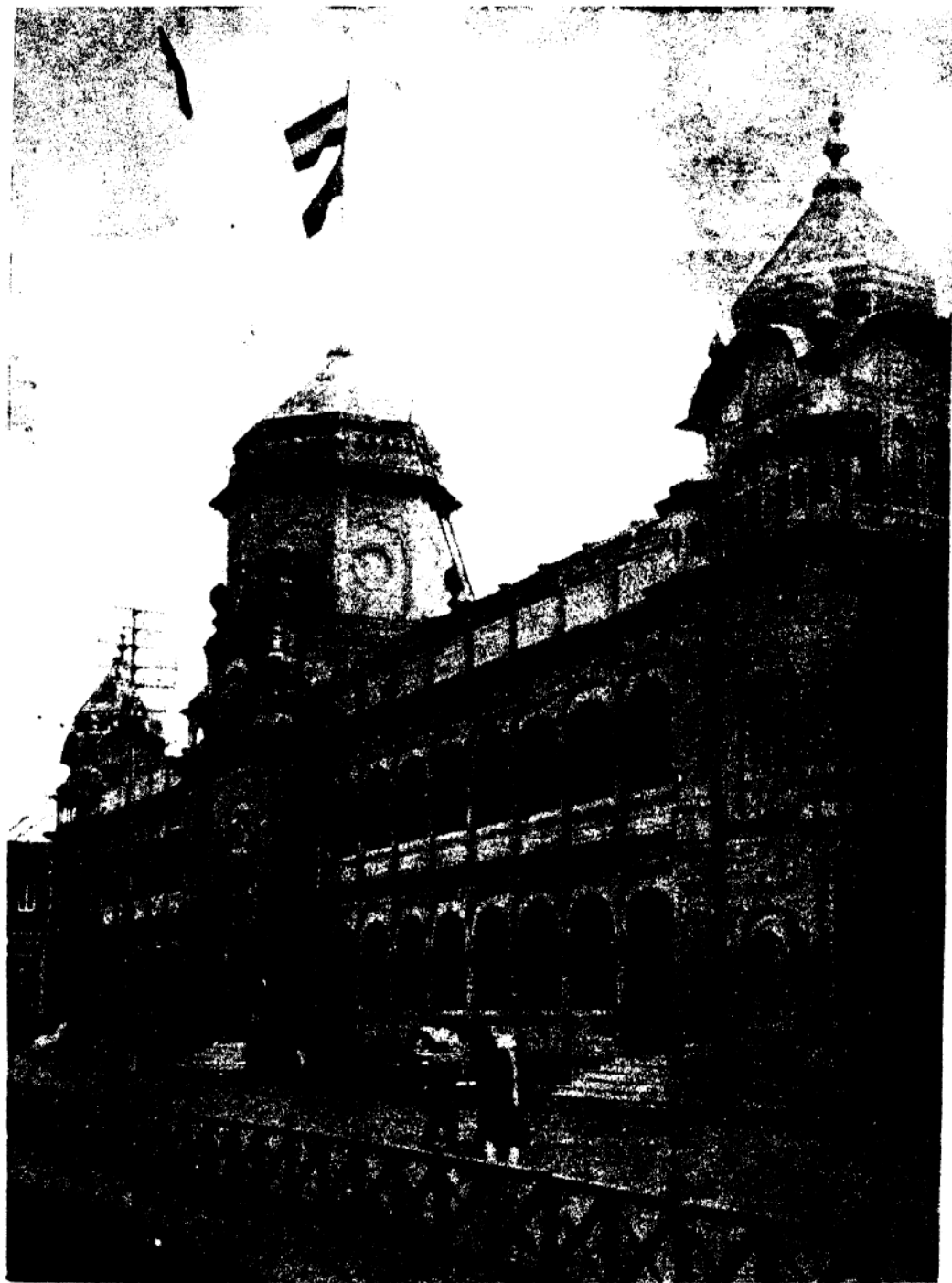


The Journal of Parliamentary Information



A VIEW OF THE JAMMU AND KASHMIR LEGISLATIVE ASSEMBLY BUILDING AT JAMMU

The Journal of
PARLIAMENTARY INFORMATION
Editor : M. N. Kaul, Bar-at-Law

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THE JOURNAL OF PARLIAMENTARY INFORMATION

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April, 1958

[No. 1

Parliamentary Democracy in the New Age*

[The second seminar on Parliamentary Democracy held under the auspices of the Indian Bureau of Parliamentary Studies was inaugurated by the Prime Minister, Shri Jawaharlal Nehru, on the 6th December, 1957, in the Central Hall, Parliament House, New Delhi. The address delivered by the Prime Minister on the occasion is reproduced below.]

Mr. Chairman, Vice-President, Your Excellencies, Fellow Parliamentarians,

We in India have adopted, deliberately and after long argument, a Constitution based on parliamentary government. The fact that the eight years since we have adopted this Constitution have not in any sense made us waver in our allegiance to it indicates how strong our faith is in that system of government.

• Now what is parliamentary government? Most people lay stress on parliamentary government or democracy being good for a variety of reasons. We praise this form of government, because it is a peaceful way of dealing with problems. It is a method of government by argument, discussion and then decision, which is taken after considering every aspect of the case, and then accepting that decision, although some of us may not agree with it. The way

we change that decision is also by argument or persuasion or by changing the government through the vote.

• Parliamentary government functions through a system of parties. The majority party runs the government, but the minority also has an important part to play. Naturally, the majority, by the mere fact that it is a majority, must have its way, but a majority, which ignores the minority, is not working in the true spirit of parliamentary democracy. If a majority crushes a minority and does not treat it fairly, the minority will lose faith in that form of government. If, on the other hand, the minority refuses to accept the majority decisions, one moves from the debating chamber to some other place to decide questions. So it needs a measure of agreement as to how we are to function and how we are to realise the objectives in view, in a parliamentary democracy.

Tempering parliamentary democracy

A point which arises in this connection is that in a period of dynamic change, one has to function—the institution of parliament has to function—with some speed. Does the parliamen-

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tary form of government enable a country to move with that speed, when speed becomes essential? Let us take a great emergency like a war. When war occurs, parliaments function, continue to function, but with certain limitations, because of that emergency. So, a great deal depends on the times or the period you are living in, on the environment that surrounds you and on the problems you have to face. Having approved parliamentary democracy as the right approach one has to see how to temper it, how to fit in, so that it can answer the major questions of the age.

In the United Kingdom, supposed to be the Mother of Parliaments—although I believe that there are other Parliaments which are older, notably that of Iceland which is very old indeed—the whole structure of Parliament evolved, roughly speaking, before the 20th century, when the world was quite different. In the 19th century, the Private Member had a good deal to say in Parliament. To-day, he has very little to say. Issues are decided upon by all kinds of forces, and government and Parliament are busy with so much legislation that they are trying to catch up all the time. The question, therefore, arises how to speed up the procedures and yet retain the essential quality of Parliament and give the individual Member some chance of not being a mere voting machine as he tends to be to-day.

Parliamentary democracy and private-enterprise

Now, Parliamentary democracy is supposed to represent certain things, which, to my mind, it may not or need not represent. It is said for instance that parliamentary democracy is inevitably combined with a system of private enterprise. But I do not see what parliamentary democracy has got to do with private enterprise. I do not see any connection between the two, except the connection of past habit and past thinking. In fact, as we all know, these

arguments about socialism, private enterprise, public sector etc., important as they are, become less and less of a choice between the extremes. There is no country in the world now, where some form of middle way between these extremes is not found or is not being found. In the U.S.A. which is said to be the country having a highly-developed form of modern capitalism and private enterprise, there is more public enterprise than in most countries, which apparently have a different objective and ideal. It is inevitable. Even in Europe, we see many countries having advanced far on the road to socialism. I am not talking for the moment of the Communist countries, which of course have gone very far. But I am talking of the other countries which may be called parliamentary, social democratic countries, meaning thereby the countries which follow a parliamentary form of government. There is no conflict in those countries between socialism and parliamentary democracy. On the other hand, I would venture to say that there is going to be an increasing conflict between the idea of parliamentary government and full-fledged private enterprise.

Why do I say that? Because the whole conception of parliamentary government is a democratic conception, most of the battles for which were fought on the political plane—for instance, the fight for votes for all, votes for women and the gradual widening of the franchise till it becomes adult franchise. It is only in very recent times, 20 or 30 years or so, that any country has had adult franchise. All the democracies of the 19th century, were based on a very limited franchise. The basic and new innovation of adult franchise was brought about only recently, and its effects are being felt in full only now. This political change, having fully established itself, it becomes obvious to the people that a political change by itself is not enough. People who shouted for the vote realise that the vote does not fill empty

Parliamentary Democracy in the New Age

stomachs and something else is necessary. The vote may be a way to fill empty stomachs or may lay down policies that help to fill them, but that is a different matter.

Economic democracy

So, immediately from political democracy we advance to the plane of economic democracy. Every country does so, in a more or less degree whatever it may say. And, if you advance to the plane of economic democracy, it means certainly a measure of equality in the economic sphere and a certain measure of well-being for all, call it Welfare State or whatever you like. It also means, broadly speaking, a certain measure of equality—not complete equality—of opportunity. Certainly, complete equality of opportunity, if you can give it to every individual, becomes the ideal.

Now, every country, in some way or other, is going that way, whether it is a Communist country, non-Communist country, anti-Communist country or any other country. It is going that way, though the method it adopts may be different.

Again, you cannot have a political democracy without mass education. In other countries, real full-blooded political democracy came after a good deal of education had spread, because of the economic revolution and all that which had prepared the ground for it, which had added to the resources of the country and thereby made it easier to fulfil the demands made by the people in those countries. In most Asian countries, on the other hand, particularly in India, we have taken a huge jump to hundred per cent. political democracy without the wherewithal to supply the demand, which a politically-conscious mass electorate makes. Before this, the people of India were certainly much worse off than they are to-day; they were poorer than to-day; but since no political consciousness had arisen, they put up with their backward conditions. They thought it was an adverse fate

which had brought this upon them and they did not grumble much. But as soon as they woke up politically, they began to grumble, and quite rightly too. There is a hiatus now between desires and their non-fulfilment, and all out political life is really concerned with how rapidly to bridge this gulf—this hiatus. We may call it the Second Five Year Plan or whatever it may be, but it is an attempt to bridge this hiatus, firstly because it is right in itself that people should have at least the primary things of life supplied to them, and secondly some other good things of life.

In countries—chiefly the countries of Europe and America—which are economically advanced and which have more or less established some kind of a Welfare State, this tension is not so acute. It is there, of course, and it grows sometimes, but it is not so acute, because the primary necessities of life are more easily available there. But where these primary necessities are not supplied, there is tremendous pressure, and there is always an element of uncertainty as to what may happen and what may not happen.

Changes *vis-a-vis* the people

And now, another thing that we should remember is that people's minds generally lag behind the physical changes that take place in the world. It is quite extraordinary how the change in the physical world is much swifter than on the people's minds, which bring about all these revolutionary changes, and yet people's minds, individuals apart, lag behind the actual changes when the changes are fairly fast. Take for instance, the French Revolution and its slogans—liberty, equality and fraternity. Even while the French Revolution was being fought in the streets of Paris and elsewhere, an even greater revolution had begun in England especially, and elsewhere too to some extent. Yet the ideas of the French Revolution overshadowed Europe for 50 or 60 years, or how many years, I do

not know, although the world was rapidly changing because of the Industrial Revolution.

The Industrial Revolution has changed and is changing Europe out of recognition in the last two hundred years. It has changed India and other countries of Asia, but it is still always difficult for people, apart from individuals, in the mass to keep pace with the changing world, with a changing society. As everyone knows, to-day we are in for a pace of change which is terrific. For, with the coming in of the atomic energy, all kinds of new things—sometimes you fear about them without understanding them—have come, and the whole basic structure of human life is changing. And yet, we are still talking a language which might have suited some past generation, but which does not fit in to-day.

It may be, and I believe so, that in spite of these changes in society, certain basic principles are never to be changed; may be, certain basic ethical approaches remain permanent. It may be, and I am prepared to say, that individual freedom is something precious which should be guarded, whatever other changes may take place. But apart from these basic things, society and individuals are being constantly affected by other changes.

Centralisation vs. Liberty

Now on the political plane, it becomes more and more obvious that countries, small or big, wish to retain hundred per cent. national independence, which they can hardly continue to do so in the present-day context. The world has become too small and they have to come together. Successful or not, they have to come together in the United Nations. The United Nations may not be a startling success, but it is an inevitable thing, and if it is not there, the world would be much more dangerous. People talk about world brotherhood, world order, federal union of the world etc., and although all

these seem to be somewhat unrealistic to-day, it is obvious that these completely independent sovereign States are becoming slowly out of place in the modern world and some kind of world order will have to arise. The world moves more and more towards centralisation and the whole process of scientific advancement points in that direction. Now, centralisation kills liberty or reduces it or limits it. So the biggest problem of the age is how to live in the modern world with this inevitable centralisation and national freedom. In India, during the last generation or two, we have been greatly impressed by ideas of decentralisation emphasized by Gandhiji, but the problem still remains of reconciling centralisation and decentralisation, whether on the political plane or on the economic plane.

Development of the Individual

Lastly, there are problems of the bureaucracy which tends to become static and passive, and the development of the individual and society in any given plan of development. Any form of Government must at least enable us to go in the direction of developing the individual, and if it does not do so, it is lacking in purpose.

So you have to think not merely in some academic way of the form of government you have or you should have, but also in terms of that form of government or political structure, which will fulfil the demands made upon it by the age. Whether parliamentary structure will ultimately answer this question or not, I do not know. But I should imagine that the parliamentary form of government and approach to problems is more likely to answer that question than any other, as other forms are likely to lead ultimately to some measure of authoritarianism. If it does not, it has become out-of-date and may have to go. However theoretically good it may be, it has to answer the questions put to it by the age. If it answers those questions, it is well-established.

Addresses and Speeches

PORTRAIT OF MADAN MOHAN MALAVIYA UNVEILED: SPEECHES BY THE PRESIDENT, VICE-PRESIDENT, PRIME MINISTER, SPEAKER AND SHRI TANDON.

[The portrait of Pandit Madan Mohan Malaviya was unveiled in the Central Hall of Parliament House on the 19th December, 1957 by the President of India, Dr. Rajendra Prasad. Extracts from the speeches made by the President, the Vice-President, the Prime Minister and the Speaker on the occasion are given below.]

Dr. S. Radhakrishnan: Mr. President, Mr. Prime Minister and Friends,

I remember the words which Pandit Madan Mohan Malaviya uttered at a public meeting at Bangalore:

Atmanah pratikulan paresham na samachareth, that is, "Do not do unto others what you do not wish to be done to yourself."

That is the verse which he recited. Malaviyaji regarded himself as a *bhakta*, a devotee. As a man who believed in God, he did not recognise any distinctions of race or religion, caste or community, ritual or other things. He took part in many of our national activities—political, economic and industrial, but his supreme passion was the Banaras Hindu University. He lived for it and he died for it. He felt that our people were culturally displaced and spiritually uprooted and that they were suffering from spiritual illiteracy, lack of public spirit, lack of technical knowledge etc. He wanted to use the Banaras Hindu University as an institution where the young men of our country could be trained in diffe-

rent fields of knowledge so that they might have some spiritual anchorage.

Malaviyaji established many institutions for technical training—mining, metallurgy, glass technology, pharmaceutical chemistry etc. Some of these courses were started in Banaras for the first time in the country, and other Universities followed only later on. *

Malaviyaji claimed to be a supporter of *Sanatana dharma*. Though a staunch Hindu, he never allowed his allegiance to Hinduism to interfere with national interests. It is essential for us to-day, when so many fissiparous tendencies are cropping up in different parts of our country, to know that here was a man who, though a devout Hindu, was an ardent nationalist. We have to remember him for his purity, his gentleness, his patriotism and for his passionate devotion to Indian culture—a culture which does not represent any racial character or religious community, a culture which stands for a spirit, a temperament, a destiny. It is that for which he stood, and I hope when Shri Tandon presents this portrait to us, we will be able to remember all these qualities associated with him.

Shri Purushottam Das Tandon*: Mr. President, Chairman, Ladies and Gentlemen,

I present to you this portrait of Mahamana Madan Mohan Malaviya on behalf of the Madan Mohan Malaviya Memorial Committee.

*Translated from the speech delivered in Hindi.

The first opportunity I got to work with him was in 1899. By that time, he had earned a good name as a lawyer both in our State and in the country, although he had practised only for a few years. He was not, however, very much interested in his practice, as his mind was absorbed in the service of the country.

In 1899, Malaviyaji was engaged in the work of propagating Hindi. Hindi was very much neglected at that time, although it was language of the people in U.P. Malaviyaji took up the cause of Hindi and worked for it, putting the Maharajah of Ayodhya as the head of the movement. It was always his trait to work for a worthy cause by remaining in the background and putting up others for the credit, when credit is due for the work. I had an opportunity to work with him for this cause, wherein he achieved some success.

I met Malaviyaji again after some time, and his mind was then busy with a scheme to start a University. We laughed at his idea, but he was so earnest in his purpose that he left his practice at the bar and left even all his interests to devote himself entirely to this cause. He put the Maharajah of Darbhanga in the forefront and worked himself, by going from place to place and collecting subscriptions. He held public meetings and appealed for contributions and collected more than a crore of rupees from the princes as well as the public. And now, we see his achievement, and the Hindu University at Banaras stands as a monument to his work.

Malaviyaji was a great devotee and a true Vaishnav. He practised religion in the true spirit. He was also at the same time a man greatly interested in the welfare of his country. He had great sympathy for the poor and his spirit rebelled whenever any wrong was done to them or to the nation. As regards the uplift of the Harijans, he had a very progressive outlook and he

associated with Lala Lajpat Rai in this work. I was also entrusted with some work in this connection in Uttar Pradesh. Later on, Mahatmaji gradually took over this work and the Harijan Sewak Sangh was established.

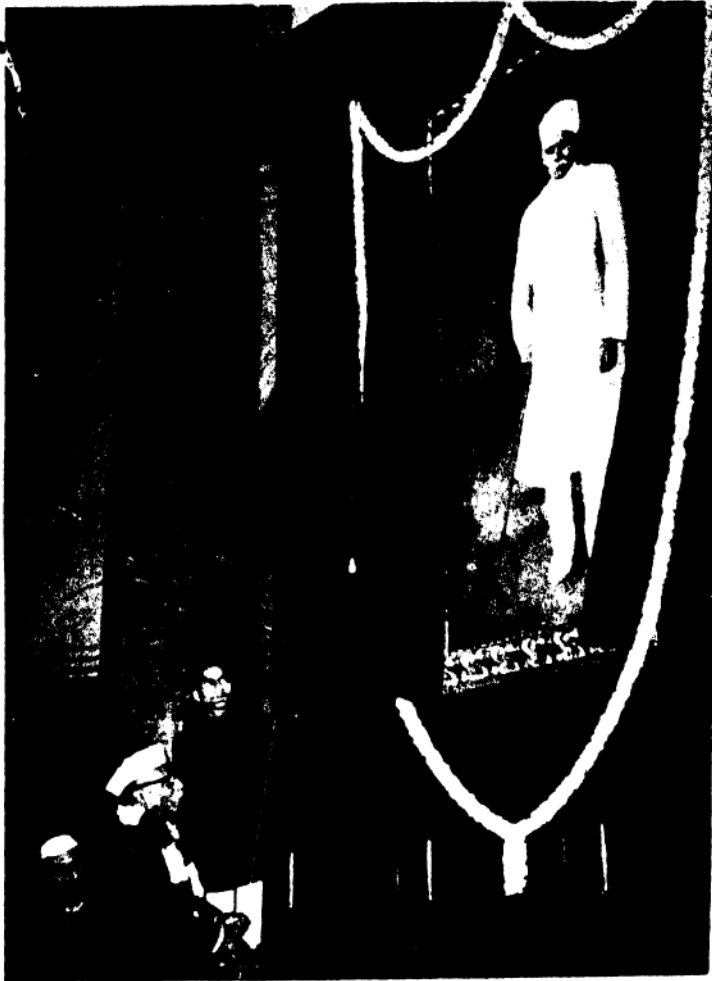
Malaviyaji was thus a pioneer and leader not only in the political field but also in the social and other fields. He used to wear spotless white clothes, and his character was also spotless and pure. He was very conscientious in his profession. Money did not mean much to him and he could devote himself to the cause of his country in several fields. He is now no more with us, but his life stands as an example for us. His memory will always inspire us, and I hope that his portrait here will prove a source of inspiration to all of us.

Chairman, Rajya Sabha: I am not speaking now as the President of the day's function, but as Chairman of the Rajya Sabha. On behalf of my friend, the Speaker and myself, I have great pleasure in accepting the portrait which has been presented to us.

The Prime Minister: Mr. President, Mr. Vice-President, Mr. Speaker, Shri Tandonji and Friends,

This hall has witnessed many historic events. Here our Constituent Assembly met and framed the Constitution of India; and here we met on the eventful 15th August, 1947, at the midnight hour to proclaim the independence of India. It is right and fitting that in this hall we should put up the portraits of the architects of that freedom.

We have already put up portraits of some of the giants of old. But I doubt if any person has a better claim for his portrait to be put up here than he whom we are honouring to-day. He has a major claim, of course, as being one of the greatest of those who laboured for the freedom of India. He has also another claim, and that is, that amongst all those who were here, he was per-



*The President unveiling the portrait of
Pandit Madan Mohan Malaviya.*

Addresses and Speeches

haps associated for the longest period with legislative work in the old Assemblies.

I used to see Malaviyaji at Allahabad when I was a boy. Later when I came back from England, I saw him working in the political field. I was very closely connected with him and served under him until the days of the martial law in the Punjab. Often I used to go to him in some torment of mind as to what we could do to further the cause of our freedom.

I remember him in innumerable ways and as a great orator. Although many aspects of his character come up before me, the one that comes uppermost is the curious mixture of his determination, gentleness and affection. Here was a man who in many ways was more representative of India and the old culture of India than perhaps most people I knew. No man can doubt his determination and his fiery patriotism and yet at the same time his extreme gentleness—a curious combination of strength and gentleness.

