various Parliamentary Committees have been constituted by me for the purpose of enabling Parliament to exercise its supervision and control on the work of the Executive Government. Parliament principally debates policies and votes the required funds; but it is equally its duty to keep constant vigil on the functioning of the Executive Government, if we desire to ensure the success of Parliamentary democracy.

Functions

Government, i.e. Ministers, give assurances, promises, undertakings, etc. from time to time during the course of debates or other proceedings on the Floor of the House in response to the suggestions, criticisms or questions of Members. But these by themselves are not and cannot be sufficient unless those assurances, promises, etc. are fulfilled by the Government. It, therefore, becomes necessary to have a Committee like the Committee on Assurances to scrutinise the assurances, promises, etc. from time to time and see how far they are implemented and also within what time.

Out of a total number of 2875 assurances till the end of the 8th Session of Parliament in 1954 as many as 2115 have been found to be fulfilled till now. Though this may appear to be a fairly large number, one notices that as many as 760 assurances still remain in balance.

The Committee will, therefore, to my mind, have to apply itself to see, not only which assurances have been implemented, but also to see further as often as possible as to why such and such assurances have not been implemented, and to find out where the fault or the delay occurs and who is responsible for the delay. The Committee will be setting a new tone to the administration if it takes up this line of work.

Achievements

I am glad to say that I find myself in

The full text of the speech delivered by Shri Mavalankar is printed in the second report of the Committee on Assurances, 1955, at pp. 17—19.

entire agreement with recommendations Nos. 4, 5 and 6 made in the first report of the Committee presented to the House on the 8th of May, 1954.

At the initial stages we have to proceed with moderation and offer cons-

tructive remarks or criticism. Such an attitude on the part of the Committee will considerably go to establish the prestige of the Committee. The Committee has already given a promise of all these things in its first report, and I felicitate it on that.

"It is tolerably obvious that the system of delegation by Parliament of powers of legislation is within certain limits necessary, at least as regards matters of detail, because it is impossible, if only for want of time, for Parliament to deal adequately and in detail with all the matters calling, or supposed to call, for legislation. Indeed, without a drastic alteration of its methods of procedure, it would be impossible for Parliament to deal adequately with even a comparatively small part of the present-day volume of departmental legislation. It may also be conceded that the system, if not abused, and subject to proper safeguards, may have its uses. It is the abuse of the system that calls for criticism, and perhaps the greatest abuse, and the one most likely to lead to arbitrary and unreasonable legislation, is the ousting of the jurisdiction of the Courts."—Lord Hewart in *The New Despotism*.

Short Notes

Farewell to Retiring Chairman

Shri B. Das

THE Public Accounts Committee for 1954-55 laid down office on the 29th June, 1955. Shri B. Das, the retiring Chairman of the Committee, who has held this post since 1950, was given a farewell by other members of the Committee at a function held at Parliament House, New Delhi, on the 28th June, 1955. Amongst the retiring members of the Committee Shrimati Ammu Swaminadhan, Shri U. M. Trivedi and Shri Choithram Gidwani spoke of the great interest that Shri Das had always taken in the work of the Committee. They also referred to the guidance they had always received from him as well as to his strictly non-party attitude in performing his duties as the Chairman. Shri Mahavir Tyagi, Minister of Defence Organisation and Shri H. V. Pataskar, Minister of Legal Affairs, and an ex-member of the Public Accounts Committee, also attended the function and eulogised the services rendered by Shri B. Das. Expressing his thanks for the remarks made by the speakers, Shri Das said that the way the Committee had been functioning these years indicated that they were near the ideal of what such a body ought to be and ought to do. He appreciated the co-operation that had been forthcoming from the officials since Independence.

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Members' Responsibilities

Responsibilities of an M. P.

Sir Winston Churchill made an observation on the responsibilities of an M. P. when he spoke on March 26, 1955 in his Constituency. He said:

"The first duty of an M.P. is to do what in his faithful and disinterested judgment he believes is right and necessary for the honour and safety of our beloved country. The second duty is to his constituents, of whom he is the representative but not the delegate. It is only in the third place that a man's duty to the party organisation or programme takes rank. All those three loyalties should be observed but there is no doubt of the order in which they stand in any healthy manifestation of democracy. The further to the Left parties go the more rigid and rigorous their discipline becomes until the personalities and convictions of individuals are ground up, as we see in the Communist Party, with the power and rigour of the machine. Latitude and tolerance ought to be allowed to members of a party and leaders should prove capacity to cope in the House of Commons, and on the platform, with personal opponents, however misguided or ambitious they might happen to be."

* * * *

Parliamentary Delegations and Associations

Exchange of Parliamentary Delegations

On the 9th February, 1955 the Supreme Soviet adopted a proclamation

inviting the Parliaments of the world to enter into direct talks and exchanges of delegations in order to safeguard world peace. The proclamation also suggested that speeches by members of the Parliament of one country in those of other countries would be in accordance with the people's desire to develop friendly relations and co-operation. Texts of the proclamation were forwarded among others to the Parliaments of the United Kingdom and India.

A suggestion was made by a Labour M.P. in the House of Commons on the 10th March, 1955 that it would be a good thing if foreigners could take part in what he called "the knockabout of British Parliamentary debate", but Sir Winston Churchill replied that unless they went through the prior formalities of becoming British citizens and securing election by a constituency, such incursions would have to be dealt with by Mr. Speaker. Answering a question by Mr. Parkin, Sir Winston said:

"Her Majesty's Government have always favoured interchanges between Members of the British Parliament and those of institutions of foreign countries which are of a similar status..... This is quite a different question from inviting members of a visiting delegation to participate in the deliberations of the House of Commons, and we should certainly rely upon Mr. Speaker to ward off any such incursions into our debates."

* * * *

Inter-Parliamentary Union

The Supreme Soviet decided on June 29 to form a National Parliamentary Group to join the Inter-Parliamentary Union*. Russia was asked to join the Union in 1947, at the first an-

nual conference after the war, but did not then reply. The Union is a non-political body for promoting contact between members of all Parliaments and is open to members of any party. India has been a member of the Union since 1949.

Note:—[The XLIVth Conference of the Inter-Parliamentary Union at Helsinki in August, 1955 decided to admit the U.S.S.R. to the Union and the Russian delegation took part in its deliberations.]

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Members' Salaries and Allowances

Ministers' Salaries (U. K.)

On the 26th October, 1954, Prime Minister Churchill announced the restoration to senior Ministers of their full statutory salaries. This would apply to 28 Ministers in all, of whom 18 are members of the Cabinet. Except for the Prime Minister, all these suffered reduction from £5,000 to £4,000 a year under the salary cut decreed for Ministers when the present Government was formed. The Prime Minister's salary was reduced from £10,000 to £7,000 a year.

* * * *

Subsistence Grant of £2 a day to Members of Parliament

In a statement made in the House of Commons on the 6th July, 1954 Prime Minister Sir Winston Churchill announced the grant of a sessional allowance to Members of Parliament. The allowance is payable to such of the members as choose to draw it at a rate of £2 for every day on which the House sits (except Fridays). It can be drawn monthly or at such other

*Reuter Message published in *The Times* June, 30, 1955.

Short Notes

times as members desire. The sessional allowance constitutes a cash reimbursement, related to the actual sittings at Westminster, of the subsistence and other expenditure which members are compelled to incur. This allowance has been granted to M.P.s. in lieu of the increase in Parliamentary salary from £1,000 to £1,500 which was proposed by an all-party Select Committee on Members' Expenses but not accepted by Government.

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Rise in Members' Salaries (U.S.A.)

On March 1, 1955 the Congress finally approved a Bill raising salary of its members by 50 per cent. The House of Representatives had, on the 16th February 1955, voted for a \$10,000-a-year pay rise for Members of Congress, i.e. an increase of 66-2/3 per cent. When the Bill went up to Senate, a majority vote cut down the pay-rise to 50 per cent, raising the salary from \$15,000 to \$22,500 instead of \$25,000 approved by the House. Since there were differences between the two Chambers, the Bill was referred to Conference for adjustment of differences. On the 24th February, 1955, the Senate and House of Representatives Conferees agreed on a 50 per cent. increase in salary for all members of the Congress and the Federal Judiciary. The changes effected in the salaries of Members and other functionaries are as under:—

	Past	Present
Vice President and Speaker	\$40,000	*\$45,000
Chief Justice	25,500	35,000
Members of Congress	15,000	22,500

*This includes \$10,000 expense accounts.

Associate Justices	25,000	35,000
Higher Court Judges	17,500	25,500
Lower Court Judges	15,000	22,500
Deputy Attorney General	17,500	21,000
Solicitor General	17,500	20,500
Assistant Attorneys General	from \$10,000 to \$15,000	
	range to	\$12,000 to \$20,000

President Eisenhower signed the Congressional-Judicial Pay Increase Bill on the 2nd March, 1955. The new rates of pay became effective from the 1st March, 1955.

* * * *

Constitutional Changes

Appellate Division Quorum Bill (South Africa)

The South African Senate passed on the 5th May, 1955 by 26 votes to 15 the Appellate Division Quorum Bill establishing an enlarged quorum of 11 Judges in cases where acts of Parliament were tested. The appeal court previously consisted of six judges but five more judges were appointed by the Minister of Justice. The Bill was earlier passed by the South African House of Assembly on the 29th April, 1955 by 78 votes to 50. The Opposition United Party argued that the Bill was aimed at packing the appeals court to overcome constitutional problems in depriving coloured (mixed blood) citizens from voting with white persons on a common electoral roll. An Opposition motion seeking indefinite postponement of the Bill was rejected in the Assembly.

* * * *

Proposal to Revise the French Constitution

On the 24th May, 1955 the French National Assembly adopted a motion

supported by all the groups except the Communists and Socialists calling for a study of the revision of the Constitution on the following points:

(1) Right of Deputies to initiate expenditure. (Art. 17).

(2) Confidence votes and censure motion. (Art. 49 & 50).

(3) Improvement of the system of dissolution of Parliament. (Art. 51).

(4) Re-organisation of the French Union (Art. 60—82).

(5) Reform and simplification of means of revising the Constitution. (Art. 90).

The Council of the Republic, on July 19, 1955, also approved in principle the revision of Articles 17, 49, 50, 51, 62-80 and 90 of the 1946 Constitution.

After this, the Assembly and the Senate would study details of a proposed revision of the Constitution. These would have to be voted by a two-third majority in the Chamber. A three-fifth majority in both Houses or a national referendum is necessary for it to become law.

* * * *

Proposed Amendment to U. S. Constitution: Filling of Temporary Vacancies in the House of Representatives

A Joint Resolution (No. 8) proposing to amend the Constitution to authorize governors to fill temporary vacancies in the House of Representatives was passed by the Senate on the 19th May, 1955 by a roll-call vote of 76 to 3. The following is the text of the proposed Constitutional amendment:

"That the following article is proposed as an amendment to the Constitution of the United States and shall be valid to all intents or purposes as

part of the Constitution only if ratified by the legislatures of three-fourths of the several States within 7 years from the date of its submission by the Congress

Article

On any date that the total number of vacancies in the House of Representatives exceeds half of the authorized membership thereof and for a period of 60 days thereafter, the executive authority of each State shall have power to make temporary appointments to fill any vacancies, including those happening during such period, in the representation from his State in the House of Representatives. Any person temporarily appointed to fill any such vacancy shall serve until the people fill the vacancy by election as provided for by Article 1, Section 2, of the Constitution."

The title of the Joint Resolution which originally read—

"A resolution (S. J. Res.8) to amend the Constitution to authorize governors to fill temporary vacancies in the Congress caused by a disaster".

was amended to read:

"Joint resolution to amend the Constitution to authorize governors to fill temporary vacancies in the House of Representatives."

The resolution has since been transmitted to the House of Representatives. The proposed Constitutional amendment would require two-third affirmative vote in the House of Representatives and must be ratified by three-fourths of the State Legislatures before it becomes effective.

* * * *

Powers and Privileges of Parliament

Investigational Powers of Congress

On the 7th July, 1955, Mr. Justice Douglas of the U. S. Supreme Court

delivered his fourth lecture on the "Studies on American and Indian Constitutional Law" as Tagore Professor of Law at the University of Calcutta. The subject of his lecture was the investigational powers of Congress.

Mr. Justice Douglas said that in the House of Commons in the United Kingdom, Questions were put to Ministers on the floor of the House. A similar practice prevailed in India and Australia. There was no such practice in America and the investigating committees of Congress performed that function. Congressional investigations served four main purposes; first, it gave Congress information and data as the basis for new legislation; secondly, it gave Congress valuable information concerning the manner in which old laws were being executed and the problems arising in connection with their administration; thirdly, it was used to develop facts with which to judge the qualifications and conduct of members of Congress; and fourthly, it was used for development of information in impeachment proceedings. The power to investigate, Mr. Justice Douglas said, was implied in certain provisions of the Constitution.

Each House of the Congress had the power to arrest a recalcitrant witness and bring him before the Bar. The Congress had also the power to punish the contumacious witness by holding him in contempt.

According to Mr. Justice Douglas, the power of investigation by a Committee of Congress was not unlimited. While the American courts had not spoken with finality on the scope of the investigating power, it was clear that the power, being derived from the Constitution, rose no further than its

source, and even in its limited sphere existed only in so far as it was congenial to other constitutional rights and guarantees.

Mr. Justice Douglas said that the power of Congress to investigate the executive branch was no doubt there, but the executive had many a time refused to supply information on the ground that the disclosure would jeopardise the safety of the nation. He further said that the unfair use of the investigative power and the oppressive practices of some of the committees had given rise to many proposals for reform. These proposals could be grouped under three categories: first, the delegation of the investigative function to *ad hoc* commissions; second, abolition of the special investigating committees; and third, voluntary adoption by Congressional committees of new rules of procedure to govern their hearings and the treatment of witnesses.

* * * *

Parliamentary Parties

Labour Shadow Cabinet

The Parliamentary Labour Party in the U. K. has re-allocated responsibility for special subjects among Opposition front benchers who will keep close touch with the groups of Labour M.P.s. specially interested in their set subjects, and coordinate both the discussion of policies and their presentation in parliamentary debate. In an address to the Labour Party Mr. Attlee made it plain that this re-allocation of responsibilities for special subjects did not necessarily mean that Ministers would be appointed on this basis in a future Labour Government.

* * * *

Delimitation of Constituencies

Boundary Commission: U.K.

The reports of the four Boundary Commissions which were set up under the House of Commons (Redistribution of Seats) Act, 1949, were presented to Parliament on the 18th November, 1954. An important feature of the Boundary Commission's report is the recognition of the force of the criticism that boundaries are being changed too frequently. The Commission in their report states:

"The provisions of the Act of 1949 require that our next periodical report must be submitted not less than three or more than seven years from the date of submission of this report. Considerable comment has been made in the Press and elsewhere to the effect that the general review of constituencies now concluded and the changes recommended as a result of that review have come too soon after the very considerable changes brought about by the Representation of the People Act, 1948.

It was clear from representations submitted to us that the changes recommended, even where they included proposals for additional representation were, not wholly welcome because of the disturbance they would inevitably cause to local political organisations and also because of the feeling of unsettlement they would cause both to the electorate and to their representatives in Parliament. The provisions of the Act of 1949 left us no alternative but to proceed with the review and to make such recommendations as we considered necessary and desirable.

Nevertheless we have been impressed by the arguments put forward against reviews at comparatively short intervals and we think that consideration should be given to lengthening the minimum and maximum periods

between reviews. Provision exists in Section 2(3) of the Act for periodical reviews of a particular constituency or constituencies and the powers given to the commissions under this section should, we think, suffice to deal with any local abnormalities requiring adjustment between reviews."

The Boundary Commission recommended the raising of constituencies in England from 506 to 511, thus increasing the membership of the House of Commons from 625 to 630. To give effect to the proposals of the Boundary Commission 52 draft Orders in Council were introduced in the House of Commons and debated. They were finally approved by the House on January 27, 1955.

* * * *

Presiding Officers

Speaker—A Public Servant

A complaint was lodged before the Additional District Magistrate, Ajmer by one Shri Lachman Das Assumal Punjabi against the Speaker of the Legislative Assembly for contravening Section 2 of the Ajmer Sound Amplifiers Control Act, 1952. The charge was that the Speaker had provided sound amplifiers in the Assembly Hall without obtaining prior permission under the Act and had thereby committed an offence punishable under Section 3 of the Act. Dismissing the complaint under S. 203 of the Criminal Procedure Code, the Additional District Magistrate observed:

"The Speaker used the sound amplifier in the discharge of his official duty. It is also evident that the Speaker of the Legislative Assembly is a "Public Servant" as defined in Section 21 of the Indian Penal Code; and is not removable from his office save by or with the sanction of the

State Government or the Central Government as laid down in Section (197)(1) Cr.P.C. In the present case, since no such sanction has been produced, no cognizance of such offence can be taken against the Speaker of the Ajmer Legislative Assembly."

A revision application against the order of the Additional District Magistrate was filed by Shri Lachman Das Punjabi on the 2nd August, 1954, in the Court of the Sessions Judge, Ajmer. On the 18th October, 1954 the Sessions Judge dismissed the revision application on the ground that the Ajmer Sound Amplifiers Act, 1952 had been declared *ultra vires* of the Constitution by the Judicial Commissioner.

* * * *

Election of the President in the Bundestag (West Germany)

Dr. Gerstenmaier was elected President of the Bundestag on the 16th November, 1954 on the third ballot, the first two ballots having failed to provide the required number of votes. Under the standing orders of the Bundestag, a President can be elected in the first ballot only if he receives more than half of the valid votes cast.

The Presidential election broke the established convention that the candidate sponsored by the majority party should not be opposed. Contending that the majority party had not observed the convention of consultation with other parties about its choice, the Social Democrats had put up their own candidate—Herr Lemmer—for the Presidentship. The rules of procedure of the Bundestag permit introduction of new candidates at the second ballot.

* * * *

Services and Facilities to Members

Decoration of the Parliament House

Further progress has been made in the scheme to decorate the Parliament House with panels depicting important events and persons in the nation's history. The first stage in the execution of the scheme envisages the preparation of coloured sketches of the panels. Fifty panels were distributed by the Artists Sub-Committee to its six artist supervisors and out of these 42 sketches have been received for examination by the Artists Sub-Committee.

* * * *

Note on Finance Bill, 1955

A request was made by some Members of Parliament to the Finance Minister for circulating a note to both Houses explaining in simple language the provisions of the Finance Bill in so far as they related to Income-Tax. A Memorandum explaining the changes relating to Income-Tax as proposed in the Finance Bill, 1955 was accordingly prepared by the Ministry of Finance and was distributed to the Members of Parliament before general discussion on the Budget commenced.

* * * *

State Drive to Parliament

The Queen Abandons State Drive (U. K.)

In the U. K. the opening of a newly elected Parliament by the Sovereign is usually accompanied by colourful pageantry. The Sovereign travels to the Parliament in gilt Irish State coach and is escorted by the household cavalry. But there are occasions when a punctilious people have to twist the tradition and adapt themselves to the

exigencies of the situation. An instance of this adaptability was witnessed in the U. K. at the time of the opening of Parliament after the last General Election. In view of the state of emergency resulting from the nation-wide rail strike, the new Parliament was opened by the Queen on June 9, 1955, and not as previously arranged on June 14. To avoid the worsening congestion on London's choked roads, it was decided to abandon the ritual of colourful State Drive. The Queen travelled to Parliament in a black Limousine, instead of the gilt Irish State coach, and unaccompanied by the household cavalry.

* * * *

Obituary

The Late Shri H. S. Chinaria

While the House was in the midst of a debate on the 7th May, 1955, the last day of the Budget session, Shri Hira Singh Chinaria, a Congress Member from PEPSU, collapsed in his seat after finishing his speech on the Hindu Succession Bill. Members rushed up and the Chairman adjourned the House temporarily. Before any medical help could be rendered, the Member died.

Covered with a white *Khadi* sheet, Shri Chinaria's body was carried out of the Chamber.

When the House re-assembled at 5-45 p.m., the Prime Minister said: "This is a sad thing when any of the members of this House, our colleagues, died anywhere and it is usual for the House to express sorrow in various ways. But it is a much sadder thing when such a death should occur actually in the precincts of this House and in the discharge of the duties of a member." He therefore, urged the Deputy-Speaker to adjourn the House as a mark of respect to the deceased member. The latter associated himself with the sentiments expressed by the Leader of the House and after paying tributes to the late Shri Chinaria, adjourned the House. As it was also the last day of the session the House was adjourned *sine die*.

This was the second time a tragedy of this nature occurred inside this Chamber. The other occasion was in 1946 when Shri K. S., Gupta, a Congress member from Andhra, collapsed and died while he was in the midst of his speech.

The Bankstown Case

By M.N. Kaul,

Secretary, Lok Sabha

A CASE, unprecedented in the Parliamentary history of the Commonwealth of Australia, occurred when two citizens were called to the bar of Parliament and sentenced to prison¹. It arose out of certain articles entitled "Immigration Racket and M. H. R." published in the Sydney newspaper *Bankstown Observer*. The articles were alleged to be grossly defamatory of a Member of the House of Representatives, Mr. C. A. Morgan, who had for some time been pressing Parliament to appoint a Royal Commission to investigate charges of corruption in the civic administration of Bankstown, and the articles were said to be an attempt to blackmail the Member into dropping his campaign.

On the Member's raising a privilege issue in the House, Mr. Raymond Fitzpatrick, the proprietor of the paper, and Mr. Franke Browne, the editor, were called before the Committee of Privileges which reported to the House on June 8, 1955 that both of them were guilty of a serious breach of privilege in publishing the articles wherein an attempt had been made to influence and intimidate the Member in his conduct in the House².

A "Character Assassination"

Intimating the events to the House, the Australian Prime Minister charac-

terised the case as "a character assassination of the worst type" and added that "both men have admitted making false charges against Mr. Morgan to suppress and silence him in Parliament. It is the high water mark of wicked cynicism." Pursuant to the recommendations of the Committee that the House should take appropriate action after its findings, it was subsequently resolved to summon the two to the bar of Parliament, to say what they wished, in mitigation³.

On June 10, 1955 the two men appeared twice before the bar of the House—first to address the Members; and finally, when the House had debated their case, to hear the sentence. They could, however, hear the intervening proceedings over the amplifiers within the Parliament House. Mr. Fitzpatrick admitted his guilt and tendered what he called a humble apology. Mr. Browne, on the other hand, refused to do so and contended that Parliament was usurping the duties of a court in refusing him trial by jury as well as the assistance of counsel.

Mr. Menzies, the Australian Prime Minister, moved that both men be sent to prison for three months. Imprisonment, he said, was an historic remedy adopted repeatedly by the House of Commons. Dr. Evatt, Leader of Opposition, while not denying Parliament's power to imprison, said that it

¹ What Limits to Privilege? *The New Statesman and Nation*, July 9, 1955.

² *The Times* June 9, 1955

³ *The Times*, June 10, 1955

was based on "musty precedents of another country" and accordingly suggested a substantial fine. His amendment was defeated and the motion for imprisonment carried.⁴

Jurisdiction of the Court

Immediately after the sentence a writ of *habeas corpus* was obtained. For three days the counsel for the two men argued before a full bench of the High Court that Parliament had acted *ultra vires* of the Constitution exercising a judicial power it did not possess. The applications for writs of *habeas corpus* were unanimously refused by the Court. Delivering his judgment on June 24, 1955, the Chief Justice remarked that the case was of considerable importance. Under section 49 of the Constitution of the Commonwealth, he said, the powers, privileges, and immunities of the Senate and the House of Representatives and of the members and committees of each

House shall be such as are declared by Parliament and, until so declared, shall be those of the House of Commons at Westminster and its members and committees at the establishment of the Commonwealth. In the absence of the declaration contemplated in the section, the English law prevailed; and under English law the exclusive jurisdiction of Parliament when dealing with its privileges was established beyond question as early as 1850. Once the Speaker's warrant was upon its face consistent with a breach of an acknowledged privilege, it was conclusive and the Court would not examine the reasons for the finding or the nature of the penalty imposed.

This statement of the law in its application to Australia, he added, was established authoritatively by the decisions of the Privy Council in *Dill v. Murphy* in 1864, and in the *Speaker of the Legislative Assembly of Victoria v. Glass* in 1871.⁵

⁴ *The Times*, June 11, 1955

⁵ *The Times*, June 25, 1955

A motion calling for the immediate release of Mr. Browne and Mr. Fitzpatrick was moved by Mr. Fraser (Labour) in the House of Representatives on August 31, 1955, on the ground that they had been imprisoned without a fair trial. It was lost by 62 votes to three.

Equality Before Law

By M.C. Setalvad,

Attorney General of India

BY the Preamble of our Constitution, the people of India declare their solemn resolution to secure to all the citizens of the Indian Republic equality of status and of opportunity. To effectuate this solemn resolution the Constitution provides that the State shall not deny to any person within the territory of India equality before the law or the equal protection of the laws.

Ideal of Equality

In its struggle for social and political freedom mankind has striven continuously towards the ideal of equality for all. The urge for equality, and liberty has been the motive force of many a revolution. The Charter of the United Nations records the determination of the member nations to re-affirm their faith "in the equal rights of men and women". Indeed, real and effective democracy cannot be achieved unless equality in all spheres is realised in a full measure.

