The Journal of Parliamentary Information

VOL. XXXIX NO.1 MARCH 1993

SPECIAL NUMBER
89th INTER-PARLIAMENTARY CONFERENCE
NEW DELHI
APRIL 1993

LOK SABHA SECRETARIAT
NEW DELHI

CBS Pub & Dist. (P) Ltd.
11, Darya Ganj, New Delhi-2

CONTENTS

OUR CONTRIBUTORS
EDITORIAL NOTE
MESSAGES
FEATURES

Constitution of Departmentaly—related Standing Committees—A landmark in the Evolution of Parliamentary System in India.

1. North-South Relations-New Dimensions 1-6
Shivraj V. Patil
2. Indian Political Process in Perspective 7-10
Surendranath Dwivedy
3. Parliament and Judiciary 11-14
Mohd. Shafi Qureshi
4. Legislative Relations between the Union and the States 15-22
B. Satyanaryan Reddy
5. Parliamentary System Versus Presidential System. 23-26
Bhanu Prakash Singh
6. Electoral Process and Reforms 27-36
S. Beant Singh
7. Elections and Electoral Reforms in India 37-42
Lal Thanhawla
8. Indian Parliament and Social Change 43-46
Chimanbhai Patel
9. Parliamentary Institutions and People's Aspirations 47-50
Hiteswar Saikia

10.	Parliament and Human Rights **Krishna Sahi**	51-53
11.	Parliamentary Democracy in India **J.S. Tilak**	54-62
12.	Parliamentary Democracy in India-Then and Now **Umeshwar Prasad Varma**	63-71
13.	Role of Members of Parliament as Intermediaries between the Citizen and Government **Harcharan Singh Ajnala**	72-76
14.	Effectiveness of Parliamentary Committees in influencing Government Policies **H.S. Bhabhra**	77-86
15.	Parliament and Political Culture **Yudhisthir Das**	87-89
16.	Parliament as a Multi-functional Institution **Hashim Abdul Halim**	90-91
17.	Environment and the Law **Shaikh Hassan Haroon**	92-96
18.	Parliamentary and Presidential Systems **T.S. Negi**	97-98
19.	Anti-Defection Law-Split in Parties **D. Sripada Rao**	99-106
20.	Anti-Defection Law-Problems and Prospects **Ghulam Sarwar**	107-112
21.	Constitution of India as an Instrument of Economic Growth and Social Justice **Ishwar Singh**	113-123
22.	Parliament as an Instrument of National Integration **Thenucho**	124-128
23.	Anti-Defection Law **Keshari Nath Tripathi**	129-137
24.	Electoral Reforms **J.Chokka Rao**	138-142
25.	Parliament, Executive and Judiciary **P.G. Naryanan**	143-146
26.	Constitutional Amendments **S.S. Ahluwalia**	147-161

27. Reforming the Government-The Presidential Alternative ? 162-168
J.K. Jain

28. Constitution of India in Precept and Practice 169-174
Satya Prakash Malaviya

29. Role of Individual and Independent Members 175-178
Ghulam Rasool Matto

30. Some Issues of Electoral Reforms in India 179-181
Chaturanan Mishra

31. Parliamentary and Presidential Systems - A Comparative Study 182-200
Naunihal Singh

32. Speaker in the Lok Sabha and the House of Commons 201-212
B. N. Pande

33. Parliament-The Fountainhead of Social Change 213-217
Sushil Kumar Shinde

34. Parliamentary Reforms 218-220
Bhogendra Jha

35. Elections and Electoral Reforms 221-222
Vishwanatham Kanithi

36. Constitution of India-An Appraisal 223-225
Sumitra Mahajan

37. Parliamentary Legislation and Social Change 226-239
Hannan Mollah

38 Parliamentary Democracy-An Assessement 240-242
Vasant Pawar

39. Socio-Economic Background of Legislators 243-244
Moreshwar Save

40. Parliamentarians and the International Co-operative Movement 245-248
Sudhir Sawant

41. Role of Women in Parliamentary Democracy 249-250
Chandraprabha Urs

42. Parliamentarians-Link between the People, Parliament and Government 251-257
C.K. Jain

43. Ecology and Environment- Role of Parliaments, Executive and the People 258-273
Har Swarup Singh

44. Parliament and the Communication Media 274-276
Chintamani Panigrahi

45. Parliament and the Executive 277-278
Yagya Dutt Sharma

46. Parliamentary Protests-Need for Changes in Forms 279-283
Virendra Verma

47. Parliament and National Integration 284-288
Renuka Ray

48. Parliament and Foreign Policy 289-291
Samarendra Kundu

49. Material and Spiritual Needs-Concerted Action for Survival 292-299
Sushila Nayar

50. Telecasting of Parliamentary Proceedings 300-308
R.C. Bhardwaj

51. Informational Needs of Members 309-313
J.M. James

52. Role and Experience of Members of Legislatures in the Committees 314-317
C.S. Janakiraman

53. Parliament and Judiciary 318-334
N.H. Muttalageri

54. Speaker and Court's Subpoena 335-342
Jugal Kishore Prasad

55. Committees of the Maharashtra Legislature 343-348
Bhaskar Shetye

56. Legislative Relations between Centre and States 349-356
Sumit Kumar

57. Parliament Library-Marching towards the 21st Century 357-366
G.C. Malhotra

58. Should the Constitution be Amended? 367-373
J.P. Chaturvedi

EDITORIAL NOTE

The Inter-Parliamentary Union (IPU), over the years, has evolved into the single largest association of sovereign Parliaments of the world. Ever since its inception in 1889, it has striven to promote the cause of parliamentary democracy as also inter-parliamentary co-operation. Today, the IPU has in its fold 116 member countries and an associate member. Together, they represent more or less the whole of humanity.