So, it is fitting and more than fitting that we put up his portrait here—to see that fine face which is so full of nobility, strength and gentleness; and I hope that we shall remember all these qualities whenever we look at his face and remember him, for we require all these qualities in serving India.

We put up his picture here, but his real memorials are others. There is a great University which he built up at Banaras and there is, above all, the free India which he brought into being.

So, I request you, Sir, Mr. President, to unveil this picture.

The President (Dr. Rajendra Prasad)*: Mr. Speaker, Ladies and Gentlemen,

It is a great occasion for us, who have assembled here, to revive the memory of Mahamana Madan Mohan

Malaviya. All his life, right from the time he started public work till his last breath, Malaviyaji was devoted to the cause of his country. Persons who were fortunate to work with him or at least see him working can understand his loyalty and love for his country and his sincere sacrifice as well as his other qualities.

Malaviyaji has done so much valuable work for the country that if people remember him or at least a part of his work, it will be a valuable example to them. His portrait here would inspire future members of Parliament to devote themselves to the country's cause.

Malaviyaji was like a bridge between the old and the new generations. He played an important role in bringing together the old and the new, the moderates and the extremists. His method and approach of work were such that he used to command spontaneous love and respect from everyone.

Such a great man was born amongst us and many of us were fortunate enough to see and come into contact with him. The portrait which I have now unveiled will not only remind the present members of Parliament but also their successors, inspire them and show them the way to live, work and die for the cause of the country.

The Speaker (Shri M. Ananthasayanam Ayyangar): Friends,

It is now my pleasant duty to thank Shri Purushottamdas Tandon who has presented this portrait of Pandit Madan Mohan Malaviya to the Houses of Parliament on behalf of the Mahamana Malaviya Smarak Samiti, Allahabad.

It is good for us to have the portrait of Malaviyaji right in front of the Members. It is of significance to Members of Parliament from this one point that the important problem

*Translated from the speech delivered in Hindi.

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before us is of national consolidation. Born in an orthodox Hindu Brahmin family, Malaviyaji was himself leading an absolutely pure and pious life. He never made any difference between man and man. On the other hand, he tried positively to bring about national consolidation, and on the banks of the Ganges taught the Upanishads and the *mantras* to those sections of the community who were called the depressed classes. He did his best to bring them

to an equal level with the higher classes. This is the lesson he taught us and we, every Member of Parliament, should try to follow this lesson. This is the highest tribute that we can pay to the memory of this great man.

I once again thank Tandonji and the Committee for having so kindly presented to us this inspiring portrait of Malaviyaji. I can only say that we shall try to follow in the footsteps of Malaviyaji as far as possible.

Your representative owes you his judgement and he betrays instead of serving you, if he sacrifices it to your opinion.....Authoritative instructions which the Member is bound implicitly to obey, vote and argue for—these are things utterly unknown to the laws of this land. You choose a Member indeed, but when you have chosen him he is not the Member of Bristol, but he is a Member of Parliament.

—EDMUND BURKE in his speech to his constituents at Bristol (Quoted by Woodrow Wyatt in his series "This is your Parliament" in *Everybody's* dated February 15, 1958).

Obituary References

Maulana Abul Kalam Azad

On the 22nd February, 1958, India mourned the death of one of her great patriots and fighters for freedom—Maulana Abul Kalam Azad, who was the Minister for Education and Scientific Research in the Union Cabinet. Earlier on the 19th February, he suffered a paralytic stroke which caused his death 3 days later.

A seven-day period of mourning was observed by the Government of India on the death of this scholar-statesman. Glowing tributes were paid to his memory not only by leaders of all parties in India but also from abroad. The President of India, Dr. Rajendra Prasad, speaking at a public meeting held in Delhi on the 23rd February to mourn his death, said that his life of dedication and sacrifice in the cause of the country's unity and freedom was a beacon light to the people of India.



Maulana Abul Kalam Azad

The Parliament paid homage to the departed leader on the 24th February, 1958. Speaking in the Lok Sabha on the occasion, the Prime Minister and Leader of the House, Shri Jawaharlal Nehru, referred to Maulana Azad as "a man of luminous intelligence" and said that "the peculiar and special type of greatness" which he represented was "not likely to be reproduced in India or anywhere else". The leaders of other parties and groups in the

House, Shri S. A. Dange, Shri J. B. Kripalani, Shri Jaipal Singh, Raja Mahendra Pratap and Shri V. Raju also joined the Prime Minister in his tributes to the departed statesman. In the Rajya Sabha, the Chairman, Dr. Radhakrishnan, referred to Maulana Azad as "an apostle of national unity and communal harmony" and said that

he also stood for "prominence in administration and economic progress". The Home Minister, Pandit G. B. Pant, said that "he was a great man in the true sense of the word" and that "we will not see the like of him again".

Coming of a family of learned Muslim divines who left India following the rising of 1857, Maulana Azad was born in Mecca in 1888, and spent his early years in Arabia. His father came to India, when he was ten years old and settled down in Calcutta. He

completed his studies in Arabic and Oriental Theology at the age of 14, and then travelled widely in Iraq, Egypt, Syria, Turkey and France learning European languages and literature.

In 1912, Maulana Azad started an Urdu Weekly "Al-Hilal" in Calcutta, which soon came to be widely known for its staunch anti-imperialist views. A nationalist from the beginning of his

public life, Maulana Azad came under the influence of Gandhiji and the national movement nearly 40 years ago. Since then he was in the forefront of the national struggle for freedom, participating in the khilafat and Non-Co-operation movements, the Civil Disobedience Campaign, the Quit-India movement and others, devotedly serving the country as national leader and as President of the Indian National Congress on several occasions. The last occasion he was President of the Congress was from 1940 till 1946, and in that capacity acted as the chief spokesman of the Congress Party in the negotiations with the British Government.

In January 1947, Maulana Azad joined the Union Interim Government as Minister for Education and continued to preside over that Ministry till the day of his death. His interests and activities covered the entire field of national activities and in all the great tasks to which he set his hand, he brought the impress of his great personality and his exceptional qualities.

Deeply read in the philosophies of the East and the West, Maulana Azad attracted attention in many countries besides India, by his scholarship and learning, and his writings commanded respect wherever the Urdu, Arabic and Persian languages are read or spoken. His commentary on the Koran had come to be known as an authoritative work in Islamic literature.

A true representative of the culture which has been evolved in India through contributions in many languages, religions and traditions, Maulana Azad had a profound faith in the destiny of India.

His death is a grievous and irreparable loss to the people of India. His humanism and his spirit of tolerance and devotion will, however, remain with us as an undying and inspiring memory.

• • •

Shri B. Das

We regret to report the death of Shri Bhuvananda Das, a sitting Member of the Rajya Sabha, on February 23, 1958, at New Delhi, after a paralytic stroke.

Shri Das, who came from Orissa, was born on May 14, 1885. He was educated in Cuttack and Calcutta and later went to the Glasgow University, where he took a degree in engineering. He was consulting engineer and industrial adviser to the Governments of Bombay and Orissa for some time.

Shri Das entered the old Central Legislative Assembly in 1923, and had been a Member since then, his legislative experience extending for a period of over 35 years. He was a Member of the old Central Assembly for 22 years and was the Chief Whip of the Independent Party during 1924-26 and of the Nationalist Party during 1926-34. In 1946 he was elected to the Constituent Assembly of India and continued to be a Member of the Provisional Parliament from 1950 to 1952. In the first General Elections, he was elected to the Lok Sabha from the Jaipur-Keonjhar constituency of Orissa and was a Member of the Lok Sabha from 1952 to 1957. From 1957 he was a Member of the Rajya Sabha. Having been a member of the Legislature for the longest period of time, Shri Das was called "the Father of the House".

He was a member of the Public Accounts Committee for a number of years and was also its Chairman from 1950 to 1954.

Condoling his death in the Rajya Sabha, on the 24th February 1958, the Chairman, Dr. S. Radhakrishnan, said:—

"He (Shri Das) discharged his functions (as a Member of Parliament or Member or Chairman of the Public Accounts Committee) with fearlessness and courage and with a sense of right. He could not be deflected from that part whatever may

Obituary References

be the pressure or temptation. He has left behind the example of a soul who was clinging to the paths of righteousness even in difficult circumstances."

In the Lok Sabha, the Speaker referred to Shri Das's long services

in the Legislature and his work as Chairman of the Public Accounts Committee and said that he was rightly called "the Father of the House".

Short Notes



Shri N. C. Nandi

Retirement of Shri N. C. Nandi

Shri N. C. Nandi, Deputy Secretary, Lok Sabha Secretariat, retired on the 30th November, 1957, after about 27 years of distinguished service in the Central Legislative Assembly Department and the Lok Sabha Secretariat.

Born on 1st November, 1899, Shri Nandi entered Government service as an Assistant in the Legislative Assembly Department of Assam Secretariat on 13th May, 1921, and later joined the Central Legislative Assembly Department on 27th January, 1930. He was promoted Superintendent on 14th September 1946, and Assistant Secretary on 3rd February, 1947. He became Under-Secretary on 15th April, 1952, and was promoted Deputy Secretary on 13th May of the same year. He attained the age of superannuation on

30th November, 1954 but was given three extensions of service upto November 30, 1957.

Shri Nandi was sent on deputation to organise the work of the Legislature in Himachal Pradesh, when it was created as a Part 'C' State in 1952. He performed his duties there with great distinction, and his services were highly appreciated. In 1954 his services were requisitioned by the Government of Nepal to advise and assist the Nepal Advisory Assembly in Parliamentary work. He received appreciation from the Government of Nepal for his services rendered in that country.

Shri Nandi also served as Assistant Returning Officer in the Presidential and Vice-Presidential elections held in 1952 and the Vice-Presidential election held in 1957.

He was President of the Lok Sabha Secretariat Club from 1953-54 to 1956-57 and President of the Lok Sabha Secretariat Co-operative and Thrift Society besides holding several *ad hoc* assignments connected with the Secretariat from time to time.

At a farewell function arranged in his honour by the staff of the Lok Sabha Secretariat on the 29th November, 1957, in which the Speaker and the Deputy Speaker took part, the Secretary, Shri M. N. Kaul, referred to the various qualities of Shri Nandi and mentioned how by dint of hard and patient work, mastery of the subject of Parliamentary procedure, devotion to duty and loyalty to the institution, he rose to the position of Deputy Secretary. Shri Nandi, Shri

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Kaul mentioned, was a good and trusted friend, a pleasant companion and a gentleman of unassuming disposition and simplicity.

The Speaker and the Deputy Speaker also spoke highly of the services rendered by Shri Nandi at the Table and the unfailing courtesy and readiness with which he attended to all the Members who approached him for guidance on various matters of Parliamentary procedure.

Another function was also held in his honour on the 30th November, 1957, by the Members of the Lok Sabha. A silver salver was presented to him by the Members in appreciation of his services, and several Members including the Speaker and the Deputy Speaker spoke highly of the efficiency, the unfailing courtesy and patience with which Shri Nandi discharged his duties.

Summons

SPEAKER NOT TO BE MADE AN AGENT FOR SERVING SUMMONS ON MEMBERS: RULING BY THE SPEAKER OF THE MYSORE LEGISLATIVE ASSEMBLY.

On the 5th October, 1957 the Speaker of the Mysore Legislative Assembly gave the following ruling with regard to the sending of Court summons to the Speaker to be served on the Members of the Assembly:

"..... The Munsiff of a certain Court has sent to me a summons to be served on two Hon. Members of this House. A similar summons has been sent by the same Munsiff to the Secretary also.

According to the practice in the House of Commons, which is applied to this House also under the Constitution, sum-

mons should not be served within the precincts of the House. Evidently, the Munsiff is not aware of the breach of privilege involved. As observed by the Speaker of the Madras Assembly in a similar case*, the Speaker should not be made an agent of the Court for serving summons on Members."

* * * *

Increase in Salaries and Allowances of Members of Parliament and Ministers in U. K.

On the 4th July, 1957, the Prime Minister, Mr. Macmillan, made the following statement in the House of Commons**.

"..... The Government have decided to propose to the House that the total emoluments of the hon. Members of this House should be increased to £1750 a year. The basic salary would remain unchanged at its present level of £1000..... The Government consider it appropriate to add to it a sum of £750 which will take the place of the present sessional allowances.†

"Like the basic salary, this sum will be liable to tax. Hon. Members will be entitled, as hitherto, to claim that, before assessment of tax, the expenses incurred in the discharge of their parliamentary duties shall be deducted from their gross emoluments of £1750. The Resolution necessary to give effect to these proposals will be moved in the near future.

"The Government propose also to deal with the reimbursement of expenses incurred by noble Lords other than Ministers in their attendance in another place..... The only assistance which Members of the other House at present receive is free rail travel to Westminster.

"The Government now propose to allow Members of the other House to claim a reimbursement upto a maximum of £8-3 sh. for each day of attendance. This payment will be a reimbursement of actual expenses arising out of unpaid service and will, therefore, not be liable to tax. The House will be asked to agree

*Cited in Vol. I, No. 2 (October 1955) issue of this Journal, p. 168.

**A note on Members' Salaries and Allowances in U.K. appeared in the Journal of Parliamentary Information in Oct. 1955 issue (Vol. I, No. 2, pp. 115-116) and another in October 1956 issue (Vol. II, No. 2, pp. 169-171).

†Introduced in July 1954, vide proceedings of the House of Commons, dated 6-7-1954.

to a Resolution authorising this new payment.

"The Government have also decided to increase the emoluments of certain Ministers. The Government propose that the salaries of Parliamentary Secretaries at £1500 should be increased to £2500 and that salaries of £3000 should be increased to £3750. The Government are taking this opportunity to propose that the Financial Secretary and the Economic Secretary to the Treasury should be remunerated on the level of Ministers of State.

"There are a number of salaries of less than £1500 and these will be raised by £1000. Salaries of £5000 or above will not be increased. At present, Ministers in the House of Commons whose salaries are less than £5000 are entitled to draw £500 of their parliamentary salary. It is proposed that in future all Ministers in the House of Commons shall, whatever their salary, draw £750 of the total parliamentary remuneration in addition to their Ministerial salaries. Since these changes generally will require legislation, a Bill will be introduced as soon as possible.

"It is proposed to increase the salaries of the Chairman of Ways and Means in this House and the Chairman of Committees in another place to £3250 and that of the Deputy Chairman of Ways and Means to £2500; and also by agreement to increase the salary of the Leader of the Opposition to £3000. The Government also propose that the Chairman & Deputy Chairman of Ways and Means and the Leader of the Opposition should be entitled to draw £750 of the gross parliamentary remuneration instead of £500 as at present. A similar provision would seem to be appropriate in your case, Mr. Speaker.

"A convenient date for these changes in emoluments & salaries would seem to be 1st July (1957)."

Subsequently on July 9, 1957, the Secretary of State for the Home Department and Lord Privy Seal, Mr. R. A. Butler, moved the following resolution in the House of Commons:

"That, in the opinion of this House, it is expedient that provision should be made, as from the first day of July, nineteen hundred and fifty-seven—

(a) for the payment to members of this House (in lieu of the salaries payable pursuant to the Resolution of this

House of 29th May, 1946, and of the sessional allowances for expenses) of the following salaries and allowances, that is to say—

(i) in the case of all members except officers of this House, members in receipt of a salary as holders of Ministerial office within the meaning of section two of the House of Commons Disqualification Act, 1957, and members in receipt of any other salary payable under the Ministers of the Crown Act, 1937, or of any pension payable under that Act, a salary at the rate of one thousand pounds a year; and

(ii) in the case of all members, an allowance in respect of their Parliamentary expenses at the rate of seven hundred and fifty pounds a year;

(b) for enabling members of the House of Lords (except the Lord Chancellor, the Lord Chairman of Committees and any member in receipt of a salary as the holder of a Ministerial office within the meaning of the said section two or of a salary payable out of moneys provided by Parliament under the Ministerial Salaries Act, 1946) to recover out of sums voted for the expenses of that House (in addition to the costs of travel for which provision is made pursuant to the said Resolution of this House) any expenses certified by them as incurred for the purpose of attendance at sittings of that House or of Committees of that House, other than sittings for judicial business, within a maximum of three guineas for each day of such attendance."

The question was put and agreed to.

The Ministerial Salaries Bill to make further provision for the salaries of Ministers, according to the statement made by the Prime Minister, was introduced in the House of Commons, on the 5th July, 1957, and passed unanimously on 11th July, 1957.

Press and Parliament: Views of Sir Hartley Shawcross *

Speaking on October 25, 1957, at the annual dinner of the London District Institute of Journalists at the Vintners'

*Reproduced from *World Press News*, November 1, 1957 by the courtesy of the Editor.

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Hall, London, on the subject of Press and Parliament, Sir Hartley Shawcross, M.P., former Attorney-General of Great Britain said:

"We (the Press and Parliament) are both inclined to get squeamish about what the other says about us. But in spite of the rules of Parliamentary privilege, the Press has the better of it.

"The politician's function is to put forward proposals, to present policies. Yours to examine and criticise them. A free Press, acting fairly but fearlessly, is an essential part of a free society.

"Press criticism should be fair. It is bad for democracy to impute evil motives and to denigrate the institutions of the country. But equally it must be courageous.

"And so I would say, do not allow yourselves to be mealy-mouthed or silent, because of any fear of Parliamentary privilege. It is not a breach of privilege to voice criticisms, however

severe, with robustness and courage, provided they are fair and not malicious.

"Now, as a Member of Parliament, I have sometimes felt anxiety about the way in which we have used the rules of Parliamentary privilege in these post-war years.

"I am told that, statistically, there has been about four breaches of privilege cases every year since the War, as against an average of only one per year before the War.

"Parliament must not be too touchy. It is important also that where a privilege case does arise, it should be treated judiciously and in no sense as a party matter.

"That should be a departure from our tradition, but I am sure it would be pressed, if Parliament were to become too sensitive and uses its procedures in an oppressive way. But the real point is that both critics and politicians should be fair and tolerant."

Membership of the House of Commons is becoming more and more a whole-time occupation. The private member can expect to have little individual influence unless he devotes substantially all his time, usually until late at night and to the exclusion of other, and even of family interests to the various duties of a member and to attendance at the House.

—Sir HARTLEY SHAWCROSS, M. P. (Quoted in the *Hindustan Times*, dated 15th March, 1958).

Effect of Dissolution upon Pending Business in Parliament

By M. N. Kaul

Secretary, Lok Sabha

DISSOLUTION brings a legislative body to an end. It terminates the life of the assembly. It must be followed by a new House. Prorogation, on the other hand, only terminates a session and does not preclude another session, unless it is coincident with the end of the legislative term. In other words, prorogation, unlike dissolution, does not affect the life of the legislative body which may continue from session to session until brought to an end by dissolution. Although the import of dissolution, as distinguished from prorogation, is well understood, the effect of the two upon pending business in Parliament varies from country to country.

Position in the U.K.

Prorogation in the United Kingdom, in addition to bringing a session of Parliament to a conclusion, puts an end to all pending business. In short, prorogation passes a sponge over the Parliamentary slate. All proceedings before either House or any of its Committees are quashed except impeachments by the Commons and appeals before the House of Lords.* All pending Bills, including those passed by both Houses and awaiting the royal assent, lapse and have to be renewed in the next session, as if they were introduced for the first time.** Private Bills are sometimes permitted by a special provision to start in the new session at the stage reached in the pre-

vious session. Committees cease to exist and have to be re-appointed in the new session. An order of the House committing a person to prison does not remain in force beyond prorogation. Resolutions of the House generally apply only to the session in which they are passed (unless they are expressly passed as 'standing orders'), and, if not so passed but intended to have continued force, are voted again every session.† There are, however, some Resolutions, voted on a single occasion, but without any definite limitation of time, which the House continues to regard as being effective.

Dissolution does not bring with it any special or additional consequences in the U.K. apart from those that attend upon prorogation; nor is it reckoned as a distinct factor even at the time of redemption of business from the omnibus rule of lapsing.

Position in other Parliaments

Similar effects attend upon prorogation in many other Parliaments. In some of them, however, dissolution is specially distinguished when it comes to saving of business from lapsing.

The practice in Canada and Ceylon is analogous to that in the United Kingdom. The position is similar in Ireland also where S.O. 102 of the Standing Orders of the Dail Eirean specifically provides that any Bill, which lapses by reason of the termination of a Session,

*May, p. 32.

**May, p. 265.

†Campion, p. 105.

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before it has reached its final stage, may be proceeded with in the next ensuing session at the stage it had reached in the preceeding session, upon resolution of the Dail restoring it to the Order Paper.

Australia and South Africa also follow the rule of the English Parliament with one difference that in these countries Bills lapsing on prorogation may be restored to the Order Paper in the following session *only* if a periodical election for the Senate or a general election of the Lower House has not intervened.*

The principle that business pending before a House cannot be carried beyond the life of that House, into a new House, would seem to be well recognised in these countries.

In the U.S. Congress business pending at the end of a session** is differentiated from business pending at the end of a Congress, for the purpose of survival. In the early years, the Congress would seem to have followed the rule of the English Parliament that business unfinished in one session should begin anew in the next, but now business goes on uninterruptedly until the term of Congress has expired. Under the current procedure, unfinished business before the House or any of its Committees at the end of a session may be resumed at the commencement

of the next session of the same Congress.† The House may even empower a Committee to sit during a recess provided it is within the constitutional terms of the House, but not thereafter.‡ The business of conferences between the two Houses is not interrupted by an adjournment of a session which does not terminate the Congress. In substance, the present U.S.A. procedure takes note of the implied differences between the termination of a session and the termination of the legislative body itself by dissolution.

The procedure in France reflects the same trend. In the National Assembly, Bills do not lapse at the end of each session, but only on the dissolution of the Assembly. In the Upper Chamber (Council), a continuing body, there is no lapse of any pending matter at any time.