Complete equality among men and women in all spheres of life is a distant ideal to be reached only by the march of humanity along the long and arduous path of economic, social and political progress. But the Constitution and the laws of a country can assure to its citizens a certain measure of equality.

Constitutional Provision

Equality is the goal embodied in the directive principles which the Indian Constitution states to be fundamental in the governance of the country. Social and economic and political justice are to inform all institutions of the national life. Citizens, men and women, are equally to have the right to adequate means of livelihood. The material resources of the community are to be so distributed as to serve the common good and the economic system is not to result in the concentration of wealth in the hands of a few. There is to be equal pay for equal work for both men and women. Endeavours are to be made to secure for the citizens a uniform civil code. These facets of social and economic equality are to guide and direct legislation undertaken by the State.

The Constitution also lays down positive and obligatory rules for the enforcement of equality among persons residing in India and among the citizens of the country. The basic provision is that the State shall not deny to any person equality before the law or the equal protection of the laws. Even trained minds have found it difficult to understand and apply the principle underlying this cryptic rule. One may, therefore, analyse it so that its meaning may be made plain.

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By Article 14 the State is ordered not to deny to any person in India equality before the law or the equal protection of the laws. Who is the State? The Constitution explains the State as including the Union and State Governments, the Union and State legislatures and all local or other authorities in India. It is these bodies who are compelled to deal equally with all persons and not to discriminate between citizens. In what respect would these bodies have to observe these rules of equality? The legislatures make laws, the local and other authorities make rules and bye-laws, the Governments issue from time to time executive orders. Such legislation, rules, bye-laws and executive orders may concern the citizens generally or certain groups of citizens. Government and the other bodies may not grant privileges or impose restrictions on inhabitants of a particular State or locality which they will deny to or not impose upon residents of another State or another locality. They may not lay down different qualifications for different persons or classes of persons in regard to obtaining employment privileges or facilities and discriminate between them. Every man or woman, citizen or alien in the territory of India is entitled to ask the bodies concerned why some one else like him and in the same situation has been preferred to him or given any better treatment under any law or rule or bye-law or order made by them.

Concept of Equal Justice

The Preamble insists on equality of status. Such equality of status is attempted in part to be achieved by providing that there shall be 'equality before the law' and 'the equal protection

of the laws'. Why does the Constitution use these two phrases? The idea underlying both is the concept of equal justice or equality of treatment. When we speak of equality before the law we visualize the law conferring a privilege or right on some individual or individuals which it has not conferred on another or others. When we speak of equal protection of the laws we think of the law being compelled to make provisions which will help or benefit or protect the rights and properties of all equally and not more of one set of persons as compared with those of another set. The law includes, we must remember, not only legislation but bye-laws and rules and executive orders.

But let there be no mistake about the meaning of these phrases. Do they mean that all men and women shall have the same rights and the same privileges irrespective of their situation or qualification or equipment? If this were so an illiterate person would be able to claim to be treated in exactly the same manner as a highly educated person and an unskilled labourer could insist upon his being paid the same emoluments as a highly qualified technician. That of course would be inequality rather than equality. What the Constitution insists upon is not absolute equality of this character but equality among people similarly circumstanced and similarly situated. As has been said by the Supreme Court of America in relation to the equality clause in the American Constitution, "equal protection of laws is a pledge of equal laws" and that means "subjection to equal laws applying alike to all in the same situation". Or, as has been said by our Supreme Court: "The guarantee against the denial of equal

protection of the laws does not mean that identically the same rules of law should be made applicable to all the persons within the territory of India in spite of differences of circumstances and conditions * * * * there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is the same." If one may try and put it in lay language in order that two persons may claim the equal protection of the law both of them must be equally circumstanced; there should be no substantial difference between their situation. This is as it should be. For, if the law gave the same treatment to persons differing in situation or circumstances the law would really be promoting not equality but inequality.

May we understand this in a concrete manner? The population in the district of a State may consist of a large number of aborigines or may be educationally backward. Other districts of the same State may be educationally advanced. In such circumstances the State legislature may make special laws for the particular district. It may, for example, grant more funds for the promotion of education in that district and may impose lower recruitment standards for admission to services in that district. It may provide that cases may not be tried by a jury in that district though the system of jury trial may prevail in the other districts. Under such laws persons in the advanced districts will be denied certain facilities and will have certain privileges as compared to persons in the backward district. Persons in the one district as compared with the others would thus, in a sense be unequally treated by the law that this will not be an infraction of equality before the law provided in the Constitution.

There is a difference in treatment but this arises out of the difference in the situation and circumstances of the inhabitants of one district as compared with those of the others. Special treatment to members of the Armed Forces in the matter of prohibition laws has been upheld. Special laws may therefore be made to suit the requirements of groups of citizens like lawyers, doctors and others. But if a law provides that certain persons in a particular area shall be tried with a jury while certain other persons similarly situated in the same area committing the same offence shall be tried without a jury the distinction will not be based on any difference in situation or circumstances. The law will offend against the rule of equality and will be unconstitutional.

Role of Courts

Which is the authority who is to decide whether different situations or circumstances exist justifying a law according to unequal treatment? The authority is a court of law. It will examine the provisions of the law and the relative situations of the individuals or the classes concerned and adjudicate whether the difference in the treatment is based on a real and substantial difference in their relative situations and circumstances.

On what principles will the courts act in determining whether a law offends against the principle of equality? One test which the courts have applied is the test of a valid classification. This test means that the court has to be satisfied that the unequal treatment is based on a rational difference in the situations and circumstances of the persons affected. But that is not the only test. The mat-

ter may also be looked at from a broad and general point of view. The court may ask itself the question whether the law charged as being an unequal law would shock its democratic conscience or would be regarded as according unequal treatment in the broad democratic sense. These tests are necessarily vague and their application will vary from time to time with the views of the judges examining the matters. But that is inevitable; for questions whether fundamental rights have been infringed have to be determined by courts of law and the individual judgment of persons constituting the courts must influence the decision of questions of this nature.

Popular Conception

The popular mind frequently understands the fundamental right of equality under the law as barring all discrimination in treatment between persons. Women have complained against certain services and employments being barred to them as an infringement of the guarantee of the equal protection of the laws. The answer has been that in regard to these services and employments women are differently situated from men and that the refusal to admit them is legitimate and justifiable. Government servants have complained that other less qualified have been preferred in the selection to certain offices. That again is no breach of equality for each selection has to be governed by conditions appropriate to the particular posts in respect of which such recruitment takes place.

Equality Clause

The equality clause prevents an arbitrary discretion being vested in the

executive. In the modern State the executive is armed with large powers, in the matter of enforcing bye-laws, rules and regulations and the performance of certain other functions. Such power may not now be exercised with discrimination. A rule or bye-law or an order capable of being used arbitrarily and so as to discriminate will be struck down by the courts as unconstitutional. The body making the law or rule or order must prescribe principles and standards which have to guide and control the executive in the exercise of its powers and discretion. For example, the issue of licenses regulating various trades and activities cannot be left to the unguided discretion of the licensing authority; the law or the rules made under the law under which they are issued have to lay down principles according to which the licensing authority has to act in the grant of these licenses. Even when the law itself makes no unequal provisions its administration by officers in a discriminatory manner may offend against the constitutional rule of equality.

The equal protection clause prevents discrimination only by the State and not by individuals. Under it a person in the territory of India may complain of being unequally dealt with by a government department; but if a private employer like the owner of a private factory discriminates in choosing his employees or treats his employees unequally the person discriminated against will have no remedy. Why this distinction between action by the State and action by an individual? Why does not the Constitution go further and prohibit all unequal treatment whether it be by the State or by a private individual?

Equality Before Law

The American Constitution, like ours, in its Fourteenth Amendment provides for the equal protection of the laws. It was contended that that amendment gave the American Congress power to prohibit discrimination not only by the State but by individuals as well. It was said that the substance and spirit of that amendment had been sacrificed by a subtle and ingenious but unjustified distinction between State action and individual action. Notwithstanding this criticism the distinction has persisted in the United States and redress under the amendment is available only in respect of State legislative or administrative action. Our Constitution has taken care in article 14 to confine its protection by express words to State action only.

There is a good reason for so restricting the operation of the "equality clause". Any extension of it to individual action may result in serious interference with the liberty of the individual. Real democracy can be achieved only by a proper balance between the freedom of the individual and fetters imposed on it in the interests of the community.

Yet even individual action in certain spheres has been restricted by our Constitution in order to enforce and promote equality. The Constitution abolishes untouchability and forbids its practice in any form. It provides that the enforcement of any disability arising out of untouchability is to be an

offence under the law. Thus a private individual or the owner of a private factory discriminating against a person on the ground of his being an untouchable and imposing a disability on him will be taken notice of and punished.

Scope

The utility and scope of the equal protection clause may be explained in the words of Justice Field of the United States Supreme Court: The clause "undoubtedly intended, not only that there should be no arbitrary deprivation of life or liberty or arbitrary spoliation of property but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their person and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediments should be interposed to the pursuits by anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offences".

Flash Voting System In West Bengal Assembly

By A. R. Mukherjee,

Secretary, West Bengal Legislative Assembly

ON the 5th July, 1952, there were nineteen divisions on the amendments moved by the Opposition to the Motion of Thanks for the Governor's Address and a whole sitting of four hours was taken up by the divisions. Although the Opposition was within its rights to call for the divisions and the Speaker had no power to stop them, for none of them could strictly be called frivolous, it appeared that the loss of a day for divisions alone was a matter requiring serious consideration. It was therefore thought necessary that some means should be devised to ensure that the right of the Opposition to call for divisions was not curtailed and at the same time the time taken for divisions was minimised.

Merits of Flash Voting System

It occurred to the author that a system known as 'flash voting' was in operation in some of the States in America by which votes were taken by an electric apparatus instead of by passing through the division lobbies and thus the time taken for voting was considerably shortened.* At the instance of the Chief Minister, West Bengal, enquiries were instituted. The Speaker of the West Bengal Legislative Assembly accompanied by the author had the opportunity, while they

were on tour in connection with the Commonwealth Parliamentary Conference in Canada, to watch the working of the flash voting system in America and also in some of the countries in Europe. They were satisfied that the system might with advantage be used for voting in the West Bengal Legislative Assembly. It was found that while a regular division through the lobbies took about 15 minutes, voting by such an apparatus took only about three minutes thus saving about 12 minutes in each division. On this basis the time saved was of considerable importance from two points of view: either the time saved could be utilised in more important business or it meant saving of considerable sum of money which would have to be paid as allowances to members. It was calculated that in a session lasting about three months about 15 days could be saved by this means.

Installation in West Bengal Assembly

The Chief Minister was approached and he sanctioned the installation of an Electric Vote Recording Apparatus in the West Bengal Legislative Assembly. After examining various systems which were in operation, the one manufactured by a firm of West Germany was chosen and they were entrusted with the work of the installa-

* The curious reader may refer to the 'Journal of the Society of Clerks-at-the-Table in Empire Parliaments, Vol. II, p. 55. where the Clerks of six Parliaments, where the flash voting system is in operation, state their views appreciating the system. One of them writes that they would not dispense with the electric voting machine under any condition.

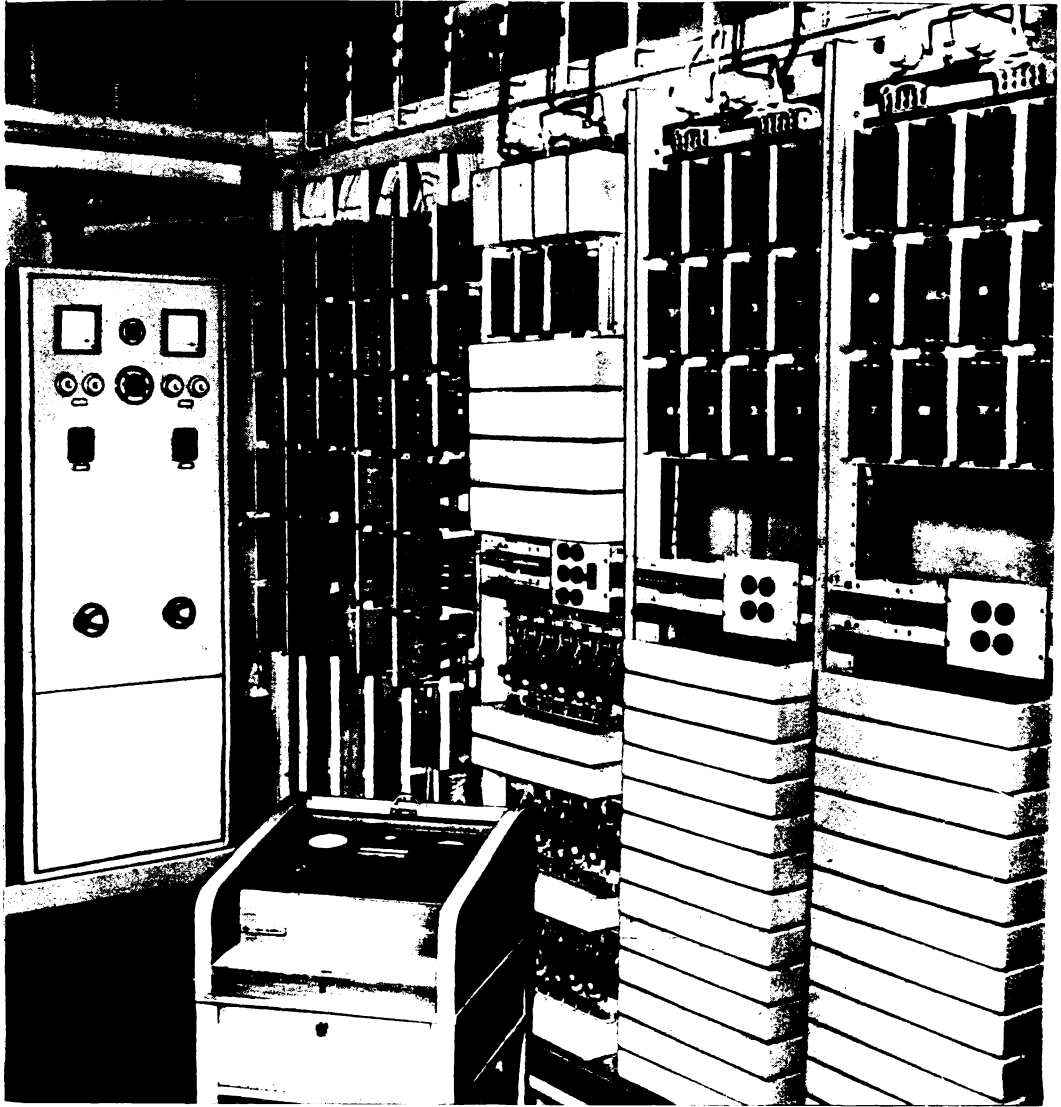


Fig. 1. Machine Room and Test Board in a Separate Room.

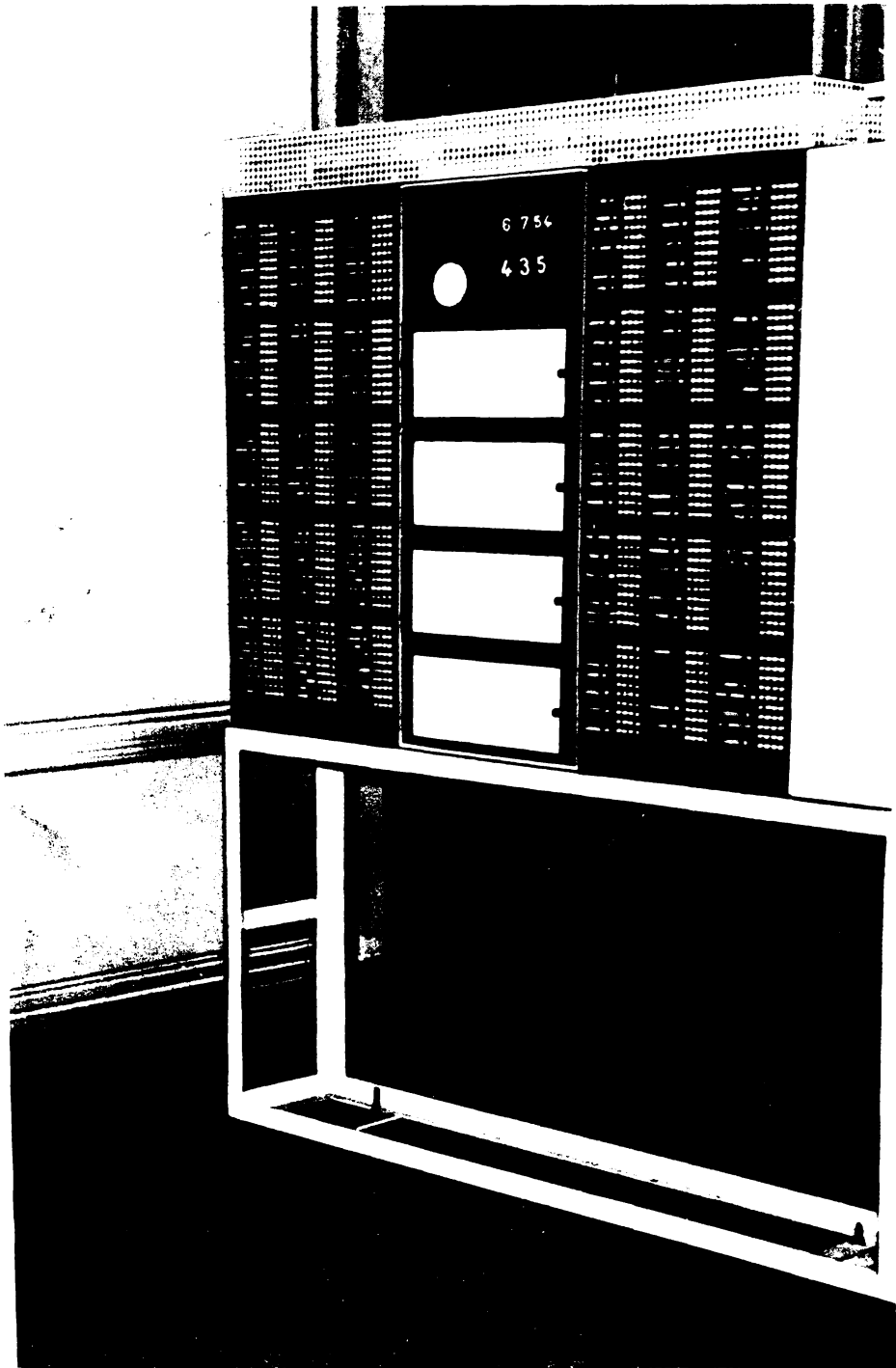


Fig. 2. Results Indicator Board in the Machine Room for Photographic Record of Voting.

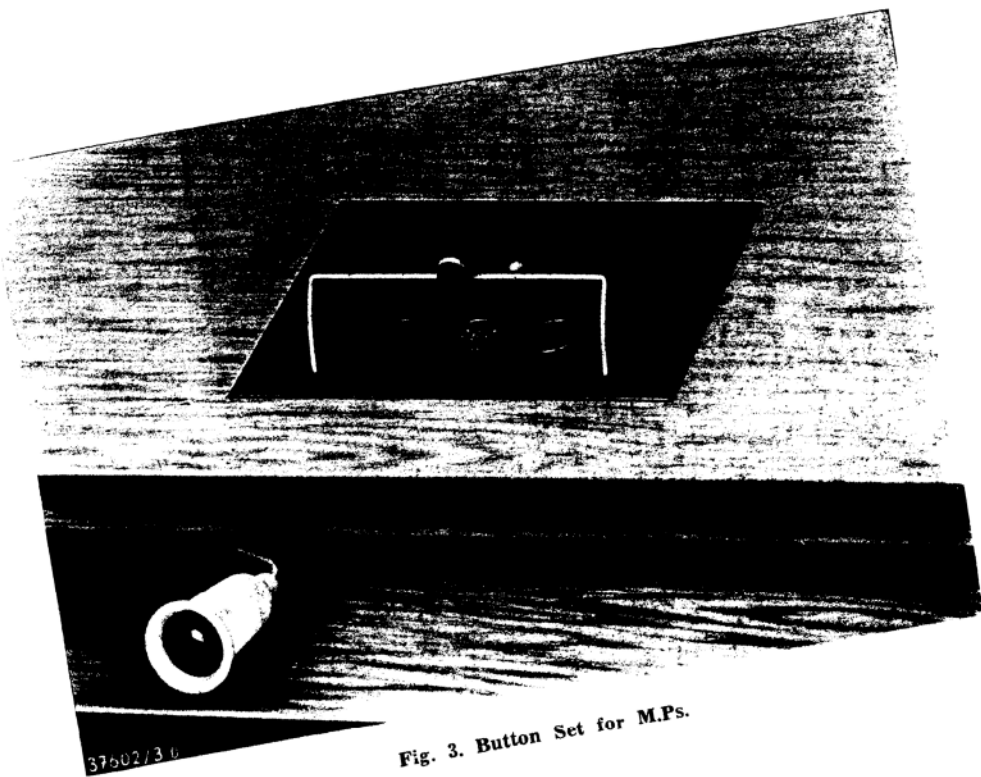


Fig. 3. Button Set for M.P.s.



Fig. 4. Indicator Board in West Bengal Assembly Hall, Calcutta.

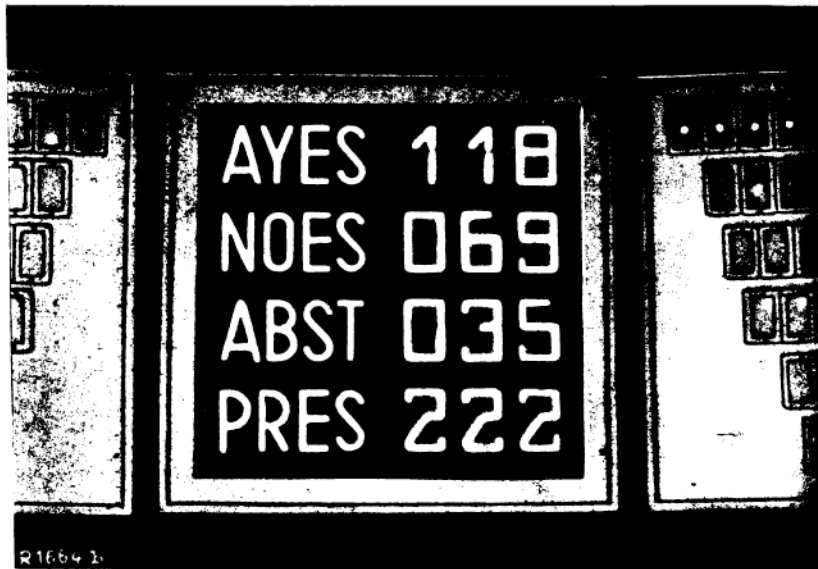


Fig. 5. Results in Indicator Board in the Assembly Chamber.

Flash Voting System

tion of an Electric Vote Recording Apparatus in the West Bengal Legislative Assembly. In installing the system approximately 17,000 metres of lead-covered cable had to be laid, 19,500 junction points had to be made out, of which about 17,000 were made by soldering. The recording apparatus is housed in a room which has to be kept air-conditioned at a temperature of about 70 degrees. The recorder not only records the votes that are given "Ayes" "Noes" or "Abstain" but also counts the total number of the votes of each vote and shows the result.

The apparatus may be used for recording three kinds of voting:

- (a) Open voting, *i.e.* record of voting which shows the number of votes and the manner in which a member has voted—Aye, No or Abstain;
- (b) closed voting, *i.e.* secret ballot which does not indicate the manner in which a member has voted but only shows the number of votes cast in each category;
- (c) present voting or roll call which records the number of members present.

Working of the Apparatus

The manner in which the system works is described below:

At each member's seat there is a small box, built-in, containing 3 buttons, a green button for AYE, a black one for ABSTAIN and a red one for NO. Underneath the table plate there is an additional push-button which must be pressed simultaneously with

one of the three buttons mentioned before. With this arrangement both hands of a member are engaged during voting so that there cannot be any room for double voting.

Furthermore, there is a pilot lamp in each box which lights up when a button is pressed and shows the correct registration of the vote by the equipment.

The result of a voting is shown on indicator boards fixed on the wall opposite the Speaker's chair. The central board indicates the total of the votes — AYES—NOES — ABSTAIN — as well as the sum of these three results, *i.e.* the number of members PRESENT.

At both sides of the central board there are the lamp fields for the members, which are arranged in accordance with the seats and contain four lamps for each member: One AYE-lamp (green), one NO-lamp (red) and one ABSTAIN-lamp (white). The fourth lamp, also white, is the PRESENT-lamp. At closed votings (ballots) and present-registrations the PRESENT-lamp lights up. Only during open votings (Divisions) the AYE, NO or ABSTAIN-lamp indicates the vote given by the respective member.

At the Speaker's seat there is a built-in-box that contains the necessary buttons to start, to control and to supervise the whole equipment. By these buttons are switched on:

- (i) Present registration
- (ii) Open voting (Division)
- (iii) Closed voting (Ballot).

Further there are: one OFF-button, several lamps indicating the state of

the equipment and of the power supply and finally, one safety-lock that prevents misuse.