The IPU, by its very nature, abounds in diversity, even in the nature and content of the parliamentary polity prevalent in member-countries. The Conferences of the IPU, held twice every year, provide a unique setting for parliamentarians from the world over to discuss problems of contemporary interest-political, economic and social. They also enable participants to exchange views on diverse issues and learn from one another's experience. Above all, these Conferences bring them together and in the process make them better aware of their responsibilities as global citizens.

We in India have had the proud privilege of hosting the 57th Inter-Parliamentary Conference in 1969. We are honoured and privileged to be the hosts to the 89th Inter-Parliamentary Conference in New Delhi in April this year. To commemorate this historic occasion, we are bringing out this Special Number of the *Journal of Parliamentary Information.*

By virtue of its unique status as the largest working democracy in the world, India perhaps best exemplifies the IPU's

unflinching commitment to parliamentary democracy. With our rich and varied democratic heritage spanning millennia, ours has been a crucible of many cultures and civilisations as also systems of governance. Though parliamentary democracy in its modern sense has been in operation in our country only after independence, we have amply proved our inherent and inviolate democratic credentials by successfully conducting ten General Elections to our Parliament and many more elections to the State Legislative Assemblies and other local level representative institutions. Undoubtedly, the triumph of democracy is best visible in our country, which has the distinction of conducting perhaps one of the largest election exercises in the history of mankind.

Parliamentary democracy in India has thrived and struck deep roots in spite of many trials and tribulations. In the process, we have proved the prophets of doom wrong. We have also sent out a clear signal simultaneously to the world at large that we are democrats by choice and conviction. There is no gainsaying that all is right with our parliamentary democratic polity. This is also a sign of the dynamics and vitality of the system as such. What we have to keep in mind is that we should all make conscious efforts towards further consolidating the cause of democracy by endeavouring to overcome the problems that we are facing.

The articles which find place in this Special Number delve deep into all these aspects of our democratic functioning, especially since independence. Coming from eminent personalities who have been closely associated with parliamentary institutions, they reflect truly the highs and lows of our system at work. A silver-lining which underpins all articles is that parliamentary democracy is still the best bet as far as our polity is concerned.

We are deeply indebted to the President of India, Dr. Shanker Dayal Sharma; the Vice-President and Chairman, Rajya Sabha, Shri K.R. Narayanan; the Prime Minister, Shri P.V. Narasimha Rao; the Speaker, Lok Sabha, Shri Shivraj V. Patil; the Deputy Chairman, Rajya Sabha, Dr. (Smt.) Najma Heptulla; the Deputy Speaker, Lok Sabha, Shri S. Mallikarjunaiah; and the President of the Council of the Inter-Parliamentary Union, Sir Michael Marshall for their Messages of good wishes which have enriched and enhanced the value of this Special Number.

We are highly oblighed to all the Union Ministers, Governors, Chief Ministers, Presiding Officers of various Legislatures, eminent parliamentarians, distinguished academicians and renowned journalists and other experts who, in spite of constraints of time, made it convenient to contribute outstanding articles for this Special Number. I would, however, like to emphasise that the views expressed in the articles are those of the individual authors and the Lok Sabha Secretariat does not accept any responsibility either for the opinions expressed or facts cited by them.

We are particularly beholden to Shri Shivraj V. Patil, Speaker, Lok Sabha for motivating and inspiring us to bring out this Special Number.

We express our deep appreciation for the sincere co-operation extended to us by Shri S.K. Sharma, Joint Director and the team of researchers, Smt. Manju Sharma, Smt. Malathi K. Ramamoorthy, Kum. Sunanda Das and Smt. Musarrat Naushad, Research Assistants.

It is our sincere hope that this issue would be found useful and informative by all parliamentarians, political thinkers, students of parliamentary political science and all those who cherish the ideals of parliamentary democracy

The regular Features of this issue of the *Journal* will appear in the June issue (Vol.XXXIX, No.2)

—C.K. Jain

राष्ट्रपति
भारत गणतंत्र
PRESIDENT
REPUBLIC OF INDIA

2 April 1993

M E S S A G E

...

I am glad that the Lok Sabha Secretariat is bringing out a Special Volume of 'The Journal of Parliamentary Information' on the occasion of the 89th Inter-Parliamentary Conference in New Delhi in April 1993.

The Inter-Parliamentary Union, since its inception in 1889, has played a pivotal role in bringing together the representatives of Parliaments of democracies around the globe.

As a member of the IPU since 1949 India has consistently contributed to the functioning of the IPU in the cause of strengthening the wherewithal of democracy.

I am sure the forthcoming Conference would prove to be an important landmark in advancing the ideals cherished by member-countries of the IPU and help building a better future for all.

I extend my greetings and good wishes to all the distinguished participants.

(Shanker Dayal Sharma)

उप - राष्ट्रपति, भारत
नई दिल्ली
VICE-PRESIDENT
INDIA
NEW DELHI
February 15, 1993.

MESSAGE

It gives me great pleasure to know that the Indian Group of the Inter- Parliamentary Union (IPU) is holding its 89th Inter-Parliamentary Conference at New Delhi in April, 1993. As an international organisation, the IPU has brought together the representatives of different Parliaments for the objective study of political, economic, social and cultural problems of international significance.

The IPU has been playing a significant role and I am confident that this Conference will provide an opportunity to all participants for sharing their experiences and finding solutions to major global problems. I wish the Conference all success.

(K.R. Narayanan)

PRIME MINISTER

MESSAGE

I am happy to learn that the Indian Group of the Inter-Parliamentary Union will be hosting the 89th Inter-Parliamentary Conference in New Delhi. This is indeed an honour for the Indian Group and an opportunity for it to look back with satisfaction at its substantial contribution to the IPU.