Position in India

In India the demarcation between the effects of prorogation and dissolution upon pending business is very distinct. The effects commonly associated with prorogation in the United Kingdom do not attend upon prorogation in India but only follow a dissolution. Even the earliest Rules and Standing Orders made this position clear. In the Old Central Legislature,

*See S.O. No. 262 of the Standing Orders of the House of Representatives (Australia) and S.O. No. 187 of the Standing Orders of the House of Assembly (South Africa).

**In the U. S. Congress, although the practice of marking off of sessions exists, there is no prorogation, as such, bringing each session of the Congress to a close—(See Sec. 590 Jefferson's Manual).

†See Sec. 901, Jefferson's Manual.

‡See Section 589, Jefferson's Manual.

§There is evidence of very early recognition of this difference by the Congress. In the early days, following the rule of the English Parliament, all orders of the House expired with the session and a person taken under such an order could be discharged after the session ended, on a *habeas corpus*. Jefferson (Section 386) mentions of an instance in 1870 when one Patrick Woods who was guilty of assault of a member was committed for 'a term extending beyond the adjournment of the session, but not beyond the term of the existing House' — (See section 386 Jefferson's Manual).

by specific provision,* all pending Bills (including notices of Bill) were saved and only pending notices (other than notices for introduction of Bills) lapsed on prorogation. In practice, actually every other pending business (e.g., motions, resolutions, amendments etc., moved and pending before the House), including business before Committees and the Committees themselves, survived. On the other hand, dissolution brought with it drastic results, and although the rules mentioned about the lapse of Bills only** every other kind of business, at whatever stage, also stood quashed.

The Constitution of India retains the distinction between the effects of prorogation and dissolution all along known to the Indian Legislature.

Even now, in the Indian Parliament, upon prorogation only pending notices (other than notices of Bills) lapse, while all other business survives. Clause (3) of Art. 107 expressly saves all pending Bills before either House from lapsing on prorogation. Under this provision, Bills before Select/Joint Committees are also deemed protected.† Business other than pending Bills which had survived in the past in the Central Legislature is saved by specific provisions made in the "Rules of Procedure and Conduct of Business in Lok Sabha" which have been made under

Art. 118 of the Constitution. Thus, pending motions, resolutions and amendments are protected by rule 336 of the Rules of Procedure and Conduct of Business in Lok Sabha. Under rule 284, business pending before Committees does not lapse by reason of prorogation and the Committees may continue to function notwithstanding such prorogation.‡ Rule 335§ provides for the time-honoured saving in respect of notices of Bills. Under this last mentioned rule, therefore, all pending notices, other than notices of intention to move for leave to introduce a Bill, lapse on the prorogation of the House.

The consequences of a dissolution, on the other hand, are absolute and irrevocable. In the Indian Parliament, only Lok Sabha is subject to dissolution, the other House (Rajya Sabha) being a continuing body not subject to dissolution. The Constitution accordingly lays down expressly the effects of dissolution upon Bills pending before each House, in the event of dissolution of Lok Sabha. Under Art. 107, all Bills pending in Lok Sabha, whether originating in that House or transmitted to it by Rajya Sabha, lapse upon dissolution. Even Bills passed by Lok Sabha, but which have not been disposed of and are pending in Rajya Sabha on the date of dissolution, lapse.

*See S. O. No. 4 of the Standing Orders of the Central Legislature, made under the Government of India Act, 1919.

**Rule 36C of the Indian Legislative Rules provided as follows:—

"On the dissolution of either Chamber all Bills which have been introduced in the Chamber which has been dissolved or have been laid on the Table under Rule 25 and which have not been passed by the Indian Legislature shall lapse."

†On a point of order raised in Lok Sabha, the Speaker held that the reference to 'pending Bills' in Art. 107(3) must be construed to mean all stages of such Bills and therefore Bills before Select/Joint Committees were also protected—See L. S. Deb., Pt. II, dated the 28th July, 1956.

‡A feature of the Indian Legislature is that parliamentary committees remain unaffected by prorogation and even continue to function when the House itself is not in session. With regard to such functioning of Committees during recess, it has been held that the parent body can by its procedural rules authorize the Committees to so function.

§This rule goes back to S. O. No. 4 of the Standing Orders of the Central Legislature which later also continued as rule 106 of the Rules of Procedure of the Constituent Assembly of India (Legislative).

Effect of Dissolution upon Pending Business in Parliament

On the other hand, Bills, which have originated in Rajya Sabha and are pending before that House, do not lapse. Bills upon which the House has disagreed and in respect of which the President has notified his intention of summoning a joint sitting of the Houses under Clause (5) of Art. 108 stand on a separate footing and are saved from lapsing upon dissolution of Lok Sabha.

There is no express provision in the Constitution re: the effect of dissolution on a Bill which has been passed by the two Houses of Parliament and sent to the President for assent. On the analogy of the practice in the British House of Commons, such a Bill should

be treated as having lapsed on the dissolution of the Assembly if it has not been assented to before the dissolution of Lok Sabha.

All other business, pending before the House or any of its Committees, lapses on dissolution. Committees themselves (which otherwise function even during the recess of the House) now stand dissolved.* The House ceases to exist as an entity and it is held that no part of the records of the dissolved House can be carried over and transcribed into the registers of the new House.† In short, dissolution draws the final curtain upon the House.

*Committees unable to complete their work before dissolution are required to report accordingly under Rule 285 which also enables any evidence taken or other papers received by these committees being made available to any new committee that may be appointed by the new House.

†See Proceedings of the Conference of the Committee of Secretaries of Legislative Bodies in India held at Hyderabad in March, 1957.

Some Suggestions for Improved Budgetary System in Various Countries*

By S. L. Shakhder

Joint Secretary, Lok Sabha Secretariat

A COMPARATIVE study of budgetary systems in the various countries reveals that there is adequate parliamentary control over the State finances. The mechanism for control is more or less the same in almost all countries with some variations.

Parliamentary Control in Different Countries.

Broadly speaking, countries which follow the Commonwealth parliamentary system attach more importance to control by the House as a whole before the Budget is passed, to a detailed and comprehensive study of a few selected items of estimates of expenditure and a detailed and thorough examination of the expenditure which has been incurred, by its Committees.

Countries which follow the Continental system place more reliance on Committee system, and Budget is scrutinised in greater detail in Committees, before it is passed by Houses, and there is little control over the expenditure after it has been incurred.

In most countries parliamentary scrutiny is not exercised over the correctness of the collection of revenues, taxes, etc.

In some countries which have a bicameral system, Budgets are presented to both the Houses, and in Italy, Belgium, Switzerland and USSR both

the Houses enjoy equal powers in regard to passing of Budgets.

We have reached the present system of parliamentary control over State finances by a process of evolution. Parliaments in all countries have always been alert that the Executives come before them for grant of supplies and imposition of taxes. Parliaments have established the right of making known their criticisms before they have voted supplies or sanctioned taxes. Parliaments grant these powers for limited periods, thereby ensuring that Executives come before them from time to time. This procedure provides for automatic and continuous opportunities for Parliament to ventilate its grievances, make known its policies and enforce economies as far as possible.

Need of the New Age.

We are, however, moving into a new age—the Nuclear Power age. The administration is becoming more complex and science is creeping into every artery of administration and Parliament. Unless, therefore, the Parliamentary system adapts itself to new environments it may lag behind and conflicts may arise.

The present criticism of democratic machinery is that (i) it is dilatory and (ii) its influence is so general and broad that it produces little impact on the administration. To a certain

*Address delivered by the author at the meeting of the Secretaries-General of Parliaments held in London on the 17th September 1957 while introducing his final report on the Budgetary System in various countries (Printed separately).

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extent these criticisms have been real. In the new age things have to proceed with great speed and there must be complete comprehension of the issues involved and there must arise in Parliaments inherent capacity to solve the issues in a most efficient manner. When discussing parliamentary control over State finances one has to keep both these points in view and so mould the system that parliament's supremacy remains pre-eminent and it moves forward with the temper of times.

Development Budget

At present in almost all countries Budgets are passed from year to year. This is understandable because Parliaments do not want to give unlimited financial powers to the Executive. They want to subject the Executive to close scrutiny from year to year and to bring to light any cases of mal-administration, mismanagement or other public grievances. During recent years, however, Governments under the direction of national parliaments have taken greater interest in the economic well-being of the people. This tendency to associate administration with the economic activities of the country has materially changed the concept of administration. Governments plan for the total economic development of the country and in the modern set-up when management of industry has become so complex and colossal projects are being built, the period of one year has consequently become very short in which any project of consequence can be completed. Governments have, therefore, felt the need of spreading the financing of projects over a number of years depending upon the magnitude of projects and the period within which they can be completed. Sometimes the period runs into several years. It is, therefore, for consideration whether in the case of expenditure on development which is spread over a number of years, Parliament should be called

upon to sanction lump provision or block grants for the completion of projects irrespective of the period during which they are constructed or completed. This will ensure continuity of finance for a project which has been started in a given year but which may be completed in later years and keeping it immune from the effects of political changes in Parliament. Of course, Parliament will be free to discuss from time to time the proper spending of the expenditure and whether it has been incurred on legitimate purposes and whether spending has been kept to the planned phasing of the project. Such a Budget may be called Development Budget and may be kept apart from the normal administrative Budgets which may be sanctioned from year to year.

Performance Budget

At present Parliaments have no machinery whereby they can ensure that the results intended to be achieved once a Budget is sanctioned have in fact been realised. They depend mostly on the administration for such reports as it may make to Parliament. In order to have an effective control over the spending of Government and to see that the monies have in fact been spent for the purposes for which they are intended and full values have been obtained, it is necessary that Parliament should rely on some independent organization which should report to it on such matters. An organization on the lines of the Comptroller and Auditor-General's Office may be suitable. This organization should have under its control independent investigators and valuers who should evaluate the programmes and report to Parliament on their findings. Such a programme evaluation organization may be mainly concerned with the following:--

- (i) Whether monies have been spent for the purposes for which they are intended;

- (ii) Whether results have been achieved within the time laid down and at minimum cost; and
- (iii) Whether full value of the money has been obtained.

This will go a long way in establishing firm control of Parliament over the finances of the country.

Scrutiny of Estimates by Committees of House

Parliaments during discussions of Budget raise questions of policy or bring to notice local grievances. Such debates do not show any real scrutiny of Budgets from the point of view of accurate and economic estimates. Indeed it may not be possible to do so in a general debate in the House. It is, therefore, necessary that some machinery should be devised whereby the estimates prepared by Governments are checked by Parliament. One course that suggests itself is appointment of committees of Parliament to probe into the estimates. Committees should be appointed for each class of expenditure either Ministry-wise or subject-wise as may be convenient. There should be a large number of Committees in order that a large number of subjects is covered at the same time. The membership of the Committees should be flexible—i.e. the Committees should not be appointed by any one or elected. It should be open to any member to go into any Committee he likes and there should be no restriction on the number of members attending the Committee. Only a minimum number may be specified. Such Committees should examine the Budgets on particular subjects in detail and record their findings thereon. This should be done before the Budgets are passed in Parliaments. Therefore a time limit on their work should be laid down so that the reports are ready by the time the House takes up Budgets for discussion and passes them. It is possible that the Committee system is already

being followed in some countries of Europe and particularly in the U.S.A.

Under the Commonwealth system, an Estimates Committee is appointed which selects a few estimates for the year and scrutinizes them thoroughly. This examination covers questions of organization, methods of work, appointment of officers and staff, and other allied matters. The scrutiny thus is intensive in character.

Public Undertakings

As has been stated above, Governments are taking more direct interest in the economic activity of the country. Therefore many projects and undertakings are run by Governments themselves. As this has been a comparatively recent development, Parliaments have not yet laid down limits of their control over the affairs of these public undertakings. Broadly speaking, Parliaments have refrained from looking into the day-to-day administration of the undertakings and have confined themselves to broad questions of policy and principles. It is obvious that the position has not yet crystallised and frequently opinions are expressed in Parliament that something more is required to be done. Piecemeal suggestions are made and reforms have been introduced, notably in the U.K. to strengthen Parliament's control over the public undertakings; but how far they have succeeded or will succeed in the future remains yet to be seen. This problem is also engaging the attention of other Parliaments, particularly in countries where Government is taking more and more interest in the establishment of State undertakings. Normally, the result of any State undertaking can only be judged by the state of its financial affairs. It is, therefore, necessary that Parliaments should concentrate attention on the working of the State undertakings. There should be closer scrutiny over the financial working of these undertakings. Thus it will appear that questions relating to

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examination of Profit and Loss Account, Balance-sheet, Cost Accounts, etc. should be looked into more carefully by Parliament through its specialised committees. The management of these public undertakings should be directly answerable to them and any information required by such committees should be made available to them. The Committees should make reports periodically to Parliament and Parliaments should discuss questions of policy while leaving details to be settled by the Committees.

Control of Public Accounts

In many countries when the expenditure has been incurred, it is audited by independent organisations and their reports are laid before Parliament. Parliaments then appoint Committees to examine such reports and to investigate cases of irregularities, infructuous expenditure, losses, etc. Experience has shown that these reports are made to Parliament a long time after the event and parliamentary committees take their own time in making their reports. In the olden days when there were set patterns of administration and Governments were mostly concerned with maintenance of law and order and running certain essential services only, such belated decisions did not do much harm; but now that the Governments are taking more interest in the economic activities and there is keener competition, such belated decisions create a lot of difficulties and tend to reduce the efficiency and morale of the administrative services. It has been frequent-

ly reported that those who are responsible for taking decisions are afraid of taking responsibilities lest some time later they should be called upon to explain their conduct in the light of circumstances not existing at the time of taking decisions but in the atmosphere of post-event. The result is that there are delays, procedural procrastination leading to wastes, etc. It is, therefore, necessary that in the present set-up expeditious methods should be devised whereby the reports of the Auditor-General are brought before Parliaments immediately after the event, and Committees of Parliament examine such reports immediately thereafter. For this purpose the audit reports should be made concurrently during the year and not deferred till the end of the year or much later than that. Parliament should not be saddled with technical and minor details, but matters of importance or those affecting any execution of policy or principles should be immediately brought forward even though the full audit has not been made, so that Parliament is seized of any irregularity or mis-spending while in the process and not after the event.

There should be scrutiny over the correctness of the collection of revenues, i.e. whether full amounts as imposed by law have been collected, that there has been no large-scale evasion or fraud or depletion of revenue from any other cause. For this purpose the Committee of Parliament which scrutinizes the expenditure may also be entrusted with this function. ✓

Process for the Withdrawal of a Motion under Discussion*

THE procedure regarding the withdrawal of a motion under discussion is as follows:—

(1) A member who has made a motion may withdraw the same by leave of the House.

(2) The leave shall be signified not upon question but by the Speaker taking the pleasure of the House.

(3) The Speaker shall ask: "Is it your pleasure that the motion be withdrawn?" If no one dissents, the Speaker shall say: "The motion is by leave withdrawn". But if any dissentient voice be heard or a member rises to continue the debate the Speaker shall forthwith put the motion.

(4) In case an amendment has been proposed to a motion, the original motion shall not be withdrawn until the amendment has been disposed of.¹

Practice in the House of Commons.

Rule 339 of the Rules of Procedure of the Lok Sabha is based on the practice in the British House of Commons which has been stated by May as follows:—

"The Member who has proposed a motion can only withdraw it by leave of the House, granted without any negative voice. This leave is signified, not upon question, as is sometimes erroneously supposed, but by the Speaker taking the pleasure of the House. He asks, is it your pleasure that the motion be withdrawn? If no one dissents, he says, 'The motion is by leave withdrawn': but if any dissentient voice be heard, or a Member rises to continue the debate, he must put the question at the end of the

debate as the motion cannot now be withdrawn even though the dissentient subsequently signifies, that he has no longer any objection to that course. An amendment cannot be withdrawn in the same way but neither a motion nor an amendment can be withdrawn in the absence of the Member who moved it. Occasionally a motion or amendment is, by leave withdrawn and another motion or amendment substituted, in order to meet the views of the House, as expressed in debate; but that course can only be taken with the general assent of the House. Where an amendment has been proposed to a question, the original motion cannot be withdrawn until the amendment has been first disposed of by being agreed to, withdrawn, or negatived as the question on the amendment stands before the original question."²

Practice in the General Assembly

Although Rule 339 was incorporated in the Rules of Procedure of Lok Sabha in 1950 immediately after the commencement of the Constitution the procedure referred to above has been followed in the Central Assembly consistently from a very early date as will be evident from the following debate in the second Central Assembly.

On the 27th February, 1925, during the discussion on Demand for Grants—Railways, Shri K. Rama Aiyangar moved his cut motion to the following effect:

"That the Demand under the head 'Working Expenses: Administration' be reduced by Rs. 37 lakhs."

After the discussion was over Shri Aiyangar sought leave of the House to withdraw the cut motion. The motion was by leave of the House withdrawn. Thereupon Pandit Motilal Nehru enquired of the President as to why the

*Prepared by the Legislative Branch, Lok Sabha Secretariat.

(1) Rule 339 of the Rules of Procedure of Lok Sabha.

(2) May, 16th Edition, p. 407.

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motion had not been put. The President observed:

"The Honourable Member does not seem to be aware that when leave is asked to withdraw a motion, unless it is objected to, the motion is automatically withdrawn."

When Pandit Motilal Nehru said that he had said 'No' when leave was asked, the President remarked:

"I must regret I did not hear that. When I put the request for leave to withdraw, the Honourable Member did not rise in his place in order to say 'No'; otherwise I should have seen him and the matter would have gone to a division. Where leave is refused, then the decision on the motion must rest with the House. But where leave is not refused the reduction proposed is automatically withdrawn."

At the close of the day, the President made the following announcement for the benefit of Members:—

"Before I adjourn the House I think I should perhaps offer a word of explanation regarding the course which I took in putting the request for leave to withdraw a motion. The Parliamentary practice is that when an Honourable Member, having moved a motion, rises to ask leave to withdraw, if that leave is objected to in the House of Commons the question is put forthwith without further debate, and I propose to follow that course here. . . . It so happens that never before has a request for leave to withdraw been objected to, and I did not actually hear Pandit Motilal Nehru when he rose in his place. Therefore, I want to make quite clear the procedure I adopt, and that I propose to adhere to, unless in good time the Select Committee on the Standing Order should take another view, which it is perfectly entitled to take."

Who can withdraw a Motion

In accordance with sub-rule (1) of rule 339 of the Rules of Procedure of Lok Sabha 'A member who has made a motion may withdraw the same by leave of the House'. It is thus clear that only the member who has moved a motion, and no other

member, can ask for withdrawal of his motion.

In the House of Commons under special circumstances a seconder of a motion was permitted to withdraw his motion.

On the 8th December, 1943 Sir Alexander Russell moved an amendment to the motion of thanks on the King's Speech with the following observation:—

"This amendment would have been moved by my hon. and gallant Friend the Member for North Newcastle (Sir C. Headlam). Unfortunately, through illness, he is absent from the House, and, in undertaking the task, I am sure the House will join with me in expressing the hope that he may have a speedy recovery. . . ."

Mr. Donald Scott while seconding the amendment observed:

"I am sure the House will join with me in expressing our sympathy with our hon. Friend and will regret very much that he feels unable to carry on. . . ."

At the end of the discussion of the amendment, Mr. Scott who had seconded the amendment sought to withdraw the same with the following observation:—

"My hon. Friend who is indisposed has authorised me to beg to ask leave to withdraw the amendment."

Time for Withdrawal of Motion

In Lok Sabha it would appear that a motion may be withdrawn even after it has been put to the House and a division called but before actual division takes place.

On the 20th April, 1950, during the discussion on the Representation of the People Bill, a division on an amendment by Shri H. V. Kamath was called but before the House actually

(3) L. A. Deb., 27-2-1925; pp. 1714-15 & 1734.

(4) H. C. Deb., 1943-44; Col. 395 (cc. 1041, 1074).

divided, Shri Kamath wanted to make some change in his amendment. The Speaker thereupon observed:—

"The hon. Member seems to be under some confusion. The wording of the amendment is: 'There shall be set up by the Speaker.....' In place of that what the hon. Member wants now is 'elected by Parliament in such manner as the Speaker may direct'. This is a new amendment. If he wants to move this amendment in place of his previous amendment, over which a division was challenged, I shall give him an opportunity of withdrawing that amendment. If he then wants to move this new amendment, I shall allow him to do so."

Shri Kamath then withdrew his first amendment by leave of the House.⁵

On the 5th March, 1952, in the House of Commons, when a motion moved by Mr. Victor Yates was under discussion, the Parliamentary Secretary to the Treasury moved the closure. After the question had been put, Mr. Yates asked leave to withdraw the original motion. The Speaker, however, did not accept the request for the withdrawal of the motion at that stage.⁶

Restrictions on Withdrawal of Motion

The right of a member to withdraw a motion is not absolute and unrestricted. It has been held that a clause of a Bill cannot be withdrawn. The Bill is introduced as a whole and a member cannot withdraw a clause after having placed the whole Bill before the House.

Normally, whenever, a clause has to be omitted from a Bill, it is put to the vote of the House and negatived. An amendment to omit the clause is not in order since the motion before the House always is that a clause stands part of the Bill. It is only when this motion is adopted that a clause stands part of the Bill.

There is a further restriction in asking for leave to withdraw a motion, viz., no speech is allowed on a motion while asking for leave to withdraw it. The following ruling of the President, Legislative Assembly, regarding withdrawal of a resolution, is cited in this connection.

On the 20th September, 1957 Shri Ram Narain Singh, asking for leave to withdraw his Resolution regarding manufacture and sale of Khadi, proceeded to make a speech.

The President ruled that he was not entitled to make a speech on a motion asking for leave to withdraw his resolution.⁷

Leave of the House for Withdrawal of Motion

A motion can be withdrawn by 'leave of the House'. Leave is signified not upon question but by the Speaker taking the pleasure of the House.