One gong, trembler bells on the floors of the building and lamps in the Assembly Chamber announce beginning and end of a voting.

The electric equipment for registration and counting of votes, as well as a second indicator board for documentary photograph, are installed, as already stated, in a separate room beside the Assembly Chamber. The registration and counting equipment consists of normal frames containing relays and selectors of standard type as used in a modern telephone exchange. A control device provides the correct run down of a voting. By the operation of a potentiometer the time for a voting can be regulated and adjusted according to needs.

A movable test-desk connected by a cord to the main frame of the electrical equipment allows the testing of the whole equipment from the central station. It contains several buttons for testing the members' relays; furthermore test switches for testing the lamps of the whole equipment. A special connection of the test-desk with the safety-lock at the Speaker's box prevents any misuse of the test-desk during a voting.

The second indicator arranged parallel to the indicator boards shows the members' lamps as well as the results figures on a panel of 35 by 47 inches. Besides the lamps of each member there are arranged their names on transparent interchangeable plates. At the end of a voting these plates are illuminated and documentary photos of the result are taken

by a special camera. These photos may be immediately developed and enlarged in a dark room next to the selector-room. Thus enlarged prints of a size of 18 cm. by 24 cm. are available within 3 to 4 minutes after the end of a voting, and they constitute the documentary record of divisions. Of course prints of any other size are possible too.

Process of Voting

The process of voting is as follows:

A voting (division) demanded by a member is announced within the whole building by ringing of the bells for three minutes. Thereafter the entrances into the meeting hall are closed and members who are late are not admitted. The Speaker repeats the question. If the voting is demanded again the Speaker starts the equipment by briefly pressing his button "Open Voting". The start-gong sounds and the voting lamps light up inviting the members to press the chosen button continuously for 10 seconds. Any mistake made by pushing a wrong button may be corrected during this 10-seconds period. Only the buttons pressed at the end of this period are recorded, and registered. The end of the voting is announced by a second gong and the extinguishing of the voting lamps. Now all votes are recorded and any further correction is impossible.

Already now, the lamp field of each member shows the given vote (green, red or white). The complete result is indicated approximately 35 seconds later on the main indicator board as well as on the second indicator for taking documentary photos.

Flash Voting System

A closed voting (ballot) runs in the same manner as mentioned before but instead of showing differently coloured lamps the lamp field of each member shows a white lamp only for indication of a vote given.

For 'present' registration, which corresponds with the above-mentioned explanation, the members may use any of their three buttons. The lamp field then shows only a white lamp for each present member, and also on the indicator board the total sum of only members PRESENT is indicated.

Success Achieved

The system has been in operation in West Bengal for the last three sessions and the result has been satisfactory. Even when a large number of divisions has been called, the time taken has been very small. In one day dur-

ing the period, 37 divisions were called and the voting was completed in about 90 minutes. As a result, there has been a considerable saving of money and it is expected that the capital outlay would not be more than what would otherwise have been spent in allowances, etc. in about three years, if the former procedure had been in operation.

It was necessary to amend the regulations for the taking of divisions. The procedure followed has been described above. The only thing that needs mentioning is that there is no going-out or coming-in during the division, the division bells are rung only once for divisions, if any, on the main motion and the amendments thereto, which are put at the end of the debate one after another. This also saves considerable time.

Reforming the Lords

By S. L. Shakhder,

Joint Secretary, Lok Sabha Secretariat

FOR more than forty years the question of reforming the House of Lords has engaged the attention of British Parliamentarians but no workable plan has so far emerged. The Parliament Act of 1911 curtailed the powers, but did not alter the hereditary character, of the House of Lords. Schemes were there no doubt but agreement among the parties was lacking and despite Lord Asquith's forceful plea that the substitution of the House of Lords by a second chamber constituted on a popular basis could brook no delay, the House remained unreformed. Lord Samuel recently compared the intervening manoeuvres to a quadrille at the State balls of his youth¹:

We took dignified steps this and that; we would advance and retire, take two steps to the right and return to our places, take two steps to our left and return to our places again..... The whole ritual was very satisfactory and impressive; but nothing ever happened; it was performance without achievement.

Conference of 1948

An important constitutional development took place in 1949 when the then Labour Government succeeded in pushing through a second Parliament Act whose single provision reduced the period for which the Lords were empowered to delay legislation from two years to one year. Before insisting on this measure the Government

consented to explore possibilities of agreed and more comprehensive reform. Accordingly, between February and April, 1948, a conference of party leaders was held but the talks broke down and ultimately the Bill was forced through. In a White paper (Cmd. 7380) issued on May 4, 1948, the Government recorded the measure of agreement reached as well as the points upon which the talks finally broke down.

The proposals for composition of the House of Lords which the party leaders were prepared to consider in detail and, if workable, to submit to their parties, may be summarised as follows:

(i) The Second Chamber should in no sense be a rival of the House of Commons; its reform therefore should be based on some modification of its present constitution and not on any system of election.

(ii) Assurance of a permanent majority for any one political party should as far as possible be removed.

(iii) Hereditary right should not by itself be a qualification for membership. Members should be appointed on grounds of personal distinction and might come either from the hereditary peerage or from commoners created life peers. This is to apply to women as well as to men.

(iv) Certain descendants of the Sovereign, certain Lords Spiritual and the Law Lords should be included.

(v) Members should be entitled to some remuneration.

¹ *The Times*, March 9, 1955

(vi) Some provision should be made for disqualification of members who neglect or become unable or unfitted to perform their duties.

The details of the proposals were not worked out because the Conference was divided on the question of the length of the Lords' delaying power. The Labour Party laid down their terms as a suspensory period of one year while the Conservative Party laid down a period of two years as theirs. Both sides yielded a little but the gap could not be closed.

1952 and After

At the end of 1952 Lord Simon introduced a Bill authorising the Crown to appoint ten life peers a year who would be entitled to sit and vote in the House of Lords. The Government opposed the motion on the ground that it was inopportune when proposals for wholesale reform were in the offing; and in the course of the debate it was announced that the Prime Minister had issued to the party leaders invitations to informal talks. Although the Liberal Party accepted the invitation, the Labour Party declined it on the ground that the previous discussions had revealed a fundamental cleavage of opinion between the Labour and Conservative Parties.

Shortly after that the Marquess of Exeter tried to introduce a measure of reform in the House of Lords by proposing, by an amendment of standing orders, to disqualify peers from voting in any one session if they had not put in satisfactory attendance at the previous session. But the House was told by the Lord Chancellor that it was not within their competence to make "so grave a constitutional change" by alteration of standing orders.

There had been no public statement to indicate that the parties had changed their policies since 1948. But Lord Jowitt gave the Labour point of view when he declared in the House of Commons on January 25, 1955:

"If the Government in formulating proposals would bear in mind that there would be no question or intention of increasing the powers of the House or of creating a House in any sense a coordinating authority with the Commons, as it would be if it was elected, they would go some way to avoiding hostility. If those principles were observed, and proposals were presented, the Labour Party would try to bring useful, not merely destructive but constructive criticism to them."

Replying to a question by Lord Samuel, the Marquess of Salisbury, Lord President of the Council, announced on the same date that Government hoped to recommend to the House the complete scheme of Lords Reforms.

Sir Winston Churchill, who on the 7th February, 1955 was asked to make a statement about reforming the upper chamber, added nothing to Lord Salisbury's statement made in the previous month but he re-inforced Lord Salisbury's plea for a further effort to achieve reform by all-party agreement.

A full-scale debate on the question of Lords Reform was initiated on the 9th March, 1955 when Lord Samuel moved a motion asking the Government whether they favoured the proposals which the representatives of the three major parties unanimously agreed at the Conference of 1948, could serve as the basis for further consideration. The debate, however, took an unexpected turn on account of the declaration of Lord Jowitt, that the Labour Party

would not be willing to enter into a preliminary conference on this topic at the present moment. All hopes of an agreement between the main political parties were thus promptly killed. Lord Salisbury, the Lord President of the Council, who presented the Government viewpoint did not refer to the powers of a reformed chamber, which, he said was a matter for Parliament and people to decide. As regards com-

position he stated that the Government's view was to retain the hereditary principle in some form or other, to take some non-hereditary peers and provide subsistence allowance for members to cover the essential expenses for their duties. On an assurance being given by him that the Government would appoint a committee to look into the matter the motion was by leave withdrawn.

"British Chancellors of the Exchequer used to enter the House of Commons carrying their estimates in a pouch called a bougette. When the tradition of annual forecasts of total revenues and expenditure was established in England about 200 years ago, the Chancellor's report was called a budget. Ever since then, government Finance officers have been trying (sometimes with success) to hold budgets in balance. The U.S. Government, a comparative newcomer to the process, did not adopt the budget system until 1921."

—*Time*, January 24, 1955.

Advice to a New Member

By Christopher Hollis

THE new M.P. has to decide a first question—a question which he can only decide for himself. There are at any given moment perhaps six Members of Parliament who have a real influence over public policy—perhaps the four leading members of the Government and two Members on the Opposition benches. There are perhaps some score or more who have a reasonable chance of attaining such influence in time and can colourably argue with themselves that it is in the public interest that they should do so. The great majority may one day achieve some sort of office, but it is quite clear from the first that they are never going to attain the first rank. If they pretend to be important, it is mere bluff or self-deception. The first task, then, for an M.P. is to put away from himself the merely adolescent dreams of the one day being Prime Minister from which every politically-minded schoolboy suffers and to decide quite coolly and objectively to which class he belongs. Naturally enough that is not a decision which he will publicly announce in a newspaper, but it is one that must be taken.

If he decides that he belongs to the smaller class, then of course he is justified in looking on membership of the House of Commons as a stepping stone to higher things and shaping his conduct accordingly. He is right to work with his party machine as closely as conscience permits.

The M. P.'s Problem

For the majority of Members the problem is a different one. Their great problem is to help to give an answer to the as yet imperfectly answered question: What is Parliament for? We can all see that it is necessary in these days to have a strong and stable executive. Whatever our criticism of elections, we can all see that it is in the public interest to have periodical elections of some sort and to give to the electorate some sort of choice in their Government—even if it is only the choice between two machines. Even those who argue that party machines are bad must agree that it is better to have two bad things to choose between than to have one bad thing imposed upon you. But, if it is absolutely essential that the Government should always, right or wrong, be sustained by its supporters in the lobby, if the overwhelming majority of electors no longer vote in any real sense for a candidate but only for a party ticket, what function do the House of Commons and the back-benchers perform?

Advantages of Membership

Obviously one of the advantages of membership of Parliament is an advantage that has nothing to do with Parliament. The letters M.P. still carry with them a certain prestige in the public mind. The merely pompous

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may enjoy sporting them round the land. Those who live on a somewhat higher level find that, though it may not be easy to express their opinions in Parliament, membership of Parliament opens to them many doors and gives them many opportunities to express those opinions elsewhere in print or by word of mouth. There is the Member's work for his constituents. The cynic's contention is that the Member only answers his mountain of letters and bothers about his constituents' houses and their pensions because he is after their votes at the next election. Experience seems to show that it is very doubtful how many votes are in fact gained by such activities. Bad Members seem, by and large, to do just as well as good Members when it comes to election day, and most of the welfare work that is done by a Member of Parliament could doubtless under a different system be done just as well by some other welfare officer. But it is interesting and valuable work, and few Members, I think, are not grateful for the opportunity of doing it.

Work for M.P.s.

Within the Palace of Westminster there is plenty to do of a not very spectacular nature for a Member who has a liking for secretaryships or treasurerhips of committees. But the real problem is just the opposite problem to that which self-importance pretends. It is not that Members have too much to do but that they have too little. They have, of course—or had in the last two Parliaments to hang about for inordinately long hours—for hours so long as to make it difficult for them to obey the British tradition of having

another occupation outside politics, but, as Gladstone said seventy years ago, 'The House of Commons is a place where one can neither work nor relax.' There is just enough interruption to prevent the Member from doing anything else and, if he does not make work for himself, not nearly enough occupation to save him from feeling when he goes home at night that he has spent his day in wasted idleness.

What sort of work can he sensibly make for himself? His problem is much easier if he is on the Opposition back benches than if he is on the Government back benches. If he is in opposition, his leaders of course welcome it if he can find any point to raise against the Government in question or debate. If he speaks, even should his speech have no other merit, his Whips at least count it to him for righteousness that he has delayed a little the Government's conclusion of its business. If he is on the Government's back bench his problem is more difficult. Merely to speak and sycophantically to say ditto to what the Official Government spokesman has said is a somewhat feeble activity. It will not do much good nor will it even bring him much thanks. For what the Government is anxious about is to get its business through, not to get its business praised. In the same way, if a Government back-bencher brings up some matter at question-time, the best that he can hope for is to be forgiven. He cannot expect approval.

The Unpopular M. P.

Nevertheless, even though he cannot expect any advantage out of it, it is reasonable that a Member should do

Advice to a New Member.

something to justify Parliament's existence. The new Member has to bear in mind that nobody becomes a Member of Parliament unless he has a certain liking for the sound of his own voice and gets somewhat more than the average amount of pleasure out of holding a floor. There are more than 600 Members of Parliament, a good proportion of them in fairly constant competition for the Speaker's eye. Therefore a Member who tries continually to intervene must expect to be unpopular. Show me the Member who occupies the largest number of columns of Hansard and I will show you one of the House's most unpopular Members. Every Member of Parliament would prefer that all other Members of Parliament should not speak at all. At any other meeting those in the audience have presumably come because they wish to hear the speaker. In the House of Commons they are only anxious—at any rate by the time that the debate has got to the back benches—for the speaker to sit down in order that they may get up themselves. Therefore it is a fatal mistake to have a number of hobby horses. He who tries that game will merely earn for himself un-

popularity with his Whips and a reputation as a stunter or a buffoon from his fellow Members which will prevent a proper attention being paid to his arguments. It very rarely pays to shout things out.

Taking up a Good Cause

But what is worth doing is to take some one cause or some few causes—preferably off the beaten track of party controversy—to which one is sincerely devoted and about which one has some knowledge and to fight for them in despite of Whips, constituents and consequences. He who does that will probably not advance his career but he can reflect that he has made his contribution to the preservation of some reality in Parliamentary institutions. After a time, it is likely enough, he will begin to feel discouraged, to feel that this gets him nowhere, to be tempted to follow a line of least resistance, to acquiesce and to fight no more. When he feels that, it is time for the Chiltern Hundreds. The back benches are places on which no one should linger for very long. It is for each member to decide the term of his own sentence.

Mr. Speaker's Seat

(House of Commons)

By M. N. Kaul,

Secretary, Lok Sabha

["The Speaker of the House of Commons is the representative of the House in its powers, proceedings and dignity. His functions fall into two categories. On the one hand he is the mouth or representative of the House in its relations with the Crown, the House of Lords and other authorities and persons outside Parliament. On the other hand he presides over the debates of the House of Commons and enforces the observance of all rules for preserving order in its proceedings.

"At a general election his seat is rarely contested, and when he vacates his office he is usually created a peer and in any case always relinquishes his membership of the House."—*Sir Thomas Erskine May.*]

BETWEEN 1895 and 1935 there had been ten elections in the U.K. in none of which had the Speaker's seat been contested.

In 1935, Captain E.A. Fitz Roy, the Speaker of the House of Commons, was opposed in his constituency by a candidate sponsored by the Labour Party.

Captain Fitz Roy announced at his adoption meeting in his constituency that he would thereafter make no speeches and do no canvassing during the campaign. He read letters from Mr. Baldwin, Mr. Ramsay MacDonald, Sir John Simon, Mr. Llyod George and Sir Herbert Samuel, as leaders of

Parties in the House, deploring the Labour Party's decision to oppose him. Captain Fitz Roy was again returned as M.P. for the Daventry Division and for the fourth time in succession re-elected to the Speakership of the House of Commons¹.

In the last five general elections (including the latest one) the Speaker has been opposed four times. On the fifth occasion there was no Speaker to oppose since he had retired at the dissolution of Parliament². When Mr. William Shepherd Morrison, who was elected Speaker of the House of Commons in October, 1951, stood as a Conservative candidate during the last General Election, his candidature was not uncontested. He was opposed in his constituency by an independent Labour candidate—Mr. D. C. Cox. The official Labour Party did not contest the seat in the Speaker's constituency in keeping with the time-honoured custom. Mr. Morrison eventually won, the total votes polled by each being: Mr. Morrison 25372 and Mr. Cox 12394.

Committee in U. K.

In 1938, the House of Commons appointed a Select Committee on Parliamentary Elections (Mr. Speaker's

¹ Journal of the Society of Clerks-at the-Table in Empire Parliaments, Vol. IV, 1935, p. 11.

² Refers to Colonel Douglas Clifton Brown who did not seek re-election in the 1951 General Election.

Seat) to consider "What steps, if any, should be taken to ensure that, having due regard to the constitutional rights of the electors, the Speaker, during his continuance in office, shall not be required to take part in a contested parliamentary election."

Mr. Speaker's Seat

The Committee was thus expected to resolve a conflict. On the one hand, it had to safeguard the undoubted constitutional right of the Speaker's constituency to choose their own candidate. On the other hand, it had to safeguard the interests of the House in preserving a fair and impartial Speakership. The Committee, in the course of their report, surveyed the political and constitutional background of the problem, analysed the practices prevailing in other democratic parliaments, traced the evolution of the modern concept of the Speakership in U.K., examined the various schemes that had been proposed for remedying the difficulties and concluded by not recommending any cut-and-dried formula for resolving the conflicting claims. The Committee opined that the solution lay in the education of the electorate and the growth of healthy conventions. The conclusions of the Committee are reproduced below³:

"To attempt to deprive a constituency of the right to choose as its member one who is considered most representative of the popular will would be a serious infringement of democratic principles. To alter the status of the Speaker so that he ceased to be returned to the House of Commons by the same electoral methods as other mem-

bers or as a representative of a parliamentary constituency, would be equally repugnant to the custom and tradition of the House. To advocate that a Speaker should modify, even in his own defence, the established attitude towards political controversy would be to reverse the whole trend of our parliamentary evolution. Such are Your Committee's conclusions. No scheme or proposal within their purview offers more than a partial solution, and each introduces new elements which, in Your Committee's considered judgment, would be less acceptable than the ills they seek to cure.

"The fact cannot be disguised that the possibility of a contest cannot be excluded even when one of the candidates holds the office of Speaker. That such a state of affairs is undesirable is admitted by all who have considered the matter with care; but the only remedy lies not in attempts at suppression, criticism or evasion, but rather in the fuller education of the electorate towards the recognition and increased understanding of those vital democratic safeguards which it is the duty of the Speaker to defend. Development along these lines cannot be rapid but it can be most surely expedited by a firm maintenance of that code of principles which has slowly been built up during the last two centuries."

In short, a Speaker seeking re-election stands in General Election without taking a party line in the campaign.

Position in India

The position in India is still fluid on this issue although it has engaged the attention of responsible persons in the country. The Conference of Presiding Officers of Legislative Bodies in India held at Trivandrum in July-

³ Report from the Select Committee on Parliamentary Elections (Mr. Speaker's Seat).

August, 1951 passed the following resolution⁴:

"This Conference is of opinion that it is desirable in the interests of the development of free democratic institutions in this country that following the practice in the British House of Commons 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. The necessary corollary of the full establishment of this convention would be that the Speaker or Chairman would not take part in party politics. The Conference feels that such a convention is a healthy one and its growth should be encouraged."

In a communication to the Chief Minister of Madras on this issue Shri Jawaharlal Nehru made the following observations in November, 1951:

"A question has arisen as to whether Speakers of Legislative Assemblies should stand as party candidates or as independents. Some Speakers are of opinion that they should stand as independents and should not be opposed. There can be, of course, no guarantee that there will be no opposition.

"We have given careful consideration to this matter, and are clearly of the opinion that Speakers should stand for election like other candidates, either as party candidates or as independents, who are liable to be opposed. Any other course is full of difficulties and would mean that if a person is chosen as Speaker once, he would continue as such for the rest of his life."⁵

The Conference of Presiding Officers at its meeting held at Gwalior in October, 1953 again took up this issue

and adopted the following resolution:

"That this Conference is of opinion that it is desirable in the interests 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, and steps for making a beginning in that direction may be pressed upon the Government by Chairman in the light of discussions held in this Conference."

The Chairman of the Conference, Shri G. V. Mavalankar, undertook to discuss the matter with the various political parties with a view to creating a consensus of opinion in favour of such a convention. After the first General Elections, the Congress had emerged as the largest party in most of the Legislatures. Although there were attempts to follow in general the principles of re-electing the retiring Speaker, departures were made owing to various political developments in the States. Hence Shri Mavalankar raised this issue before the leaders of the Congress Party. The Working Committee of Congress made the following decision on this subject on April 4, 1954:

"The Working Committee considered Shri G. V. Mavalankar's letter for establishing a convention for the uncontested election of Speakers and felt that this was not a feasible proposition for the present in view of other political parties being involved in the question. However, it was decided that, normally speaking, Speakers should be given Congress ticket and if they are elected, they may be selected for election to Speakership as far as possible."⁶

⁴*The Hindustan Times*, August 27, 1951.

⁵*The Hindustan Times*, November 15, 1951.

⁶*Congress Bulletin*, April, 1954.

Emergency Powers of the Executive in the U.K.

THE Emergency Powers Act, 1920, was enacted in the U. K. "to make exceptional provision for the protection of the community in cases of emergency". The Act empowered the Crown to declare by proclamation a state of emergency whenever "it appears to H. M. that any action has been taken or is immediately threatened by any person or body of persons of such a nature and on so extensive a scale as to be calculated, by interfering with the supply and distribution of food, water, fuel or light or with the means of locomotion to deprive the community or any substantial portion of the community of the essentials of life." Recently a state of national emergency was proclaimed in the U.K. from the midnight of May 31, 1955, as a result of a strike of locomotive drivers and firemen. On the 13th June, 1955, both the House of Commons and the House of Lords gave their approval to the emergency powers which the U.K. Government assumed during the previous week to deal with the strike.

Emergency in War and Peace

In the U.K., a distinction is made between an emergency due to war, and an emergency in times of peace¹. In times of peace, the Executive can resort to the Emergency Powers Act, 1920, but in times of war, Parliament passes an Act authorising the Executive to make regulations for the public safety. On

the 24th August, 1939, the Emergency Powers (Defence) Act of 1939 was passed. This Act provided for Orders in Council to make regulations for the purposes of the public order; the efficient prosecution of war; "maintaining supplies and services essential to the life of the community", apprehension, trial and punishment of persons offending against the Regulations; detention of persons "whose detention appears to the Secretary of State to be expedient in the interests of public safety or the Defence of the Realm"; the taking of possession or control of any property or undertaking; the acquisition of any property other than land; entering and searching any premises, etc.². The Act related to Realm and was renewable yearly by address of both Houses. It lapsed when the emergency was over.

Emergency Powers

The U.K. Government have made only occasional use of the emergency powers in peace-time. Before the recent declaration of emergency, the Government had resorted to these powers only three times during the last 35 years after the Act of 1920 was passed. The general strike in 1926, and the dock strike in 1948 and 1949 had prompted the Government of the day to resort to this Act.

The emergency powers of the U.K. Government are entirely statutory, and the regulations are to be made subject

¹ALLEN, C. K.: *Law and Order*.

²SIEGHART, M. A. : *Government by Decree*.

to the limitations and conditions imposed by the statute. Consequently, these regulations are liable to be set aside by the Courts if they are *ultra vires*. Circumstances under which an emergency may be proclaimed have been specified in the Emergency Powers Act, 1920. The purposes for which the Government may and may not make regulations have also been specified in the Act. The regulations can only secure and regulate the supply and distribution of the necessities of life or empower the police to preserve peace. The Executive cannot impose military service or industrial conscription, punish without trial, suspend the writ of *habeas corpus* or alter the existing procedure in criminal cases by resorting to regulations. The proclamation must be laid before Parliament forthwith, and if Parliament is not sitting, it must be summoned within five days. If both the Houses do not approve of the regulations so made within seven days of

their presentation, the regulations automatically lapse.

Position in India

In India, however, under Article 123 of the Constitution, the President is empowered to promulgate Ordinances during recess of Parliament. Clause (1) of Article 123 provides that "if at any time, except when both Houses of Parliament are in Session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.". Similarly, Article 213 empowers the Governors to promulgate Ordinances during recess of State Legislatures. The provisions of the Indian Constitution do not lay down in what conditions and for what purposes the Ordinance-making power is to be used. The Courts cannot question the justification of an Ordinance.

Relations Between the Executive and the Legislature in the United States of America

THERE are three important features in the American Constitution, *viz.* popular sovereignty, federalism and separation of powers. The Constitution vested all executive powers in the President while all legislative powers were conferred upon the Congress. In providing for the separation of powers the founders of the American Constitution were influenced by the French political philosopher, Montesquieu, who advocated the separation of powers as the best means of preventing the growth of tyranny. Soon after the Constitution was adopted, it became abundantly clear that the doctrine of the separation of powers and the system of checks and balances was not conducive to the existence of smooth relations between the Executive and the Legislature. American history is replete with instances where the Executive has clashed with the legislature. President Andrew Jackson took a strong line over the question of distribution of powers as between the Executive and the Legislature. Abraham Lincoln had to struggle with the Legislature over the conduct of the civil war. Herbert Hoover had serious difficulties with the House of the Representatives during the last two years of his term. Franklin Delano Roosevelt's social policy gave rise to frequent clashes with the Congress. Lately President Eisenhower, who always strove to maintain friendly re-

lations with the Congress, had to re-monstrate against, what he thought, "an unconstitutional invasion of the province of the executive".