I convey my best wishes to the organisers of the Conference and all the participants.

(P.V. Narasimha Rao)

New Delhi
February 12, 1993

अध्यक्ष लोक सभा
SPEAKER LOK SABHA
04 Mar 1993

MESSAGE

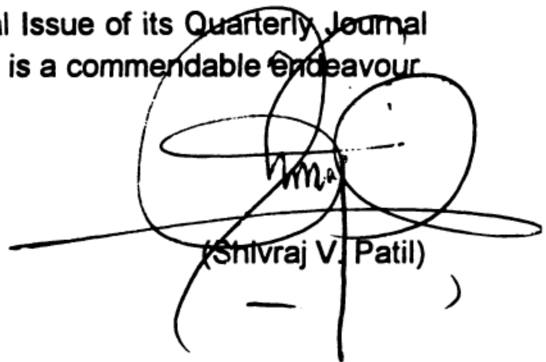
Building bridges of understanding and continuously nursing them is a task essential in the direction of promoting world peace.

The Inter-Parliamentary Union in its Conferences and other meetings provides a forum for Parliamentarians from over hundred member countries to meet, discuss and exchange ideas and views on bi-lateral, multi-lateral and international matters which certainly go a long way in widening the areas of understanding and cooperation.

The aims, objects and activities of the IPU conform to the UN Charter and hence this institution, which is over a century old, lends its strong support to the United Nations.

In April this year, India would be having the privilege and honour of hosting the IPU Conference.

To mark this occasion, I am glad, the Lok sabha Secretariat would be bringing out a Special Issue of its Quarterly Journal of Parliamentary Information. It is a commendable endeavour. I wish them all success.



(Shivraj V. Patil)

Sir Michael Marshall DL MP

UNION INTERPARLEMENTAIRE

Le Président du Conseil Interparlementaire

INTER-PARLIAMENTARY UNION

The President of the Inter-Parliamentary Council

MESSAGE

On the occasion of the 89th Inter-Parliamentary Conference in New Delhi, it is a pleasure to convey to the Indian Group of the the Inter-Parliamentary Union and to the organising committee of the Lok Sabha my gratitude for all the sterling effort which has been expended in arranging the holding of this conference at relatively short notice. It is also my pleasure to welcome to New Delhi the delegates to the 89th Inter-Parliamentary Conference. I am sure that they will find their week in the largest democracy in the world both stimulating and exciting. We shall all benefit from meeting together in these unique surroundings.

DR (SMT) NAJMA HEPTULLA

DEPUTY CHAIRMAN
RAJYA SABHA
PARLIAMENT HOUSE
NEW DELHI

March 19, 1993

MESSAGE

It is indeed our great privilege to host the 89th Inter-Parliamentary Conference in New Delhi from 12 to 17 April, 1993. I am happy to note that we are able to bring out a special issue of the Quarterly Journal of Parliamentary Information on this occasion. Considering the world wide participation by representatives from all the walks of life, I am sure the Conference would yield very rich results.

I wish the Conference a great success.

Najma Heptulla
(NAJMA HEPTULLA)

उपाध्यक्ष लोक सभा
DEPUTY SPEAKER LOK SABHA

MESSAGE

It is a matter of great pleasure that the Indian Group of IPU is hosting the 89th Inter-Parliamentary Conference in New Delhi in April, 1993.

I am very happy to convey my best wishes through the Special Issue of the **Journal of Parliamentary Information** being brought out by the Lok Sabha Secretariat to mark the occasion and wish the Indian Group of the IPU every success in their mission of bringing together the representatives of the Parliaments of sovereign States. Last time when we hosted Conference in October-November, 1969, the number of member countries participated was only 52 whereas now it is 116 plus one Associate Member. It is thus heartening to see that more and more of its members are feeling the urge to come together with representatives of the Parliaments of sovereign States to work more vigorously for peace and cooperation among peoples and for the firm establishment of representative institutions.

(S. MALLIKARJUNAIAH)

Constitution Of Departmentally Related Standing Committees—A Landmark In The Evolution Of Parliamentary System In India

Over the years, there has been an unprecedented growth in the range, magnitude and complexity of governmental activities. This had naturally led to a situation where Parliament was finding itself somewhat hadicapped to perform its function of debating policies, making laws and overseeing executive actions in various fields of administration. Of late, there has been a growing realisation that if the Parliament has to really fulfil its pivotal role in ensuring administrative accountability, it needed some institutional arrangements which could undertake scrutiny of the Government Budget and enquire into the performance and also suggest policy directions and initiatives. The need was felt more because of time constraint and the inability of the House to discuss several matters and to go into details. The successful experience of the departmentally related Select Committees in the British House of Commons and other countries persuaded our parliamentarians to adopt the Committee System.

As early as in 1978, the Presiding Officers Conference had deliberated on this matter. During the Third Regional Commonwealth Parliamentary Association Seminar held in New Delhi in January, 1984, the question of setting up Subject Committees was discussed in detail. The Presiding Officers Conference held in the subsequent years also delved deep into the issue. These effortts finally reached fruition when, on 18 August, 1989, Parliament

constituted three such Committees relating to Agriculture, Science and Technology and Environment and Forests.

The viability of this experiment was soon in evidence so much so that it was felt that Parliament should go in for a full-fledged Committee System. Mr. Speaker Patil took the initiative and held discussions with the Prime Minister, Leaders of Parties, Members and others. These discussions, which were in several rounds, helped considerably in formulating the scheme and also bringing about an agreement among differing points of view. Thereafter, the agreed proposals were placed before the Rules Committee of Lok Sabha. Proposals were futher considered at a joint meeting of the Rules Committee of Lok Sabha and Rajya Sabha. Finally, the Rules Committee in its Third Report presented to the Lok Sabha on 29 March, 1993, recommended the setting up of seventeen departmentally-related Standing Committees of Parliament. The Rules Committee of Rajya Sabha also adopted the same rules which were presented to Rajya Sabha on 29 March, 1993. Both Houses adopted the rules same day. Thus, in the history of Indian Parliament a major initiative was taken in the direction of making the Parliament more powerful and effective in the exercise of its control over the executive.