The question whether a request for leave to withdraw a motion should be decided by vote of the House or whether a single dissentient voice necessitated the putting of the motion which it was sought to withdraw, was discussed at the Conference of Presiding Officers held in January, 1923. Relevant extract from the minutes of the Conference is given below:—

"He (the Chairman Sir Alexander Muddiman) mentioned that in the Council of State he had always taken the latter view, which was in accordance with House of Commons practice and which rested on the principle that when once a question had been brought before the House by the moving of a motion, it was the right of every member to obtain the decision of the House thereon. It was for this reason that he always used the formula 'Is it your pleasure that Mr. Blank have leave to withdraw his motion.' The Conference unanimously agreed that this was the correct procedure and it appeared that it had in fact been followed by the President in all the

(5) Parl. Deb., Pt. II, 20-4-1950, p. 3079.

(6) H. C. Deb., 1951-52, Vol. 497 (Col. 612-13).

(7) L. S. Deb., 20-9-1927 (p. 4659).

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provincial Councils in which there had been instances of an application for leave to withdraw being challenged."⁸

The question again came up before the Conference of Presiding Officers held in January, 1938. The Chairman of the Conference (Sir Abdur Rahim) observed that the practice that had been followed in the Central Assembly was a sound one and it was also the practice in the House of Commons. That is to say, if there was any dissentient voice, withdrawal should not be allowed.⁹

Sub-rule (2) of Rule 339 lays down that if any dissentient voice is heard, the Speaker shall 'forthwith' put the motion. Thus the practice in Lok Sabha is that when objection is taken to the withdrawal of a motion, the substantive motion is forthwith put to the House.

Procedure for Withdrawal of a Motion to which Amendments have been moved

The proviso to sub-rule (2) of rule 339 of the Rules of Procedure of Lok Sabha lays down that—

"If an amendment has been proposed to a motion, the original motion shall not be withdrawn until the amendment has been disposed of."

Three recent instances of withdrawal of motions in Lok Sabha are given below :—

(i) During the sixth Session of Lok Sabha, Shri Shree Narayan Das moved a resolution regarding the appointment of a Committee to enquire into the working of the existing administrative machinery and methods at the Centre. The resolution was discussed for 4 hours and 26 minutes on the 2nd, 4th and 30th April, 1954. While concluding his reply to the debate on the 30th April, 1954, Shri Shree Narayan Das sought leave of the House to with-

draw his resolution in view of the assurances given by the Government. The Chairman observed that before the Member finally withdrew his Resolution there were certain amendments to be disposed of. Out of 6 amendments which had been moved 2 were negatived and 4 withdrawn by leave of the House.

Thereafter the Chair sought the pleasure of the House regarding withdrawal of the resolution of Shri Shree Narayan Das, and Shri C. P. Gidwa dissented. Thereupon the Chair put the Resolution to the vote of the House which was negatived: Ayes 34; Noes 117.¹⁰

(ii) A recent instance which occurred in Lok Sabha regarding withdrawal of amendment to a resolution is given below :—

On the 2nd August, 1957, during the discussion in Lok Sabha on the resolution regarding discontinuance of grant of scholarships to students on community basis moved by Shri Bibhuti Mishra, the Prime Minister observed that the Government were unable to accept the resolution and suggested to the mover not to press his resolution. The mover of the resolution, Shri Bibhuti Mishra, agreed to withdraw it. As certain amendments were moved to the resolution, the Chairman said that he would put the amendments to the House. When Shri Supakar, a member, enquired as to why the amendments were to be put when the original resolution itself was to be withdrawn, the Chairman observed:

"According to our Rules, when amendments have been moved they have to be put to the House before the main resolution is put."

Accordingly, all the amendments moved by Shri B. K. Gaikwad, Shri Thimmaiah and Shri B. C. Kamble were, by leave of the House, withdrawn.¹¹

(⁸) Minutes of the Conference, January, 1923; pp. 7-8.

(⁹) Minutes of the Conference, January, 1938, p. 22.

(¹⁰) L. S. Deb., 30-4-1954, Col. 6217-24.

(¹¹) L. S. Deb., Part II, dt. 2-8-57, pp. 3814-19.

(iii) On the 19th July, 1957 after the discussion on a Private Members' Resolution regarding appointment of a second Pay Commission, Pandit Dwarka Nath Tiwary sought leave of the House to withdraw an amendment moved earlier by him. On an objection being raised by a member, the amendment was put to the vote of the House and negatived.¹²

Thus withdrawal of a motion can be moved only after amendments thereto have been disposed of by being agreed to, withdrawn or negatived, and an amended resolution can be withdrawn by leave of the House.

On the 25th March, 1943, in the Central Assembly, after two amendments to a resolution relating to the grievances of officials and Secretariat assistants employed in Railways had been adopted, the amended resolution was put to the House and while the division bells were ringing, the mover of the resolution asked for leave to withdraw the resolution on an assurance given by the Member for Communications. The President thereupon ruled that as the amendments had been adopted, the resolution could not be withdrawn.

Subsequently, however, on the 29th March, 1943 the President after further consideration of the matter held that the resolution could be withdrawn by leave of the House after amendments to it had been adopted.¹³

Is it incumbent upon the Speaker to put the motion to vote when objection is taken to leave to withdraw it?

A question may arise as to whether it is incumbent upon the Speaker to put the motion to vote when objection is taken to leave to

withdraw it. It had been ruled by the President of the Legislative Assembly in 1933 that the Chair had the right to withdraw a motion from consideration of the House, although it had been moved, when it was found during discussion to be out of order.

During the debate on clauses of the Reserve Bank Bill, Shri S. C. Mitra moved an amendment which he eventually asked leave to withdraw. Objection having been taken to the request, the President pointed out that the Chair could refuse to put the question on the amendment and observed: "If he asks for leave to withdraw and the House refuses leave,—because the Chair heard voices of this side, saying 'No'—even then the Chair would refuse to put the question. According to the House of Commons practice:

'If it should appear, in the course of the discussion, that an amendment which has been allowed to be moved is out of order, the Chairman draws attention to the fact and withdraws the amendment from the consideration of the House.'

Yesterday, the Chair allowed this amendment to be in order in respect of certain objection taken by the Law Member, because the Chair held that those objections did not hold good. Subsequently, the Chair discovered that there were certain other objections which cast a doubt whether this amendment was in order or not. It is open to the Chair now to draw the attention of the House to this new aspect and to withdraw the amendment from the consideration of the House. Therefore, the only course that is open to the Chair, if the House does not want to give permission to the Honourable the Mover to withdraw the amendment, is to refuse to put the question on that amendment."

After the discussion on the Amendment concluded, the President said:

(12) L.S. Deb., Pt. II, 19-7-57, p. 1276.

(13) L.A. Deb., dt. 25-3-43, pp. 1465-66; dt. 29-3-43, pp. 1544-45.

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"As it has appeared in the course of the discussion, that the amendment in its present form would lead to anomalous results and would in any case be ineffective in many parts and for

that reason is not in order, the Chair draws the attention of the House to this fact and withdraws the amendment from further consideration."¹⁴

Legislation is more than the "oil of government"; it is the essential pre-requisite of government. And it is in the committees, where Congress is least susceptible party discipline, that it gives its legislative answer to the policies of the administration.

—DEAN ACHESON in his book "A Citizen Looks at the Congress".

(14) L. A. Deb., dt. 2-12-1933 (pp. 2506—08 and p. 2538).

Power of the Executive in U.K. to Intercept Communications

*Mr. MARRINAN'S CASE

ON the 9th October, 1956, reports appeared in certain newspapers in Britain of a case where it was alleged that a barrister, Mr. Patrick Marrinan, had obstructed the police when they were acting in the course of their duty in Dublin. The prosecution counsel of the case reported this alleged professional misconduct on the part of Mr. Marrinan to the Attorney-General of Great Britain who in turn informed the Bar Council of the matter.

Facts of the Case

On the 20th November, 1956, the Bar Council—a private organisation—asked the police whether any further information was available with them about Mr. Marrinan's alleged professional misconduct. The police had some material available with them, in this connection, which had been obtained by them in June and July 1956, in the course of their interception of the telephone line of one Billy Hill, a criminal. On the 26th November, 1956, the then Secretary of State for the Home Department, Viscount Tenby, authorised the police to show this information personally to Sir Hartley Shawcross, the Chairman of the Bar Council. On the 18th December, Sir Hartley was shown the transcript of the intercepted telephone conversations and was informed that if he thought it necessary

to show it to other people, he should get the permission of the Home Secretary to do so. He was also informed that Mr. Marrinan was believed to be acting improperly in concert with Billy Hill in certain matters, well knowing him to be a criminal.

Sir Hartley sought the permission of the Home Secretary on the 18th December to disclose the transcripts to the members of the Bar Council and the Benchers of Lincoln's Inn (to which Mr. Marrinan belonged), so that they might enquire into Mr. Marrinan's professional misconduct and take appropriate action. This permission was granted on the 20th December, 1956.†

Debates in the House of Commons

On the 7th June, 1957, when questions were raised in the House of Commons about the interception of telephones by the police, Mr. R. A. Butler, the present Home Secretary, replied:—

“The prerogative power of intercepting telephone communications can be used only by the personal authority of the Secretary of State. This power is one which Parliament has always recognised to be essential for the protection of society. It is used solely in cases involving the security of the State, or for the purpose of detecting serious crime. Information from this source is jealously guarded and it is a settled principle that it is not disclosed to persons outside the public service.

“The circumstances of this case (Mr. Marrinan's case) were wholly

*Prepared by the Research and Reference Branch, Lok Sabha Secretariat on the basis of the Report of Privy Councillors of Communications and the Proceedings of

†The professional conduct of Mr. Marrinan was investigated by the Benchers of the Lincoln's Inn, and, as a result of their decision, Mr. Marrinan was disbarred and expelled from the Honourable Society of Lincoln's Inn. Mr. Marrinan appealed against the decision to the Lord Chancellor, but his appeal was dismissed by the Appeal Tribunal of five judges of the High Court sitting as a domestic tribunal.

appointed to enquire into the Interception of the House of Commons, U. K.

Power of the Executive in U. K. to intercept Communications

exceptional. It was represented to the Secretary of State that the disclosure of this information to the Bar Council was desirable in the interests of maintaining our high standard in the administration of justice. The Secretary of State felt it to be his duty to supply to the Bar Council information which had already been obtained from an intercept of the telephone communications of a notorious and confessed criminal.

"..... I must make clear that this case will not be treated as a precedent. I can further assure the House that the Government appreciate to the full the necessity of preventing any abuse of this necessary but distasteful power."

Appointment of the Committee of Privy Councillors

Subsequently, on the 29th June, 1957, the Prime Minister, in consultation with the leaders of the Labour and Liberal Parties in the House, decided to appoint a Committee of three Privy Councillors to go into the whole question of the power of the Executive to intercept telephone and other communications. The three Privy Councillors appointed to the Committee were Sir Norman Birkett (Chairman), Lord Monckton and Mr. P. C. Gordon Walker, M.P. The Committee held altogether 28 sittings and studied in detail the position of the interception of communications from 1937 to 1957 and submitted its report to the Prime Minister on the 18th September, 1957.

Observations of the Committee

As regards Mr. Marrinan's case, the Committee observed that "the action of Sir Hartley Shawcross and Viscount Tenby were wholly governed by considerations of the public interest." Sir Hartley considered the evidence concerning Mr. Marrinan as directly affecting the integrity of the Bar and the proper administration of justice, and as Chairman of the Bar Council, he felt that a special responsibility lay upon him to preserve that integrity. Viscount Tenby, the Home Secretary, got information from the police that the criminal, Billy Hill, was carrying on his activities in connivance with Mr.

Marrinan, a member of the Bar, and he thought that the circumstances of this case were so "exceptional" that he would depart from the normal practice and grant permission for the disclosure of the transcripts to the Bar Council. The Committee, however, felt that this decision of Viscount Tenby was a "mistaken" one, and that the material obtained by interception should in no circumstances be made available to any body or person whatever outside the public service. It also felt that the power given to the Secretary of State to issue warrants to intercept communications was of such great importance and consequence, that it should be rigorously confined to the purposes for which the Home Secretary was convinced in the first place that it was right to issue a warrant.

Recommendations of the Committee

As regards the interception of communications in general, the Committee's conclusions and recommendations were:—

(a) The power to intercept letters has been exercised from the earliest times, and has been recognised in successive Acts of Parliament; this power extends to telegrams and is wide enough to cover telephone communications as well.

(b) If, however, it is thought that the power to intercept telephone message is left in an uncertain state which is undesirable, it is for Parliament to consider what steps ought to be taken to remove all uncertainty, if the practice is to continue.

(c) The power to intercept communications is exercised for the prevention and detection of serious crime and for the preservation of the safety of the State. The interception is highly selective, and is used only where there is good reason to believe that a serious offence or security interest is involved.

(d) The power is now almost exclusively exercised by the Metropolitan Police, the Board of Customs and Excise and the Security Service. It is used with the greatest care and circumspection under the strictest rules and safeguards, and never without the personal, considered approval of the Secretary of State.

(e) The use of the power has been effective in detecting major crimes and preventing injury to national security.

(f) The exercise of the power in these limited spheres should be allowed to continue under the same strict rules and supervision. The criminal and the wrong-doer should not be allowed to use services provided by the State for wrongful purposes quite unimpeded, and the Police, the Customs and the Security Service ought not to be deprived of an effective weapon in their efforts to preserve and maintain order for the benefit of the community.

(g) The interference with the privacy of the ordinary law-abiding citizen or with his individual liberty is infinitesimal, and only arises as an inevitable incident of intercepting the communications of some wrong-doer. It has produced no harmful consequences.

With regard to the interception of the communications of the Members of Parliament, the Committee observed that "a Member of Parliament is not to be distinguished from any ordinary member of the public, so far as the interception of communications is concerned, unless the communications were held to be in connection with a Parliamentary proceedings." It added that there was a clear recognition by the House of Commons of the right of the Secretary of State to intercept Members' postal packets by the use of

an express warrant, and that subject to any decision by the House, the rulings concerning letters would extend by analogy to telephones.

Reservations of Mr. Gordon Walker

Mr. P. C. Gordon Walker, a member of the Committee, however, made certain reservations to the above recommendations. His view was that public repugnance to the practice of interception had increased, and the power should, therefore, be further restricted. He also said that in the detection of crime, the power should be confined to the most extreme and urgent occasions, and no warrant should be issued save on a sworn information or affidavit, and that no material obtained should be used by the Crown as evidence in any court of law or in any enquiry in the public service.

Action taken by Government

The Prime Minister announced in the House on the 31st October, 1957 that the Government accepted all the recommendations of the Committee, and arrangements were being made to give effect to those which called for a change in the procedure.

Constitutional Limitations upon Investigating Power & of U.S. Congress*

THE Watkins case provided an occasion to the United States Supreme Court to define the constitutional limitations upon investigations by Congressional Committees. It also gave the Court an opportunity to assert the constitutional and legal rights guaranteed to a witness who is prosecuted in a Court of Law for contempt of Congress on account of his refusal to answer questions before a Congressional Committee.

Watkins Case

John T. Watkins, a labour organiser, had appeared, on April, 29, 1954, as a witness before a Sub-committee of the Committee on Un-American Activities of the United States House of Representatives. The Sub-Committee sought from Mr. Watkins a description of his background in labour union activities. Mr. Watkins answered all allegations made against him freely and without any reservation. He, however, refused to tell the Sub-Committee whether or not he knew that certain named persons had been members of the Communist Party in the past. Explaining to the Sub-Committee why he took such a position, he said:

"I refuse to answer certain questions that I believe are outside the proper scope of your Committee's activities. I do not believe that any law in this country requires me to testify about persons who may in the past have been Communist Party members or otherwise engaged in Communist Party activity but who to my best knowledge and belief have long since removed themselves from the Communist movement. I do not believe that such questions are relevant to the work of this Committee nor do I believe that this Committee has the right to undertake the public exposure of persons because of their past activities."

At the instance of the House of Representatives, the United States Attorney initiated a criminal prosecution in a Court of Law against Mr. Watkins for contempt of Congress on account of his refusal to answer questions before the Sub-Committee. The Court found Mr. Watkins guilty and sentenced him to a fine of \$100 and an imprisonment for one year. The conviction was affirmed by the full bench of the Court of Appeals for the District of Columbia.

On a writ of *certiorari*, however, the Supreme Court of the United States reversed the judgment of the Court of Appeals and instructed the District Court to dismiss the indictment.

Constitutional limitations upon Congressional investigations

Mr. Chief Justice Warren, delivering the opinion of the Court, said:

"The power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws as well as proposed or possibly needed statutes. It includes surveys of defects in our social, economic or political system for the purpose of enabling the Congress to remedy them. It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste. But broad as is this power of inquiry, it is not unlimited. There is no general authority to expose the private affairs of individuals without justification in terms of the functions of the Congress. Nor is the Congress a law enforcement or trial agency."

"The power of the Congress to conduct investigations assumes that 'the constitutional rights of witnesses will be respected by the Congress as they are in a court of justice.' The Bill of Rights is applicable to investigations as to all

*Prepared by the Committee Branch, Lok Sabha Secretariat.

forms of governmental action. Witnesses cannot be compelled to give evidence against themselves. They cannot be subjected to unreasonable search and seizure. Nor can the First Amendment freedoms of speech, press, religion, or political belief and association be abridged."

"It is the responsibility of the Congress to insure that compulsory process is used only in furtherance of a legislative purpose. That requires that the instructions to an investigating Committee spell out that group's jurisdiction and purpose with sufficient particularity."

"Protected freedoms should not be placed in danger in the absence of a clear determination by the House or the Senate that a particular inquiry is justified by a specific legislative need."

Position in U.K.

Describing the system obtaining in the United Kingdom, the Chief Justice said:—

In the United Kingdom, "important investigations, like those conducted in America by congressional Committees, are made by Royal Commissions of Inquiry. These Commissions are comprised of experts in the problem to be studied. They are removed from the turbulent forces of politics and partisan considerations. Seldom, if ever, have these commissions been given the authority to compel the testimony of witnesses or the production of documents. Their success in fulfilling their fact-finding missions without resort to coercive tactics is a tribute to the fairness of the processes to the witnesses and their close adherence to the subject matter committed to them".

*The appropriate statute is found in 2 U. S. C. 192. It provides:

"Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanour, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months."

This statute was passed in 1857 as a direct result of an incident which caused the Congress to feel that it needed more severe sanctions to compel disclosures than were available in the historical procedure of summoning the recalcitrant witness before the bar of either House of Congress and ordering him held in custody until he agreed to testify. Such imprisonment is valid only so long as the House remains in session.

Commitment for contempt of Congress

As regards the power of the Congress to punish for contempt of its authority, the Court said:

"The history of contempt of the legislature in this country is notably different from that of England. Unlike the English practice, from the very outset the use of contempt power by the legislature was deemed subject to judicial review."

"Since World War II, the Congress has practically abandoned its original practice of utilizing the coercive sanction of contempt proceedings at the bar of the House. The sanction there imposed is imprisonment by the House until the recalcitrant witness agrees to testify or disclose the matters sought, provided that the incarceration does not extend beyond adjournment. The Congress has instead invoked the aid of the federal judicial system in protecting itself against contumacious conduct. It has become customary to refer these matters to the United States Attorneys for prosecution under criminal law."

Rights of a witness: Awareness of pertinency of questions

The Court said:—

"In fulfilment of their obligation under this statute, the Courts must accord to the defendants, every right which is guaranteed to defendants in all other criminal cases. Among these is the right to have available, through a sufficiently precise statute, information revealing the standard of criminality before the commission of the alleged offence. (In the present case), the statute defines the crime as refusal to answer any question pertinent to the question under inquiry. Part of the standard of criminality, therefore, is the pertinency of the questions propounded to the witness. A witness who appears before a congressional Committee must decide at the time the

Constitutional Limitations upon Investigating Powers of U. S. Congress

questions are propounded whether or not to answer. It is obvious that a person compelled to make this choice is entitled to have knowledge of the subject to which the interrogation is deemed pertinent."

Practice in U. K.

Describing the practice obtaining in the United Kingdom/in regard to commitment for contempt of Parliament, the Court said:

"Almost from the beginning, both the House of Commons and the House of Lords claimed absolute and plenary authority over their privileges. This was an independent body of law, described by Coke as *lex parliamenti*. Only Parliament could declare what those privileges were or what new privileges were occasioned, and only Parliament could judge what conduct constituted a breach of privilege.

In particular, this exclusion of *lex parliamenti* from the *lex terrae*, or law of the land, precluded judicial review of the exercise of the contempt power or the assertion of privilege. Parliament declared that no court had jurisdiction to consider such questions."

Watkins' acquittal

The Court decided that:

"...the statement of the Committee Chairman in this case, in response to petitioner's protest, was woefully inadequate to convey sufficient information as to the pertinency of the questions to the subject under inquiry. Petitioner was thus not accorded a fair opportunity to determine whether he was within his rights in refusing to answer, and his conviction is necessarily invalid under the Due Process Clause of the Fifth Amendment."

Mr. Justice Frankfurter, who concurred with the judgment of the Court, summed up the position thus:

"Until 1857, Congress was content to punish for contempt through its own process. By the Act of January 24, 1857, as amended by the Act of January 24, 1862, Congress provided that, 'in addition to the pains and penalties now existing' (referring of course to the power of Congress itself to punish for contempt), 'contumacy in a witness called to testify in a matter properly under consideration by either House, and deliberately refusing to answer questions pertinent thereto, shall be a misdemeanor against the United

States.' By thus making the federal judiciary the affirmative agency for enforcing the authority that underlies the Congressional power to punish for contempt, Congress necessarily brings into play the specific provisions of the Constitution relating to the prosecution of offences and those implied restrictions under which Courts function.

Prosecuting for contempt of Congress presupposes an adequate opportunity for the defendant to have awareness of the pertinency of the information that he has denied to Congress. And the basis of such awareness must be contemporaneous with the witness' refusal to answer and not at the trial for it. Accordingly, the actual scope of the inquiry that the Committee was authorized to conduct and the relevance of the questions to that inquiry must be shown to have been luminous at the time when asked."

Dissenting judgment

Mr. Justice Clark, who dissented from the opinion of the Court felt that "the Chief fault in the majority opinion is its mischievous curbing of the informing function of the Congress."