President Eisenhower's conflict with the Congress arose over the \$31.8 billion Defence Department Appropriations Bill for the current year. In Section 638 of the Bill the Congress had stipulated that the Secretary of Defence must get permission from the Senate and the House Appropriation Committee before he took the armed forces out of such non-military activities as cake-baking, dry cleaning, etc. This Bill could have been vetoed by President Eisenhower who would not agree to this condition but since the Defence Department needed the money urgently he signed the Bill, but declared at the same time that the Executive branch would pay no attention to this section which it considered invalid. In a Message to the Congress President Eisenhower wrote*:

"The Constitution divides the functions of the Government into three departments—the legislative, the executive, and the judicial, and establishes the principles that they shall be kept separate. . . . The Congress has the power and right to grant or deny an appropriation but once an appropriation is made, (it) must, under the Constitution, be administered by the executive branch of the Government

* *Time*, July 25, 1955.

alone, and the Congress has no right to confer upon its committees the power to veto executive action or to prevent executive action from becoming effective. Since the organisation of our Government, the President has felt bound to insist that executive functions be maintained unimpaired by legislative encroachment, just as the legislative branch has felt bound to resist interference with its power by the executive."

There has been at least one other case previously of a President of the U. S. refusing to be bound by the provisions of a Bill with which he disag-

reed even though he had accorded his assent to the Bill. In an Appropriations Bill of 1943, Congress had inserted a clause depriving three government employees accused of radicalism of their pay. President Roosevelt denounced this provision on the ground that there had been no legal proceedings against the three even though he accorded his assent to the Bill as framed by the Legislature. He ignored the Congressional edict and his action was upheld by the U.S. Supreme Court.

Texas State Senator, Mr. Kilmer Corbin, set a new national filibuster record by talking for 28 hours and 15 minutes against a tax plan.

His marathon speech bettered by nine minutes a record set by a fellow Senator, Mr. Wayn Wagonseller, on March 31.

(The Hindustan Times, May 20, 1955)

A Procedural Controversy in the United Nations General Assembly

THE ninth session of the General Assembly of the United Nations commenced on the 21st September, 1954.

Shrimati Vijayalakshmi Pandit, who was the Chairman of the Indian Delegation for the ninth session of the General Assembly, acted as the Temporary President on the opening day of the session under Rule 30 of the Rules of Procedure of the General Assembly, till Dr. Eelco N. Van Kleffens (Netherlands) was elected as President, towards the end of the day.

Rule 30 of the Rules of General Assembly¹ provides that at the opening of each session of the General Assembly the Chairman of the delegation from which the President of the previous session was elected would preside until the General Assembly elected a permanent President, for the current session. In accordance with this Rule, Shrimati Pandit, who was President of the Assembly during its eight session, took the Chair.

Question of Chinese Representation

At the outset, M. Vyshinsky (U.S.S.R.) raised the question of representation of China in the United Nations and moved the following resolution²:

"The General Assembly considers it necessary that representatives of the

People's Republic of China, appointed by the Central People's Government, should take the rightful seat of China in the General Assembly and in other organs of the United Nations."

Mr. Lodge (U. S. A.) moved a counter resolution asking the General Assembly to decide

"Not to consider, at its ninth regular session during the current year, any proposals to exclude the representatives of the Government of the Republic of China or to seat representatives of the Central People's Government of the People's Republic of China."

The U.S.S.R. resolution should have been taken up first. But in order that the U.S.A. resolution might have priority over it, Mr. Lodge asked that Rule 91 of the Rules of the General Assembly might be invoked. This rule gave the Assembly power to decide questions of precedence with regard to putting the proposals to vote. Rule 91 reads as follows:

"91. If two or more proposals relate to the same question, the General Assembly shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted. The General Assembly may, after each vote on a proposal, decide whether to vote on the next proposal."

Accordingly, Mr. Lodge moved the following resolution:

"The General Assembly decides to consider first the motion just offered by the representative of the United States."

¹U.N. Rules of Procedure of the General Assembly, New York, July 1954.

²U.N. General Assembly, Ninth Session, Official Records, 473rd Plenary Meeting, A/PV. 473.

The Temporary Chairman put this resolution to vote. It was adopted by an overwhelming majority. The U.S.A. resolution thus obtained priority over the U.S.S.R. resolution.

A Point of Order

The Temporary President was about to put to vote the draft resolution submitted by the United States, when Shri Menon (India) raised a point of order.

The point of order was that the U.S.A. resolution must be ruled out of order on the following grounds:

- (i) Under rules 12 to 14 of the Rules of the General Assembly, Provisional Agenda of a session of the Assembly should be drawn up by the Secretary-General and communicated to all the member nations of the U.N.O. at least sixty days before the commencement of the session. The rules also specify as to what exactly a provisional agenda should include, period of notice, etc. Shri Menon contended that no previous notice of the U.S.A. resolution had been given nor was it on the agenda and therefore it could not be discussed under the Rules of Procedure.
- (ii) Rule 66 of the General Assembly provided that "Assembly shall not, unless it decides otherwise, make a final decision upon any item on the agenda until it has received the report of a committee on that item". Therefore, in the first instance, the Credentials

Committee should consider the question of representation of China and only on its report it should be discussed in the General Assembly. Therefore, if the Assembly were to pass the resolution moved by the U.S.A. it would be imposing a restriction on its legitimate discussion by the Credentials Committee and subsequent debate on its Report in the Assembly.

The Temporary Chairman ruled the objections raised by Shri Menon as out of order on the following grounds:

- (1) There were several precedents where the General Assembly had dealt with the questions in plenary meeting without their reference to the Credentials Committee.
- (2) The General Assembly had already decided by an overwhelming majority of votes to give priority to the U.S.A. resolution. This voting implied recognition of the legality of the U.S.A. resolution by the General Assembly and therefore it could not be ruled out of order.

As soon as the above-mentioned ruling was given by the Chair, Shri Menon again went to the rostrum and said that:

- (a) a wrong precedent in conflict with the Rules should not be followed;
- (b) Rules of Procedure can be changed by amendment in the prescribed form only;

A Procedural Controversy in the U.N.

(c) That the Assembly had not voted on the legality of the U.S.A. resolution but had merely assigned priority for its consideration; and

(d) The validity of the resolution had been challenged before its submission for voting to the Assembly.

To this intervention of Shri Menon, the Chair observed as follows:

“May I ask the representative of India

whether his intervention is a challenge to my ruling?”

Shri Menon thereupon observed that he had no intention of challenging the ruling of the Chair but his intention was only to submit the actual position. However if the Chair ruled the other way he would accept the ruling.

Thereupon, the Temporary Chairman put the U.S.A. resolution to the vote of the Assembly which was adopted by an overwhelming majority.

The Bihar Assembly Secretariat laid on the Assembly table two thick stitched volumes running into 1,048 pages in aggregate. The first volume alone was made up of 666 pages.

Both volumes contain answers to 1,599 questions tabled by 211 members from all sides of the House during the last budget session. In addition, another set of 37 answers to questions tabled during the autumn session of 1954 was laid.

This is said to be an all-time record of answers laid on the table of the Bihar Legislature on any single day during its history of 33 years.

(The Hindustan Times, Oct. 10, 1955)

Some Parliamentary Activities at a Glance

Debates in Parliament and State Legislatures

The Ajmer Sales Tax Bill, 1953

A PROCEDURAL point arose in the Legislative Assembly, Ajmer on the 29th October 1954 when the Assembly took up consideration of the Ajmer Sales Tax Bill, 1953, which was returned by the President for reconsideration under the provisions of Section 26 of the Government of Part C States Act, 1951.

According to the provisions of the Section referred to above, the President, while withholding his assent to a Bill passed by the Legislative Assembly of a (Part C) State, may direct the Chief Commissioner to return the Bill to the Legislative Assembly together with a message requesting that the Assembly will reconsider the Bill or any specified provision thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message. According to the Rules of Procedure (Rule 141) of the Ajmer Assembly "when a Bill has been so returned, the point or points referred for consideration or the amendments recommended by the President shall be put before the Assembly by the Speaker and shall be discussed and voted upon in the same manner as amendments to a Bill or in such manner as the Speaker may consider most convenient for their consideration by the Assembly".

Immediately after the announcement was made by the Speaker to the Assembly about the return of the Ajmer

Sales Tax Bill, 1953 by the President for reconsideration, the Finance Minister got up for moving certain amendments. A point of order was raised by some Members that the amendments should be placed before the Assembly by the Speaker as enjoined by Rule 141 of the Rules of Procedure. The Speaker read out the message from the President as communicated to him by the Chief Commissioner and gave a ruling that as no specific amendments were communicated to him, the whole Bill was before the House for reconsideration; that is, it should be treated as if it were a new Bill and should pass through all stages before the Assembly. A member asked whether amendments to any clauses of the Bill could be given by any Member, irrespective of the amendments of which notice had been given by the Government and the Speaker replied that notice of any amendment could be given by any member and the House could consider the same in the usual way.

* * * *

Message from the President of the Grand National Assembly of Turkey

On the 8th December, 1954 the Speaker read out in the Lok Sabha the following message which he had received from the President of the Grand National Assembly of Turkey through the Leader of the Indian Parliamentary Delegation which visited Turkey in October, 1954:

"It is a pleasant duty for me to assure Your Excellency that the goodwill of the Indian Parliament as conveyed by Your Excellency is fully reciprocated."

cated in the Grand National Assembly of Turkey, and to request you to be so good as to convey, in return, the best wishes of our Assembly to your Parliament."

A similar message was read out in the Rajya Sabha by the Chairman.

* * * *

Indian Tariff (Amendment) Bill, 1955

A point of procedure arose in connection with the Indian Tariff (Amendment) Bill, 1955 which was certified by the Speaker as a Money Bill and passed by the Lok Sabha on the 26th July, 1955. Clause 2 of Article 109 of the Constitution provides that a Money Bill passed by the Lok Sabha shall be transmitted to the Rajya Sabha for its recommendation and that the Rajya Sabha shall within a period of fourteen days from the date of receipt of the Bill return the same to the Lok Sabha with its recommendations. Clause 5 of the same Article provides that if a Money Bill passed by the Lok Sabha and transmitted to the Rajya Sabha for its recommendation is not returned to the Lok Sabha within the period of fourteen days it shall be deemed to have been received by both Houses. Ordinarily, the Secretary, Lok Sabha is bound, unless he has directions from the Speaker to the contrary, to transmit a Money Bill as soon as it is passed by the Lok Sabha

to the Rajya Sabha for its recommendations. The Bill so transmitted will be deemed to have been received* by the Rajya Sabha when it is received by its Secretary.

On the 26th July, 1955, when the Indian Tariff (Amendment) Bill was passed by the Lok Sabha the other House was not in session, and was expected to assemble only on the 16th August, 1955, that is some twenty days after. Had the Bill been transmitted to the Rajya Sabha, therefore, immediately after its being passed by the Lok Sabha, the result would have been that the former would not have had an opportunity of discussing it.

To overcome this difficulty, the Speaker of the Lok Sabha directed the Secretary not to transmit the Bill to the Rajya Sabha immediately after it was passed, but to keep the Bill pending so that when it was actually transmitted, the interval thereafter till the Rajya Sabha assembled, would be sufficiently less than 14 days as to permit the Rajya Sabha to have a discussion thereon. While announcing this decision on the 1st August, 1955 in the Lok Sabha, the Speaker also directed that Government should in future so arrange its programme that a contingency of this nature did not arise.*

* * *

*The relevant rules relating to communications between the two Houses are quoted below :

10. *Mode of sending messages*—Every message from the House to the Council or from the Council to the House shall be in writing or in print or partly in writing and partly in print and shall be signed by the Secretary of the House or the Council and conveyed to the Secretary of the Council or the House, as the case may be.

Communication of messages to members—

(1) If any such message is received by the Secretary of the House or the Council when it is in session, he shall report the message to the House or the Council, as the case may be, at the first convenient opportunity after its receipt.

(2) Whenever the House or the Council to which a message is sent is not in session, a copy of the message shall, as soon as it is received by the Secretary of the House or the Council, be forwarded by him to every member of the House or the Council, as the case may be. [The Houses of Parliament (Joint Sittings and Communications) Rules, Ch. III.]

Demands for Grants for Railways

Experience had shown that the time at the disposal of the Lok Sabha for discussions relating to the Railway Budget was not enough to have all the local grievances ventilated. During the Budget Session of 1954, it was agreed on the Speaker's suggestion that only a few major grievances would be discussed on Cut Motions. For the rest, the Members were asked to submit brief Memoranda, not exceeding ten lines, on every point. The Ministry's replies to such Memoranda were placed on the Table of the House in due course and found place in the proceedings.

At the instance of the Speaker, the same practice was followed during Budget Session of 1955 also, with the further limitation that none of the Memoranda should deal with more than one specific point.

* * * *

The Spirituous Preparations (Inter-State Trade and Commerce) Control Bill, 1955

A procedural point arose in connection with the Spirituous Preparations (Inter-State Trade and Commerce) Control Bill, 1955 which was discussed by the Lok Sabha on August 1, 1955. Clause 14 of the Bill reads as under :

"Nothing in this Act or in the rules made thereunder shall affect the validity of any Provincial Act or a State Act for the time being in force, or of any rule, regulation or order made thereunder, which imposes any restriction not imposed by or under this Act, or imposes a restriction greater in degree than a corresponding restriction imposed by or under this Act on the traffic in any spirituous preparations within the territories of the State."

When the above Clause was taken up for consideration, Pandit Thakur Das Bhargava pointed out that under the Constitution the powers of Parliament were greater than those of the State Legislatures in regard to the imposition of restriction on trade, commerce and intercourse among States. He drew the attention of the Chair to Article 254 of the Constitution which provided that if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, the law made by Parliament, whether passed before or after the law made by the legislature of such State, shall prevail and the State law shall be void to that extent.

"Can we go against the provisions of the Constitution", Pandit Bhargava asked, "and say any greater restriction (provided in clause 14 of the Bill) will be there in spite of the fact that they are inconsistent with the law".

The Deputy Speaker who was then in the Chair observed that Parliament instead of specifically stating in the Bill, could adopt all the Clauses and Sections of the State Acts. In that case they would become part and parcel of the Bill. He said that for the sake of brevity the provisions of the State Acts were incorporated in the particular Clause. He further explained that Clause 14 should be interpreted to mean that all those provisions of the State Acts which were different from those contained in the Bill should be treated as part and parcel of the Bill.

* * * *

Parliamentary Questions

Information on some important matters elicited through questions in Parliament is given below:

(Lok Sabha)

Separation of Audit from Accounts

(7th September, 1954)

Shri A. M. Thomas asked the Finance Minister if the Government had taken any steps to effect the separation of Audit from Accounts. The Minister of Finance (Shri C. D. Deshmukh) informed the House that a senior officer of his Ministry had been nominated to draw up in consultation with an officer whom the Comptroller and Auditor-General was placing on special duty in his office, proposals for effecting the separation of Audit from Accounts in the central sphere. He further stated that the question of separation being a difficult and complex one, it was not possible to assess the time that these officers would take to submit their report. In reply to supplementaries, the Finance Minister said that the Comptroller and Auditor-General had not put forward any scheme to this effect but had submitted certain general proposals which the Government had accepted.

Union Public Service Commission

(11th September, 1954)

Questioned whether it was a fact that the U.P.S.C. had drawn the attention of the Government to the time-lag between the selection of candidates by the Commission and the appointment of the selected candidates by the

Government, the Deputy Minister of Home Affairs (Shri B. N. Datar) stated in reply that so far as the Indian Administrative Service and the Indian Foreign Service were concerned, there was no delay in offering appointments to the successful candidates who were normally appointed to these services sometime in April on the basis of the results declared in February and March. He admitted that delays occurred in offering appointments to the successful candidates in the Indian Police Service and the Central Services because the results in respect of these examinations were published usually in May or June. Government had, however, with effect from the current year adopted the practice of informing the successful candidates the total number of available vacancies in the respective services. This practice enabled the successful candidates to know beforehand their chances of absorption and enabled them to decide whether or not they should appear at the next competitive examination.

Asked if it was a fact that the Union Public Service Commission had recommended to Government that some statutory safeguards should be provided to minimize the possibility of increase in the number of cases in which Government might depart from the advice of the Commission and whether Government proposed to accept that recommendation, the Deputy Minister of Home Affairs (Shri Datar) stated in reply that Government had already adopted the convention that the advice of the U.P.S.C. should, as a rule, be adopted. Where, however, good and sufficient reasons existed for departing from that convention, Government

took decisions which appeared to them best in the public interest. In such cases, under Article 323 of the Constitution, Government placed before Parliament a memorandum explaining the reasons for non-acceptance of the Commission's advice.

Public Service Commissions

(11th September, 1954)

In reply to a question, the Minister of Home Affairs informed the House that in order to have an objective assessment of the way in which arrangements of recruitment to posts by Public Service Commissions had worked, the U.P.S.C. had made arrangements to obtain from the Ministries concerned, periodical assessments for the first two years of the merit and performance of all persons appointed on the recommendations of the Commission. Confidential periodical assessments were also made by the Ministries concerned in respect of persons appointed on the results of competitive examinations held by the Commission. From the study of the material it appeared that there were no serious reasons to apprehend that the recruitment arrangements of the U.P. S. C. did not produce personnel of the requisite quality. According to the objective review, there was room for improvement in respect of the time taken in completing the process of recruitment and instructions to minimise such delays had since been issued by the Government.

Inspectorate for Indian Missions

(24th September, 1954)

In reply to a question regarding the inspection arrangements in the Indian

missions abroad, the Deputy Minister of External Affairs (Shri Anil Kumar Chanda) informed the House that the Government had appointed certain officials to inspect the Missions and the work assigned to them was to advise and guide the Heads of Missions and other officers in the performance of their duties, to make recommendations for fixing foreign allowance after studying the local conditions and cost of living, to examine buildings, recommend purchases and sales and large-scale alterations of buildings and furniture, recommend purchases of new cars and condemn old ones, to look into the accounts of the Missions, to comment on all administrative matters and to deal with cases of indiscipline, etc. In reply to a further question Shri Chanda stated that the Ministry could not look into the problems of the far-flung Embassies from Delhi and hence two officers were specially detailed to tour round the various Embassies.

Organisation & Methods Division

(3rd May, 1955)

Replying to a question on the Organisation and Methods Division, the Prime Minister informed the House that the control measures introduced in all Ministries and Departments at the instance of the O & M Division furnished reliable objective material for gauging the quality of performance by individual officers and staff. This was in its turn reflected in the confidential reports on their work and conduct on which promotions were based. He further stated that a number of officers whose performance had been

shown to be outstanding, had received accelerated promotions to the different grades of the Central Secretariat Service. Persons whose performances were not regarded satisfactory had been passed over although at the time of the initial constitution of the Service they had been graded high.

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(Rajya Sabha)

Duties and Functions of Parliamentary Secretaries

(21st April, 1955)

In answer to a question asked in the Rajya Sabha on the 21st April, 1955, the Minister for Parliamentary Affairs stated that the duties, functions, responsibilities and status of Parliamentary Secretaries had not been formally defined and laid down anywhere. According to recognised parliamentary practice, he said, a Parliamentary Secretary was appointed to assist his Minister in his parliamentary duties, and it was for the Minister to determine the responsibilities which his Parliamentary Secretary should undertake. The work of different Parliamentary Secretaries therefore varied considerably. He further stated that there was no fixed scale of office assistance and secretarial facilities prescribed for Parliamentary Secretaries. These varied and were determined according to the requirements of each case. Answering a supplementary the Minister stated that Parliamentary Secretaries were provided with free houses and free telephones and were paid at the rate of Rs. 21 per day if they were required

to work in New Delhi during the "off season".

* * * *

Committees at Work

Select Committee on Nationalised Industries (U.K.)

A Select Committee on Nationalised Industries was set up by the House of Commons on the 16th March, 1955 "to examine the Reports and Accounts of the Nationalised Industries established by Statute, whose controlling Boards are wholly appointed by Ministers of the Crown and whose annual receipts are not wholly or mainly derived from moneys provided by Parliament or advanced from the Exchequer, and to obtain further information as to so much of the current policy and practices of those industries as are not matters which—

- (a) have been decided by or clearly engage the responsibility of any Ministers;
- (b) concern wages and conditions of employment and other questions normally decided by collective bargaining arrangements;
- (c) fall to be considered through formal machinery established by the relevant Statutes; or
- (d) are matters of day to day administration."

The Committee consists of 13 members and has power to send for persons, papers and records.

It will be the function of this committee to keep Parliament better informed about the activities and problems of the nationalised industries, without interference in their internal management. The nationalised industries which will fall within the ambit of inquiry will include those managed by the National Coal Board, the British Transport Commission, the two Airways Corporations, the British Electricity Authority, the North of Scotland Hydro-electric Board, and the Gas Council.

The appointment by the House of Commons of the Select Committee on Nationalised Industries marks the culmination of a long period of controversy about the scope and functions of the Select Committee. In 1953 an all-party Select Committee appointed under the chairmanship of Mr. Ralph Assheton had submitted an unanimous report in which they recommended that a standing committee of the House of Commons should be appointed to keep Parliament more fully informed "as to the general policy and practice of the nationalised industries" without seeking to control the work of the corporations. During discussion of the Committee's report in Parliament the Opposition had made it plain that they did not favour the proposal, although the five Labour Members, who had sat with six Conservatives on the Select Committee, had concurred with their colleagues and had made an unanimous recommendation.

The Select Committee gave full weight to the argument that a standing committee of inquiry might impede the work of the nationalised industries and destroy their initiative. Nonethe-

less, they concluded that a greater accountability to Parliament was necessary because of the large amount of capital employed in the publicly owned industries, the importance to the community of the charges for goods and services which they provide and because of the Treasury guarantees of their public borrowings and interest charges. The only practical means of achieving this, they thought, would be the establishment of a committee which would establish a liaison between Parliament and the nationalised industries without jeopardizing the efficiency of those industries or interfering in their detailed administration.

* * * *

Select Committee on Estimates (U.K.)

In their Seventh Report on the Foreign Service which was published on the 8th December, 1954, the Select Committee on Estimates (1953-54) recommended *inter alia* that Parliament should give urgent consideration to the proper supervision by its Committees over the "ever-increasing expenditure authorized to be incurred in foreign territories". In para 80 of the Report the Committee stated:

"It is an alarming thought that the Foreign Office or any other Government Department undertaking services abroad should be conscious of the fact that Parliament cannot exercise any effective control over expenditure authorized for such services, especially as the total expenditure abroad has now reached such a formidable figure in excess of £200 million a year."

This statement of the Committee evoked considerable controversy. Critics of the Government, prompted by

the enormity of the expenditure on the foreign services, demanded an independent enquiry. The sources close to the Government said that the figure of £200 million quoted by the Committee was not correct. On the 13th December, 1954 Sir Anthony Eden stated in the House of Commons that the total expenditure on the Foreign Service at home and abroad, including expenditure incurred on behalf of the Foreign Office by the Ministry of Works and other Departments was not £200 million but just under £20 million. He promised an immediate examination of the "practicability of the recommendations" made by the Select Committee.

In a White Paper issued on the 1st February, 1955 the British Government turned down the proposal of the Select Committee on Estimates for an independent enquiry into the functions of the Foreign Service. The White Paper further stated that Government proposed to arrange for a Treasury Official to be attached to the Foreign Service Inspectorate to take part in inspections.

On the 24th February, 1955 the Select Committee on Estimates presented a second special report to the House in which they admitted having made two factual errors in their earlier report on the Foreign Service. They however added that in no part of their report was a statement made that "Foreign Service expenditure amounted to £200 million." The paragraph in which the figure occurred expressly referred to the lack of Parliamentary supervision over the whole field of governmental expenditure abroad.

Viewed from the procedural point of view the seventh report of the Select

Committee is significant. In Part I of the Report the Committee critically referred to the Government's decision that it would be unconstitutional for the House to grant leave of absence to some Members to make an official enquiry abroad accompanied by a Clerk of the House.

* * * *

Select Committee on the Attendance of Peers (U.K.)

A motion was moved in the House of Lords on June 21, 1955 by the Lord President of the Council (The Marquess of Salisbury) for the appointment of a Select Committee to inquire into the powers of the House in relation to the attendance of its members. The motion was agreed to after the Lord President had assured the House that this was purely a fact-finding inquiry to discover what the powers of the House were. It was stated that the Committee would sit in public and report to the Government.

* * *

Committee on Assurances (Lok Sabha and State Assemblies)

The Committee on Assurances was formed in the Lok Sabha on the 1st December, 1953 with the following functions:

- (a) the extent to which the assurances, promises and undertakings, etc. given by the Ministers on the floor of the House have been implemented; and
- (b) where implemented, whether such implementation has taken place within the minimum time necessary for the purpose.

The Committee of the Lok Sabha has so far presented two Reports to the House.