On 31 March, 1993, at an impressive function held in the Central Hall of Parliament, the Vice-President of India and Chairman, Rajya Sabha, Shri K.R. Narayanan formally inaugurated the new Standing Committees. The function was also addressed by the Prime Minister, Shri P.V. Narasimha Rao, the Speaker, Lok Sabha, Shri Shivraj V. Patil and the Union Minister of Parliamentary Affaris and Water Resources, Shri Vidyacharan Shukla. We reproduce below the text of these Addresses as also the amendments that have been made in the relevant rules of the Rules of Procedure and Conduct of Business in Lok Sabha, consequent upon the setting of the said Committees.

—Editor

Address By Shri K.R. Narayanan, Vice – President of India and Chairman, Rajya Sabha

We are today entering a new phase in the evolution of our parliamentary system. I do not believe that in human institutions there can be anything like an end of history. This Parliament itself has been evolving over the years and it is important that even though the Committee System has been known to other Parliaments for a considerable time now, we are not adopting it in an imitative way but because through our own experience, we have found that it is needed for the functioning of our own system.

The Committee System is an old idea whose time has come today. In recent times, I recall that previous Speakers Shri Bal Ram Jakhar and Shri Rabi Ray had tried to give a fillip to this idea of establishing this Committee System in our Parliament. But, today our hon'able Speaker, Shri Shivraj Patil, has taken a bold initiative and worked hard in order to bring this idea into a reality. He has used his considerable persuasive power in order to overcome obstacles in the way of the establishment of system and I want to congratulate him today for his achievement. This is a historic step in which the Government headed by the Prime Minister has played an important role.

I recollect that at the Conference of the Presiding Officers of Parliament and Legislative Bodies in India, held last September in the Central Hall he said that he would like the Committee System to be introduced as early as possible and he believed that we would be able to make a success of the system. The Minister of Parliamentary Affairs and the Ministers of State in the Ministry of Parliamentary Affairs in both Houses have worked hard and contributed to the realisation of this new system. I should also like to thank and congratulate the Members of the Rules Committees of both Houses who helped us in sorting out many problems involved in the introduction of the system and enabled us to find a consensus in regard to this matter.

We have had the experience of the U.K. House of Commons which started this system in 1979 as department-related Select Committees. The unanimous opinion in U.K. is that the Select Committees since 1979, "have increased the flow of information coming out of Whitehall and this has resulted to some extent in debates being better informed both inside and outside Parliament."

This system, apart from dealing with the basic or ordinary issues, will tone up the functioning of Parliament. One of the important impacts of this system has been the general toning up of debates and efficiency of functioning of Parliamentary System. We have had in our own country the system operating in some of our State Legislatures. Kerala has had this system functioning for some time now and it has been found a success. one difference in the system being followed in the State of Kerala is that there Ministers normally preside over what they call the Subject Committees and the Committees have the power to investigate into issues and complaints also.

The main function of our Committees would be in-depth examination of functioning of the Government, consideration of Demands for Grants, Bills, long term national policies, etc. The main purpose, of course, is to ensure the accountability of Government to Parliament through more detailed consideration of measures in these Committees. The intention is not to weaken or criticise the administration but to strengthen it by investing it with more meaningful Parliamentary support.

I feel that the Committees in their functioning should not be inquisitorial nor should the Government side evasive in its approach. Even though tremendous, lot of work can be done in these Committees, it is admitted that they cannot be a substitute for fullfledged debates in Parliament on issues, on Demands, on legislation and other matters. The Committees are only a mechanism. We have to instil them with life. And for this, not only full and intelligent participation of Members is required but, I think, there should be powerful support by the Secretariat. The Secretariats of both Houses have already contributed, as the hon'ble Speaker has mentioned, in the formation of these Committees themselves. Without the help of knowledgeable, objective officials neither the Parliament is a whole nor the Committee System can work effectively.

I also feel that apart from the secretarial and research assistance to be given to the Committees, we should have for the whole of Parliament, indeed for every Member of Parliament, research and secretarial assistance made available. I know that it may be an expensive proposition but we all know that since Independence our general bureaucracy has been proliferating according to the Law of Parkinson. And in such a situation, it may not be impossible for us to ensure that Members of Parliament are given at least the minimum of research and secretarial assistance so that they can fulfil the mandate of the people efficiently and effectively. I have found that in the United States, there is an institution called 'The Congressional Aids' and every Senator and Congressman has at his disposal a staff for research, not only for research but for general advice, and these aids are something between a civil servant and a politician; and mostly young people. And they not only help the Congressmen themselves out of the experience they get by assisting them. We have a large pool of educated young people from whom I think we can draw upon for this kind of assistance.

I want to add something more about the role of the officials. Under the British System, according to one of the great experts on Parliamentary Government, K.C. Wheare, one of the most valuable things is : The association of "special and "non-special minds" - the phrase is actually that of Bagehot. It is from the

cooperation in the work of the Committee between Members and officials, to quote Wheare again, that there comes out : Unity out of plurality, direction out of confusion, decision out of discussion". This is the result of the dynamic impact of officials on the Committees, in the system which has been working in several countries and which we are now embarking upon to work.