He thought that 'the majority has substituted the judiciary as the grand inquisitor and supervisor of the congressional investigations', which it had never been. In his view the restraint imposed by the Court on the Committee system appeared to "cripple the system beyond workability". He held:—

"So long as the object of a legislative inquiry is legitimate and the questions propounded are pertinent thereto, it is not for the Courts to interfere with the Committee system of inquiry. To hold otherwise would be an infringement on the power given the Congress to inform itself, and thus a trespass upon the fundamental American principle of separation of powers."

"The propriety of investigations by Congress has long been recognised and rarely curbed by the Courts, though constitutional limitations on the investigatory powers are admitted.

To carry on its heavy responsibility the compulsion of truth that does not incriminate is not only necessary to the Congress but is permitted within the limits of the constitution.

In contempt prosecutions before a court, the majority places an investigative hearing on a par with a criminal trial,

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requiring that 'knowledge of the subject to which the interrogation is deemed pertinent..... must be available (to witness) with the same degree of explicitness and clarity that the Due Process Clause requires in the expression of any element of a criminal offence.' I know of no such claim ever being made before.

Such a requirement has never been thought applicable to investigations and is wholly out of place when related to the informing function of the Congress.

In the conduct of such a proceeding it is impossible to be as explicit and exact as in a criminal prosecution."

The Member of Parliament is a genuine and vital bulwark of the liberty of the individual. Now that legislation and the work of Government Departments affect everyone's life, it is essential to have some one to whom ordinary people can turn to champion them.

—WOODROW WYATT in his serial article "This is your Parliament" in *Everybody's* dated February 22, 1958.

Prima Facie Question of Privilege: What it means*

ACCORDING to article 105(3) of the Constitution, the powers, privileges and immunities of each House of Parliament, Members and Committees thereof have been equated to those of the House of Commons, U.K., and its members and Committees as at the time of the commencement of the Constitution, until defined by law. As the powers, privileges and immunities of the House, Members or Committees have not so far been defined by law, they continue to remain equated to those of House of Commons, U.K., as on 26th January, 1950.

There has, however, been one notable development in the Lok Sabha as compared to the House of Commons, U.K. The procedure for raising all questions of Privilege in the House has been laid down in detail in Chapter XX of the Rules of Procedure and Conduct of Business in Lok Sabha whereas no such detailed provision has yet been made in the Standing Orders of the House of Commons, U.K.

According to rule 222 of the Rules of Procedure and Conduct of Business in Lok Sabha, a question involving a breach of privilege either of a member or of the House or of a Committee thereof can be raised only with the consent of the Speaker. In giving the consent, the Speaker in Lok Sabha is guided by the conditions laid down in rule 224 which, *inter alia*, specify :

(i) not more than one question shall be raised at the same sitting;

(ii) the question shall be restricted to a specific matter of recent occurrence;

(iii) the matter requires the intervention of the House.

In the House of Commons, U.K., no such specific conditions are laid down in Standing Orders but, by custom and practice, the Speaker there permits a question of privilege to be moved in the House and gives it precedence over other public business only if he is satisfied:

(i) that there is a *prima facie* case that a breach of privilege has been committed;

(ii) that the matter is being raised at the earliest opportunity; and

(iii) that it calls for the immediate interposition of the House.

The implication of these conditions may be best illustrated by rulings given by the Speaker of the House of Commons from time to time. These rulings have been grouped under each one of the three aspects mentioned above.

Position in Great Britain: *Prima facie* case of breach of privilege must be made out

On the 23rd November, 1934, Mr. R. T. Evans, a Member, drew the attention of the House about the premature publication of the report of the Select Committee on Indian Constitutional Reform.

The Speaker thereupon gave the following ruling:—

"..... as far as I am concerned, it is not for me to decide whether a breach of privilege has been committed or not. All I have to decide, from what the Hon. Member who raised the matter has said, is whether he has made out a *prima facie*

*Prepared by the Committee Branch, Lok Sabha Secretariat.

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2. I have listened very carefully to what the Hon. Member has said and have definitely come to the conclusion that he has not made out a *prima facie* case of each of privilege."¹

On the 27th October, 1949, Mr. S. E. Dorman, a Member, stated that the decision not to discuss the report of the Committee of Privileges might create the impression in the public that a question which was ruled as being a *prima facie* case was perhaps found to have no substance on investigation.

The Speaker thereupon ruled as follows:—

"It must never go out that because I ruled that there is a *prima facie* case here is any substance in it. It merely means that I have followed some rules, and therefore it goes to the Committee of Privileges. It does not follow that there is substance in it."²

On the 27th June, 1951, Mr. Alexander, Chairman of the Select Committee on Estimates, made a complaint about the publication of a reference in the *Daily Telegraph* of that date about a confidential memorandum presented to the Committee, while evidence was still being taken and before the report had been finalised. The Speaker thereupon ruled as follows:

"In my opinion there is a *prima facie* case, but that does not mean that I am prejudging it. It must be a matter for enquiry. The Hon. Member will now please move a Motion."³

Mr. Churchill raised a point of order and asked whether the Speaker was ruling, that it was a breach of privilege or that it should be referred to the Committee. The Speaker replied as follows:

"I have no authority to rule that a matter is a breach of privilege. I can

only say that there is a *prima facie* case which I think should be referred to the Committee and be inquired into. I cannot rule that any matter is a breach of privilege because that would be prejudging it. All I say is that there is a *prima facie* case, and it is for the House to decide what to do about it."⁴

On the 24th April, 1952, Mrs. Barbara Castle, a Member of the House of Commons, drew the attention of the House to a paragraph appearing in the evening edition of the *Star* newspaper containing derogatory references to the Members of the House of Commons arising out of a speech by a Member of the House of Lords at an annual meeting of the Primrose League. The Speaker thereupon observed as follows:—

"It is not my duty to say whether or not a breach of privilege has been committed. That is a matter for the House to decide. But I would remind the House that one of the acts treated as a breach of privilege has been defined as libels on the House or on particular Members in respect of their Parliamentary conduct. It is my duty to say that a *prima facie* case of breach of privilege has been made out and that the matter has been raised at the first opportunity."⁵

On the 27th April, 1953, Mrs. Bradnock, a Member, drew the attention of the Speaker to an article headed "What a Baptism" by Patricia Ford, M. P., published in the *Sunday Express* which contained certain references to the private apartments of the House.

The Speaker thereupon ruled as follows:—

"It is not for me to say whether a breach of privilege has been committed. That is for the House, and not the Speaker, and the question which I have to answer is whether, in the circumstances, there is a *prima facie* case which will justify a motion being proposed that the case of the complaint of the Hon.

¹H. C. Deb., 1934-35, Vol. 295, Col. 390.

²H. C. Deb., 1948-49, Vol. 468, Col. 1523.

³H. C. Deb., 1950-51, Vol. 489, Col. 1382.

⁴H. C. Deb., 1950-51, Vol. 489, Col. 1382-83.

⁵H. C. Deb., 1951-52, Vol. 499, Col. 892.

Prima facie Question of Privilege : What it means

Member is a matter to be further considered."⁶

On the 4th February, 1954, Mr. Silverman, a Member, made a complaint that a letter purported to have been written by Sir J. Barlow, M.P., had been published in the correspondence columns of the *Manchester Guardian* on the 3rd February, 1954, under the heading "The Cotton Bill" which he held was tantamount to a breach of privilege of the House. The Speaker thereupon ruled as follows:—

"It is not for me finally to pronounce on the matter; it is a matter for the House itself, which is the guardian of its own privileges. My duty is only to say whether I believe there is a *prima facie* case or not, so as to give this matter precedence over the Orders of the Day. I am bound to say that I cannot find evidence in this case of a *prima facie* breach of privilege, and I must so rule."⁷

On the 26th January, 1955, Mr. S. Silverman, a Member, stated that if it was a fact that the Police Officer actively interfered to prevent an Hon. Member of the House from taking a small party of his constituents into the House, then it was clear interference with the execution by a member of the House of Commons of his public obligations and *prima facie* was, therefore, a breach of privilege.

The Speaker thereupon ruled as follows:—

"It is not the duty of Mr. Speaker at any time to say whether a breach of privilege has occurred or not. He is only asked to give his opinion whether a *prima facie* case exists or not. The guardian of the privileges of this House is the House of Commons itself. To found even a *prima facie* case of breach of privilege there must be a definite complaint of breach of privilege. I have heard none such. That would not pose the matter. It has been raised at the earliest possible moment. If the matter is crystallised, and if facts are brought to my notice of any definite act constituting a breach of the privilege of this House, the House

will be ready to consider it, but at the present moment no such definite complaint has been made to me. Therefore, I rule that there is no *prima facie* case of breach of privilege. If the Hon. Member wishes to pursue this matter on the present evidence, his remedy is to put down a Motion for the consideration of the House."⁸

On the 27th November, 1956, Mr. Arthur Lewis, a Member, made a complaint that as a result of publication of a paragraph under the caption "This man wants to comfort the Egyptians" in the issue of the *Sunday Graphic* newspaper dated the 25th November, 1956, a number of people had molested him by telephone calls using objectionable and foul language, threatening him and trying to make him withdraw the question.

The Speaker thereupon ruled that:—

"My duty on the occasion, as the House knows, is not to decide whether a breach of privilege has, in fact, occurred or not, but merely to settle, for the guidance of the House, the procedural question whether the Hon. Member has made out a *prima facie* case and raised the matter at the earliest possible moment so as to enable me to give the consideration of this matter priority over the Orders of the Day. That is all I propose to consider."⁹

On the 22nd January, 1957, Mr. George Wigg, a Member, drew the attention of the House to the programme called "Any Questions" broadcast by B.B.C. on the 2nd December, 1956, and stated that the views expressed during the course of discussion on a *sub-judice* matter amounted to a breach of privilege of the House.

The Speaker thereupon observed:—

"In view of what has occurred, I think that he has established a *prima facie* case. In saying so, I do not in any way prejudice the view, which is one for the House, whether there has been a breach of privilege or not. It only means that I will now accept a Motion on the matter."¹⁰

⁶H. C. Deb., 1952-53, Vol. 514, Cols. 1972-73.

⁷H. C. Deb., 1953-54, Vol. 523, Col. 573.

⁸H. C. Deb., 1954-55, Vol. 536, Col. 175.

⁹H. C. Deb., 1956-57, Vol. 561, Col. 242.

¹⁰H. C. Deb., 1956-57, Vol. 563, Col. 41.

On the 22nd January, 1957, Mr. Godfrey Lagden and Mr. Ron Ledger, Members, drew the attention of the House to a statement of Mr. Donald Paterson published in the *Romford Recorder* in its issue dated the 4th January, 1957, under the heading "M.Ps. too kind to themselves."

The Speaker thereupon ruled:

"It is, of course, for the House to decide whether what we have heard constitutes a breach of privilege, but, concerned as I am with the procedure of the matter, I consider that both Hon. Members have made out a *prima facie* case with regard to the complaints they have made, and that I should therefore accept a Motion on the matter."¹¹

Mr. J. A. Leavy, Member, rose on a point of order and enquired if when the Speaker had ruled that there was a *prima facie* case for referring this matter to the Committee of Privileges, and the Leader of the House had put the formal Motion before the House, it would not be a breach of respect to the House, if not a breach of privilege, to vote against that motion.

The Speaker thereupon observed as follows:—

"I can tell the Hon. Member straightway that there is nothing wrong, or unconstitutional, or contrary to the practice of this House in the House refusing a Motion that a matter be referred to the Committee of Privileges. The duty of the Chair is to see that the minimum requirements which constitute a *prima facie* case of breach of privilege are present, and he merely says that they are in order to give the Motion priority over the Orders of the Day. That does not imply either a ruling on the part of the Chair that a breach of privilege has been committed or that the House ought to send the matter to the Committee of Privileges. It is entirely a matter for the House to debate. For example, there are many technical breaches of privilege, such as giving reports of our debates in press, which the House has been content to ignore for a large number of years but which, if they were raised, would no

doubt still be considered as technical breaches of privilege. There may be many other such cases.

The duty of the Speaker is to safeguard the House from entirely frivolous invocations of the law of privilege. In this case, in view of what has happened in an earlier case, I took the view—as the House took up on the earlier occasion—that it was my duty so to rule. But it is by no means incumbent upon Hon. Members to vote either for or against the motion."¹²

On the 8th April, 1957, Mr. G. R. Strauss, a Member, raised a question of privilege and stated that as a result of his writing a letter to the Minister and Paymaster General, suggesting that the peculiar method adopted by the London Electricity Board in the disposal of its old and useless cable might be investigated, he had been threatened by the Board with a legal action. The Speaker thereupon observed as follows:—

"It is not, of course, for me to say whether a breach of privilege has occurred or not. That is a question for the House. My duty is to decide whether the right Hon. Gentleman has, in fact, made out a *prima facie* case such as would entitle me to give his complaint priority over the Orders of the Day. I think that the answer to that question is in the affirmative and I am prepared to accept a Motion on the Matter."¹³

The matter must be raised at the earliest opportunity.

On the 15th February, 1912, Viscount Helmsley, a Member, raised a question of privilege based on a speech made by another member as reported in the *Yorkshire Herald* of 5th February, 1912. The Speaker thereupon observed as follows:—

"The Noble Lord is out of time. He ought to have raised the question yesterday. The speech for which the Noble Lord complains was made on 4th February. The hon. Member whose speech is impunged took his seat yesterday at the

¹¹H. C. Deb., 1956-57, Vol. 563, Col. 44.

¹²H. C. Deb., 1956-57, Vol. 563, Cols. 49-50.

¹³H. C. Deb., 1956-57, Vol. 568, Col. 821.

Prima facie Question of Privilege : What it means

commencement of the business, and after he had taken his seat there was an opportunity of raising the question."¹⁴

On the 8th December, 1920, Lieut. Colonel Archer-Shee, a Member, drew the attention of the House about a libellous and intimidating article published in the issue of *Daily Mail* dated the 6th December, 1920, and also sought to move that the article constituted a grave breach of privilege of the House.

The Speaker thereupon ruled as follows:—

"I am sorry to have to take exception to this Motion, but it is really out of time. The hon. and gallant gentleman should have brought it forward on Monday. If he wishes to call the attention of the House to any breach of privilege 'instantly arising', it must be brought at the earliest possible moment after the breach has been committed. I express no opinion as to whether there has or has not been a breach of privilege. It is still open to the hon. Member to raise it but he must raise it in his own time. I could not accept a Motion of that sort now intervening before public business."¹⁵

On the 26th October, 1926, Mr. N. Maclean, a Member, raised a point of privilege about the publication of a statement containing reflections on the Labour members, in a book called 'England' written by Dean Inge.

The Speaker thereupon observed as under:—

"According to our rules a matter complained of as a breach of privilege must be raised at the first available opportunity and raised with the production of the paper or book in which the passage is contained. I find that the book to which the hon. Member refers was published more than a month ago, and consequently his plea fails clearly on the point of time. I do not, therefore, give any ruling on the question of the substance of the passage complained of."¹⁶

¹⁴H. C. Deb., 1912, Vol. 34, Col. 42.

¹⁵H. C. Deb., 1920, Vol. 135, Col. 2117.

¹⁶H. C. Deb., 1926, Vol. 199, Col. 700-01.

¹⁷Parl. Deb., 1864, Vol. 174, Col. 190.

The matter must require the interposition of the House

On the 17th March, 1864, Sir Henry Stracey, a Member, stated that he had placed a notice on the paper to move:—

"That the statement of the Procureur General, implicating a Member of this House of Commons and of her Majesty's Government in the plot for the assassination of our ally the Emperor of the French deserves the serious consideration of the House."

The Speaker thereupon ruled as follows:—

"If the hon. Member could claim the ground of privilege, that would give his Question precedence without postponing the Orders of the Day. A matter of Privilege which claims this precedence should be some subject which has recently arisen, and which clearly involves the privileges of this House and calls for its immediate interposition. I stated to the hon. Baronet that as this subject has already been twice under the notice of the House—as questions have been asked twice in this House upon it—it did not appear to me to come under the character of something which had recently arisen, and required the immediate interposition of the House without notice....."¹⁷

On the 31st May, 1921, Mr. Neil Maclean, a Member, raised a question of privilege stating that the *Plan English* newspaper, by publishing articles, had imputed corruption and breach of trust of members, and asked whether he would be permitted to raise this question before any other public business was taken up. The Speaker thereupon ruled as follows:—

"Before a question of privilege can be raised in interruption of the ordinary business of the House, it requires to satisfy two conditions. One is that it is instantly raised as soon as possible after the alleged breach has been made, and the second is that the interposition of the House is necessary for the protection of its dignity. The hon. Member's motion fails on both points. It has not been

raised instantly and it certainly, in my view, cannot be a protection of the dignity of the House to raise this matter now. That is not a question of privilege of the whole House because the courts are open if it be necessary to use them."¹⁸

On the 19th March, 1951, Mr. Sydney Silverman, a Member, made a complaint that he had been sent a copy of a letter and a document purporting to have been written by Mr. L. N. Tomlinson to Rev. Fielding Clarke, containing imputations against him. The Deputy Speaker, who was in the Chair, thereupon ruled as follows:—

"In my opinion, the letter complained of constitutes a *prima facie* case of breach of privilege, which calls for immediate interposition of the House. If, therefore, the hon. Member desires to move a Motion I am prepared to receive it."¹⁹

It would be seen from the above rulings that the Speakers of the House of Commons, U.K., have emphasised that it was for the House to decide whether a particular question raised was a breach of privilege or not and that what the Speaker was concerned with was only whether a *prima facie* case had been made out so that it could be given priority in the Orders of the Day.

Position in India.

In the Lok Sabha, the consent of the Speaker to the raising of a question in the House involving a breach of a privilege either of a Member or of the House or of a Committee thereof is necessary under Rule 222 of the Rules of Procedure and Conduct of Business in Lok Sabha. The Speaker's jurisdiction is limited to the procedural formality of admitting or disallowing the motion. He merely decides whether it is a matter for enquiry and whether it should be brought before the House

and given priority in the List of Business. This would be clear from the following rulings given by the Speaker in Lok Sabha.

On the 10th March, 1950, during the discussion on a certain Bill, Syed Nausherahi sought to raise a point of privilege, but on the Chair directing him to raise it later, he asked for a decision as to whether Members were not entitled to raise a point of privilege, if while the House was in session, a situation arose in the very House itself which appeared to be an infringement of the privileges of the Members. Thereupon, the Speaker ruled:

"If hon. Members want to raise any point they should first contact me, make me cognizant of the point that they want to raise, so that I may have time to consider the question, discuss that matter with the Member and try to understand him. Unless this is followed, any Member may choose to raise any point in the House and call it a point of order or privilege and it would mean an unnecessary waste of time of the House.....I, as the protector of the rights of Members, am equally bound to see that nobody is allowed waste the same of the House by raising any point at any time he likes..... whenever Members have come and talked to me, I do not remember a single occasion on which I have refused the request of the Member to the point being raised. That is a proper procedure. If I think that that is really a breach of the privilege—if I am convinced *prima facie* of the position—then of course I will allow that, not otherwise....."²⁰

On the 13th May, 1953, while clarifying the procedure for bringing the question of Privilege on the floor of the House, the Deputy Speaker observed as follows:—

"Normally, matters must be brought to my notice. Then, I must look into them and if there is no question, I need not give my consent and take up the time of the House."²¹

¹⁸H. C. Deb., 1921, Vol. 142, Col. 839.

¹⁹H. C. Deb., 1950-51, Vol. 485, Col. 2111.

²⁰Parl. Deb., Pt. II, dated the 10th March, 1950, p. 1338.

²¹H. P. Deb., Pt. II, dated 13th May, 1953, Col. 6479.

Prima facie Question of Privilege : What it means

On the 29th May, 1957, when Shri Anthony Pillai, a Member, sought to raise a question of privilege in Lok Sabha, Shri A. K. Gopalan stated that although the Speaker could reject a question of privilege, the members had a right to know the subject matter of the privilege issue that was sought to be raised, and the reason why it was rejected.

The Speaker replied:

"The consent of the Speaker is a condition precedent to raising a question of Privilege. Shri A. K. Gopalan referred to certain cases, it must be, I think, there was a *prima facie* case and therefore I brought them before the House. The Speaker has the right to find out *prima facie* whether there is case to be brought before the House. If I find that there is no such *prima facie* case, I will not bring it before the House. Therefore, I have disallowed it"²²

From the case quoted above, it will be observed that the Speaker exercises his discretion only to the extent of giving consent to the question of privilege being raised in the House and given priority for discussion as envisaged in rule 225(1) of the Rules of Procedure and Conduct of Business in Lok Sabha. But the question whether the matter is actually a breach of privilege or contempt of the House is entirely a matter for the House to decide, for the House is the master of its own privileges. The Speaker in admitting such a question of privilege has only to see whether the matter is fit for further enquiry and should be brought before the House. If he admits such a motion, it does not necessarily mean that he agrees with the contents thereof. It is for the House to accept or reject it.

²²L. S. Deb., dated the 29th May, 1957, Col. 2656-57.

Some Parliamentary Activities at a Glance⁶

Debates in Parliament

Point of Order on the report of the Commissioner of Scheduled Castes and Scheduled Tribes on the Ramanathapuram riots

On the 17th December 1957, in connection with a starred question on the Ramanathapuram riots a point of order was raised whether the Report of the Commissioner of Scheduled Castes and Scheduled Tribes relating to the disturbances in Ramanathapuram in Madras State, which had been submitted to the President, was a privileged document, and whether Government could refuse to lay it on the Table of the House.

The Deputy Minister of Home Affairs (Shrimati Violet Alva) contended that the report related to the law and order situation in an area of the Madras State, and since it related to a State matter, the report could not be laid on the Table of the House. The Speaker reserved his ruling on the point of order.

On the 18th December 1957, the matter again came up before the House. It was contended by some Members that the Commissioner of Scheduled Castes and Scheduled Tribes was a statutory authority under Article 338 of the Constitution, and that all the reports that he submitted to the President should be laid before each House of Parliament.