With similar end in view the Legislatures of Madhya Pradesh, Madras (Council and Assembly), Punjab, Travancore-Cochin, Vindhya Pradesh, Bhopal, Bihar (Assembly only), Uttar Pradesh (Assembly only), PEPSU, Ajmer, Delhi and Himachal Pradesh have constituted their Committees on Government Assurances.

So far*, the Committee on Assurances functioning in the Legislatures of Travancore-Cochin, Delhi and Vindhya Pradesh have presented Reports to their respective Houses. The Committees on Assurances of the Travancore-Cochin Assembly and Vindhya Pradesh Legislative Assembly have submitted two Reports each, whereas the Delhi Vidhan Sabha has presented one Report.

The rules regarding the composition and terms of reference of the Committee on Assurances in the States are on the same lines as applicable to the Committee on Assurances in the Lok Sabha. The Speakers of the State Legislatures nominate Members whose number varies from State to State. The term of office of the Members is one year.

* * *

Committee on Absence of Members from the Sittings of the House (Lok Sabha)

The Fourth Report of the Committee

*Up to May, 1955

on Absence of Members from the Sittings of the House which was presented to the Lok Sabha on the 13th September, 1954, is important from procedural point of view. The Committee in this Report observed:

“The duty of each member to the House is paramount and the Committee consider that Members should remain absent only when it is absolutely necessary and there are good reasons for doing so. It is absolutely necessary that in this, as in other matters, proper and healthy precedents should be established. The Committee, therefore, suggest that in future leave should not be recommended unless the reasons advanced in the applications are considered by the Committee to be proper.”

The Report of the Committee containing the above suggestion was adopted by the House on the 15th September, 1954.

* * * *

**Select Committees on Bills
(Lok Sabha)**

The following directions were issued by the Speaker to the Chairmen of Select Committees on Bills:

- (i) At any time before the consideration of the Bill is finally concluded by the Select Committee, any Member of the Committee may submit a memorandum/note containing his views on the Bill in writing to the Committee.

- (ii) The Chairman may if he thinks it fit direct that copies of the note or extracts therefrom be circulated to the members of the Committee.
- (iii) If in the opinion of the Chairman, a Minute of Dissent contains words, phrases or expressions which are unparliamentary, irrelevant or otherwise inappropriate he may order such words, phrases or expressions to be expunged from the Minutes of Dissent.
- (iv) Notwithstanding anything contained in direction (iii) above the Speaker shall have the power to order expunctions in like circumstances or to review all decisions regarding expunction from Minutes of Dissent and his decision shall be final.
- (v) A Minute of Dissent shall be given only after the draft Report has been considered and adopted by the Committee and it shall not be conditional in any respect.
- (vi) A member who has been absent from the sitting or sittings of a Committee at which the draft Report of the Committee was considered may give a Minute of Dissent if he certifies in writing that he has read the report.

* * * *

Committee on Subordinate Legislation (Lok Sabha)

The Third Report of the Committee on Subordinate Legislation was presented to the House on the 3rd May, 1955. The following are the important recommendations made by the Committee in this Report:

- (1) In regard to matters affecting the Ministers of Government the powers for making rules under any relevant Act should not be delegated to Government. In cases where it is considered necessary by the House to delegate power to make such rules, the rules should be operative after the affirmative vote of the House has been obtained.
- (2) If Parliament is to be represented on any body to be constituted by Government, the ratio between the members of the Lok Sabha and the Rajya Sabha should be 2:1.
- (3) Suitable provisions on the following lines should be included in the future Bills which may seek to delegate power to make rules, etc. or which may seek to amend earlier Acts giving power to make rules, etc:—
 - (i) that all rules shall be laid on the Table;
 - (ii) that the rules shall be laid for 30 days before their final publication.

But if it is not expedient to lay them on the Table before their publication, they may be laid as soon as possible after their publication together with an explanatory note stating the reasons therefor; and

- (iii) the Acts shall provide that the rules shall be subject to modifications by the House.
- (4) All statutory rules and orders of concern or importance to the general public should be published at the Centre as well as in the States, preferably simultaneously. The translations of these rules and orders in the recognised languages of the States should also be published along with them in the respective State Gazettes. Press communiques should also be issued to explain the general purport and effect of the rules, etc.
- (5) All rules and amendments in rules should be given short titles both in the body and at the top.
- (6) S.R.O. Nos. of previous amendments and the original rules or at least S.R.O. number of the last amendment should be cited in a foot-note whenever any amendment is sought to be made in any rule.
- (7) Explanatory notes explaining the general purport should be

appended to all the rules and amendments.

- (8) The Ministries should ensure that their 'orders' are laid on the Table within seven days after their publication in the Gazette, if the House is then in session. If it is not then in session, they should be laid on the Table within seven days after the commencement of the following session.

• * * *

Committee on Private Members' Bills and Resolutions (Lok Sabha)

On the 5th May, 1955 the Committee considered the proposal for holding a single ballot in respect of Private Members' Bills in a session and also other matters ancillary thereto. The recommendations of the Committee contained in their Thirtieth Report were adopted by the House on the 5th August, 1955. The following are the recommendations of the Committee:

- (i) There should be one ballot each month for determining the relative precedence of pending Private Members' Bills covering two consecutive days allotted for such Bills.
- (ii) In cases where notices of next motions are received after the List of Business for the first day has been finalised, Bills in respect of which such no-

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tices are received should be included in the List of Business for the next allotted day in their appropriate places as determined by the ballot.

leaders of parties in the House.

* * * *

Public Accounts Committee (Parliament of India)

Examination of Finance Accounts of the Central Government

- (iii) It should be provided that when a Bill has been introduced notice for introduction of an identical Bill will lapse.
- (iv) It should be provided that if the Member-in-charge of a Bill is unable, due to adequate reasons, to pilot a Bill after introduction, he may authorise another member to do so with the approval of the Speaker.
- (v) Where notices for resumption of adjourned debate on Bills had not been received and hence the Bills had been excluded from the ballot, such Bills should be included in the List of Business after the Bills balloted earlier, if notices for resumption of debate are received subsequently.
- (vi) The rules of procedure should be amended where necessary to give effect to these recommendations. Until the rules are amended the recommendations may be implemented with the consent of the House and the Speaker may issue necessary directions for the purpose. In the alternative the recommendations may be adopted as a matter of convention with the consent of

In the previous issue of the 'Journal of Parliamentary Information' a mention had been made about the skeleton form of statements devised by the Ministry of Finance in consultation with the Comptroller and Auditor-General to enable the Public Accounts Committee to start scrutinising the receipt and borrowing sides of Accounts pending the compilation and publication of the regular Finance Accounts of the Central Government. A question arose whether the statements in question should be presented to Parliament or submitted to the Public Accounts Committee direct. Since the Comptroller and Auditor-General was not presenting any Audit Report on these statements, the question of their being laid on the Table of both the Houses of Parliament in the manner envisaged in Article 151 (1) of the Constitution did not seem to arise. The matter was, therefore, placed before the Chairman, P.A.C. and the Speaker, who agreed that these statements should be treated in the same manner as other notes/memoranda, etc. which were submitted by the Ministries concerned to the P.A.C. pursuant to action taken by them on the recommendations made by the Committee.

* * * *

Audit Reports (Civil) relating to Part 'C' States

Prior to the enactment of the Government of Part C States Act, 1951*, the Accounts of these States including those which had a separate Legislature appeared in the Central Government Appropriation Accounts (Civil) and all financial irregularities, etc. arising therefrom were dealt with in the relevant Audit Reports (Civil) presented to Parliament. They were considered by the Public Accounts Committee at the Centre.

Consequent on the amendment of the above Act in 1954†, the following provision was inserted in the principal Act in the form of Section 39-B:

"Audit Reports: The reports of the Comptroller and Auditor-General of India relating to the accounts of a State where a Legislative Assembly has been established under Section 3 shall be submitted to the Chief Commissioner, who shall cause them to be laid before the Legislative Assembly of the State."

Public Accounts Committees were, therefore, set up by the respective Part 'C' States Legislative Assemblies, to examine the Appropriation Accounts and Audit Reports thereon relating to these States. As the scrutiny of Accounts and examination of irregularities relating to these States came within the purview of the respective State Public Accounts Committees, it followed logically that matters outstanding in the Reports of the Central Public Accounts Committee in so far as they related to the Part 'C' State Governments concerned, should also be pursued by them.

The above question arose in the following two cases and it was decided to leave it to the State Public Accounts Committee to pursue them further, if they so desired, in the altered constitutional set-up:

- (i) Para 22(c) of Audit Report (Civil), 1951—

Withdrawal of money by the Chief Fire Officer in advance of requirements—Purchase of two Tank Wagons.

(This case was commented upon in Para 19 of the Seventh Report of the P.A.C. for 1952-53).

- (ii) Para 26(b) of the Audit Report (Civil), 1950—relating to certain financial irregularities committed in the Office of the Dairy Development Officer, Delhi during the year 1946.

* * * *

Estimates Committee (Lok Sabha)

Scope and Functions Concerning Matters of Policy

The Conference of Chairmen of Estimates Committees, held in New Delhi on the 20th and 21st November, 1954, under the Chairmanship of Shri G. V. Mavalankar, Speaker, Lok Sabha, discussed *inter alia* whether the scope and functions of Estimates Committee extended to matters of policy. The rules of the Estimates Committee of

*. No. XLIX of 1951.

† No. 7 of 1954.

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the Lok Sabha lay down that the Committee can "suggest alternative policies in order to bring about efficiency and economy in the administration". The Chairman of Estimates Committee, Bombay, who initiated the discussion, expressed the view that the Committee was not competent to "question" the policy approved by the Legislature but could suggest an alternative procedure in the implementation of that policy. The meaning of alternative policy, argued the Chairman from Madhya Bharat, should be taken in a restricted sense so as to connote "policy, ancillary to the policy already laid down by the Legislature". The Chairman of Travancore-Cochin Estimates Committee said that as the House would be in a position only to lay down broad principles of policy, the Committee because of "an intensive scrutiny and an intensive examination of the estimates" could and should offer its suggestions in the form of alternative policies. Moreover, any policy suggested by the Committee would be subsequently discussed by the Legislature.

Discussing at length the scope of the Estimates Committee, the Deputy Speaker, Lok Sabha, remarked that it was generally not open to the Committee to change the policy laid down by Parliament or Legislature. But if there was no such express policy, or if it was found that one policy was adopted in one case and another in a different case, it was up to the Committee to say that this kind of *ad hoc* decision on various matters without a policy behind it was not conducive to the best interests of the country and also to suggest a course to be adopted.

Matters of policy, said the Chairman of the Lok Sabha Estimates Committee, are laid down by the House, but as the main function of the Committee is to bring about economy and efficiency, it should suggest alternative policies for consideration of Parliament or Legislature.

In this connection, the Speaker, Lok Sabha, issued the following directives for the working of the Committee of the Lok Sabha, on December 2, 1954:—

1. The term 'policy' referred to in clause (a) of sub-rule (1) of rule 243* 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 sub-rule (1) of rule 243 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 Parliament that a change in policy is called for. The fundamental objectives of the Committee are economy, efficiency in administration and

*Rules of Procedure and Conduct of Business in the Lok Sabha.

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 Parliament”.

Procedural Matters

BILLS

Bills providing for levy of fees for services rendered do not attract the provisions of Article 117(1) of the Constitution

On the 1st March, 1955, during the discussion on the motion for consideration of the Imports and Exports (Control) Amendment Bill, 1955, Shri U. M. Trivedi raised a point of order that the Bill was a Financial Bill as section 4A of the Principal Act as also clause 4 of the Bill which sought to amend that section provided that fees will be charged on all applications. He contended that unless fees were charged for services rendered, they become a tax. He, therefore, thought that the Bill was a Financial Bill and it should have been introduced in the original instance with the recommendation of the President.

The Chair held over the decision on the point of order and on the 5th March, 1955 when discussion on the motion for consideration of the Bill was resumed, the Chairman (Shrimati Sushama Sen) asked the Minister for Legal Affairs (Shri H. V. Pataskar) to

give his views on the point at issue. Shri Pataskar thereupon quoted from the judgments of the Supreme Court and explained the position as follows:

“What is proposed to be done by the amendment of the section which now stands is that they want to levy a fee in respect of all applications whether they are for the issue of a licence to import or export or for the renewal thereof.

The contention of the hon. Member was that if it was a tax it would become a Money Bill and as such it could not have been introduced in the first place in the Rajya Sabha and in the next place it would require the sanction of the President. That was his objection. But, as it amounts to fees, naturally his objections do not stand.

A ‘Tax’ is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered.

The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of common burden, while a fee is a payment for a special benefit or privilege. . . . Fees confer a special capacity, although the special advantage, as for example in the case of a registration fees for documents or marriage licenses, is secondary to the primary motive of regulation in the public interest. Public interest seems to be at the basis of all imposition.

There is no doubt that a fee resembles a tax in many respects and the question which presents difficulty is, what is the proper test by which the one could be distinguished from the other? A tax is undoubtedly in the nature of a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. But the other and equally important characteristic of a tax is, that the imposition is made for

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public purposes to meet the general expenses of the State without reference to any special advantage to be conferred upon the payers of the tax....

This licence fee is to be collected for the purpose not of a common burden but because it confers a special benefit upon certain individuals; for instance, on those who want to apply for licence and on those who want to have the benefit of the licences. They have to pay the fee in order to have the licence. It is not as if it is a general tax that will go to the general revenues.

There is another very great distinction between tax and fee, and it is quantum of imposition on the taxpayer. In the case of a tax, it depends upon his general capacity to pay. In the case of a fee, the quantum does not depend upon the capacity of the man to pay but upon the fact that he is to get a benefit. So far as these matters are concerned, it is clear from the very wording that it is nothing more nor less than a licence fee imposed for defraying some petty expenses incurred in connection with the work. There is, therefore, no substance in the point of order....."

After the Minister for Legal Affairs had explained the constitutional position regarding the point of order, the Chairman observed that there was no irregularity and ruled out the point of order.

* * * *

Statement of Objects and Reasons is not part of a Bill

In the Mysore Legislative Assembly some members raised objections to the motion for consideration of the Cattle Trespass (Amendment) Bill, 1954, on the ground that the Statement of Objects and Reasons accompanying the

Bill bore no relation to the Bill as laid on the Table of the House and that the Bill should not therefore be proceeded with. The Speaker of the Assembly thereupon gave the following ruling:

"A perusal of the Rules of Procedure indicates that it is only in the case of a Bill originating in this House that the Bill is required to be accompanied by a Statement of Objects and Reasons. The Cattle Trespass (Amendment) Bill did not originate in this House. It was introduced in the other House and passed by that House after certain amendments were made in the original Bill. The Bill as passed by the Council was thereafter laid on the Table of this House as required by rule 90—F. This rule merely requires that the Bill as passed by the Council shall be laid on the Table of the House and does not say anything about the Statement of Objects and Reasons. In the several Legislatures in India the practice in this matter appears to differ. In some Legislatures the Bill as passed by the originating Chamber together with the Statement of Objects and Reasons is laid on the Table of the other House. This is done though the Bill may have undergone extensive changes in the originating Chamber so that the Statement of Objects and Reasons does not correctly indicate the purposes of the Bill as it emerges from the originating House. In certain other Legislatures the Bill as passed by one House is laid on the Table of the other House without the Statement of Objects and Reasons.

So far as we are concerned in Mysore, the practice has been to lay on the Table of the House the Bill as passed by the other accompanied by the Statement of Objects and Reasons as it was originally appended to the Bill. This was intended to give the members of the House an idea of the purposes underlying the Bill when it was first introduced in the other House. It was felt that to merely lay the Bill unaccompanied by

such a Statement would deprive Members of such information, whatever it may be worth. However, it is desirable that the Government should always amend the Statement of Objects and Reasons in conformity with the amendments effected by the originating House before taking it up in the other House.

I shall also get this question examined again.

It must however be stated that, as a Statement of Objects and Reasons is not part of the Bill, there can be no objection to taking up the Bill for consideration. It is quite open to any Hon'ble Member to argue that, as the Bill has been considerably changed, the purpose of the Government in bringing forward this measure would not be achieved by passing the Bill in the present form. That would be an argument on merits which an Hon'ble Member is entitled to pursue. But no objection can be taken for making the motion. If the Hon'ble Minister wants to move that the Bill be taken into consideration, he may do so."

* * * *

QUESTIONS

Admissibility of questions seeking information about the Legislature Secretariat

On the 16th March, 1955, Shri M. Kalyanasundaram asked a Short Notice Question in the Madras Legislature regarding recruitment of officers in the Legislature Secretariat. The question had been put down for answer by the Finance Minister. When the question was taken up, Shri Kalyanasundaram submitted that while he had no objection to the Finance Minister's replying to the question, he wanted to know

the constitutional position in this matter. Until rules regulating the conditions of service of the staff, under Article 187 (2) of the Constitution, were made, the Governor in consultation with the Speaker of the Legislative Assembly or the Chairman of the Council, as the case may be, could make rules regulating the recruitment and the conditions of service of persons appointed to the Secretariat staff. The member was, therefore, of the view that the Governor acted on the advice of the Speaker, and was not free to consult or act on the advice of the Council of Ministers, and he contended that the question ought to be answered by the Speaker and not a Minister in the Government. While giving his ruling on the point, on the 18th March 1955, the Speaker observed that in the House of Commons in England, and in the Lok Sabha in Delhi, where there were separate Secretariats for the two Houses of the Legislature, questions pertaining to the Secretariat were given notice of privately and answered privately in the Chamber by the Speaker. But in the States in India the Legislature Secretariat was under the control of the Speaker of the Assembly as well as the Chairman of the Council.

There was a chance, the Speaker said, that his voice might be drowned in the combined voices of the representatives of the Government and the Chairman of the Council and, under the circumstances, he could not take the responsibility of answering the questions even by private notice. He therefore, ruled that questions relating to the Legislature Secretariat would be answered by the Leader of the

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House so long as the present dual control over the Legislature Secretariat by the Speaker as well as the Chairman of the Legislative Council continued. He however expressed the hope that Government would soon bring forward a legislation, as contemplated in the Constitution, to empower the House itself to regulate the Legislature Secretariat which would incidentally enable him to answer Questions on the subject in private.

* * * *

Suspension of the Question Hour to enable the House to take up Government Business

The twenty-fourth Report of the Business Advisory Committee, which was presented to the Lok Sabha on the 7th September, 1955, recommended *inter alia* that the "Question Hour on the 13th and 14th September when the consideration of motion regarding Displaced Persons Compensation and Rehabilitation Rules, 1955, is to be taken up should be dispensed with".

On the 8th September, 1955, after the motion for the adoption of the report of the Committee had been moved, Shri H. V. Kamath (Hoshangabad) raised an objection to the suspension of the Question Hour which according to the old practice* could be done only by the unanimous consent of the House. Moreover, if the Question Hour was dispensed with on any day, he added, the question list for that day was taken up on some other day when there was no Question Hour. The Member requested the Chair that on the basis of that convention the questions put down for these two dates

should be taken up on the 10th and 24th September respectively as on these days there was no Question Hour. The Speaker thereupon observed that the practice of transferring the questions wholesale from one day to another whenever the Question Hour was dispensed with had been discontinued during the current Parliament. With more and more business coming before the House, the Chair added, a new type of convention was developing so that "whenever it is necessary to make up the time, it is a question of balance between foregoing the Question Hour and the allotment of time to be taken up in the discussions in the House on the various Bills and other subjects that come up for debate". The Chair also stated:

"The old convention does not stand now for the simple reason that it was a convention when there was no Business Advisory Committee. Now, the Business Advisory Committee which represents the entire House takes all points of view into consideration and comes to a conclusion. The report is before the House....If the House accepts the report, then it becomes the order of the House....".

The Speaker also observed in this connection that the suspension of Question Hour will be resorted to only in exceptional cases.

The Report of the Business Advisory Committee was subsequently adopted by the House.

When on the 12th September, 1955, Shri Kamath drew the attention of the Chair to the completion before the scheduled time of the debate on the Companies Bill and requested for the

*Parliamentary Debates, February 2, 1952, C. 1634

“resurrection” of the questions for those two dates, the Speaker gave the following ruling:

“The recommendation was made by the Business Advisory Committee and it has been endorsed by the House. If at all it has to be reconsidered now, it will first have to be considered by the Business Advisory Committee and then by the House.”

* * * *

JOINT COMMITTEE

Sittings of Joint Committee outside the precincts of the Parliament House

On the 22nd April, 1955 the Chairman of the Joint Committee on the University Grants Commission Bill, sent a note to the Speaker conveying the desire of the Members of the Joint Committee that the sittings of the Committee might be held at Poona. He requested for the Speaker's decision on the matter. The Speaker accorded his permission to the meeting of the Committee being held at Poona but stipulated that the venue should be the Bombay Legislature Building and that all the form, atmosphere and decorum of a Parliamentary Committee should be observed.

* * * *

RULES COMMITTEE

Members of the House who were not members of the Rules Committee were invited to the meeting of the Committee to offer suggestions

The Rules Committee of the Bihar Legislative Assembly had submitted their report in 1954 on the

draft of the rules to be made by the Assembly under clause (1) of Article 208(1) of the Constitution of India for regulating the procedure and the conduct of business of the Assembly. To these draft rules more than a hundred amendments were tabled by various members. The House, on a motion by a member, re-committed all these amendments to the same Committee for consideration. When these amendments were actually before the Committee, the Speaker, in his discretion, invited all those members who had tabled amendments, to appear before the Committee to give the members of the Committee the benefit of their views over their respective amendments. This proved very helpful to the Committee in coming to a decision.

* * * *

OFFICIAL GALLERY

Persons sitting in the Official Gallery not to brief the Ministers loudly

During the course of the debate in Lok Sabha on Delhi Joint Water and Sewage (Amendment) Bill on the 2nd August, 1955, a member raised a point of order and sought the Chair's ruling whether an official sitting in the Official Gallery could brief a Minister in loud tones while the Minister was speaking. The Deputy Speaker who was then in the Chair ruled that while there was no objection to members consulting officials in the Official Gallery, such consultation should be in low tones, and the officials should not speak loudly so as to be heard in the House.

* * * *

Disposal of files in the Official Gallery amounts to disrespect of the House

On the 15th March, 1955 the Speaker of the Punjab Vidhan Sabha gave his ruling on a point of order raised on the previous day by an opposition member that the disposal of files by an Officer in the Official Gallery amounted to contempt of the House.

Describing the galleries as "those parts of the House which are not appropriated to the use of members", the Speaker said that the officers and visitors present in them must, nevertheless, observe proper decorum and show proper courtesy to the House. While he did not object to Officers noting down points that arose in the House or for referring to files to find suitable answers thereto, he held that disposal of files, "apart from its being a disturbing factor to the members sitting in the House, amounted to disrespect to it."

* * * *

PRIVATE MEMBERS' BUSINESS

A Resolution cannot be considered to have been moved unless the House is seized of it

Rule 25 of the Rules of Procedure and Conduct of Business in the PEPSU Vidhan Sabha provides that all business appointed for any day and not disposed of before the termination of the sitting shall stand over until the next day available for such class of business, or until such other day in the session so available as the member in charge of the business may desire; but business other than Government business, so standing over shall have

no priority on such day unless it has been commenced in which case it shall only have priority over business other than Government business fixed for the day.

On the 16th December, 1954, which was a Private Members' Business day, a member moved his resolution one minute before the sitting of the House and began to speak in favour thereof. Since the House adjourned before the Member concluded his speech the resolution could not be put to the House by the Speaker. On the next Private Members' Business day (23rd December, 1954) the Member relying on Rule 25 of the Rules of Procedure raised objection that his Resolution which could not be discussed on the previous day should have been included as item No. 1 in the List of Business for the day. The Speaker thereupon ruled that since the House had not been seized of the said resolution, the same was not considered to have been moved.

* * * *

SERVING OF SUMMONS

Services of a subpoena on a Member within the precincts of the House while the House is in session constitutes a breach of privilege

The Stationary Sub-Magistrate of Palladam, Coimbatore District, sent a summons to the Speaker, Madras Legislative Assembly for causing the same to be served on Snri A. Senapathi Gounder, M.L.A. While mentioning this fact in the House on the 15th December, 1954, the Speaker said that the service of a subpoena on a member within the precincts of the House

while the House was in session constituted a breach of privilege. He asked the Leader of the House to instruct all the Magistrates in the State that they should not make the Speaker a post-box for serving summons on members.

* * * *

PRESIDING OFFICER

Personal opinions of the Speaker on public matters should not be referred to in debate

On the 2nd May, 1955, during the course of his speech on the Hindu Marriage Bill, as passed by Rajya Sabha, a member (Pandit D. N. Tiwary) referred to certain views expressed by the Speaker in a speech at Allahabad.

The Deputy Speaker thereupon observed as follows:

"May I suggest to the hon. Member, that though it is not laid down in the rules, as in the case of the Rashtrapati, whose opinions ought not to be quoted here or brought in support of any particular position or in opposition of a particular view, I would like hon. Member to avoid reference to the Speaker and his views in canvassing for or against a particular proposal. On the floor of the House it will evoke controversy and then speeches will be made for or against such views."