Several witticisms have been uttered about the Committee System generally. In Britain, somebody said, "A Committee is a body of people which keeps minutes and wastes hours." There is another definition that, "They are a group of people who are individually determined that something must be done but collectively decide that nothing can be done." I do hope that this Committee System would function more meaningfully.

Parliament in india has been an adapted institution but it has developed in a very original way. And we have made our Parliamentary System to undertake new functions which Parliaments in advanced countries have never attempted. We have made it to serve the purpose of basic development of our economy and society. We have used it as a unifying instrument in a very diverse society. And often, we have found that the system has a therapeutic effect in dealing with the occasional general madness in society, and in bringing about out of it a minimum of sanity. For these purposes our Parliament has functioned in a creative, original way. And I think, by establishing these Committees, we are adding a new dimension to it.

While inaugurating this new system, I want to wish the Committee System every success in enriching our Parliamentary System and our democracy.

Thank you very much.

Address By Shri P.V. Narasimha Rao, Prime Minister

We are launching the new Standing Committee system in Parliament today. To me, this is a matter of great satisfaction, not only because I have always been in favour of such a system, but also because this event signifies fulfilment of an assurance I had given about six months back when I addressed the All-India Conference of Presiding Officers, Leaders of Parties, Ministers of Parliamentary Affairs and Whips at this very place. On that occasion, I had made it clear that the Government would like the system to be introduced as early as possible and had assured fullest cooperation to make it a success. A beginning had been made in 1989 when for the first time such Standing Committees were set up for three Ministries, namely Agriculture, Science & Technology and Environment & Forests. Ever since then, there has been consideration at several levels in the Government and Parliament as to how we could cover the whole ambit of the Executive by such a system, but concrete progress had been eluding. Our success in launching these Committees today, is in no small measure due to the initiative and dynamism shown by the Honourable Speaker Shri Shivraj Patil ji. I would also like to place on record the excellent work done by my colleague, the Minister for Parliamentary Affairs Shri Vidyacharan Shukla ji in giving a push to this scheme and seeing through its implementation.

Committees have become a vital part of the institutional framework of Parliaments all over the world today. When one talks about Committees of Parliament, one thing that comes out prominently is that they are primarily thought of as an instrument of 'control' over the Executive. While they do act as controls over the Executive, there are several other virtues and benefits associated with such a system. It offers an opportunity to the members to have a glimpse into the working of Governments and understand the practical problems and constraints. It also helps them to gain expertise and specialisation about the subjects dealt with by the Committees, which in turn is bound to result in elevating the standard of debate on the floor of the House. For this reason, it is necessary that as many members as possible should be associated with these Committees. I am happy that the Rules Committee has taken this aspect into account and increased the number of members to be nominated on each Committee in such a manner that almost all members will have opportunity of serving on one or other of these Committees.

The immediate task of these Committees is rather a brisk one, because they have to start off with examination of Demands for Grants of all the Ministries of the Government and submit their reports to both Houses within a prescribed period. This itself is a stupendous task as each one of these Committees has to produce reports on two to six Ministeries or Departments, with the exception of three Committees which are entrusted with only one Ministery each. Thus the Parliament will have before itself the reports prepared by these Committees on the Demands of all the Ministries. This itself will be a major achievement as Demands for Grants of all Ministries would have been scrutinised by at least a Joint Parliamentary Committee if not by the Parliament as a whole. This is significant as practically at no time in the past could the Parliament discuss all the Demands for Grants for want of time.

There is provision in the new sytem for the Committees to be assisted by experts on the given subjects. This is necessary as it would provide the much needed information management and interpretation of data for members of the Committees.

These being Standing Committees, their work will not come to an end with the submission of Reports on Demands for Grants.

They will be entrusted with functions of different kinds from time to time. They will have opportunities to examine Bills introduced in both Houses as referred to them by the Chairman or the Speaker. They will also be able to consider the long term policy documents presented to Parliament with a view to giving constructive suggestions. It has been a welcome feature of the existing Parliamentary Committees to work on a non-partisan basis. I am sure the new Committees will also work in the same spirit.

I would like to once again assure that the Government will extend its full support and cooperation to the new Committees in whatever way possible and feasible under the Rules. I hope Members will take keen interest and devote necessary time and energy to the work assigned to the Committees.

I wish the Committees all success.

Thank you.

Address By Shri Shivraj V. Patil, Speaker, Lok Sabha

In this convocation, we extend a very warm welcome to all the ladies and gentlemen, friends and the Honourable Members who are present here.

We are thankful to the Honourable Vice-President, Shri K.R. Narayanan, for agreeing to inaugurate the working of the Committee System in our Parliament and for making himself available here for the purpose. But for his understanding and support, the Committee System would not have become feasible and would not have come into existence in the shape and time in which it has become possible now.

We are indeed thankful to the Honourable Prime Minister for agreeing to preside over this function. In a way, it was he who initiated the idea to have the Committee System in our Parliament and supported it, to the hilt to see that it became possible and could be started. Let it be noted in the pages of the history of the parliamentary system in our country.

We are thankful to Shri V.C. Shukla, Minister of Parliamentary Affairs, for the manner in which he supported the genesis of the system and convinced his colleagues for standing by it.

We are also thankful to Shri Ghulam Nabi Azad, former Parliamentary Affairs Minister, who did his best to acquire the

support to the system in the Parliament and Council of Ministers.

Shri S.B. Chavan, Home Minister, who was responsible for starting a system of something of this kind in Maharashtra was also very supportive of and encouraging for the Committee system. We thank him also.

Shri L.K. Advani, the Leader of the Opposition in the Lok Sabha, supported the creation of the Committee System. And we thank him very sincerely.

Shri P.R. Kumaramangalam, Minister of State for Parliamentary Affairs, Shri Somnath Chatterjee, Shri Indrajit Gupta, Shri Nirmal Kanti Chatterjee and other Members of Parliament helped us to refine the system we wanted to have. They too deserve our thanks.