The Minister of State in the Ministry of Home Affairs (Shri B. N. Datar) on the other hand, stated that under Article 338 only the annual reports of the Commissioner of Scheduled Castes and Scheduled Tribes were required to be laid before each House of Parliament, and a special report like the one relating to the law and order situation in Ramanathapuram was a privileged document, and it was open to the Government to claim privilege under the first proviso to Rule 368 of the Rules of Procedure.† After hearing the views from all sections of the House, the Speaker observed:

"Yesterday, the question was put regarding the Report submitted by the Special Officer relating to Ramanathapuram riots. In answer to the question the Hon. Deputy Minister said that the Report had been sent to the President. The question raised thereafter was whether it ought to be placed on the Table of the House. Some points were urged on both sides and I said I will consider that matter.

"Further, last time when hon. Members wanted a special day of special allocation of time separately for discussing the Ramanathapuram incident, I said

*Article 338 of the Constitution reads:

(1) There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President.

(2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.

†Rule 368 of the Rules of Procedure says:—

"If a Minister quotes in the House a despatch or other State paper which has not been presented to the House, he shall lay the relevant paper on the Table:

Provided that this rule shall not apply to any documents which are stated by the Minister to be of such a nature that their production would be inconsistent with public interest."

that they might be able to discuss it along with the discussion on the reports of the Scheduled Castes and Scheduled Tribes Commissioner. They want that this report on the Ramanathapuram riots under the rules ought to be made available to the members of Parliament. They would like to know firsthand what exactly the Special Officer has said relating to that matter, so that it will enable them to have a good and proper discussion.

"In this case members rely upon Article 338 which states that the report of the Special Officer ought to be submitted to the President 'and the President shall cause all such reports to be laid before each House of Parliament'. It is a statutory obligation on the part of the President to lay it on the Table of the House. The President does not come here himself. He acts only through the Minister. So, to this House the Minister is a representative of the President.

"The question is whether the Minister can claim privilege with respect to this report. My attention has been drawn to Rule 368, which relates only to reports or some State Papers which the Ministers bring to this House and quote. This is not a case where he, of his own accord, referred to it in this House, or wanted to rely upon it. It is open to the Minister in that case to lay it on the Table or not and, if he so thinks, he can claim privilege. But this document is a document under Article 338, and hon. Members on the opposite side say that they are entitled to ask that it be placed on the Table of the House. Rule 368 does not, therefore, apply here.

"It is common ground that this report has been presented to the President and the person who has presented the report is an Officer who is appointed under Article 338. Then the only point is whether it is an annual report. There is nothing in Article 338 which says that it must be an annual report. The words used in Article 338 are 'and report to the President upon the working of those safeguards at such intervals as the President may direct'. It does not say one year. It can be as often as the President directs. Therefore, this is a case where the President directed him and he went and reported. So, strictly and literally, this is a report under Article 338, and the President is bound to lay it on the Table of the House, through his Home Minister.....

"I have looked into that report. It contains some extraneous matter which may affect cases which are pending and

hence ought not to be placed before the House. Those portions may be eliminated and only that portion which is very necessary for the purpose of our discussion, so far as the safeguards for Scheduled Castes and Scheduled Tribes are concerned, may be laid on the Table of the House.....

"Therefore, the hon. Minister will make this report available to the members of Parliament, as early as possible."

A copy of the Report of the Commissioner for Scheduled Castes and Scheduled Tribes so far as it related to the welfare aspect of the Scheduled Castes in the riot-affected areas of Ramanathapuram was accordingly laid on the Table on the 18th December, 1957.

* * *

Life Peerages Bill in the House of Commons (U.K.): Second Reading

The Life Peerages Bill was given a Second Reading in the House of Commons (U.K.) on the 12th and the 13th February 1958.

Moving the Bill for consideration on the 12th February, the Secretary of State for the Home Department (Mr. R. A. Butler) said that it was "a short Measure to enable life Peers, who may include women, to be created with the right to sit and vote in the House of Lords". The Government was convinced, he added, of the necessity of a second Chamber "in the highly complicated society in which we live" and that it was better to have the work of the House of Commons "revised by another Chamber complementary" to the Commons. "There is very often need for a revision of the Bills" sent by the Commons, and "it is valuable to have our legislation revised with care and thoroughness in another place" he said.

Tracing the history of the membership of the House of Lords, Mr. Butler said that it had never been purely hereditary at any time but had been changing in its composition with the passage of years. Peerages had been conferred and were being conferred on grounds of public service and

almost all interests in the life of the nation had their spokesmen in the Upper House. There were some 170 peers of the first-creation even at present, many of whom had been prominent in the work of the House of Commons.

The present Bill, Mr. Butler said, proposed to empower the Crown to create life peers. It would enable the Crown to offer life peerages to "people of distinction, people in the public service, people who could represent some aspect of the nation's life with particular authority, or who could take part in an adequate way in the parliamentary life of the country". The object was thus to add to the House of Lords "men and women of distinction from all the main sectors of national life", "men and women who would strengthen it by their knowledge of affairs and their experience and widely varied interests—political, scientific, economic, cultural and religious". This would enable the House of Lords to "adequately and accurately reflect the life and thought of the nation", and also to discharge the function of an Upper House effectively.

Continuing, Mr. Butler said that the Bill was a short and "practical measure designed to meet the circumstances of the time". It placed no limit on the number of life peers who might be created, which would be done by appointment by the Crown on the recommendation of the Prime Minister. Although the constitutional responsibility to make recommendations rested with the Prime Minister, "it would be reasonable and right for him to consult the Leader of the Opposition to ascertain the views of the Opposition on any particular recommendations", especially when he recommended people for life peerages "primarily on political grounds".

The Bill was "strictly limited in scope" but it was "a major measure designed to facilitate the work of the

Upper House". It was designed "to take a step in the evolution of Parliament in order to fit it to discharge its responsibilities in this constantly changing era", Mr. Butler concluded.

Opposing the Bill, Mr. Hugh Gaitskell (Leader of the Opposition) moved the following amendment to the motion:

"This House declines to give a second reading to a Bill which leaves the House of Lords overwhelmingly hereditary in character and with unimpaired powers to frustrate and obstruct the will of the elected representatives of the people".

He said that "the composition of the House of Lords as a whole was totally wrong in being overwhelmingly hereditary" and that "the main motive" behind the present proposals was "to preserve the authority and enhance the prestige of the House of Lords". In the opinion of the Labour Party, even the present powers of the House of Lords were "excessive" and "if in consequence of this Bill, its prestige was enhanced, it might very well seek to use its existing powers far more intensively and far more frequently". The powers of delay which the House of Lords had even now were "still considerable".

The House of Lords, Mr. Gaitskell said, should be composed in such a way that it could not obstruct the will of the House of Commons. It should, therefore, be neither separately elected, as it were, on a parallel with the House of Commons, nor be hereditary in character, nor have the power to overrule or obstruct the House of Commons. The present Bill, on the other hand, left the Conservative majority in the House of Lords "in its overwhelming character", and with its "present power unchanged" and it also gave "conveniently an apparently rightly more respectable appearance to the House of Lords". It was

therefore "not really a reform Bill" and had been "imposed by the Government on the Opposition without consultation". The major problem of the Labour Party in accepting peerages under this Bill was "to find people who could spare the time" to serve in the House of Lords as no provision had been made in the bill for the payment of any salaries to them. Lastly he mentioned that although the Bill did not discriminate between men and women in the creation of the peers, this "non-discrimination did not extend to hereditary peeresses".

A number of Members from both sides of the House took part in the debate. Lady Tweedsmuir said that it was necessary for the Upper House to have powers to delay legislation passed by the majority Government of either Party in the other House, as there was a clear four-year term of legislation for the Government, during which time public opinion might have changed from what it was at the time of the election. She also wanted provision to be made for payment of salaries to the peers.

Mr. Clement Davies opposed the measure on the ground that it proposed to continue the hereditary principle which had become "a complete anachronism to-day".

Mr. J. E. Powell said that the "substantial constitutional change" contemplated by the Bill had not been proved to be necessary.

Mr. F. Bowles contended that the work of revision done by the House of Lords was merely to see whether a piece of legislation was "legally watertight and carrying out the intentions of the Government" and that this work could as well be done in the House of Commons itself through one more stage between the Report stage and the Third Reading of the Bill.

Mr. C. W. Armstrong defended the retention of the hereditary principle and said that second Chamber was

doubly necessary where there was an unwritten Constitution and one Chamber had complete power unchecked by any written provision of the Constitution.

The Attorney-General said that the Bill was an important measure but not one, which of itself would tend to increase either the power or the authority of the House of Lords. It would, however, create a breach in the hereditary principle and was thus a reforming Bill. He asked the House to support the measure.

Sir Frank Soskice, speaking on the 13th February, criticised the Bill on the ground that it left the composition or powers of the House of Lords practically unchanged. He said that the Labour Party was opposed to an hereditary Chamber with powers which would in effect block the will of the elected representatives of the people in the House of Commons, and if there was to be any second Chamber, it should be such as could not offer any effective change to the will of the people as expressed by their elected representatives.

The Minister of Education (Mr. Geoffrey Lloyd) said that the aid of the Bill was "modest and practical" but "not unimportant", and that it was intended to "improve the working of the House of Lords". He added that it was "in tune with both the spirit of the Constitution and the needs of the future".

Mr. Aneurin Bevan said that the Bill left the present powers of the Upper House untouched and was, therefore, unwelcome. He also said that the work of revision done by the House of Lords was not of a very important nature, and that in the present day when Governments had to act quickly and efficiently, the interposition of delay by the Upper House was not a welcome feature.

The Secretary of State for Scotland (Mr. John MacIay) who wound up the

debate said that a second chamber was necessary "to examine and revise Bills brought from the House of Commons; to initiate comparatively non-controversial measures; to interpose so much delay—and no more—in the passage of Bills—which affect the Constitution, introduce new principles of legislation or raise issues on which the opinion of the country was equally divided—as is needed to enable public sentiment to be adequately expressed; and to provide a forum for the discussion of important questions". The object of the Bill, he said, was to enable the House of Lords to have a "wider representation, in the conditions of to-day of people in different walks of life and the professions", as such people were needed in that House.

The Bill then passed the Second Reading stage by 305 votes to 251 and was referred to a Committee of the Whole House.

* * *

Parliamentary Question

(Lok Sabha)

Answering a question on the 26th November, 1957 as to the number of election petitions disposed of, pending etc. after the second General Elections, the Minister for Law (Shri A. K. Sen) said that upto the 15th November, 1957, 105 election petitions had been disposed of by the tribunals and 351 petitions were pending. He added that out of 6 petitions challenging the elections of Union Ministers, 2 had been disposed of and out of 32 petitions challenging the elections of Ministers and Deputy Ministers in States, 13 had been disposed of. 13 elections to the State Legislative Assemblies had been declared null and void. Eleven appeals had been made to the High Courts, 2 had been dismissed and the rest were pending.

(Rajya Sabha)

In reply to a question on the 18th December, 1957, as to whether the Government of India had advised the State Governments to 'associate Members of Parliament with the training centres for Community Development work and if so, what action had been taken by the State Governments, the Minister for Community Development (Shri S. K. Dey) stated that the Informal Consultative Committee of the Ministry of Community Development had decided during the second session of Parliament that Members of Parliament might visit the training centres in their States belonging both to the Central and State Governments and see how the training is imparted, with a view to suggesting ways and means of improving the quality of the training. The Minister added that this decision had been communicated to the State Governments for necessary action, whenever any Member of Parliament intimated a desire to visit a training centre.

* * *

Committees at Work

Appointment of Committees by Government on Matters already under Examination by a Committee of Parliament.

The Estimates Committee considered in 1954 how far and in what circumstances Government might appoint Committees for consideration of the same matters and subjects as were under the examination of the Estimates Committee and recommended as follows in their Seventh Report:—

(a) So far as Departmental Committees consisting of officials of the Government are concerned, the Committee have no objection to Government appointing one or more Committees for the consideration of any matters which are concurrently under the examination of the

Committees at Work

Estimates Committee, but the Report of such Committees should not be published without the concurrence of the Estimates Committee;

(b) The matter referred to such Departmental Committees should normally relate to technical subjects where expert advice is necessary and reference of matters of general nature should be avoided; and

(c) Whenever the Government propose to appoint a Committee consisting wholly or partly of non-officials including Members of Parliament while the matter is under the examination of the Estimates Committee, it should invariably be the practice that the Chairman of the Estimates Committee is consulted in advance as to the constitution of such a Committee. The Estimates Committee may themselves examine the matters proposed to be investigated by the Committee of the Government or may authorise the Government to proceed with the formation of the Committee as they may consider fit.

The Government felt some difficulties in implementing these recommendations, and the Minister of Food and Agriculture (Shri A. P. Jain) therefore, met the Chairman, Estimates Committee, on the 4th May, 1956, to discuss the matter with him. They agreed to a procedure in keeping with the Estimates Committee's recommendations to regulate the appointment by Government of Departmental and non-official Committees to examine matters under the examination of the Estimates Committee and for the publication of the reports of such Committees.

The agreement was forwarded to the Speaker, who desired that it might be made applicable to all Parliamentary Committees. The matter was discussed further with Government and it was agreed that the procedure agreed upon might be established as a convention between the Government and the Parliamentary Committees, which

would be embodied in an office memorandum to be issued by them for the information and guidance of all the Ministries concerned.

Thereupon, the Department of Parliamentary Affairs issued a memorandum on the 25th June, 1957, which laid down that the following conventions would, in future, be observed by all the Ministries and Departments, while appointing Committees to consider matters already under the examination of a Parliamentary Committee:—

(i) (a) "If any Ministry/Department proposes to set up a Committee to investigate or inquire into any matter, it should ascertain from the Lok Sabha Secretariat whether any Committee of Parliament is already engaged on an examination of the same matter;

(b) "If a Committee of Parliament or a Sub-Committee thereof is already so engaged, no other Committee should be set up unless the appointment of such a Committee is clearly unavoidable in the public interest;

(ii) (a) "Where the appointment of such a Committee is considered necessary, no Member of Parliament shall be appointed as a member of such a Committee except after previous consultation with the Parliamentary Committee already engaged in the examination of the matter, such consultation being made through the Lok Sabha Secretariat;

(b) "The report of any Committee so set up should not be published without prior consultation with the said Parliamentary Committee through the Lok Sabha Secretariat. If any difference of opinion arises between the Ministry and the Parliamentary Committee, the guidance of the Speaker should be sought."

The above procedure would not apply to purely Departmental Committees

composed entirely of officials which might be set up to examine specific questions and whose reports are not intended for publication.

* * *

**Committee on Government Assurances
(Lok Sabha) July-December, 1957**

The Committee on Government Assurances of the Second Lok Sabha, which was constituted by the Speaker on the 5th June 1957, continued in office during the period July-December, 1957, held five sittings. The first sitting of the session was held on the 8th August 1957 and was inaugurated by the Speaker*.

At the subsequent sittings, the Committee reviewed pending assurances and also considered the implementation of certain assurances in regard to the first Lok Sabha and the first and second sessions of the Second Lok Sabha. The Committee agreed to drop these assurances in fulfilment of which action had been taken by the Government, and directed that those assurances which had not been implemented satisfactorily might be followed up. They also desired early implementation of all the pending assurances.

At the sitting held on the 6th September 1957, the Committee desired that the attention of the Department of Parliamentary Affairs might be invited to the recommendations made earlier that assurances should be normally implemented within two months and where it was not possible to do so, the circumstances might be explained to the Committee.

On the 17th December, 1957, the Committee considered and approved the rules for the internal working of the Committee. These rules have since been approved by the Speaker.

*The inaugural speech made by the Speaker on the occasion has been reproduced in Vol. III, No. 2 (October 1957) pp. 138-139.

**House of Lords Debates Vol. 193, Col. 206-210.

At the sitting held on the 17th December 1957, the Committee considered the implementation of the assurances given in the Lok Sabha on the 22nd December, 1956, during the discussion on the Delhi Tenants (Temporary Protection) Bill, and recommended that the Ministry concerned might be requested to expedite the introduction of the promised fresh legislation on the subject.

On the 27th November, 1957, the Committee considered the following suggestions made by the Department of Parliamentary Affairs:—

(1) In case where non-implementation of an assurance within two months is self-explanatory, no explanatory note stating reasons for delay in implementation need be asked for; and

(2) Where an assurance given also constituted a statutory obligation, it need not be treated as an assurance.

The Committee agreed to the first suggestion. In respect of the second suggestion, they observed that once an assurance was given on the floor of the House, the House should be informed about the action taken by the Government in implementation thereof, even though the assurance constituted a statutory obligation.

The minutes of the sittings of the Committee were laid on the Table of the House by the Chairman on the 9th September and 20th December, 1957.

* * *
**House of Lords (U.K.): Report of the
Committee on Grant of Leave of
Absence to Peers**

On the 21st June, 1955,** the Lord President of the Council, Marquess of Salisbury, moved in the House of Lords:

*The inaugural speech made by the Speaker on the occasion has been reproduced in Vol. III, No. 2 (October 1957) pp. 138-139.

**House of Lords Debates Vol. 193, Col. 206-210.

Committees at work

"That a Select Committee be appointed to inquire into the powers of this House (the House of Lords) in relation to the attendance of its members."

Speaking on the motion, Lord Salisbury said that the question of the powers of the House of Lords with regard to the attendance of Peers had cropped up more than once in recent debates, particularly when the subject of the reform of the House of Lords came up before the House. He suggested that a Select Committee with broad general terms of reference might be appointed to enquire into this aspect of the matter and to report to the House and that it might be a purely fact-finding enquiry.

On the House agreeing to the motion, a Select Committee under the Chairmanship of Earl Swinton was appointed. The Committee examined in detail how the House of Lords had exercised in the past its powers with regard to the attendance of its members and what its present constitutional powers were in this respect.

The findings of the Committee were as follows†:

"The Writ of Summons by which Peers are ordered to attend Parliament is older than Parliament itself. It invokes the feudal allegiance of temporal Lords to the Crown as authority for their summons."

"Under the Writ and the (Letters) Patent, a Peer has—

(a) the right to a 'seat, place and voice' in Parliament;

(b) the duty to attend in Parliament and 'treat and give his counsel';

(c) any other right which his Peers customarily possess."

"It has been an acknowledged article of peerage law and of the privilege of the House that the Writ cannot be withheld from a Peer.

The words used in the Writ of Summons "impose the duty of attendance in Parliament. And since the command to attend

came from the Crown, so at first the power to excuse attendance was exercised by the Crown..... During the 17th century, however, this power to excuse attendance was gradually taken over by the House from the Crown; and in that time, the House would either grant leave of absence for a period owing to the inability of the Peer concerned to attend, or, taking notice that a Peer was absent from his place at the beginning of the sitting, would, after making such inquiry as was necessary, excuse him..... The power of the House set forth in Standing Order No. 21 ('Lords may obtain leave of absence at the pleasure of the House upon cause shown') is thus of some antiquity."

"The House undoubtedly has power to order the attendance of its members and to punish members who disobey such orders by reprimand, by fine or by imprisonment."

"Since 1841, no attempt has been made by the House to enforce the attendance of Peers, but there can be no doubt that such a power does still exist, and could be used by the House if it so wished."

"There are numerous cases which can be taken to establish that failure to obey an order of the House commanding attendance has been regarded as contempt, and as punishable accordingly; but the Committee have been unable to discover any instance in which Peers have been punished for failure to attend, unless they have previously been specially summoned by order of the House; and it has seemed to the Committee that the contempt has lain in the disobedience to the order of the House rather than in the failure to attend."

"Neither this power of the House to enforce attendance, nor its right to excuse Peers from attending, has lapsed through desuetude. Accordingly, if the House desired to bring up to date those of its arrangements which govern the attendance of Peers, it would have the power to do so, provided that in so doing, it infringed no constitutional rights and did not contravene the law and custom of Parliament."

"At present, out of so large a number (over 800 peers) there must be many who are unable to attend, either because they are fully occupied with other important duties or because they feel themselves unfitted for parliamentary work, or for reasons of age, health or expense."

†Report of the Select Committee on the Powers of the House in relation to the attendance of its Members (pp. iii—xiv).

"A Peer who at the present time is unable or unwilling to discharge his duty of attendance can reasonably be said to have a duty to apply to the House for leave of absence Many of them are unaware of the fact that they can, under the existing Standing Order No. 21, apply for leave of absence, still less of the consideration that they could be said to be under a duty to do so. But if the House were to adapt to the present condition of affairs its Standing Order on leave of absence, the Committee do not doubt that these Peers would readily conform to the new arrangements."

The Committee, therefore, suggested that the Writ of Summons or a copy of the Writ might be sent to every Peer together with a copy of any new Standing Orders on leave of absence, before the beginning of Parliament. It also suggested that the new Standing Orders might provide in substance:—

(a) "That it is the duty of Members of the House to attend regularly or as often as they reasonably can or else to apply for leave of absence;

(b) "that a communication be addressed to all Members of the House at the beginning of every Parliament, stating that if they desire to be relieved of the obligation of attendance they should apply for leave of absence, either for the duration of the Parliament or for any shorter period, and further that they should state in reply to such communication whether they do or do not desire to apply for leave of absence;

(c) "that any Member of the House who fails to reply to such a communication should be regarded as having applied for leave of absence, unless he attends to take the Oath within one month of the beginning of a Parliament;

(d) "that Members of the House are expected, if they have been granted leave of absence, not to attend until their leave of absence has been terminated by their giving such

notice as may be prescribed by Standing Order."

The Committee also considered the question of sanctions in cases of failure to abide by the proposed Standing Orders on leave of absence. They felt that if any sanction or penalty were imposed upon a Peer for failure to obey the Standing Orders: "the effect might be partially or completely to exclude him from the exercise of his rights. They did not think that the absence of any penalty would make the Standing Orders ineffective and were unanimous that the Standing Orders "would in practice be scrupulously observed by Peers, and that it would be unnecessary for the House to prescribe any penalty for disobedience."