* * * *

Vacation of the Office by the Speaker on the issue of the Proclamation by the President under Article 356 of the Constitution

The Andhra Legislative Assembly was dissolved on the 15th November,

1954 by a Proclamation issued by the President under Article 356 of the Constitution due to a breakdown of the constitutional machinery in the State. The Proclamation *inter alia* suspended certain Articles of the Constitution relating to the Legislature. As Article 179 was one of the Articles so suspended the question arose whether or not the Speaker of the Assembly had vacated his office on the date when the Proclamation came into effect. The Legal Department opined that inasmuch as Article 179 was suspended the Speaker was deemed to have vacated his office with effect from the date of the issue of the Proclamation. The said Proclamation was revoked by the President on the 28th March, 1955, soon after the General Election and the Speaker was deemed to have re-assumed his office of Speaker of the Andhra Legislative Assembly on the 28th March, 1955, under the second proviso to Article 179 of the Constitution. The Speaker continued to hold office till the 21st April, 1955, as the new Assembly was summoned to meet on the 22nd April, 1955.

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No discussion on matters coming under the jurisdiction of the Speaker

According to a Reuter message from Capetown dated the 11th April, 1955 a member of the Nationalist Government Party told the South African House of Assembly recently that the portraits of the late King George V and Queen Mary in the Press gallery "gave offence to certain people". The member desired to know the justification for preserving the two

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symbols of British authority in the House. Mr. Strijdom, the Prime Minister, said that the display of portraits was a matter which came under

the jurisdiction of the Speaker and he hoped that there would be no further discussion on the subject.

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“The Chair’s association with the members is by the seats they occupy and not by their names and faces.”—Shri G. V. Manalankar in the Lok Sabha, September 10, 1955.

Constitutional Developments

Constitutional Reform in India: The Constitution (Fourth Amendment) Act, 1955

THE text of the Constitution (Fourth Amendment) Act, 1955, which received the assent of the President on the 27th April, 1955, is reproduced below:

THE CONSTITUTION (FOURTH AMENDMENT) ACT, 1955

(27th April, 1955)

AN Act further to amend the Constitution of India.

BE it enacted by Parliament in the Sixth Year of the Republic of India as follows:

1. This Act may be called the Constitution (Fourth Amendment) Act, 1955.

2. In article 31 of the Constitution, for clause (2), the following clauses shall be substituted, namely:—

“(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property.”

3. In article 31A of the Constitution—

(a) for clause (1), the following clause shall be, and shall be deemed always to have been, substituted, namely:—

“(1) Notwithstanding anything contained in article 13, no law providing for—

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over of the management of any property by the State for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

Constitutional Developments

- (d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or
- (e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent"; and

(b) in clause (2),—

- (i) in sub-clause (a), after the words "grant", the words "and in the States of Madras and Travancore-Cochin, any *Janmam* right" shall be, and shall be deemed always to have been, inserted; and
- (ii) in sub-clause (b), after the words "tenure-holder", the words "*raiyat, under-raiyat*" shall be, and shall be deemed always to have been, inserted.

4. For article 305 of the Constitution the following article shall be substituted, namely:—

"305. Nothing in articles 301 and 303 shall affect the provisions of any existing law except in so far as the President may by order otherwise direct; and nothing in article 301 shall affect the operation of any law made before the commencement of the Constitution (Fourth Amendment) Act, 1955, in so far as it relates to, or prevents Parliament or the Legislature of a State from making any law relating to, any such matter as is referred to in sub-clause (ii) of clause (6) of article 19."

5. In the Ninth Schedule to the Constitution after entry 13, the following entries shall be added, namely:—

- "14. The Bihar Displaced Persons Rehabilitation (Acquisition of Land) Act, 1950 (Bihar Act XXXVIII of 1950)
- 15. The United Provinces Land Acquisition (Rehabilitation of Refugees) Act, 1948 (U.P. Act XXVI of 1948)
- 16. The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (Act LX of 1948)
- 17. Sections 52A to 52G of the Insurance Act, 1938 (Act IV of 1938), as inserted by section 42 of the Insurance (Amendment) Act, 1950 (Act XLVII of 1950)
- 18. The Railway Companies (Emergency Provisions) Act, 1951 (Act LI of 1951)

19. Chapter III-A of the Industries (Development and Regulation) Act, 1951 (Act LXV of 1951), as inserted by section 13 of the Industries (Development and Regulation) Amendment Act, 1953 (Act XXVI of 1953)
20. The West Bengal Land Development and Planning Act, 1948 (West Bengal Act XXI of 1948), as amended by West Bengal Act XXIX of 1951."

The Constitution (Fourth Amendment) Bill was introduced in the Lok Sabha by the Prime Minister on December 20, 1954. On March 15, 1955 the House adopted by 322 votes to nine the motion to refer the Bill to a Joint Select Committee. The Rajya Sabha adopted unanimously a similar motion on the 19th March, 1955. The Committee consisted of 45 members and the Prime Minister was the Chairman of the Committee.

The Joint Committee in their report submitted on March 31 proposed a number of important amendments to the Bill, *viz.*

- (i) That the State should not be required to pay their full market value as compensation for nationalised industrial undertakings and banking and insurance companies;
- (ii) That agricultural and other property rights, and certain types of deprivation of industrial or commercial property by a process of acquisition and regulation should be removed from the purview of the proposed amendment to Article 31A;

- (iii) That the amount of compensation paid could be challenged in the courts on the ground that it was "illusory" or amounted to fraud under the Constitution, but not on the ground of its inadequacy.

In its amended form the Bill was passed in the Lok Sabha by 302 votes to five on April 12, 1955. The Rajya Sabha passed the Bill unanimously on April 20, 1955.

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The National People's Congress of the People's Republic of China

[The Constitution of the People's Republic of China was adopted on September 20, 1954. Under the Constitution, all political power in the People's Republic of China emanates from the National People's Congress. The articles providing for the formation, functions and the procedure of the National People's Congress are reproduced below.—*Ed.*]

Article 2

All power in the People's Republic of China belongs to the people. The organs through which the people exercise power are the National People's Congress and the local people's congresses at every level. The National People's Congress, the local people's congresses at every level and other state organs, without exception, practise democratic centralism.

Article 21

The National People's Congress of the People's Republic of China is the highest organ of State power.

Article 22

The National People's Congress is the sole organ exercising the legislative power of the State.

Constitutional Developments

Article 23

The National People's Congress is composed of deputies elected from provinces, municipalities directly subordinate to the central authority, national minorities, the armed forces and Chinese residents abroad. Regulations governing the number of deputies to the National People's Congress and the manner of their election are prescribed by Electoral Law.

Article 24

The National People's Congress is elected for a term of four years. One month before the expiry of the term of office of the National People's Congress, the Standing Committee of the National People's Congress must carry to completion the election of deputies to the succeeding National People's Congress. Should exceptional circumstances arise, making elections impossible, the term of office of the National People's Congress may be prolonged until the succeeding Congress is elected.

Article 25

The National People's Congress meets once a year, convened by its Standing Committee. The National People's Congress may be convened at any time should its Standing Committee deem it necessary or one-fifth of the deputies propose it.

Article 26

The National People's Congress, when it meets, elects a presidium to conduct its sittings.

Article 27

The National People's Congress exercises the following functions and powers:—

(1) Amends the Constitution;

- (2) Enacts laws;
- (3) Supervises the enforcement of the Constitution;
- (4) Elects the Chairman and Vice-Chairman of the People's Republic of China;
- (5) Decides on the appointment of the Premier of the State Council on the nomination of the Chairman of the People's Republic of China, and of the membership of the State Council;
- (6) Decides on the appointment of the Vice-Chairman and members of the National Defence Council on the nomination of the Chairman of the People's Republic of China;
- (7) Elects the President of the Supreme People's Court;
- (8) Appoints the Procurator-General;
- (9) Decides on the national economic plan;
- (10) Examines and approves the budget and financial report of the State;
- (11) Ratifies the status and boundaries of provinces, autonomous regions, and municipalities directly subordinate to the central authority;
- (12) Decides on general amnesties;
- (13) Decides on questions of war and peace; and
- (14) Exercises all other functions and powers which the National People's Congress considers necessary.

Article 28

The National People's Congress has the right to remove from office the following:

- (1) The Chairman and the Vice-Chairman of the People's Republic of China;
- (2) The Premier and the Vice-Premiers, the Ministers, the Chairman of Commissions and Secretary General of the States Council;
- (3) The Vice-Chairman and Members of the National Defence Council;
- (4) The President of the Supreme People's Court; and
- (5) The Procurator-General.

Article 29

Amendments to the Constitution must be passed by a two-thirds majority of the deputies of the National People's Congress. Laws and other resolutions must be passed by a simple majority of the deputies of the National People's Congress.

Article 30

The Standing Committee of the National People's Congress is the permanent body of the National People's Congress. The Standing Committee of the National People's Congress is composed of the following members elected by the National People's Congress:

- The Chairman of the Standing Committee;
- The Vice-Chairmen of the Standing Committee;
- The Secretary-General; and
- Members.

Article 33

The Standing Committee of the National People's Congress is responsible to the National People's Congress and reports to it. The National People's Congress has the right to recall members of its Standing Committee.

Article 34

The National People's Congress establishes the Nationalities Committee, the Bills Committee, the Budget Committee, the Credentials Committee and other necessary committees. All the Committees established by the National People's Congress are under the direction of its Standing Committee when the National People's Congress is not in session.

Article 35

All State organs, people's Organizations and citizens concerned are obliged to supply necessary information to the various committees established by the National People's Congress when these conduct enquiries or investigations.

Article 36

Deputies of the National People's Congress have the right to address interpellations to the State Council or to the ministries and commissions of the State Council, which have the responsibility to answer.

Article 37

No deputy of the National People's Congress may be arrested or placed on trial without the consent of the National People's Congress or, when the National People's Congress is not in session, without the consent of its Standing Committee.

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Article 38

Deputies of the National People's Congress are subject to the supervision of the units which elect them. These electoral units have the right to replace their elected deputies at any time according to the procedure prescribed by law.

Article 43

The Chairman of the People's Republic of China convenes a Supreme State Conference whenever necessary and presides at its meetings. The Supreme State Conference is attended by the Vice-Chairman of the People's Republic of China, the Chairman of the Standing Committee of the State Council and others concerned. The views of the Supreme State Conference on important State matters are submitted by the Chairman of the People's Republic of China to the National People's Congress, its Standing Committee, the State Council or other organs concerned for discussion and decision.

Article 52

The State Council is responsible to the National People's Congress and reports to it or, when the National People's Congress is not in session, to its Standing Committee.

Article 80

The Supreme People's Court is responsible to the National People's Congress or when it is not in session, to its Standing Committee. Local People's courts at every level are responsible to the local people's congresses of corresponding levels and report to them.

Article 84

The Procurator-General is responsible to the National People's Congress and reports to it or, when the National People's Congress is not in session, to its Standing Committee.

Article 86

All citizens of the People's Republic of China who have reached the age of 18 have the right to elect and be elected irrespective of nationality, race, sex, occupation, social origin, religious belief, educational level, property status and length of residence, except insane persons and those who are by law deprived of their right to elect and be elected. The women have equal rights with men to elect and be elected.

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Constitutional Reform in France

The following are the provisions* of the Constitution Amendment Bill which was passed on second reading by the French National Assembly on November 30, 1954:

(1) A state of siege could be declared "under conditions laid down by law". (Art. 7).

This version had been proposed by the Council of the Republic and was accepted by the Assembly, which had originally detached from the Bill for further consideration of the clause relating to the imposition of the state of siege.

(2) The Assembly would meet on the first Tuesday in October, and after sitting for at least seven months (excluding adjournments lasting more

*See *Keesings Contemporary Archives*, September 19—26, 1954, pp. 13147-48; *Constitutional and Parliamentary Information*, January 15, 1955

than eight full days), might be adjourned by the Prime Minister through a Government decree. (Art. 9).

The only change made by the Council of the Republic in the Assembly's original text was the stipulation that only adjournments exceeding eight "full" days would count as interruptions of the session. The Assembly accepted this on second reading.

Under the existing Constitution the Assembly began its annual session in January and sat for at least eight months; as a result, the Assembly had generally sat until August and reassembled in November, thereby leaving only a few weeks for the discussion of the Budget for the following year. The amendment represents a return to the pre-war practice whereby the Government was free to adjourn Parliament although it increased the minimum length of the session from five to seven months.

(3) Each Chamber would elect its *bureau* at the beginning of the session "according to the conditions provided for by its rules" (Art. 11).

The Assembly's original version had stipulated that these elections should be by majority vote, but on second reading the Assembly accepted the version recommended by the Council of the Republic.

The existing practice was to elect the *bureau* in proportion to the strength of the various parties.

(4) If the Assembly was not in ordinary session its *bureau* could convoke an extraordinary meeting of Parliament, whilst the President of the

Assembly would be required to summon such a meeting if requested by the Prime Minister or by at least half the deputies. An extraordinary session could be closed by the Prime Minister on the same conditions as laid down in Art. 9 but not until Parliament had dealt with the matters for which it had been specially convened. (Art. 12).

The Council of the Republic had proposed a number of amendments (all of which were rejected by the Assembly) providing, *inter alia*, that only the National Assembly could be convened in emergency session.

Under the existing Constitution, emergency sessions were summoned by the *bureau* of the Assembly at the request of the Prime Minister or of one-third of the deputies.

(5) Legislation (except Bills for the ratification of treaties or on budgetary and other financial matters, which would always be initiated by the National Assembly) might be initiated by the Assembly or the Council of the Republic, and would be passed on to the other Chamber for consideration after its adoption. (Art. 14).

The Council of the Republic had proposed that those provisions of the Constitution dealing with the consultation of the Assembly of the French Union and of the Economic Council should also be applicable to Bills examined in the first instance by the Council of the Republic. This, however, was rejected by the National Assembly as unnecessary.

Under the Constitution as at present, legislation proposed by members of the Council of the Republic was required to be passed to the Assembly

Constitutional Developments

for consideration, without first being debated by the Upper House.

(6) Every Bill would be examined in turn by the two Chambers with a view to the adoption of an identical text. A Bill first introduced in the National Assembly would be voted upon by the Council of Republic within two months of its adoption by the Assembly, and would then pass backwards and forwards between the two Chambers (the "navette" procedure) until agreement was reached. After the second reading in the Council of the Republic each Chamber would be allowed the same period as had been taken up by the other during its preceding consideration, with a minimum of seven days. If, however there was no agreement within 100 days from the date when the Bill had been remitted to the Council of the Republic for a second reading, the Assembly would have the final say by adopting previous version, either with or without any of the Council's amendments.

Special provisions were laid down for (a) Budget and financial legislation for which the period allowed for agreement between the two Houses would in no case exceed the time previously spent by the National Assembly on the legislation in question; (b) all matters to which the Assembly had given priority (*procedure d'urgence*), in which case the period allowed for the Council of the Republic's consideration would be double the time allowed for the Assembly's deliberations. The time limit of 100 days was reduced in the case of Budget and financial legislation to one month, and in the case of matters declared by the Assembly to be urgent to 15 days.

If the Assembly exceeded the time-limits laid down for it, the maximum period for final agreement between the two Houses would be extended accordingly. However, any periods during which parliamentary sessions were suspended would not count in the allotted time-limits, which, moreover, could be extended by decision of the Assembly. (Art. 20).

This amendment proved to be the most controversial of all those under consideration. Originally, the Assembly's Universal Suffrage Commission had rejected the clause inserted by the Council of the Republic that any delay on the part of the Assembly beyond the period of time laid down for its deliberations would automatically extend the period allowed for agreement between the two Chambers. Following a lengthy debate, M. Mendes-France appealed to the Assembly to make this small concession to the Council of the Republic, and it was only after the Prime Minister's intervention that an amendment maintaining the Council's version was passed by 307 votes to 305. The Article as a whole was then passed by 315 votes to 208.

The existing Constitution provided that the Assembly should first vote on a Bill; that the Council of the Republic should then adopt or amend it within two months; and that the Assembly should vote on the Council's amendments, its decision being final. If, however, the Council had voted on the Bill by an absolute majority the Assembly could override the Council's amendments in whole or in part only by an absolute majority.

(7) No Deputy or Senator could be prosecuted or arrested while Parliament was in session without the per-

mission of the Chamber of which he was a member, unless arrested in the act of breaking the law. Between sessions no member of Parliament could be arrested without permission of the Chamber to which he belonged, unless he was arrested in the act of breaking the law, or his prosecution had been authorised, or a final sentence was being executed. A Deputy or Senator arrested between sessions could vote by proxy when Parliament met again until the Chamber had agreed to the suspension of his Parliamentary immunity; if his immunity had not been lifted within 30 days of the opening of the session, he would automatically be released. (Art. 22).

The Council of the Republic had deleted the proxy vote for arrested Deputies or Senators, but the Assembly reinserted its original text. On the other hand, it accepted the Council's proposals concerning the arrest of members between sessions.

The new text resorted to pre-war practice by limiting Parliament's immunity to periods when Parliament was in session.

(8) The Prime-Minister-designate would choose the members of his Cabinet before presenting his programme and policy to the Assembly, and would take office if he received a simple majority of members present and voting on a *vote d'investiture* (Art. 45).

Hitherto a Prime-Minister-designate was required to obtain an absolute majority of the Assembly's membership (i.e. at least 314 votes out of 627) on a *vote d'investiture*. This provision in the Constitution was largely responsible for the Cabinet crises of recent

days in as much as several Prime-Ministers-designate failed to secure absolute majority. The Council of the Republic had proposed that the requirement of an absolute majority of the Assembly's membership, as laid down in the 1946 Constitution, should remain unaltered. The National Assembly, however, rejected an M.R.P. amendment supporting the Council's version by 412 votes to 201, and resorted to its original proposal for the simple majority procedure.

(9) A motion of confidence could be voted upon 24 hours after it had been moved, instead of after an interval of 48 hours as hitherto required under the Constitution. The rejection of a confidence motion would still require an absolute majority of the Assembly's membership (Art. 49).

The Assembly rejected (by 500 votes to 117) the Council of the Republic's proposal that a simple majority should be sufficient for the rejection of a confidence motion, and reinserted its original text.

(10) Voting on a motion of censure would take place under the same conditions as on a motion of confidence. (Art. 50).

In this case the Assembly similarly insisted on its previously adopted text, and rejected the Council of the Republic's proposal for a simple majority.

(11) In the event of a dissolution of Parliament, the Cabinet would continue in office unless the dissolution was preceded by the adoption of a motion of censure. In the latter eventuality the President of Republic would nominate the President of Assembly

as Prime Minister and Minister of the Interior, the other Ministers remaining in office. (Art. 52).

Although the Council of the Republic had rejected the Assembly's text concerning the nomination of the President of the Assembly as Prime Minister and Minister of the Interior if a censure motion was adopted, the Assembly insisted that its original text remain unaltered.

Under the existing Constitution, the Cabinet, with the exception of the

Prime Minister and the Minister of the Interior, remained in office after a dissolution; the President of the Assembly, who acted as Prime Minister nominated the Minister of the Interior by agreement with the *bureau* of the Assembly and selected members of the groups not represented in the Government as Ministers of State. The purpose of the amendment was to prevent members of the Opposition (e.g., the Communists) from automatically entering the Government in the event of a dissolution of Parliament.

Note:—A Bill amending 11 Articles of the French Constitution was introduced by the Government of Rene Mayer in the National Assembly during May, 1953. After examination and revision by the Assembly's Universal Suffrage Commission, it came before the full Assembly on July 16. It was adopted on first reading on July 23 with slight modifications. Under Article 90 of the 1946 Constitution the Bill was referred to the Council of the Republic and passed by that body (by 240 votes to 47) on March 18, 1954. The Council made a number of amendments the most important of which were : (a) a reversal of the Assembly's decision that in future a simple majority would be sufficient for the *vote d'investiture* for a new Prime Minister, instead of the absolute majority required under the 1946 Constitution; (b) a stipulation that a simple majority would be sufficient for a no confidence vote or a vote of censure contrary to the Assembly's wish to retain an absolute majority for such votes; (c) certain changes in the *navette* ("shuttle") system provided for in the case of disagreement between the two Chambers on pending legislation and (d) a demand that the "procedure of urgency" for a Bill should not be invoked by the Assembly without the prior agreement of the Council of the Republic in the case of legislation involving ratification of an international treaty. The Bill was given a second reading in the National Assembly on November 29-30, 1954, and passed by 412 votes to 141, with 58 abstentions.

The Bill obtained both the absolute majority and the two-thirds majority required to bring it into operation at once, except for the new provisions of Article 9 and those connected with the election of the Parliamentary *bureaux*, which would only come into force at the beginning of the new Parliamentary session in October, 1955.

Privilege Issues

Lok Sabha

Reflections on a Parliamentary Committee

On the 6th April, 1955, Shri U. M. Trivedi, a member of the Lok Sabha, gave notice of his intention to raise a question of privilege in the House arising out of the following passages appearing in the *Hindustan Times* of the 8th February, 1955 under the heading "Political Diary":—

"It is said that originally it was felt that the offer of a ministership could not appropriately be made to him (Shri V. K. Krishna Menon, M. P.) while the strictures passed by the Public Accounts Committee on the management of public funds by the High Commissioner's Organisation in London remained unanswered. Steps were taken by the Government last session to give a clean bill to the former High Commissioner and it may be presumed that the Chief Whip will see to it that the Public Accounts Committee endorses the view of the Government at the next sitting of the Committee."

The member contended that this statement cast reflections upon the impartiality of the Public Accounts Committee and was a contempt of the Committee, and consequently that of the House.

The matter was placed before the Speaker who withheld his consent to the raising of this question in the House on the following grounds:

(1) "Members of the Legislature are often guided in the decisions in the House by the party whips. Hence the statement that a decision taken in the

House by certain Members is an action under the Party Whip, cannot be considered a 'contempt'. An act which in relation to the House cannot be treated as contempt, cannot also in relation to a Committee of the House become a contempt.

(2) The notice to raise this question of privilege in the House was given two months after the publication of the article while under the Rules of Procedure of the House, a case of breach of privilege must be brought to the notice of the House immediately."

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Assam

Impartiality of the Speaker

On the 4th November, 1954 Shri Mohi Kanta Das, Parliamentary Secretary and Government Chief Whip, Assam Legislative Assembly, complained that Shri Hareshwar Goswami, Leader of the Opposition, had committed a breach of privilege of the House by imputing partiality on the part of the Speaker in certain remarks made inside the House, and in a statement made before the Press

Giving the background, Shri Das said that on the 2nd November, 1954 when the Leader of the Opposition sought the leave of the House to introduce the Assam Freedom of Movement in Tea Plantations Bill, 1954 the Deputy Minister, Shri Hareshwar Das, raised a point of order stating that the motion for leave was out of order. The Leader of the Opposition then made a statement refuting the arguments of the Deputy Minister. Thereafter the Speaker asked the Deputy

Privilege Issues

Minister to sum up by way of a reply. At this stage the Leader of the Opposition stated on a point of order that he (the Deputy Minister) had no right of reply. The Chair ruled that he had. The Leader of the Opposition, Shri H. Goswami, questioned the ruling of the Speaker and the opposition party thereafter staged a walk-out. The Leader of the Opposition also made a statement to the Press justifying the action of his party and alleging partiality to the Speaker which was published in 'Assam Tribune' and other papers.

Shri Mohi Kanta Das, the Government Chief Whip, also said that the particular papers which had published the statement affecting the dignity of the Chair had also violated the rules and thus came within the purview of Rule 135 of the Rules of the Assembly. He prayed that the whole matter be referred to the Committee of Privileges.

A member of the Opposition, Shri Umaruddin, raised a point of order that under the rules not more than one question could be raised at the same sitting. He said that the two statements made by Shri Goswami, one inside the House and the other outside the House, were two different questions and could not be raised simultaneously.

Some members pointed out that the point raised by Shri Umaruddin was not correct because there might be a series of acts connected with the same matter. The question was whether the dignity of the House was affected, and whether it was a continuation of one and the same transaction.

The Speaker giving his ruling said that he considered that matter a grave

one and would like to refer it to the Privileges Committee. The practice was that no charge of partiality should be made against the Speaker on the floor of the House or outside and publication by a newspaper of such a statement should not be allowed. Although Shri Goswami had withdrawn the statement and had expressed regrets therefor, it was a fact that he had made the statement inside the House. He therefore thought that *prima facie* there was enough material for the Privileges Committee to decide

(i) Whether the member was within his rights to charge the Speaker of partiality;

(ii) Whether he has any right to affect the dignity of the Speaker outside by issuing a Press Statement; and

(iii) Whether the newspapers, under his instigation or somehow, have published such a statement; and if so, whether they were justified."

The House adopted a motion to refer the question to the Committee of Privileges for report by the end of February, 1955.

In pursuance of the motion carried in the House on the 4th November, 1954, the Committee of Privileges held its sittings on the 12th February and 18th March, 1955 and decided as follows:

(i) "In view of the regret expressed by Shri Goswami in two stages, *i.e.* once for making the remarks on the floor of the House and for making the statement before the Press, we are unanimous in our decision that no further action need be taken on the matter and that it may be closed.

(ii) "The Press may generally criticise the conduct of the Chair without casting or suggesting any reflection on his impartiality and a publication in a newspaper reflecting partiality on the conduct of the Chair is not justified."

The Report of the Privileges Committee was discussed in the House on 21st June, 1955 and adopted.