Shri Sharad Dighe, Shri P.K. Bansal, Shri Ram Vilas Paswan, Shri Nitish Kumar, Smt. Malini Bhattacharya, Shri George Fernandes, Shri Inder Jit, Shri Inder Kumar Gujral, Shri Saifuddin Choudhury Shri Anil Basu, Shri Chitta Basu and other MPs also gave us lot of help.

We thank them from the core of our hearts.

Shri G.L. Batra, Additional Secretary, Shri C.K. Jain, Secretary-General, Lok Sabha, Shri Sudarshan Agarwal, Secretary General, Rajya Sabha, worked hard to frame the rules and to see that the Committees start functioning. We appreciate their help and enthusiasm in this respect.

The Officers of the CPWD did their best to create and provide chambers and offices for the Chairmen and their staff and the Staff of their Secretariat. We would like to say that we appreciate the speed with which they did their job and the manner in which they performed their duties.

We appreciate very much and thank the members of Parliament for agreeing to opt for this system and experiment with it to tone up the functioning of the Parliament.

In this respect, the help which was extended by some friends from the Press, in the shape of new ideas and support, also deserves our appreciation and thanks.

We would, more particularly and specially like to remember and pay our tribute to the memory of our former Prime Minister Smt. Indira Gandhi , who was responsible for sowing the seed of the concept of the Committee System in our Parliament.

We would like to remember the efforts done by the former Speakers Shri Balram Jakhar, and Shri Rabi Rayji and for watering the sapling of this system and giving it all the support and help and seeing that it remained in existence until it took the present shape and thank them for the services they rendered to the Parliamentary and Committee System in India.

We are expressing our gratefulness to our colleagues in so many words and so specifically because, but for their succour and support, the new system would not have seen the light of the day. We are doing it, because we think that this information should form part of the annals of the Parliamentary System.

The Parliament shall have Seventeen Committees. Each of these Committees shall have 30 Members from the Lok Sabha and 15 Members from the Rajya Sabha and shall be responsible to examine the working of the Ministries given to each of them.

Each Committee shall examine the Demands for Grants, Bills, Annual Reports, and the basic policies of the Ministries under each of them and report on them to the Parliament. They shall be able to obtain help for the purpose from the Secretariat of the Parliament, Ministries and other experts.

The rules made for them are the result of the discussions between the Presiding Officers, the Members of the Executive, the Leaders of the Parties, the Members of Parliament, the Ex-Members of Parliament who take interest in Parliamentary affairs, the Officers and the Members of the Rules Committees. They are based on the consensus evolved among all concerned.

We would like to see that the Committees experiment with these rules for some years and then, in the light of their experience, we can have a second look at the rules to make them more effective.

With these Committees having come into existence, it would be possible for the members to participate in greater detail, in the

functioning of the Parliamentary system. They would be able to examine the Demands for Grants and Annual reports of all the Ministries every year in greater detail. That would help the Ministries and the Parliament to do better in their respective spheres of activities.

World over, the parliamentary system have been moving towards working in details in Committees, as well as in the plenary meetings. We, in the Indian Parliament, have also stepped on the route in that direction. We hope that this system or some of this kind, in modified forms, would be started in the State Legislatures also, as agreed to in the Conferences of the Presiding Officers.

The working of the system may encounter some hurdles. But, we should not be cowed down by them. We should be able to overcome the difficulties, with the ingenuity which we have at our disposal. We should also try to evolve ways and means to make it successful, meaningful and interesting. We are sure that the Chairmen, Members and Officers involved in them would do their best.

The Secretariat of the Parliament would organise Courses and discussions with the experts in these fields, to make the functioning of these Committees more and more purposeful.

These Committees shall help the people, the Parliament, the Executive to use the system in a most cost-effective, democratic and purposeful manner.

With the help of all concerned, the new system is embarked upon.

With the help of all concerned, we hope that it would work successfully.

Thank you.

Address By Shri Vidyacharan Shukla, Union Minister of Parliamentary Affairs and Water Resources

This is a historic occasion when we are taking a major step forward in improving the functioning of Parliamentary institutions. The system of Standing Committees we are now starting may not be entirely new to this country. Standing Committees had existed even in pre-independent India but from the point of view of their composition and functions, the Committees we are now starting are different from the earlier ones.

As is well known, we constituted 3 Standing Committees in 1989 for three Ministries. But we could not proceed further during the Ninth Lok Sabha to cover all the Ministries by this system, although the Rules Committee of the Ninth Lok Sabha recommended such Committees. There were some members and also some Ministers who gave notices of amendments to the Rules Committee's recommendations. The consideration of the amendments took a long time for one reason or the other and the Committees could not be set up before the Lok Sabha was dissolved.

It goes to the credit of the Rules Committee of the present Lok Sabha to have immediately taken up consideration of this important Parliamentary reform and submitted very comprehen-

sive recommendations in their First Report itself. Honourable Speaker Shri Shivraj Patil Ji relentlessly pursued the matter to see that the proposals of the Rules Committees took concrete shape for implementation during this Budget Session itself. There is no exaggeration if I say that it is he who is responsible for the new system to be launched today.

There were many issues that had to be considered before finalising the functions and procedures for the new Committees. As we wanted as many members as possible to be accommodated on these Committees, the number has been increased to 45 from 30; out of them 30 will be from Lok Sabha and 15 from Rajya Sabha. The number of Committees also has been increased to 17, out of which 6 will have Chairmen from Rajya Sabha and 11 having Chairmen from Lok Sabha.