On the 10th December, 1957*, the Chairman of the Committee, the Earl of Swinton moved a resolution in the House of Lords for the approval of the report and suggesting that a Select Committee be appointed to frame Standing Orders on the leave of absence of Peers. In the discussion that followed, several Peers took part and the Lord Chancellor expressed the view that there would be no constitutional difficulty on the question of Standing Orders with regard to leave of absence. The resolution was then agreed to by the House.

* . . . *

Procedural Matters

Lok Sabha: Circulation of Copies of Bills to Members before Introduction

A recent development in the procedure regarding introduction of Bills in Lok Sabha is the decision that copies of Bills should be circulated to Members at least two days before the day on which they are proposed to be introduced. Appropriation Bills, Finance Bills and Secret Bills, are however, exempted from this requirement.

*House of Lords Debates Vol. 206 No. 16 Cols. 977—1020.

Procedural Matters

This is provided by the following Direction from the Speaker:

"No Bill shall be included for introduction in the list of business for a day until after copies thereof have been made available for the use of Members for at least two days before the day on which the Bill is proposed to be introduced:

Provided that Appropriation Bills, Finance Bills, and such secret Bills as are not put down in the list of business may be introduced without prior circulation of copies to members:

Provided further that in other cases, where the Minister desires that the Bill may be introduced earlier than two days after the circulation of copies or even without prior circulation, he shall give full reasons in a memorandum for the consideration of the Speaker explaining as to why the Bill is sought to be introduced without making available to Members copies thereof in advance, and if the Speaker gives permission, the Bill shall be included in the list of business for the day on which the Bill is proposed to be introduced."

Before this procedure came into effect copies of Bills were circulated to Members only after introduction.

Lok Sabha: Chair not to disallow a Money Bill on the ground that it does not comply with the requirements of Article 272 of the Constitution

On the 16th December, 1957, when the Additional Duties of Excise (Goods of Special Importance) Bill, 1957, was taken up for consideration, a Member raised a point of order that the Bill did not comply with the provisions of Article 272 of the Constitution* in that the Bill did not lay down the principles in accordance with which the pro-

ceeds of the duty would be distributed among the States, but contained only the quantum of the distributable amount which would accrue to the various States. Ruling out the point of order the Speaker observed on the 18th December, 1957:—

"Before I allow further discussion, let me dispose of the point of order raised the other day that under Article 272 of the Constitution, the principles according to which the amount is to be distributed ought to be formulated by Parliament.

I find generally that principles have not been formulated in the Bill, but only percentages are given, except in one case where it may be treated as a principle. But all the same, I find that an amendment has been tabled to the Long Title stating that the provisions of the Bill are in accordance with the principles that have been laid down in the Finance Commission's Report. The Long Title also is put to the vote of the House as it forms part of the Bill.

It is said in the amendment tabled by the Minister that the distribution has been made in accordance with the principles mentioned in the Finance Commission's Report. I would not accept the Long Title normally if it referred to a report which is an ordinary report by somebody or even by the Government. The present is a report from a statutory body. After the President under Article 280† appoints a Finance Commission, the Commission makes a Report and it is laid on the Table. Therefore, in view of the large number of principles enunciated there, the whole report will have to be transported into this Bill. The elucidation in the Long Title, I think is sufficient and it meets the objection.

Hon. Members will realise that if there is a defect of this character in a Bill the Speaker does not take the responsibility of disallowing it. Even when a Bill is beyond the jurisdiction of this House, I leave it to the House to decide.

Therefore, I accept the statement that in one case the schedule itself should be

*Article 272 of the Constitution states:

Union duties of excise other than such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied and collected by the Government of India, but, if Parliament by law so provides there shall be paid out of the Consolidated Fund of India to the States to which the law imposing the duty extends sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among those States in accordance with such principles of distribution as may be formulated by such law.

†Article 280 relates to the appointment of a Finance Commission by the President and its duties.

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treated as formulating the principles. In the other cases the lacuna has been made up by the amendment to the Long Title which has been tabled by the hon. Finance Minister.

The Government has introduced an amendment to the Long Title; if hon. Members are not satisfied with it, they can table amendments and say in what way it should be done.

In the circumstances, the Speaker will not take the responsibility of disallowing a Bill on the ground that certain principles have not been enunciated in it. I do not, therefore, think I should interfere or refuse further discussion on this Bill."

The Bill was then discussed and passed.

* * *

Lok Sabha: Joint discussion on a Private Member's Resolution seeking disapproval of an Ordinance and on a Government Bill seeking to replace the Ordinance

On the 22nd November, 1957, Shri Naushir Bharucha, a Member, moved a resolution under Article 123 (2) (a) of the Constitution* seeking disapproval of the Reserve Bank of India (Amendment) Ordinance. A Government Bill seeking to replace that Ordinance was also put down for consideration on that day. The Speaker, suggested that a joint discussion might take place on the resolution and the motion for consideration of the Reserve Bank of India (Second Amendment) Bill, and asked the Minister of Finance to move the Bill. When the Minister of Finance pointed out that these two motions were contrary in purpose and that a negative motion could not be coupled with a positive one, the Speaker observed:—

*Article 123 of the Constitution reads:—

"(1) 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.

(2) An Ordinance promulgated under this article shall have the force and effect as an Act of Parliament., but every such Ordinance—

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions."

"If the House approves, or carries the Resolution, it is disapproval of the Ordinance. Then the Bill automatically falls through. . . . If this Resolution falls through that means that the House has already given its opinion on the consideration motion and straightway I will take it up clause by clause and accept the consideration motion as having been approved."

In regard to the actual procedure for putting to vote the Resolution and the motion for consideration of the Bill, the Speaker further observed:—

"The Resolution will be put to vote first. On the motion for consideration also, the discussion will be taken as having been concluded by the vote on the Resolution. I will put the motion for consideration of the Bill also. There will thus be a single discussion. It is in that order that I will proceed."

The Minister of Finance then moved the motion for consideration of the Bill, and a joint discussion followed on the Resolution and the Bill. The Resolution was put to the vote of the House first. After it was negatived, the motion for the consideration of the Bill was put by the Chair and adopted.

* * *

Motion for Recommittal of the Navy Bill as reported by Joint Committee to the same Joint Committee held dilatory and ruled out of order

On 18th November, 1957, when Shri Raghuramaiah, Deputy Minister of Defence, moved for consideration of the Navy Bill, as reported by Joint Committee, Shri Naushir Bharucha sought to move an amendment for the recommitment of the Bill to the Joint

Committee with instructions to make some particular and additional provisions in the Bill. The Deputy Minister of Defence pointed out that all the points in regard to which Shri Bharucha desired the Bill to be referred back had already been considered by the Joint Committee and some of them formed the subject matter of the minutes of dissent.

Ruling the amendment out of order, the Chairman observed:

"Whatever additional provisions are suggested by the hon. Member in his amendment can be made by tabling amendments while the Bill is taken up for consideration clause by clause.

Secondly, after the Bill has returned from the Joint Committee no new circumstance has arisen which required consideration by the Joint Committee again of this Bill.

I do not think that this amendment of the hon. Member is admissible. Rule 341(3) reads:—

"If the Speaker is of opinion that a motion for re-committal of a Bill to a Select Committee of the House or a Joint Committee of the House or circulation or re-circulation of the Bill after the Select Committee of the House or the Joint Committee of the Houses has reported thereon, is in the nature of a dilatory motion in abuse of the rules of the House inasmuch as the Select Committee of the House or the Joint Committee of the House, as the case may be, has dealt with the Bill in a proper manner or that no unforeseen or new circumstance has arisen since the Bill emerged from such Committee, he may forthwith put the question thereon or decline to propose the question."

In this case, the report of the Joint Committee was presented to the House only on the 11th November, 1957. No new circumstance has arisen since then, which requires this House to send it again to the Joint Committee.

I, therefore, rule the amendment out of order."

Lok Sabha: Answering of Questions after the Question Hour

On the 18th December, 1957, after the Question Hour was over, a Member re-

quested the Chair that a particular Starred Question, which was on an important subject, might be permitted to be answered as a special case. The Speaker enquired from the Minister if he was willing to answer the Question, and when the Minister stated that if the Chair so directed he would answer it, the Speaker observed:

"The Question Hour alone will be utilised for purposes of questions—for non-official purposes. The rest of the time is entirely at our disposal for official work. Now if the hon. Minister is willing to answer, I will allow this question, otherwise not. If the hon. Minister himself wants to give an explanation regarding this to clear up any doubts that might arise, I have no objection. If he is not willing to do so, I will pass on to other matters."

Further on when another Member on a point of order submitted that the question was already in the list and the Minister was, therefore, bound to answer it and that it was up to the Speaker to give the permission or not, the Speaker observed:

"I do not give permission. I cannot extend the time. The first hour alone is devoted to answering Questions. Whatever Questions are reached, they are answered. The answers to remaining Questions are laid on the Table of the House for information. The rest of the time is entirely at the disposal of the Government for official business. If the Minister himself thinks that he must give an explanation or clear certain doubts, then it is his look-out. I cannot ask him to do so."

Lok Sabha: Speaker to determine the number of Supplementaries to a Question

On the 31st July, 1957, in the course of supplementaries to a Starred Question, a Member represented to the Speaker that he (The Speaker) had allowed four supplementary questions to that question, whereas he permitted only three supplementaries on the previous question. The Speaker thereupon observed:

"With regard to the number of supplementaries, the importance of the question

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and various other considerations are taken into account.....If I am satisfied that enough has been asked in respect of a question, I cannot allow more supplementaries."

When the Member stated that the same rule should be applied in respect of every question, the Speaker further said:

"The limitation is not on account of the number of supplementaries but on account of the importance of the question. It is open to the Speaker to find out whether a particular question is of sufficient importance or significance and has been answered sufficiently. If it has not been answered sufficiently, he may allow more supplementaries. If a question is completely answered even on the first supplementary, then I proceed to the next question. It is for me to decide whether a question has been answered sufficiently or not."

* * *

Lok Sabha: Direction regarding Statements to be laid on the Table in reply to Questions

Copies of statements to be laid on the Table in reply to Questions were

made available to Members concerned fifteen minutes before the Question Hour, in accordance with the directions of the Speaker until the middle of the third session of the Second Lok Sabha.

On the 6th December, 1957, in the course of supplementaries to a Starred Question in reply to which a statement had been laid on the Table, a Member (Shri K. K. Warior) represented to the Speaker that the period of fifteen minutes available to the Members to study those statements was insufficient. The Speaker, thereupon, observed that he would issue directions that the statements in question might be made available to the Members concerned half-an-hour before the commencement of the Question Hour.

Accordingly with effect from the 7th December, 1957, such statements are made available to the Members half-an-hour in advance of the Question Hour.

Decisions from the Chair

Amendments to Bills

An amendment beyond the scope of the Bill is out of order.

(Lok Sabha; Deb. Pt. II 31-5-57).

An amendment enlarging the scope of a Bill is out of order.

(Lok Sabha Deb. Pt. II; 27-8-57).

An amendment for the insertion of a new clause which is consequential to any changes made in the Bill is in order.

(Lok Sabha Deb. Pt. II; 27-8-57).

During the third reading stage, verbal amendments to make clear the intention of any clause in the Bill are in order.

(Lok Sabha Deb. Pt. II; 4-9-57).

The sanction of the President is necessary for any amendment which seeks to increase the imposition of a tax or the incidence of a tax.

(Lok Sabha Deb. Pt. II; 31-8-57
and 3-9-57).

Calling Attention Notices

On the last day of a session, more than one calling attention notice may be admitted by the Speaker.

(Lok Sabha Deb. Pt. II; 31-5-57).

Cut Motions

Cut motions on the demands for grants, which have not been moved at the commencement of the discussion on demands, cannot be put to vote of the House.

(Lok Sabha Deb. Pt. II; 14, 17 and 20-8-57).

Debates

Reference to proceedings in the Rajya Sabha in the course of a debate in the Lok Sabha is not in order.

(Lok Sabha Deb. Pt. II; 27-5-57).

Point of Order

When the Speaker is addressing the House, no point of order can be raised.

(Lok Sabha Deb. Pt. II; 13-5-57).

Privilege Issues

Production of Documents concerning the proceedings of the House or ceremonies thereof in Courts of Law: Report of the Committee of Privileges of Lok Sabha

On the 11th September, 1957, the Committee of Privileges of the Lok Sabha considered the procedure to be adopted for producing documents connected with the proceedings of the House in Courts of Law. According to Rule 383 of the Rules of Procedure of the Lok Sabha:

“the Secretary shall have custody of all records, documents and papers belonging to the House or any of its Committees or Lok Sabha Secretariat, and he shall not permit any such records, documents or papers to be taken from the Parliament House without the permission of the Speaker.”

There is, however, no specific rule in the Rules of Procedure regarding the production of documents connected with the proceedings of the House in Courts. The Committee, therefore, considered the procedure obtaining in the British Parliament, the United States Congress, the House of Representatives, Australia, the House of Assembly, South Africa, the House of Representatives, New Zealand and the Dail Eireann. The general parliamentary practice in these countries was that any document relating to the proceedings of the House or any Committee of the House or in the custody of the officers of the House could not be produced in a Court of Law by a Member or an Officer of the House without the leave of the House being first obtained.

However, the House invariably granted such permission unless the matter involved any question of privilege.

The Committee, therefore, recommended that no Member or officer of the Lok Sabha “should give evidence in a Court of Law in respect of any proceedings of the House or any Committee of the House or any other document connected with the proceedings of the House or in the custody of the Secretary of the House without the leave of the House being first obtained.”

The Committee further observed:

“When the House is not in session, the Speaker may in emergent cases allow the production of the relevant documents in Courts of Law in order to prevent delays in the administration of justice and inform the House accordingly of the fact when it reassembles. In case, however, the matter involves any question of privilege, especially the privilege of a witness, or in case the production of the document appears to him to be a subject for the discretion of the House itself, he may decline to grant the required permission and refer the matter to the Committee of Privileges for examination and report.”

The Committee, therefore, recommended:

“Whenever any documents relating to the proceedings of the House or any committees thereof are required to be produced in a Court of Law, the Court or the parties to the legal proceedings should request the House

Privilege Issues

stating precisely the documents required, the purpose for which they are required and the date by which they are required. It should also be specifically stated in each case whether only a certified copy of the document should be sent or an officer of the House should produce it before a Court of Law.

"When a request is received during sessions for producing in a Court of Law, a document connected with the proceedings of the House or Committees or which is in the custody of the Secretary of the House, the case may be referred by the Speaker to the Committee of Privileges. On a report from the Commit-

tee, a motion may be moved in the House by the Chairman or a member of the Committee to the effect that the House agrees with the report and further action should be taken in accordance with the decision of the House."

The Committee further observed that normally certified copies of the documents, required to be produced in Courts of Law, should be considered sufficient evidence of such documents and that, if necessary, the relevant provisions of the Indian Evidence Act, 1872, might be amended accordingly.

The Report of the Committee was laid on the Table of the House on the 12th September, 1957 and adopted by the House on the 13th September.

The representatives of the people are the proper ultimate authority in all matters of government, and administration is merely the clerical part of government. Legislation is the originating force. It determines what shall be done.

—DEAN ACHENSON in his book
"A Citizen Looks at the Congress".

Conferences

Conference of Presiding Officers of Legislative Bodies in India

JAIPUR

(October 14-16, 1957)

The twenty-third Conference of the Presiding Officers of Legislative Bodies in India was held at Jaipur from the 14th to the 16th October, 1957, under the Chairmanship of Shri M. Ananthasayanam Ayyangar, Speaker of Lok Sabha.

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

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

Inter-Legislature Association

The Conference considered the report of the Committee of Presiding Officers on the formation of an Inter-Legislature Association and recommended that steps might be taken to form Groups in all the States Legislatures as a preliminary to the formation of the Association, in pursuance of the Committee's report.

Indian Parliamentary Service

The report of the Committee of Presiding Officers on the proposed Indian Parliamentary Service was discussed. It was decided that the consideration of the proposal to have an All-India Parliamentary Service might be postponed for the present.

*The text of the inaugural speech was issued in this Journal, pp. 198-205.

Privileges

The Conference considered the question whether Government could conduct any enquiry, open or confidential, with regard to a matter which the Committee of Privileges of the House was already seized of.

The Chairman said that the matter of privileges was the exclusive jurisdiction of the House and no other authority had jurisdiction to consider that matter. Government could conduct an enquiry only with regard to its own officers and for its own administrative purposes, but not with a view to interfering with the normal course of enquiry by a Committee of Privileges. Further, the only restriction that could be put by Parliament on such a Government enquiry was that it should not interfere with the evidence before the Privileges Committee.

Appropriation Bill

The Conference considered the scope of discussion on the Appropriation Bill.

The Chairman said that in the Lok Sabha the discussion on the budget estimates and the Appropriation Bill together corresponded to the discussion on a Bill. Thus the discussion on the budget estimates corresponded to a general discussion on the Bill, and the discussion on demands corresponded to clause-by-clause consideration, the Appropriation Bill was only the operative portion of the budget. Members expressed their views in detail at the time of discussion on the budget estimates and not when the Appropriation Bill was considered. The Chairman

published in Vol. III No. 2 (October 1957)

Conferences

added that this procedure of the Lok Sabha might be accepted by the States Legislatures by way of general guidance.

Financial Committees

The Chairman said that in the Lok Sabha a convention was being observed by the parties and groups that one-third of the members of the Financial Committees changed every year. The retiring members might, however, be nominated for re-election after a break of one term in office. He observed that this convention might be followed in the States also.

Legislature Secretariats

The Conference adopted a resolution requesting the States Legislatures to take early steps to frame rules governing the recruitment and conditions of service of their Secretariat staff as required under Article 187 of the Constitution, wherever such rules had not so far been framed.

Exhibition of Publications

For the first time, an exhibition of Publications issued by various Legislature Secretariats was organised by the Lok Sabha Secretariat in the Conference Premises. Books, Reports, Brochures, Charts and Graphs pertaining to the activities of Legislatures, were displayed.

An invitation to hold the next Conference of Presiding Officers at Darjeeling was extended by the Speaker of the West Bengal Legislative Assembly and was accepted by the Conference.

* * * *

Conference of Secretaries of Legislative Bodies in India

JAIPUR

(October 13, 1957)

The sixth Conference of the Secretaries of the Legislative Bodies in India

was held at Jaipur on the 13th October, 1957 under the Chairmanship of Shri M. N. Kaul, Secretary, Lok Sabha. Thirty-one Secretaries and other Officers were present.

The Conference opened with a welcome speech by the Secretary, Rajasthan Legislative Assembly.

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

Adjournment Motion

The general sense of the Conference was that where for a particular day, notices of more than one adjournment motion were received, the Speaker should take them one by one, and as soon as one motion was admitted by him and the House gave leave, it should be put down for that day and the remaining motions should be taken up on the succeeding days. But if the Speaker gave his consent to one motion and the House refused leave, he should take up the next motion and the opinion of the House whether it should discuss that motion or not should be determined that day. Where several motions were received, one adjournment motion (if it was admitted and the House gave leave) should be put down on the Order Paper for that day.

Statutory Resolutions

The procedure to be adopted by State Legislatures with regard to Statutory Resolutions ratifying Bills passed by Parliament was discussed in some detail. The matter was decided to be referred to the Committee of Secretaries for examination on two points: firstly, who should address the States Legislatures with regard to the ratification of Bills passed by the Parliament; and secondly, when the matter has been referred to the States Legislatures, where there are two Houses and where one House has ratified and the other has rejected it, what procedure should be adopted for conveying the decision to the Parliament.

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Private Members' Business

The Conference agreed that the State Legislature Secretariat should not take responsibility for the drafting of Bills for Members, but in accordance with the practice prevailing at the Centre might give assistance to Members who gave notice of their Bills.

Casting Vote

The general sense of the Conference was that since the Chairman of a Committee, unlike the Speaker, was not debarred from participating in the discussion, he should not lose his normal vote. The casting vote might be exercised when there was a tie.

* * *

Commonwealth Parliamentary Conference, 1957

The Commonwealth Parliamentary Association held its fifth Conference in New Delhi from the 2nd to the 10th December, 1957, India, Pakistan and Ceylon acting as joint hosts. This is the first time that a Conference of the Association was held on Asian soil.

The Conference was attended by 106 delegates from various parts of the Commonwealth, representing 49 branches of the Association and by 4 observers from the United States Congress. It was inaugurated by the President of India, Dr. Rajendra Prasad, in the Central Hall of Parliament House on the 2nd December, 1957. The Prime Minister, Shri Jawaharlal Nehru, the West Pakistan Minister of Law, Pirzada Abdus Sattar and the Prime Minister of Ceylon, S. W. R. D. Bandaranaike, welcomed the delegates on behalf of the host countries, and replies to the addresses of welcome were made by the leaders of the delegations from the U.K., Canada, Australia, New Zealand, South Africa, Ghana and Malaya, and by the Nigerian and Jamaican delegates on behalf of the Auxiliary and Affiliated Branches. The Vice-President, Dr. S.

Radhakrishnan, also addressed the inaugural meeting of the Conference.

The proceedings of the Conference were held at Vigyan Phavan, New Delhi, under the Chairmanship of Shri M. Ananthasayanam Ayyangar, who had earlier been elected Chairman of the General Council of the C.P.A. The following subjects were discussed:

(i) *Economic Relations in the Commonwealth:*

This subject was discussed on the afternoon of the 2nd and the 3rd December, 1957. Seventeen delegates including the Finance Minister of India took part in the discussion.

(ii) *The Problem of the Under-Developed Territories in the Commonwealth:*

This subject was discussed on the 4th and 7th December. 33 delegates including the Finance Minister of Pakistan participated.

(iii) *"Working of the Party System in Parliament":*

This subject was discussed on the 4th and 5th December, 1957. The Prime Minister of Ceylon, the Hon. S. W. R. D. Bandaranaike and ten other delegates participated.

(iv) *"Social Services in the Commonwealth":*

This subject was discussed on the 5th December and 14 delegates participated in the discussion.