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Himachal Pradesh

Premature Publication of News

In its issue dated the 23rd April, 1953, *The Times of India* published a part of the proceedings of the Select Committee on Himachal Pradesh Seed Potato Bill, 1953, before the Report of the Committee had been presented to the Himachal Pradesh Vidhan Sabha. The matter was raised in the Vidhan Sabha by a member, Shri Ghanshyam, who alleged that *The Times of India* had committed a breach of privilege of the House by premature publication of the news. The House referred the case to the Committee of Privileges for investigation and report.

The Committee of Privileges in its report came to the following conclusions:

(i) That a *prima facie* case of breach of privilege existed against the Editor. *The Times of India*.

(ii) That in view of the unqualified written apologies having been tendered by the Editor, *The Times of India* and also by the Special Correspondent of the paper at Simla, the matter might be considered as closed provided that the apologies were published in their newspaper.

The Report of the Committee of Privileges was discussed in the Himachal Pradesh Vidhan Sabha on the 5th and 8th June, 1953. During discussion of the Report in the House some members suggested that the inquiry of the Committee of Privileges was incomplete because it had not determined the source of leakage of the news regarding the

proceedings of the Select Committee and that the person responsible for the leakage was as much guilty as the correspondent and the Editor of *The Times of India*. After the Chairman of the Committee of Privileges (Shri Krishan Chander) had assured the House that the apology tendered by the paper was genuine, the Report of the Committee of Privileges was adopted and the matter was dropped.

* * * *

Hyderabad

Dr. Raj Bahadur Gour's Case

A case, where a Member of the Union Parliament submitted himself to the jurisdiction of a State Legislature on the issue of an alleged breach of privilege, occurred in the Hyderabad Legislative Assembly. The facts of the case are given below:—

On the 22nd April, 1954, the Speaker, Hyderabad Legislative Assembly, referred to the Committee on Privileges the question relating to the alleged breach of privilege of the House arising out of a speech said to have been delivered by Dr. Raj Bahadur Gour, a Member of the Rajya Sabha. The Committee at its meeting held on the 25th May, 1954, decided to send a copy of the speech to Dr. Gour with a request to inform it whether the version of his speech was correct and whether he had referred to the Assembly as "Chore" Assembly. In his reply Dr. Gour categorically denied having made the alleged speech and asserted that "no responsible, educated citizen could be expected to make such a speech". At its subsequent meeting held on the 12th July, 1954, the Committee decided not to treat the report of the speech

Privilege Issues

made by the Police as a *fait accompli*, since it required corroboration by evidence adduced from witnesses present on the spot. In the face of the categorical denial and assertion by Dr. Gour, the Committee recommended to the House that further enquiry in the case be dropped and Dr. Gour's statement accepted as correct.

* * * *

Suppression of Views

Raising an issue of breach of privilege in the Legislative Assembly, Hyderabad, Shri Ch. Venkatrama Rao stated that his speech delivered in the House on the 26th March, 1954 criticising the Public Works Department demands was not reported by the Press Trust of India and the Associated News Service (a local news agency) with the intention of suppressing his views, and this action on the part of these agencies was wilful amounting to a breach of privilege of the House.

The question was referred to the Committee of Privileges of the Assembly.

In a Report presented to the House on the 14th April, 1955, the Committee observed that the said agencies had covered many of his speeches and gave convincing reasons in their statements for not including the speech in question in their reports. The instances where the speeches of the Member were not reported were few and far between and would not, therefore, amount to a suppression of the speeches of the Member; nor was the Member able to establish that this action was wilful and *mala fide*. The Committee had, therefore, concluded that "every news agency and newspaper has got

its own way of reporting and publishing things and is free to decide whether to report or publish any matter or not" and unless it was established that the speech had not been reported wilfully or *mala fide* it could not be deemed to be a breach of privilege of an Assembly or a Member.

The Report was adopted by the Hyderabad Legislative Assembly on the 6th September, 1955.

* * * *

Madras

Censorship of Members' Mail

On the 9th December, 1954, the Speaker of the Madras Legislative Assembly mentioned in the House that he had received notice from a Member of the following motion relating to a breach of privilege:

"The letters which I address to some of the people in my constituency and also the letters which I receive from the people in my constituency are being intercepted by the Special Branch Police. To quote an instance, I wrote a letter to one of the residents in Golden Rock regarding the action taken by me as an M.L.A. to represent the tense situation that has developed in Golden Rock due to an illegal burial of a dead body amidst residential quarters of Railway workers by a Railway Officer. This letter was posted on 1st December, 1954 in the Mount Road Post Office. But the letter was delivered in Golden Rock to the concerned person on 4th December, 1954. I reliably understand that the Special Branch Head Constable took the envelope from the post office as soon as the bags were opened and the letter was with the Police for two days, i.e., on 2nd and 3rd. The envelope bears the postal seal, dated 4th December, 1954, 9 A.M. It also bears the Mount Road Postal seal dated 1st December, 1954, which

is also sought to be erased. I understand that this has been done by the Special Branch Police under instructions from the State Government.

Such action by the executive is a serious breach of privilege of the Members of this House and is calculated to undermine the dignity of this House. I submit the matter may be referred to the Committee of Privileges for suitable action."

The question was taken up in the House on the 15th December, 1954. At the outset the Speaker explained the function of the Chair regarding privilege motions. He said that "a privilege question is always decided by the House. As far as the Speaker is concerned, he simply says, whether a *prima facie* case is made out or not."

The following arguments were put forth by members in support of the motion for referring the question to the Committee of Privileges:—

(i) If letters written by them are intercepted, members cannot function efficiently. It is a privilege of the legislators to be free from interference of this sort.

(ii) Another member had a similar complaint. Interception of letters by the Police had become a common practice.

(iii) Members of the House of Commons are "free from arrest and molestations" and the term molestation is defined as comprising victimization or discriminatory action by the King or the Executive. In the present case the Executive were discriminating between the political parties.

(iv) In Great Britain sovereignty rests with the King. In India sovereignty rests with the people of the country. If the communications are intercepted, how can members have access to the people who are sovereign of the country?

(v) It was contended that as there was no hard and fast rule of privilege on this point, this issue might be placed before the Committee of Privileges to decide:—

(a) Whether Government had a right to censor letters sent to an individual?

(b) Whether the members of the Assembly could claim privilege from such interception of communications?

(c) Whether they were entitled to such privileges in respect of certain communications addressed to them by the officials.

The Leader of the House (Shri C. Subramanian) contended that no breach of privilege was involved in this case as:

(i) Censoring was done under the authority of law and he was unable either to deny or admit that the letters had been intercepted as stated by members.

(ii) Under section 26 (1) of the Indian Post Offices Act, 1898, it was open to the State to intercept postal articles in the interests of public safety or tranquility, and there was absolutely no restriction with regard to class of persons affected by it.

(iii) With respect to the contention that by intercepting letters, the members were prevented from access to the people who were sovereign, he said that it would be the limit of absurdity if this argument was extended to its logical conclusion.

(iv) Members of the House did not have an absolute right or privilege which was not enjoyed by others with reference to their communications with people outside.

The Speaker observed that in this case he had not been able to find a precedent either in the British House of Commons or the Canadian Parliament. He, however, found a precedent

in the Parliament of the Commonwealth of Australia, where also members enjoyed the same privileges as those of the British House of Commons. On the 25th February, 1944, a member of the Commonwealth House of Representatives raised the question whether censorship of M.P.s' mail was not a breach of privilege. In this connection the Prime Minister cited the Post and Telegraph Censorship Order which laid down clearly that the censor might open and examine all postal articles as defined in the Post and Telegraph Act.

On the suggestion of the Leader of the Opposition a Committee was set up to go into the question of censorship of mail. In its report, submitted on the 30th March, 1944, the Committee came to the conclusion "that the opening by the censors of letters addressed to the Members of the House is not a breach of any existing privilege of the House."

The Speaker referred to the provisions of Section 26 of the Indian Post Offices Act and said that they were similar to those in the Act of the Commonwealth of Australia. He, therefore, ruled that no *prima facie* case for referring the issue to the Committee of Privileges was made out.

* * * *

Punjab

Communications to other Legislatures

On the 1st November 1954, the Speaker of the Punjab Vidhan Sabha informed the House that one of its Members (Pt. Shri Ram Sharma) had addressed communications to Speakers of other Legislatures questioning the validity of his rulings. The Speaker observed that the interpretation of pro-

cedure and precedents was the prerogative of the Presiding Officer and his rulings were not open to challenge by anyone. Pandit Shri Ram Sharma, the Speaker stated, had addressed communications to the Speakers of the Lok Sabha and of Legislative Assemblies in other States in which he had stated *inter alia*:

"It would be interesting to find that not a single adjournment motion has been held in order by the Speaker of the Punjab Legislative Assembly since the present Assembly came into being."

The Speaker said that by unconstitutionally resorting to communications to other Speakers, Pt. Sharma brought the present Speaker as well as his predecessor (Dr. Satyapal) into contempt. He further observed:

"His act of subjecting the Speaker's decisions to the scrutiny of an outside authority is tantamount to disrespect to the House and a challenge to our democratic institutions...I, therefore, hold that the Member has committed contempt of the House by his effort to hamper and harass the Chair in the performance of its functions impartially and constitutionally. I am not, however, referring this matter to any committee for, I have the inherent right to take action in matters of this nature without any previous order of the House. Accordingly, I administer a strong warning to him."

* * *

Leakage of Budget

On the 11th March, 1955, Maulvi Abdul Ghani Dar asked for leave to move a motion of privilege regarding the leakage of the budget. He said that the Finance Minister made available to the Press copies of the budget proposals before their presentation to the House. He also said that it was not necessary that leakage in actual

words should take place. The fact of supplying copies of the budget before its presentation to the House in itself constituted a leakage since it could well have led to a disclosure of the budget proposals.

The Speaker giving his ruling observed as under:

"It is an old convention dating back, I believe, to 1937 to give advance copies to the Press and this concession to the Press has not so far been abused. The same practice holds good in other States and even at the Centre.* The Press is as important a part of the democratic organisation as any legislative chamber; it is always taken into confidence in important matters. We are all engaged in a common endeavour, which is the service of the common man.

"Leakage is that which leaks out. The Member has not shown that any leakage has taken place which might have had the effect of upsetting the financial markets of the State.

"I, therefore, hold that there has been no leakage as such and accordingly refuse to give consent to the moving of this motion. I would, however, suggest that the Government might examine its present practice in this connection."

* * * *

Travancore-Cochin

Detention of M.L.As.

On the 7th January, 1955 the Travancore-Cochin High Court dismissed the petition filed by Shri A. Kunjan Nadar,

a Member of the Travancore-Cochin Legislative Assembly, who was arrested on the 12th August, 1954 and was held in custody. The petitioner had prayed:

"that a Writ of Mandamus, privilege or other appropriate directions and orders should issue directing the respondents to enable the petitioner to attend the session of the Legislative Assembly of the Travancore-Cochin State summoned to commence its sittings on 25th January 1955 and to remove the obstructions in that behalf."

The Counsel for the petitioner had contended that his client had a paramount right to attend the proceedings of the Legislative Assembly and his detention though admittedly legal and under due process of law should be subordinated to that right and appropriate writs or directions to effectuate that right by permitting his client to take part in the proceedings of the Legislative Assembly commencing on the 25th January, 1955 should be issued. It was further argued that by his detention, the petitioner stood in danger of his seat in the Legislature being declared vacant under Article 190 of the Constitution. It was contended that no disqualification was attached to a member under section 7(b) of the Representation of the People Act, till conviction and that mere detention as under-trial prisoner in custody would not deprive a member of his privileges and immunities as a member.

*In regard to the reference to the Centre made by the Punjab Speaker in his ruling the existing practice of the supply of the Budget speech is as follows :—

Part A (Factual Survey of the Budget speech) is released to the Press representatives and others at the various State Capitals and a few other selected places outside Delhi at 5 p. m. At Delhi Part A is released at 5 P. M. only to the Press representatives.

Part B (Taxation proposals) of the Budget speech, the Finance Bill, the Budget Statement and the Explanatory Memorandum are released to the Press representatives in Delhi only after the Finance Minister has finished his speech. (*Selections from the Departmental Decisions of the Speaker—Vol. II. Decision No. 198*)

While dismissing the petition Mr. Justice Koshy and Mr. Justice Menon observed:

"Article 194 deals with the powers, privileges and immunities of the Legislatures and their members in the Part A States and article 238 makes those powers, privileges and immunities available to the Legislatures and their members in the Part B States as well. Clause (3) of article 194 deals with the privileges and immunities available to the petitioner in a matter like this and they are, according to that clause 'such as may from time to time be defined by the Legislature by law' and, until so defined, those of a member of the House of Commons of the Parliament of the United Kingdom at the commencement of the Constitution....."

"There is no statutory provision granting the privilege or immunity invoked by the petitioner and it is clear from May's *Parliamentary Practice* (15th Edition, 1950, p. 78) that 'the privilege of freedom from arrest is not claimed in respect of criminal offences or statutory detention' and that the said freedom 'is limited to Civil causes, and has not been allowed to interfere with the administration of criminal justice or emergency legislation'....."

"It is nobody's case that the petitioner's seat has become vacant or that the disqualification specified in subsection 7 (b) of the Representation of the People Act, or for the matter of that in any of the sub-sections of section 7, has disqualified the petitioner for being chosen as, or for being a member of the Travancore-Cochin Legislative Assembly....."

"The grounds on which a disqualification may be incurred and a seat vacated have nothing to do with what we are called upon to decide in this case; that is, the existence or otherwise of the privilege or immunity claimed by the petitioner and on which his prayer is based....."

"So long as the detention is legal—and in this case there is no dispute

about its legality—the danger of the petitioner losing his seat or the certainty of his losing his daily allowance cannot possibly form the foundation for relief against the normal or probable consequence of that detention...."

* * * * *

Uttar Pradesh

Admonition of Government Official

On the 4th March, 1954, Shri Genda Singh, a Member of the U.P. Vidhan Sabha, made a written complaint wherein he alleged that the Superintendent of Gorakhpur Jail, the District Magistrate of Deoria and the Sub-divisional Magistrate of Padrauna, were guilty of breach of privilege on the following grounds and requested that proper action be taken against them:

"(1) He was arrested on the 7th February, 1954 under Section 341 of the Indian Penal Code and was put in the Gorakhpur District Jail under remand for 15 days. However, after the expiry of this period on the 21st February, 1954, he was further detained in the same jail from 22nd to 27th February, without a second remand order, and was thus deliberately prevented from attending the Budget Session of the Assembly on these days.

(2) When he sought to send telegrams to the Governor, the Speaker and the Chief Minister, about his unauthorised detention in the jail, the District Magistrate, Deoria put obstacles in the way of these telegrams reaching the said authorities.

(3) The Speaker was intimated of his arrest only under section 341 of the Indian Penal Code; but, later on, charges under Sections 147 and 323 were also included. Thus the Speaker was given wrong information."

The Speaker after hearing the member and the Home Minister, held that

there was a *prima facie* case and he referred the matter to the Committee of Privileges.

The Committee of Privileges, after examining various documents and taking evidence from a large number of witnesses, came to the conclusion that Shri Laxminarayan Mehrotra, Assistant Public Prosecutor, Kasia had committed a gross breach of privilege of the House and of the Committee by causing fabricated documents to be produced before the Committee and by tampering with the witness in regard to the evidence to be tendered before it. The Committee recommended that Shri Mehrotra be called before the Bar of the House and admonished.

When the report came up for discussion before the House, two members, Shri Narayan Dutt Tewari and Shri Ram Narayan Tripathi, moved amendments to the report proposing action against certain other officers also. The amendments were, however, lost and the House accepted the recommendations of the Committee of Privileges.

On the 20th December, 1954, Shri Laxminarayan Mehrotra was called before the Bar of the House where the Speaker admonished him in the following words:

"The House has adjudged you guilty of breach of its privileges which has been committed by producing a fabricated document, attempting to tamper with a witness with regard to his evidence, giving false evidence and **trying to conceal the truth from the Committee of Privileges.** As a Government servant you were expected to perform your duties honestly and truthfully, but you have acted otherwise. In the name and on behalf of

the House, I admonish you for the gross offence that you have committed against the House."

* * * *

Vindhya Pradesh

Arrest of Members

On the 20th May, 1955, the Committee of Privileges of the Vindhya Pradesh Legislative Assembly presented its report to the House on the question of breach of privileges which was referred to the Committee on the 23rd November, 1954. The reference arose out of the complaints made by Shri Chandra Pratap Tiwari, M.L.A. on the 22nd November, 1954 and some other members on the incident in the premises of the Assembly on the 16th November, 1954.

The allegations were:—

- (i) That on the 16th November, 1954 the police made a merciless *lathi-charge* on the Members of the Assembly and others and dragged them within the premises of the House.
- (ii) That the District Magistrate, Rewa and the police force kept about seven members of the House including Shri C. P. Tiwari under arrest for one or two hours within the premises of the House.
- (iii) That Shri C. P. Tiwari was arrested during the currency of the session on the 16th November, 1954 and that he was detained in jail for four days and not allowed to attend the sitting of the House on the 17th November, 1954.

It was alleged that the above actions of the police and the District Magistrate, Rewa constituted a breach of privilege of the House and of the Members concerned.

The Committee of Privileges, which in its thirteen sittings examined thirteen witnesses, came to the following conclusions which were embodied in the Report:

(i) There was no *lathi-charge* on any member of the House within its premises on the 16th November, 1954. One member was, however, assaulted in the premises, which constitutes a breach of privilege. But as it is difficult to spot the exact man who assaulted and in view of the apology tendered by the Distt. Magistrate on behalf of himself and those on duty, the matter be closed.

(ii) Though Shri Tiwari and others may not have been kept under arrest in the sense in which the term is used in Sec. 46 (1) of Cr. P. C., yet the condition in which they were placed does amount to arrest in the popular sense.

The Law of Privileges is very clear on the point. Sir Erskine May, in his book entitled 'The Law, Privileges, Proceedings and Usages of Parliament' quoting at page 120 from the Report of the Select Committee on Privileges, says, 'The service of criminal process upon a member of either House may

and his arrest within the precincts would be a breach of Privilege at any rate while it is sitting, without the leave of the House first obtained.' In this case it is clear that no permission of the House or the Speaker was taken either before placing the members in the condition in which they were kept for about two hours or within a reasonable time after the action... But in view of the fact that in tense situations like these delays or omissions to secure proper orders before taking action may arise and further in view of the apology tendered by the Distt. Magistrate, it is suggested that no further action is needed in the matter.

(iii) Shri C. P. Tiwari's behaviour was disorderly in the premises of the House while the House was sitting. He has thus committed contempt of the House.

(iv) Shri C. P. Tiwari was arrested on the 16th November, 1954, when the House was in session. It is also clear that he was arrested for certain charges under the Indian Penal Code. He was also kept in the Judicial lock-up for a few days. The Law of Privileges is very clear on the point. No privilege can be claimed for indictable offences under the common law of the land. Consequently his arrest, during the currency of the Session, outside the premises of the House for indictable offence does not constitute any breach of Privilege."

"At the first reading we raise hopes; at the third reading we voice fears."
[Shri N. V. Gadgil in the Lok Sabha, September 10, 1955]

Conferences

CONFERENCE OF PRESIDING OFFICERS OF LEGISLATIVE BODIES IN INDIA

Rajkot

(January 3-5, 1955)

THE twentieth Conference of the Presiding Officers of Legislative Bodies in India was held at Rajkot from the 3rd to 5th January, 1955, under the Chairmanship of Shri G. V. Mavalankar, Speaker of the Lok Sabha.

The Conference opened with a welcome speech by the Speaker, Saurashtra Legislative Assembly. Thereafter the Chairman delivered his inaugural Address.

There were 18 points on the Agenda of the Conference, which were discussed during the three days that the Conference met. Apart from these, the Conference also discussed and adopted a resolution which suggested that copies of the resolutions unanimously adopted at the Conference should be supplied to the Presiding Officers in order to facilitate their implementation. The resolution also stated that the Presiding Officers might, if they thought fit, forward copies of such resolutions to the Chief Ministers of the States.

A resume of the discussions on some of the important points is given below:

(1) **Adjournment of the House:** The Conference suggested that a rule on the lines of the rules of the Lok Sabha should be adopted by the State Legislatures regarding the powers of the

Speaker in matters of adjournment of the House. Rule 15 of the Rules of Procedure and Conduct of Business of the Lok Sabha empowers the Speaker to determine the time when a sitting of the House should be adjourned whether *sine die* or otherwise. Such a rule would enable consideration being given to such factors as the volume of business before the House, the rights of the minority party and the convenience of the majority party before a decision is taken.

(2) **Adjournment Motion:** The Conference felt that the general principles which are followed by the Lok Sabha with regard to the admissibility of adjournment motions, the right of members to move adjournment motions, and the power of the Speaker to admit or disallow such motions might be adopted by the State Legislatures also. The Conference suggested that the general principles enunciated* in this connection by the Speaker of the Lok Sabha in Mir Laik Ali's case might be kept in view by the State Legislatures.

(3) **Privileges:** The Press Commission had recommended in its report that the powers, privileges and immunities of the Legislatures, and their members and committees should be codified. The Conference was of the view that the time had not yet come when the question of codification of the law of privilege could be taken up. The main privileges were well-known

* Parl. Debate, Part II, 21st March, 1950.

and it was felt that no purpose would be served by an attempt at enumeration of all these at this stage.

(4) **Pre-publication of Bills:** The Conference was of the view that the power to allow the publication of a Bill prior to its introduction in the House should vest in the Presiding Officer, who should, in exercising his discretion, give due consideration to the interests of Government as a whole and the importance of the Bill.

(5) **Private Members' Bills:** The Conference also suggested that the Legislature Secretariat should, if required, help Private Members to draft their Bills.

(6) **Questions:** It was generally accepted that in the case of a Question in the legislature, which contained a defamatory statement, the Presiding Officer may first ascertain from the member concerned whether he had made any *prima facie* inquiry as to the correctness of the statement in question.

It was also agreed that the Lok Sabha procedure in the disposal and admitting of Questions might be adopted by the State Legislatures with such modifications as may be deemed necessary by them.

The Conference also accepted the suggestion that on matters where the authority was divided between the Centre and the States, Questions could be asked in Parliament to the extent to which powers were not delegated to the States. Questions relating to delegated authority might be dealt with by the State Legislatures.

(7) **Financial Committees:** It was noted that the Public Accounts and the Estimates Committees could examine expenditure and estimates relating to "charged" items in the Budget also.

(8) **Resignation of Speaker and Deputy Speaker:** The Conference discussed the question as to whom the Speaker or the Deputy Speaker should hand over his resignation if the office of the Deputy Speaker and the Speaker as the case may be, was vacant at the time of resignation, and to whom the Speaker and the Deputy Speaker should hand over their resignations if they intended to resign simultaneously. It was felt that there was some ambiguity in the articles of the Constitution governing the subject. It was consequently agreed that it should be further examined to see whether these Articles needed any amendment to make the position clearer.*

*The matter was referred to the Special Secretary, Ministry of Law. He has informed that the points raised in the discussion have been carefully considered by the Government of India and they are of the view that the difficulties of interpreting and applying articles 93 and 94(b) of the Constitution to particular circumstances of an admittedly extraordinary character are not at all serious and that there is no need to amend these articles.

In the opinion of the Government of India it would not be correct to give an unduly restricted meaning to the expression "another member" occurring in article 93. If, for instance, the office of Speaker becomes vacant, the fact that a member is at that time the Deputy-Speaker of the House should not be held to disqualify him for standing for election to Speakership, and there should be no need for him to resign beforehand the office of Deputy Speaker.

As regards article 94(b), if the Deputy-Speaker wishes to resign at a time when the office of Speaker is vacant, it should be sufficient for him to address the letter formally to the Speaker and send the letter of resignation to the Secretariat of the House. It would be quite proper for the Secretary of the House to receive the letter and place it before the House in due course.

Conferences

(9) **Statement by a Resigning Minister:** The Conference was of the view that in this matter the rules of the Lok Sabha should be adopted so that a resigning Minister should hand over to the Speaker and the Chief Minister in advance a copy of the statement, if any, that he might propose to make in the State Legislature in connection with his resignation.

(10) **Judges:** The Conference was of the view that in matters concerning the Judiciary the Legislatures could seek factual information about judicial administration in general and make suggestions for their improvement.

(11) **Statutory Corporations:** It was agreed that the present practice by

which Legislatures exercised control over statutory corporations by means of Questions or discussions on matters of general policy was satisfactory and should be continued.

(12) **Inter-Legislature Association:** The Conference decided that an Inter-Legislature Association should be formed and the Chairman of the Conference should be authorised to take steps in that direction.

The Conference accepted the invitation extended by the Speaker of the Assam Legislative Assembly and decided that the next Conference should be held at Shillong some time in October or November, 1955.

“Bureaucratic administration means fundamentally the exercise of control on the basis of knowledge. This is the feature of it which makes it specially rational. This consists on the one hand in technical knowledge which, by itself, is sufficient to ensure it a position of extraordinary power. But in addition to this, bureaucratic organisations, or the holders of power who make use of them, have the tendency to increase their power still further by the knowledge growing out of experience in the service.” (Max Weber in The Theory of Social and Economic Organisation).