The Committees, besides examining the Demands for Grants of all Ministries/ Departments and submitting report to both Houses, will also be entrusted with other functions such as examination of Bills referred to them and considering major policy documents presented to the Houses. This will be a welcome step inasmuch as the Committees will focus close attention to the various aspects of the legislative measures and come up with valuable suggestions which may prove useful when the whole House takes up the bill for consideration and passing. These Committees will also examine the annual reports of the Ministries. This will mean that the entire working of a Ministry will be scrutinised by these Committees. One of the recommendations of the Rules Committees is that the Standing Committee will not go into the day to day administration of the Ministries. This is as it should be, for the Committees are expected to engage themselves on matters of a higher level which provide direction, guidance and necessary inputs for broad policy formulation by the Government. I hope and trust that the members will keep this in mind during the course of discharging their functions in these Committees.

I will be failing in my duty if I do not express my grateful thanks to the Honourable Chairman, Rajya Sabha Shri K.R. Narayanan, who also took a very keen interest in ushering in the new system. He took a Joint Meeting of the Rules Committees of both Houses and sorted out matters concerning the two Houses

in a very cordial manner.

The Honourable Prime Minister has been blessing the new venture from the beginning. His assurance to the Conference of Presiding Officers, Leaders of Parties, Ministers of Parliamentary Affairs and Whips in 1992 provided the inspiration for pushing the matters to finality.

A point has been raised by some as to whether the Consultative Committees attatched to the Ministries should be continued in the light of this development. Consultative Committees are less formal in nature, not being Parliamentary Committees and presided over by the concerned Ministers. There may be some advantages in continuing these Committees. However, we are open to suggestions on this and a decision will be taken based on the wishes of the Committees themselves.

It is heartening to note that there has been overwhelming unanimity among the members in welcoming the new scheme. I hope that they will show the same spirit in working on these Committees and producing valuable reports within the time fixed for the purpose. The future of the system lies on how they function during the recess that is just ahead of us. I appeal to the Chairmen and members of the Committees to function in an objective manner and establish healthy conventions which will provide valuable guidance for the future.

I have no doubt, that Honourable members will make this system a success and set an example not only to our State Legislatures but to other parliamentary systems in the world.

APPENDIX

*Amendments to the Rules of Procedure and Conduct of Business in Lok Sabha (Seventh Edition) as finally recommended by the Rules Committee of Tenth Lok Sabha and adopted by Lok Sabha on 29 March 1993**

Departmentally related Standing Committees

Departmentally related Standing Committees.

331C. (1) There shall be departmentally related Standing Committees of the Houses (to be called the Standing Committees).

(2) The Ministries/Departments covered under the jurisdiction of each of the Standing Committees shall be as specified in the Fifth Schedule :

Provided that the Chairman, Rajya Sabha and the Speaker may alter the said Schedule from time to time in consultation with each other.

Constitution.

331D. (1) Each of the Stading Committees constituted under Rule 331C shall consist of not more than 45 members, 30 members to be nominated by the Speaker from amongst the members of Lok Sabha and 15 members to be nominated by the Chairman, Rajya Sabha, from amongst the members of Rajya Sabha.

(2) A Minister shall not be nominated as a member of the Committee, and if a member after his nomination to the Committee is appointed a Minister, he shall cease to be a member of the Committee from the date of such appointment.

(3) The Chaimen of Committees as specified in Part I of Fifth Schedule shall be appointed by the Chairman, Rajya Sabha and Chairmen of Committees as specified in Part II of the Schedule shall be appointed by the Speaker, from amongst the members of the Committees.

(4) The term of office of the members of the Committees shall not exceed one year.

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*These amendments substitute the existing Rules 331C, 331 D, 331 E, 331 F, 331 G and 331 H of the Rules of Procedure and Conduct of Business in Lok Sabha.

Functions,

331E. (1) The functions of each of the Standing Committees shall be -

(a) to consider the Demands for Grants of the concerned Ministries/Departments and make a report on the same to the Houses. The report shall not suggest anything of the nature of cut motions;

(b) to examine such Bills pertaining to the concerned Ministries/Departments as are referred to the Committee by the Chairman, Rajya Sabha or the Speaker, as the case may be, and make report thereon;

(c) to consider annual reports of Ministries Departments and make reports thereon;

(d) to consider national basic long term policy documents presented to the Houses, if referred to the Committee by the Chairman, Rajya Sabha or the Speaker, as the case may be, and make reports thereon.

(2) The Standing Committees shall not consider the matters of day to day administration of the concerned Ministries/Departments.

Applicability of provisions relating to functions.

331F. Each of the functions of these Committees as provided in clauses (a) to (d) of sub-rule (1) of rule 331E shall be applicable to the Committees from the date as may be notified by the Chairman, Rajya Sabha and the Speaker in respect of applicability of a particular function.

Procedure relating to Demands for Grants.

331G. The following procedure shall be followed by each of the Standing Committees in their consideration of the Demands for Grants and making a report thereon to the Houses :-

(a) after the general discussion on the Budget in the Houses is over, the Houses shall be adjourned for a fixed period;

(b) the Committees shall consider the Demands for Grants of the concerned Ministries during the aforesaid period;

(c) the Committees shall make their report within the period and shall not ask for more time;

(d) the Demands for Grants shall be considered by the Houses in the light of the reports of the Committees; and

(e) there shall be a separate report on the Demands for Grants of each Ministry.

Procedure relating to Bills.

331H. The following procedure shall be followed by each of the Standing Committees in examining the Bills and making report thereon :

(a) the Committee shall consider the general principles and clauses of the Bills referred to them and make report thereon;

(b) the Committee shall consider only such bills introduced in either of the Houses as are referred to them by the Chairman, Rajya Sabha or the Speaker, as the case may be; and

(c) The Committee shall make report on the Bills in the given time.