(v & vi) *The Future of the Smaller States and the Role of the English Language in the Commonwealth:*

These subjects were discussed on the 6th December in the morning and afternoon sessions respectively. 13 delegates spoke on the former and 15 on the latter.

Conferences

(vii) "International Affairs and Defence":

This subject was discussed on the last two days of the Conference, viz., the 9th and 10th December. The Prime Minister of India, Shri Jawaharlal Nehru and the Rt. Hon. Hugh Gaitskell, Leader of the Opposition in the British Parliament, took part in the discussion besides 19 other delegates.

The Conference was marked by friendliness and mutual understanding and a desire for closer co-operation among the members of the Commonwealth in all fields.

A number of art, cultural and other programmes were organised in honour of the delegates during their stay in Delhi. Receptions were held by the President, the Prime Minister and the India Branch of the Commonwealth Parliamentary Association. The Vice-President and the Speaker of the Lok Sabha gave dinners in their honour.

The delegates were also entertained to a Music and Dance Recital by the All India Radio, a Bharat Natyam performance and a Handloom Fashion Show. An Indian Art Exhibition, a Mounted Gymkhana, an Exhibition Polo Match and shows of documentary films depicting the various aspects of life and development in India were also arranged for them.

A tour programme, both before and after the Conference, to important and interesting places in India, Pakistan and Ceylon was also organised for the delegates. The tours lasted from the 10th to the 29th November and from the 12th to the 22nd December, 1957. The delegates, divided into two batches, visited Bombay, Poona, Ellora, Ajanta, Madras, Mahabalipuram, Mysore, Bangalore, Agra, Bhakra-Nangal and Calcutta in India; Karachi, Peshawar, Lahore, the Ghulam Mohammad Barrage and the Khyber Pass in Pakistan; and Colombo, Kandy and Nuwara Eliya in Ceylon.

Answers to Enquiries on Parliamentary Procedure and Practice

Salary of Newly-Elected Members

Question:

- (i) What is the date from which a Member elected under the General Elections of 1957 became entitled to his salary?
- (ii) What is the effect of election of a sitting member of the Lok Sabha to a State Legislature and vice versa in a General Election?

Answer:

- (i) Under the proviso to sub-section (2) of Section 15 of the Representation of People Act, 1951, general elections for the constitution of new Legislatures may be held within six months prior to the date of expiry of the terms of the old Assemblies. Since the General Elections of 1957 were held some time before the dissolution or expiry of the terms of the First Lok Sabha and State Assemblies, they were in the nature of anticipatory elections, and the newly-elected members were entitled to salary only on the occurrence of the vacancies in the Legislature to which they were elected, i.e. either after the dissolution of the old Assembly or after the expiry of its normal term and not from the dates of declaration of their respective results.
- (ii) The Prohibition of Simultaneous Membership Rules, 1950 provide that if a person is chosen as a member of both the

Parliament and a House of a State Legislature, his seat in Parliament shall become vacant unless he has resigned his seat in the State Legislature within 14 days from the date of publication in the Gazette of India or in the official Gazette of the State, whichever is later, of the declaration that he has been so chosen. Under this rule, a sitting member of the Lok Sabha who is elected to a State Legislature would cease to be a member of the Lok Sabha after 14 days of the publication of the declaration of his election in the official State Gazette. Similarly, a sitting member of a State Legislature on his election to the Lok Sabha would cease to be a member of the State Assembly after 14 days of the publication of his election in the Gazette of India. If any period of time intervenes between the date he ceases to be the member of one Legislature and the date on which the Assembly to which he has been newly-elected comes into being, he will not be entitled to any salary for this intervening period.

* . * *

Election of Speaker

Question:

What is the procedure followed in the Lok Sabha for maintaining secrecy of the ballot in regard to the election of the Speaker?

*Answers to Enquiries on Parliamentary Procedure
and Practice*

Answer:

In Lok Sabha, the election of the Speaker is conducted by division and not by ballot.

However, elections to Parliamentary Committees are conducted by ballot according to the principle of proportional representation by means of the single transferable vote. The names of the contestants are printed on the ballot papers issued to the voters. The voter does not thus have to write the name of the candidate for whom he wants to vote or sign his own name on the ballot paper. All that he has to do is to put the figure '1', '2', '3' and so on against the names of the candidates of his first, second or third choice and so on and then put the ballot paper in the ballot box.

With a view to ensure that ballot papers are not issued twice to the same member, the practice in the Lok Sabha is to enter the Division number of the member to whom a ballot paper is issued on the counterfoil of the ballot paper.

* * *

Questions

Question.—Will the giving of evasive, incomplete or wrong answers and insistence on their being right constitute a breach of privilege?

Answer.—The right of members is confined only to the extent of asking questions, and it does not extend to the form in which the answers are given by the Ministers. This position is well recognised both in the House of Commons, U.K. and in the Lok Sabha.

The Speaker has in a direction issued under the Rules of Procedure of the Lok Sabha laid down a procedure whereby members can bring to his notice and that of the House any mistakes or inaccuracy in a statement made by a Minister.

The answers given by the Government to questions on the floor of the House cannot be construed as a question of breach of privilege.

* * *

Languages used in the Printing of Lok Sabha Debates.

Question.—What is the procedure in regard to the use of languages in the printing of debates of the Lok Sabha?

Answer.—In accordance with the provisions of the Constitution of India, Members of Parliament can address the House in Hindi or in English, or in their mother tongues with the permission of the Presiding Officer.

The practice in the Lok Sabha is that the speeches delivered in Hindi, English and Urdu are recorded by the official reporter and printed in their respective scripts in the Debates. In the case of Urdu speeches an English translation is also printed immediately after the original version in the Lok Sabha Debates. In the case of speeches in other languages the Members are required to furnish an English translation thereof which is inserted in the Printed Debates in proper sequence.

In addition to this, a Hindi version of the Debates is also printed giving a Hindi translation of the proceedings in the Lok Sabha.

Editorial Note

With this issue, we begin the fourth year of our Journal. The three years that have passed have been of much parliamentary activity in India, not only at the Centre but also in the States, and we have tried to give our readers through the pages of this Journal as much information as possible about the development of parliamentary procedure not only in the Indian Legislatures but in some foreign Parliaments as well. The steady growth of the popularity of our Journal and the references made to it in some recent works on Parliament such as "An Encyclopaedia Parliament"* are a matter of deep gratification to us, and we hope to maintain this standard in future as well.

The present issue contains as its leading article a thought-provoking speech by our Prime Minister on "Parliamentary Democracy in the New Age" delivered while inaugurating the second Seminar on Parliamentary Democracy held in the Parliament House, New Delhi in December 1957.

Our thanks are due to the Indian Bureau of Parliamentary Studies, who organised this Seminar, for their kind permission to publish this speech in our Journal.

The recent death of Maulana Abul Kalam Azad, who was Minister for Education and Scientific Research in the Government of India and the passing away of Shri B. Das, who was the "Father of the House" in the Indian Parliament have created a void in the political and parliamentary life of our country. Short sketches of their lives have been published in this issue as a mark of our respect to these leaders.

The issue contains other features, articles, and short notices as usual, and we hope that they will be found interesting and informative by our readers.

The consolidated index for the first three volumes of the Journal is being issued separately.

*By Norman Wilding and Philip Laundy (Cassell & Co. Ltd., London, 1958). A review of this book appears elsewhere in this issue.

Book Reviews

An Encyclopaedia of Parliament by Norman Wilding and Philip Laundy, Cassell & Co., London, 1958, pp. 705, sh. 63).

This is a reference work on Parliament by the librarians of two Parliaments—Mr. Norman Wilding, the Librarian of the Federal Assembly of the Federation of Rhodesia and Nyasaland, and Mr. Philip Laundy, Librarian of the Legislative Assembly of Southern Rhodesia. Information gathered by them from different publications and various sources over a period of time, in the course of researches conducted as part of their duties in the parliament libraries has resulted in this useful and handy volume.

The work deals in detail with the history, procedure, ceremonial, administrative and political offices connected with the British Parliament and includes accounts of parliamentary institutions in the other Commonwealth countries as well. It provides concise and authoritative information on all aspects of the Mother of Parliaments, its procedure, customs, powers and privileges. The headings are arranged in an alphabetical sequence and some of the titles dealt with in detail are the Cabinet, elections, estimates, Hansard, House of Lords reform, Mace, Press and Parliament, privilege, Speaker etc. The early history of Parliament upto the reign of Queen Elizabeth I is dealt with under the single title of "Parliament", while the subsequent period down to Queen Victoria's time is treated at length under the name of each sovereign. There are also biographical notes of statesmen and politicians who were directly concerned with the creation and growth of Parliament, its powers, privileges and precedents, or those who have influenced its customs and proce-

cedure. Similar information, though in lesser detail, has been given in respect of other Commonwealth Parliaments also.

Developments in India since 1935 and the broad features of the Indian Constitution, the Indian Parliament and its procedure have been stated briefly under the title "Indian Parliament". A paragraph has also been given about the Parliament House. The reorganisation of the States and the consequent changes in the number of States Legislatures have been referred to under the title "Indian State Parliaments".

There are 32 appendices added to the main text. They give the names and dates of all the British Secretaries of State and Ministers of the Crown since the creation of each office, the dates of all the British Parliaments from 1213 to 1955 and also the names of all the Prime Ministers of all the Commonwealth countries. The bibliography at the end records over 350 works of political biography, more than 400 on British Parliamentary history, constitutional law etc., and nearly 200 on Commonwealth Parliaments.

The work is fairly wide in scope, carefully planned and simple in exposition. Its main value is that it gives in one single volume "a wealth of fact which is otherwise obtainable only from a numerous assortment of other publications." It will be found useful not only by those who are engaged in parliamentary activities and students of parliamentary history and procedure but also by the ordinary public interested in the work of the Parliament.

Constitutional Developments in India by C. H. Alexandrowicz (Oxford University Press, Bombay, 1957, pp. 225).

This work by C. H. Alexandrowicz, professor of International and Constitutional Law in the University of Madras sets forth the constitutional developments in India during the period 1950—56 with the purpose of drawing, as pointed out by the author in the Introduction, the attention of the reader to the fundamental issues of constitutional law and practice in present-day India. He has chosen the following problems for detailed discussion.—(a) the interpretation of the Constitution by the judiciary and the method adopted for it; (b) personal liberty and fundamental rights guaranteed by the Constitution and the Directive Principles of State Policy; (c) the character of the Indian Executive; and (d) the nature of the Indian federation.

In the first chapter, the author discusses the methods adopted by the judiciary for the interpretation of the Constitution, and refers to certain cases where the Supreme Court allowed references to the Constituent Assembly debates for purposes of interpretation and a few others where the intentions of the Constitution-makers were sought to be ascertained from the words of the enactment only. He urges that the methods of interpretation should be uniform in all cases.

In the next chapter, the question of personal liberty as against the working of the Preventive Detention Act is discussed. The other freedoms, such as the freedom of speech, assembly, residence, religion etc., are treated separately, as also the question of equality versus protective discrimination and

the right to private property versus its compulsory acquisition by the State.

A brief analysis of the main institutions of government is made in the chapter on the "Separation of Powers and the Delegation of Legislative Power". Attention has been drawn in this connection to the advisory opinion of the Supreme Court given in 1951 that "India had not adopted the theory of the separation of powers as known in the U.S.A. and that though parliamentary supremacy in India is not the same as in the United Kingdom, English and American constitutional law applies basically to the delegation of legislative power" in India.

The real and nominal head of the Indian Executive forms the theme of the next chapter. It points out how the position of the Indian President as the nominal head has been left to be developed through conventions and the Constitution has not incorporated any provisions to that effect.

The next chapter deals with the constitutional structure of the Indian federation during the years 1950—56 upto the enactment of the States Reorganisation Act and the subsequent reorganisation after the enactment of the Constitution (Seventh Amendment) Act. The description of the Indian Constitution as a quasi-federation is criticised in this connection.

The last two chapters deal with the elections and India's role in the international field and her relations with the Commonwealth.

As a survey of Constitutional development in India since Independence, the book is a valuable addition to the literature on the Constitution of India.

APPENDIX I

Statement showing the activities of the Houses of Parliament/State Legislatures in India during the period 1st July, 1957 to 31st December, 1957

Name of the House/ Legislature	Session during the period	Legislation			Questions					Committees										
		No. of bills passed		Starred	Unstarred	Short Notice	Names	No. of members of interest	Names	No. of members of interest										
		Government	Private Members								Notices received	Notices received	Admitted	Admitted						
1	2	3	4	5	6	7	8	9	10	11	12	13								
Lok Sabha	Two Sessions: (i) From 15-7-57 to 13-9-57 (47 sittings). (ii) From 11-11-57 to 21-12-57 (32 sittings).	47	..	12292*	3208**	1289	3760†	456‡	41	General purposes Com- mittee.	Select Committee on Wealth Tax Bill	35	Select Committee on Expenditure Tax Bill	35	Joint Committee on Navy Bill	39	Joint Committee on Delhi Municipal Corporation Bill	45	Joint Committee on Delhi Development Bill	45

*Includes 3016 Starred Questions which were converted into Unstarred Questions and 121 Short Notice Questions admitted in ordinary course.

**Includes 121 Short Notice Question which were admitted as Starred Questions.

†Includes 3016 questions, notices for which were received as Starred Questions.

‡Includes 121 Short Notice Questions which were admitted as Starred Questions.

Rajya Sabha.	Two Sessions: (i) From 12-8-57 to 14-9-57 (23 sittings). (ii) From 18-11-57 to 24-12-57 (28 sittings).	4	3038	1552	1992	1830	58	20	Joint Committee on the Mines & Minerals (Regulation & Development) Bill, 1957 30 Joint Committee on the Prohibition of Offenders' Bill, 1957 36 Joint Committee on the Parliament (Prevention of Disqualification) Bill, 1957 30
Andhra Pradesh Legislative Assembly.	Two Sessions: (i) From 3-7-57 to 31-7-57 (23 sittings). (ii) From 26-10-57 to 22-11-57 (23 sittings).	15	1965	1072	7	7	133	56	Committee on Subordinate Legislation 9 Committee on Telugu Glossary of Legal, Legislative & Administrative Terms 30
Assam Legislative Assembly.	Two Sessions: (i) From 8-6-57 to 6-7-57 (5 sittings)*. (ii) From 4-11-57 to 12-11-57 (7 sittings).	14	164	159	451	386	6	2	Committee on Petitions 4 House Committee 6 Committee of Privileges 6
Bihar Legislative Assembly.	Two Sessions: ** (i) From 1-7-57 to 2-7-57 (2 sittings). (ii) From 6-11-57 to 20-12-57 (31 sittings).	9	2691	1707	445	442	459	312	..
Bihar Legislative Council.	One Session: From 11-11-57 to 23-12-57 (23 sittings).	9	302	293	409	389	1	1	Library Committee 12 Privilege Committee 15 House Committee 8

Appendices

Bombay Legislative Assembly. <i>One Session:</i> From 28-11-57 to 26-12-57 (21 sittings)	27	2534†	2347†	6	6	222	182	Public Accounts Committee 27 Estimates Committee 27 Assembly Rules Committee 15 Committee on Subordinate Legislation 19 Committee on Petitions 5 Business Advisory Committee 9 Committee on Private Members' Bills & Resolutions 13
Bombay Legislative Council. <i>One Session:</i> From 10-12-57 to 26-12-57 (11 sittings)	27	53	50	1	1	1	1	Committee on Petitions 5 Business Advisory Committee 8 Committee on Private Members' Bills and Resolutions 8
Jammu & Kashmir Legislative Assembly. <i>Two Sessions:</i> (i) From 21-8-57 to 18-9-57 (14 sittings). (ii) From 2-11-57 to 4-11-57 (2 sittings)	18	4	430	4	29	4	5	Committee on Government Assurances 7 Select Committee on a Bill further to amend the Jammu & Kashmir Land Revenue Act, 1956 5 House and Library Committee 9
Kerala Legislative Assembly. <i>Two Sessions:</i> (i) From 22-8-57 to 2-9-57 (9 sittings). (ii) From 12-12-57 to 21-12-57 (9 sittings)	19	2382@	1639†	665	38	17	17	Select Committee on Marumakkathayam (Amendment) Bill, 1957. Select Committee on Kerala High Court Bill, 1957 Select Committee on Kerala Re-enacting Bill, 1957 Select Committee on Kerala Agricultural Pests and Diseases Bill, 1957. Select Committee on Kerala Land Conservancy Bill, 1957.

*Sittings which took place before 1st July, 1957, have not been included herein.

†Last two days of the first session of 2nd Assembly.

‡Including 206 Short Notice Questions which were admitted as Starred Questions.

§Not available.

@Total number of questions excluding the Short Notice Questions of which notices were received.

†Includes of Short Notice Questions which were admitted as Starred Questions.

N.B.—Number of Members of the Committees are not available.

1 2 3 4 5 6 7 8 9 10 11 12 13

Select Committee on Kerala Compensation for Tenants Improvements Bill, 1957

Select Committee on Kerala Numbudiri Bill, 1957

Select Committee on Sihanam Properties (Assumption of temporary management and control) and Hindu Succession (Amendment) Bill, 1957

Select Committee on Kerala Indebted Agriculturists Relief Bill, 1957

Select Committee on Jemmikarom Payment (Abolition) Bill, 1957

Select Committee on Kerala Lime Shells (Control) Bill, 1957

Select Committee on Kerala Money Lenders Bill, 1957

Select Committee on Travancore-Cochin Medical Practitioners (Amendment) Bill, 1957

Business Advisory Committee

Business Advisory Committee on Delegated Legislation

Committee on Privileges

House Committee

Rules Committee

Public Accounts Committee (1957-58)

Estimates Committee (1957-58)

Committee of Petitions on Bills

Library Committee

Committee on Estimates

Committee on Public Accounts

Committee on Subordinate Legislation

Madhya Pradesh Legislative Assembly. Two Sessions: (i) From 1-7-57 to 7-8-57 (27 sittings) (ii) From 14-11-57 to 5-12-57 (16 sittings)

Madras Legislative Assembly. Two Sessions (i) 113 hours (ii) 71 hours (43 sittings in all)

22	..	4898	2385	3169	2071	81	29	15
25	..	1953	1405	19	17	68	49	10
								10
								15
								10
								10
								15
								10
								15
								5
								12
								20
								20
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Appendices

<p>Madras Legislative Council</p> <p style="margin-left: 2em;">Two Sessions: (i) 25 hours (ii) 39 hours (27 sittings in all)</p>	25	512	455	2	2	15	13	8	<p>Business Advisory Committee</p> <p>House Committee</p> <p>Committee of Privileges</p> <p>Committee on Government Assurances</p>	11 16 16 7
<p>Orissa Legislative Assembly</p> <p style="margin-left: 2em;">One Session: From 22-11-57 to 13-12-57 (15 sittings)</p>	7	1458*	1109**	19	<p>Business Advisory Committee</p> <p>Committee on Government Assurances</p> <p>House Committee</p> <p>Committee of Privileges</p> <p>Select Committee on Madras General Sales Tax (Amendment) Bill, 1957</p> <p>Select Committee on Madras Village Panchayats</p> <p>Select Committee on Madras Catering Establishment Bill, 1957</p> <p>Joint Select Committee on Madras Bhoodan Yagna Bill, 1957.</p>	15 5 9 10 15 15 19 24
<p>Punjab Legislative Assembly</p> <p style="margin-left: 2em;">One Session: From 23-10-57 to 30-10-57 (6 sittings)</p>	21	700	500†	380	223	55	4	5	<p>Committee to consider and decide as to the action to be taken under Article 187 and Article 194 of the Constitution and in all matters connected therewith</p> <p>Select Committee on the Utkal University (Amendment) Bill, 1957</p> <p>Committee on Petitions</p> <p>Select Committee on Punjab Land Revenue Bill, 1957</p> <p>Select Committee on the Punjab Land Revenue (Special Charges) Bill, 1957</p>	7 10 5 15 19

*Total number of questions of which notices were received.

**Total number of questions admitted.

†Includes 15 Short Notice Questions which were admitted as Starred Questions.

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Punjab Legislative Council. *One session:* From 28-10-57 to 6-11-57 (5 sittings)]

19 .. 88 56* .. 9** 4 .. Committee on Government Assurances 6
 Committee connected with the comforts and convenience of the Members 8
 Rules Committee 8
 Select Committee on the Punjab Shops and Commercial Establishments Bill, 1957 12
 Select Committee on the Rajasthan Urban Improvement Bill, 1957 23

Rajasthan Legislative Assembly *One session:* From 4-11-57 to 20-11-57 (12 sittings)

20 1530 715 20 20 4 2 .. 179
 22 .. 9336 6966 214 116 3074

U. P. Legislative Assembly. *Two sessions:* (i) From 9-4-57 to 12-10-57 (57 sittings) (ii) From 9-12-57 to 15-1-58 (15 sittings)

Committee on Petitions. 5
 Business Advisory Committee 11
 Committee on Privileges 10

U. P. Legislative Council. *One session:* Started on 19-7-57 and continued after 31st December, 1957 (31 sittings upto 31-12-57)

20 .. 1441 1169 34 26 89 33
 Committee on Harijan Affairs 3
 Committee on Refugees 3
 Committee on General Administration 3
 Committee on Public Works (Building & Roads) 3
 Committee on Public Works (Irrigation) 3
 Committee on Public Works (Electricity) 3
 Committee on Education 3
 Committee on Labour 3
 Committee on Justice and Legislation 3
 Committee on Agriculture 3
 Committee on Excise 3
 Committee on Jail 3
 Medical Committee 3
 Committee on Local Self Government 3
 Committee on Information 3
 Committee on Civil Supplies 3
 Committee on Forest 3
 Committee on Revenue 3
 Committee on Industries 3
 Committee on Planning 3

Committee on Police . . .	3
Committee on Transport . . .	3
Committee on Co-operative . . .	3
Social Welfare Committee . . .	3
Committee on Rashuriya Employment Services. . .	3

*Includes 2 Short Notice Questions which were admitted as Starred Questions.

**Notices for these questions were received as Starred.

†15 sittings took place before 1st July, 1957.

††This session continued after 31st December, 1957.