CONFERENCE OF SECRETARIES OF LEGISLATIVE BODIES IN INDIA

Rajkot

(January 5, 1955)

The third Conference of Secretaries of Legislative Bodies in India was held at Rajkot on the 5th January, 1955 under the Chairmanship of Shri M. N. Kaul, Secretary, Lok Sabha. Thirty-five Secretaries and other Officers were present.

Shri A. R. Mukherjee, Secretary, West Bengal Legislature, presented the report of the Committee appointed by the Conference at Srinagar in 1954 to suggest a scheme for the proposed Indian Parliamentary Service. The Chairman of the Conference observed that copies of the report would be circulated to the Secretaries who might send their considered comments thereon. The Committee would thereafter consider the comments and prepare a final report which would then be discussed by the Conference.

Shri Mithan Lal, Secretary, Uttar Pradesh Legislature, was appointed to serve on the Committee in place of Shri K. C. Bhatnagar, formerly Secretary of the Uttar Pradesh Legislative Assembly, and it was agreed that Shri T. Hanumanthappa, Joint Secretary of the Madras Legislature, could attend the meetings of the Committee in the place of Shri R. V. Krishna Ayyar, Secretary of that Legislature.

The Conference then referred the following matters to the Committee for consideration and report:

(i) Functioning of Legislature Secretariats.

(ii) Whether there should be joint or separate Secretariats for the Houses of a State Legislature which had two Houses.

(iii) If any powers or functions pertaining to a Legislature Department are assigned to the Governor under any rules, what should be the mode of communication between the Legislature Department and the Governor and whether it should be direct through the Governor's Secretary or through any Department of Government.

(iv) Comparative study of procedure relating to asking and answering of Questions in the various Legislatures.

It was agreed that the Lok Sabha Secretariat would circulate to the Secretaries a questionnaire on the above subjects for eliciting the relevant information for being placed before the Committee.

It was also generally agreed that the Conference should be held annually, with a pre-arranged agenda.

CONFERENCE OF CHAIRMEN OF PUBLIC ACCOUNTS COMMITTEES

New Delhi

(April 30—May 1, 1955)

The Conference of Chairmen, Public Accounts Committees was inaugurated on the 30th April, 1955 in Parliament House, New Delhi by Shri G. V. Mavalankar, Speaker of the Lok Sabha. The Chairmen of the Public Accounts Committees of 19 State Legislatures participated. The Chairman, Estimates Committee of Lok Sabha, was also present. The Chairman, Public Accounts Committee of Parliament and the Comptroller and Auditor-General addressed the Conference.

Inaugurating the Conference, the Speaker referred to the importance of Finance and proper accounting in Public Administration and the responsibility of the Legislature for scrutinising the accounts. "It is vital in the interest of the tax-payer", the Speaker observed, "to scrutinise and examine not only the record of receipts and expenditure, not merely the existence or otherwise of sanctions by proper authorities, but also to examine as to how the policies have been worked out, and whether the administration is rendering service to the citizen in proportion to the money spent".

Addressing the Conference, the Chairman of the Conference, Shri B. Das, observed that the purpose of the Conference was to arrive at a unity of purpose in the working of the Public Accounts Committees so that purity of administration and strict financial control could be achieved.

Shri A. K. Chanda, Comptroller and Auditor-General of India, speaking next, traced the origin and development of Public Accounts Committee in the United Kingdom and dealt with its functions. According to him the controls exercised by the Public Accounts Committees were manifold such as, an expert control, a financial control, a judicial control, a non-party control and, finally a deterrent control. He also stated that this control, which though operating *ex-post-facto* was not a mere post-mortem. The Committee itself habitually pursued its enquiries into the present and its decisions affected future expenditure also.

The Conference then proceeded to discuss points relating to the internal working of the Committee.

The following were the more important points which were discussed at the Conference and the conclusions reached:

(i) **Term of the Public Accounts**

Committee: It is desirable to have a continuity in membership for the efficient working of the Committee. This can be brought about by the retirement of a certain proportion of the Members (say one-third) by rotation every year if the life of the Committee is co-terminus with that of the Legislature; or by the re-election or re-nomination of a similar quota if the term of the Committee is one year.

(ii) **Witnesses before the Committee:** Ministers should not be called

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to appear before the Committee either to give evidence or for consultation in connection with the examination of the accounts by the Committee. The Conference was unanimously of the opinion that the Secretary of the Ministry/Department should himself appear before the Committee and if for any reason, he was unable to do so, he should write to the Chairman in advance indicating the reasons.

(iii) **Delay in the compilation of Appropriation Accounts and Audit Reports thereon:** To ensure prompt compilation of the Appropriation

Accounts and the Audit Reports thereon, an Act on the lines of the U. K. Exchequer and Audit Departments Act, 1866 should be enacted here prescribing the dates by which these Accounts should be prepared and laid on the Table of the House.

(iv) **Implementation of the recommendations of the Committee:** The Conference was of the opinion that the labours of the Committee would go in vain, unless the recommendations of the Committee were implemented by the Government. Therefore, careful watch should be kept by the Secretariat and the Committee in this regard.

CONFERENCE OF SECRETARIES OF THE PUBLIC ACCOUNTS COMMITTEES

New Delhi

(April 29, 1955)

The Conference of Secretaries of the Public Accounts Committees, which was attended by delegates from 19 State Legislatures was held at New Delhi on the 29th April, 1955 under the Chairmanship of Shri M. N. Kaul, Secretary, Lok Sabha. In his inaugural address Shri Kaul gave a detailed exposition of the working of the Public Accounts Committee in India and the U. K. and touched upon the financial procedure prevailing in the U.S.A., the U. K. and other countries. He referred also to the important role played by the Secretariat of the Committee in facilitating their deliberations.

The address was followed by a short discussion on some practical aspects of the working of the Committee.

The main points which were raised by Shri Kaul in his address are summarised below:

Background

The Public Accounts Committee which was set up at the Centre in 1921 had very little of parliamentary atmosphere about it, and was a pale shadow of the Committee as it now exists. It was only after the inauguration of the Constitution in 1950 that the Committee became a parliamentary committee responsible to the Speaker.

Tasks before Committee

When the secretariat functions of the Public Accounts Committee were

transferred to the Parliament Secretariat (as the Lok Sabha Secretariat was then called) the Committee set about improving the form and pattern of reports. One of the earliest acts of the Committee was to expedite the printing of the Audit Reports which were very much in arrears.

Accountability

The reports of the Committee have a great value in that they point out certain defects, irregularities, etc. But the most important effect is that they inculcate in those who have powers to incur expenditure a feeling that they would be called upon to account in full therefor.

Precedents

One of the main difficulties which the Public Accounts Committee had to face was in regard to the setting up of healthy precedents for the future. The Committee had to evolve a system that was generally acceptable. In this respect the Committee was fortunate in having the guidance and advice of the Speaker who always took a keen interest in the work of the Committee and strengthened its procedural side considerably.

Annual Finance Accounts

A question was raised whether the Committee could examine the Revenue Accounts and the debt side of the Government of India without the Audit Reports thereon. The Commit-

Conference

tee had taken the view that it was not necessary to wait for the Audit Reports and that the accounts might be examined in the usual way.

Position in U.S.A.

In the U.S.A. there is no Public Accounts Committee. Instead they have Appropriation Committees with numerous Sub-Committees thereof and the Departments are called before the Committees to explain the budget estimates. There is also a Comptroller General who advises whether the money has been properly and wisely spent.

Delegation of Financial Power

During the time of the British Government the Ministry of Finance controlled all governmental expenditure. But now greater delegation of financial powers is being made to the Heads of the Departments. The tendency is towards integration of financial and administrative functions. It is, therefore, obligatory on the Secretary or the the Head of Department to point out to the Minister the various financial implications of the policy that is going to be adopted.

Secretariat

A parliamentary official is not concerned with favouring the Government or opposing the Government. All that he is concerned with is to see that all the facts are properly prepared and proper questions are put, the Committees are supplied with accurate and clear-cut memoranda, their discussions are accurately recorded and their reports are properly prepared. For that purpose it is necessary to train a large number of parliamentary officials.

The British System

In the United Kingdom the Public Accounts Committee look at problems from the layman's point of view. Matters requiring technical information are referred to Expert Committees. The Committee do not go into and pronounce judgment on technical matters. They generally accept the technical advice of experts or a body of persons who are competent to give information on such matters. The Public Accounts Committee in India follow the British pattern with such changes as are necessary in the light of experience gained over a number of years.

ALL-INDIA CONFERENCE OF GOVERNMENT WHIPS

Mysore

(January 15-16, 1955)

An All-India Conference of Government Whips was held at Mysore on the 15th and 16th January, 1955. The Conference was convened by the Union Minister for Parliamentary Affairs, Shri Satya Narayan Sinha. It was inaugurated by Shri K. Hanumanthaiya, Chief Minister of Mysore.

This was the second Conference of its kind to be held since Independence, the first one having been held at Indore in 1952.

Aims and Objects of the Conference

The Conference was designed to focus attention on the following:

- (i) the Parliamentary etiquette and coordination of Parliamentary activities with special emphasis on quorum, and ways and means of stimulating interest in parliamentary affairs in members;
- (ii) the need for full and effective attendance by members in the House;
- (iii) matters relating to the position and responsibilities of the Whips, particularly in regard to their day-to-day relations with members of the party and leaders of the Opposition Groups;
- (iv) principles governing the selection of members to various parliamentary committees and for participating in debates;

(v) re-assessment of the scope for private members' effective initiative in legislation and other parliamentary decisions;

(vi) whether Whips should participate in the debates; and

(vii) proposal to change the name of Whip to *Sachetak* and Chief Whip to *Mukhya Sachetak*.

Points Raised in the Presidential Address

In his presidential address delivered on the 15th January, 1955, Shri Satya Narayan Sinha referred, *inter alia*, to the need in the present stage of development of democracy in the country for the Whips acting in a wider capacity as servants of a democratic State though they might be appointed as instruments of a party. The Conference itself was not being held as a party affair but was convened by the State Government and the President was acting in his capacity as the Minister of Government of India on Parliamentary Affairs. He stressed that Whips had not merely in the course of their duties to lead members of groups in their charge but also guide them, and this required an intensive study of their individual feelings, inclinations and abilities. The Whips had also, therefore, to be fully conversant with all the details of the proceedings in the House, the contents of Bills before them, the major points involved in the debates, the procedural rules and technique, etc. One current problem that they had to meet was that of finding fresh talent for leaders in

the country. There was one great advantage in the present conditions in which one political party had an overwhelming majority in most of the States as well as in the Centre, so that in such a condition the Whips could afford to be less insistent in their ordinary duties of guiding members to vote in a particular way and could devote more time to their positive functions of education and guidance of members. The Chairman also suggested that the designations of the Chief Whip and the Whip should be henceforth in Hindi as *Mukhya Sachetak* and *Sachetak*, respectively.

Resolutions Adopted by the Conference

The Conference considered certain resolutions on the subjects of functions and status of Whips, establishment of an orientation institute for greater understanding by legislatures of public problems, etc. The following resolutions were adopted by the Conference.

(1) *Resolution moved by Shri Mangala Prasad and unanimously adopted:*

“Noting that there was still a great deal of misunderstanding about the functions and status of Chief Whips and realising the importance of defining them so as to enhance the practical utility of the Chief Whips’ Organisation, this Conference recommends:—

- (i) That the Chief Whips should be nominated by the Leaders of the Legislatures concerned.
- (ii) That Deputy Chief Whips, if any, and other Whips should be nominated by the Chief

Whips in consultation with the Leaders.

- (iii) That Chief Whips should receive official recognition by being accepted as the channels through which contacts are maintained between the members of the party in the Legislatures and the Leaders on the one hand and the Government and the Speaker on the other for purposes of Government business in the Legislature; and they should be responsible for the selection of members to Select and Joint Committees and other Committees of the Legislatures.
- (iv) That Chief Whips, Deputy Chief Whips and Whips of the Party forming the Government should be known as ‘Government Whips’.
- (v) That Chief Whips should be given requisite facilities by way of office accommodation and such emoluments as may be considered suitable in each State consistent with their responsibilities and functions.
- (vi) That Chief Whips, even when honorary, should have precedence consistent with their status.
- (vii) That for all practical purposes the Chief Whips’ Organisation in the States should be allowed to function on lines similar to its counterpart in the Union Parliament.”

(2) *Resolution moved by Shri Ananda Mukerjee and seconded by Shri Gowda, and adopted:*

"Recognising the implications of rapidly expanding spheres of Government functions and their growing complexities, this Conference recommends the establishment of an orientation institute for Legislatures of all parties in the Union Parliament and State Legislatures designed to ensure greater understanding of public problems by them in the interests of an effective and enduring democracy and urges on the Union Government to provide the requisite assistance for the purpose and obtain external aid, if necessary."

(3) *Resolution moved by the Chair, and adopted unanimously:*

"The problem of administration is not mechanical. It is essentially human. Unless therefore it is approached in that right spirit with sympathy, solicitude and understanding the desired results become difficult of achievement. The administrators have to serve the people because that is the only purpose for which they can and they ought to exist." (Shri Govind Ballabh Pant in a talk broadcast on August 18, 1955).

"This Conference recommends that Hindi equivalents of *Mukhya Sachetak*, *Upa Mukhya Sachetak* and *Sachetak* be adopted for Chief Whip, Deputy Chief Whip and Whip, respectively."

(4) *Resolution moved by Shri Rohan Lal Chaturvedi, and adopted unanimously:*

"The Conference of Chief Whips and Whips assembled here resolves that the Government Whips of the various States should assemble at least once a year for the exchange of views; and for proper functioning of this organisation it should hold conference in different States."

The Conference concluded on the 16th January, 1955.

Editorial Notes

IN bringing out this second issue of the Journal we acknowledge with gratitude the many messages of appreciation which were received from the readers since the publication of the first issue. Elsewhere in this Journal we are reproducing some of the messages that were received. It will be our constant endeavour to progressively improve the get-up and contents of the Journal.

We are grateful to the All India Radio for giving us permission to reproduce the text of the talk on "Equality before Law" broadcast on January 20, 1955. Our thanks are also due to the Editor, *Spectator*, for giving per-

mission to reproduce the article on "Advice to a New Member" by Christopher Hollis.

In this issue we are introducing two new features, namely, "Privilege Issues" and "Constitutional Developments". For facility of reference an index to the previous issue has been included and hereafter each number will contain a consolidated index to all the previous issues.

We take this opportunity of acknowledging with thanks the assistance rendered by the State Legislature Secretariats in supplying us the necessary material for this issue of the Journal.—*Editor*

Book Reviews

Government by Committee: An Essay on the British Constitution by K. C. Wheare (Published by Oxford University Press, Amen House, London E. C. 4, 1955, pp. 264, 25s.)

“THE student of committees”, writes Prof. Wheare in the Preface to his book, “has to make a choice. Either he can try to hack his way through the jungle on foot or he can try to get a bird’s eyeview of the terrain from the air.....I have chosen to attempt a reconnaissance from the air, inspite of its dangers, for it seems to me that when you are exploring a jungle an aerial map is the first essential.” The reconnaissance work of Prof. Wheare has turned out to be an admirable criticism of the working of committees under British Government.

Committees are an old British institution. They are an important part of what is referred to as the ‘British way of life.’ Sir Winston Churchill at one time said: “We are overrun by them like the Australians were by the rabbits”. In 1949 Mr. Attlee stated in the House of Commons that there were more than 700 committees in government departments alone. Prof. Wheare has estimated that in local governments there are more than 50,000 committees.

The scope and method of the essay has been explained in Chapter I. Committees have been classified into seven categories and the principle upon

which this classification has been made is that of the function or process which the committee carries out rather than of the institution of which it forms a part or with which it is connected. On this basis the Committees have been arranged into six classes—committees to inquire, committees to advise, committees to negotiate, committees to legislate, committees to administer and committees to scrutinise and control. For purpose of comparison the author has studied (Ch. II) the role and relative importance of what he calls seven “characters” in committee work—the official, the expert, the layman, the party man, the interested party, the Secretary and the Chairman. Save in the case of committees to legislate in the House of Commons, where the Minister provides leadership, the responsibility for leadership rests primarily upon the Chairman.

In his book Prof. Wheare has paid great attention to committees of Parliament. Parliament’s main problem is how to complete its business and how to ensure accountability. In so far as the latter function is concerned the Standing Committees (the Estimates Committee, the Public Accounts Committee and the Statutory Instruments Committee) perform their business admirably well. Speaking about the Public Accounts Committee Prof. Wheare writes: “Perhaps no other Select Committee could achieve the position of respect and effectiveness

the Public Accounts Committee has achieved." He is also mindful of its defects. The zeal of the Public Accounts Committee has continually to be watched to ensure that it does not encroach on proper freedom. Prof. Wheare thinks that "while Committees to advise, to enquire and to negotiate have strengthened the official in White Hall", there has been no comparable strengthening of Westminster. He suggests that the remedy lies not in weakening White Hall but in strengthening Westminster. Ministers have a most important part to play in this sphere. Members of Parliament also can see to it that official or expert sense is subjected to the sceptical scrutiny of the lay mind. Prof. Wheare concludes with the remarks: "Government by committee, where Chairmen and officials perform their vital and difficult roles with skill and success, will go far in Britain to ensure not only that we make the best of democracy, but that we make the best of bureaucracy also."

The book is a valuable addition to the existing treatises on the working of the British Government.

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German Parliaments by **Sir Stephen King-Hall and Richard K. Ulmann**
[Published by the Hansard Society, 39, Mill-bank, London, S.W.1, 1954, pp. 162 (inclusive of appendix and index), illustrated, 10s-6d]

The view most commonly held both inside and outside Germany is that representative institutions are foreign to German thought and tradition. The authors of the *German Parliaments*

have endeavoured to prove how incorrect this popular view is and have lent support to the theory advanced by Montesquieu that "the British Parliament had its origin in the oak woods of Germany". The embryonic English Parliaments, the authors believe, were developments out of practices which had originated among Teutonic tribes living in that part of the continent that is known as Germany today.

In the words of Sir Stephen King-Hall the book is a study of the representative institutions in Germany and its object is "promoting especially in Germany, the cause of Parliamentary democracy". Much labour has gone into it, and the work "is a combined Anglo-German operation which has been conducted in a most harmonious manner".

The book is divided into seven chapters each packed with informative details about the country, the growth of democratic institutions and the vicissitudes through which the German Parliamentary institutions had to pass. The authors have made it plain at the beginning that it would be futile to look for any continuity in the history of Germany comparable to that of England, or to attempt to write the history of the German Parliament. One could at best note the developments of representative institutions in Germany and the fate they suffered and that is precisely the object of the work.

As one reads through the pages certain impressions remain. Germany is a country where boundaries shifted with kaleidoscopic swiftness, jealousies and rivalries of princely estates

blurred the political picture and incursions from neighbouring States played no insignificant part in arresting the growth of democratic institutions. Centuries of Lutheran education which brought about the "habitual subservience" of the German people to their masters, the emphasis on "Ruhe and Ordnung", "Quiet and Order" rather than on "Law and Order" and the traditional weight of militarism and bureaucracy created a feeling in many Germans that politics and public life are not their responsibility and should be left to the expert. Yet "the rope of parliamentarism" ran on through the Confederate Act of June 8, 1815, through the Constitution of August 11, 1919 (characterised as "most liberal of all Constitutions"), the Basic Law of the Federal Republic of Germany, 24th May, 1949 and finally the Constitution of the German Democratic Republic of October 7, 1949.

One of the facts that emerges with significant clarity (thanks to the lucid analysis of the authors) is that political progress in Germany has seldom been the result of the people's own efforts, however much they have tried. It was either the more-or-less free gift of a gracious monarch or the result of military defeat and national humiliation.

By publishing this short but authoritative book dealing with the history of representative institutions in Germany, the Hansard Society has rendered valuable service to research workers and students of the history of Parliamentary institutions in Germany and elsewhere.

As It Happened by C. R. Attlee (Published by William Heinemann Ltd., London, 1954, pp. 227, 16s.)

The memoirs of a politician reflect in a great measure the history of his time. This is all the more true in the case of Mr. Attlee who, as a politician, enjoys the unique distinction of having been successively Deputy Prime Minister and Prime Minister of England for twelve years. His memoirs, which he has called "As It Happened", form a remarkable commentary on the wide, chequered and violent stretch of history which they cover.

In the internal politics of England the Labour Party's accession to power in 1945 was the most outstanding event of the century. With Mr. Attlee at the helm of affairs the country witnessed a great social upheaval. In colonial matters too, Mr. Attlee's Labour Government showed a remarkably keen foresight and the transfer of power to India and Burma is a tribute to his political acumen and wisdom.

The title strikes the keynote of the book and events have been described just as they occurred. There is hardly a facet of the politics of the period that has not received its share in Mr. Attlee's memoirs. Written with charm and balance the memoirs reveal a pleasant personality, a modest man looking in retrospect on the events of life and commenting on them coolly and deliberately. The interest of the narrative keeps up to the end. Perhaps the best part of the book is that dealing with Mr. Attlee's childhood. He was the seventh child and the fourth son in a family of eight belonging to the professional class. His father was

a Gladstonian Liberal but most of his people were Conservatives. They lived at first among market gardens and fields and farms at Putney and then in an old red brick country house. Nostalgic memories crowded his mind when he thought of his childhood. Those were the days full of charm and freshness.

"Early days remain fresh in the memory and I can still recall very clearly the atmosphere of those times. Standing in our garden one could hear the roar of London traffic as the horsehoofs beat on the paved streets. I recall the dust in summer and the mud in winter, the occasional ride in a hansom cab and the more frequent one in the dusty, musty four-wheeler with straw on the floor".

He had his early education at the Hailebury College where he was once caned for indulging in a patriotic demonstration. Oxford was for him a quiet place, but his "bent of mind at that time was wholly romantic". Before embarking on the Parliamentary career in 1922 Mr. Attlee had a spell of war service to his credit and experience of local self-government work as Mayor of Stepney.

In his autobiography he has recalled his relationships with fellow Prime Ministers, with Mr. Nehru ("who united great charm with high abilities"), with Mr. Liaquat Ali Khan ("a very fine young man") and Mr. Senanayake ("a man of great charm"). With characteristic magnanimity he has described his association with companions who shared with his hopes and fears and had a hand in the shaping of history. For all his associates he has a kind word.

The book closes with the frank utterance:

"But having now exceeded the age of three score years and ten I would say that up to the present I have been a very happy and fortunate man in having lived so long in the greatest country in the world, in having a happy family life and in having been given the opportunity of serving in a state of life to which I had never expected to be called."

These memoirs inevitably invite, and in some ways challenge, comparison with the Churchillian survey of the same ground, of which this book forms an invaluable complement.

* * *

The Advice and Consent of the Senate
by **Joseph P. Harris** (Berkeley and Los Angeles, University of California Press, 1953, pp. 457)

The peculiarly American institution of senatorial confirmation of appointments by the U. S. President was designed in the words of Lord Bryce in his classic study, *The American Commonwealth*, as probably nothing more than a check "to prevent the President from making himself a tyrant by filling the great offices with his accomplices and tools". But in actual practice, writes the author, contrary to the evident intention of the framers of the Constitution, the appointing power of the President, by and with the advice and consent of the Senate, has been extended "to thousands of minor offices and positions". The length to which the Senate in America has extended its executive function can be seen from the fact that in nineteen years from 1933 through 1951, on an average, 17,858 presidential nominations were submitted per annum to the

Senate. Prof. Harris is of the opinion that whereas senatorial confirmation of appointments has worked reasonably well for certain types of offices, "for many others, it has become to a large extent an empty formality, and for certain offices it has served to perpetuate patronage appointments where non-political appointments should be the rule".

Senatorial confirmation of appointments is a feature unique to the United States and the countries in Central and South America which have modelled their constitutions on the American pattern. This executive function of the Senate is a basic part of the constitutional system of the country and an important element in the division of powers between the President and the Congress. Recognized as one of the important powers of the American Senate the subject of Senatorial confirmation attracted wide public attention only recently when several bills and riders were passed by the Senate seeking to extend the requirements of confirmations to a large number of subordinate administrative positions.

The treatment of the subject is both historical and analytical. Prof. Harris has traced the history of the confirmation of appointments by the Senate from the framing of the Constitution to the present day and analysed the practical operation and effects of the practice. The constitu-

tional issues pertinent to the subject are discussed at length in the first chapter which reviews the debates of the Constitutional Convention of 1787 and other significant discussions and writings of the time. The succeeding chapters, covering more than half of the book, are devoted to historical review of the relationship and conflicts between the President and the Senate over appointments. The latter half of the study contains an account of the custom of "senatorial courtesy", the procedure of the Senate in passing on nominations. The concluding chapter gives an analysis and appraisal of the whole subject.

The central issue to which this study is directed is which officers should be appointed by the President and confirmed by the Senate and which should be appointed otherwise. The author opines that in the first category should be placed only the policy determining political officers, judges, members of independent boards and commissions, diplomatic representatives, and high-ranking military and naval officers.

The book is, perhaps, the only exhaustive study on the subject. Dealing as it does with an important aspect of the American Constitution, this study is a valuable contribution to a proper appraisal of the executive-legislative relationships in the United States.