Reports of the Committee.

331 I.(1) The Reports of the Committees shall be based on broad consensus.

(2) A Member of a Standing Committee may give note of dissent on the report of the Committee

(3) The note of dissent shall be presented to the Houses along with the report.

Applicability of general rules.

331J. Except for matters for which special provision is made in the rules relating to the Standing Committees, the general rules applicable to other Parliamentary Committees in Rajya Sabha shall apply *mutatis mutandis* to the Standing Committees specified in Part I of the Fifth Schedule and the general rules applicable to other Parliamentary Committees in Lok Sabha shall apply to Standing Committees as specified in Part II of the Schedule.

Venue of sittings.

331K. The Standing Committees shall not work in any other place except the precincts of Parliament House, unless otherwise specifically permitted by the Chairman, Rajya Sabha or the Speaker, as the case may be.

Power to have expert opinion.

331L. The Committee may avail of the expert opinion or the public opinion to make the report.

Matters not to be considered.

331M. The Standing Committees shall not generally consider the matters which are considered by othe Parliamentary Committees.

331N. The reports of the Standing Committees shall have persuasive value and shall be treated as considered advice given by the Committees.

Reports to have persuasive value.

2. After the Fourth Schedule to the Rules of Procedure and Conduct of Business in Lok Sabha the following Schedule shall be inserted, namely :-

Insertion of Fifth Schedule.

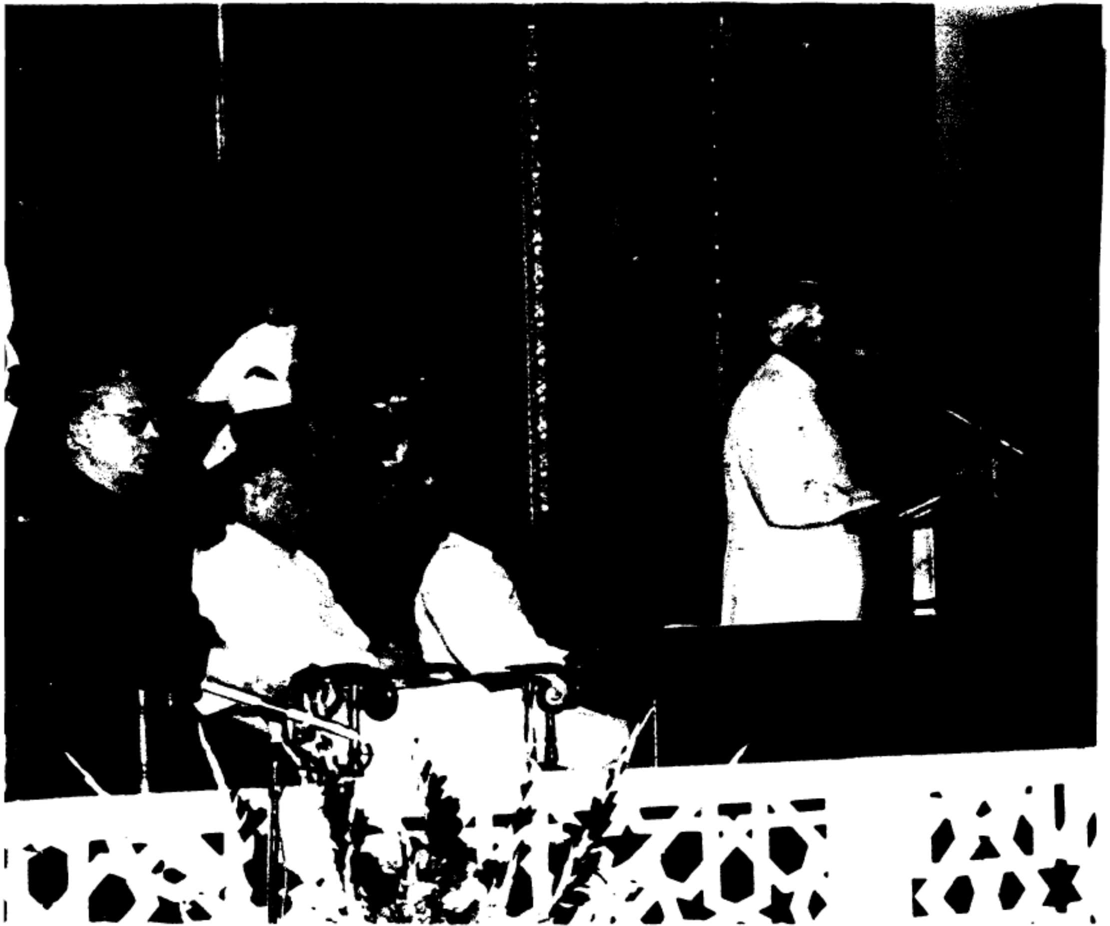
FIFTH SCHEDULE

(See rule 331C)

Ministries/Departments under the jurisdiction of the Standing Committees

Sl. No.	Name of the Committee	Ministries/Departments
	Part I	
1.	Committee on Commerce	(1) Commerce
		(2) Textiles
2.	Committee on Home Affairs	(1) Home Affairs
		(2) Law, Justice & Company Affairs
		(3) Personnel, Public Grievances & Pensions
3.	Committee on Human Resource Development	(1) Human Resource Development
		(2) Health and Family Welfare
4.	Committee on Industry	(1) Industry
		(2) Steel
		(3) Mines
5.	Committee on Science & Technology, Environment & Forests	(1) Science & Technology
		(2) Electronics
		(3) Space
		(4) Ocean Development
		(5) Biotechnology
		(6) Environment & Forests
6.	Committee on Transport & Tourism	(1) Civil Aviation
		(2) Surface Transport
		(3) Tourism

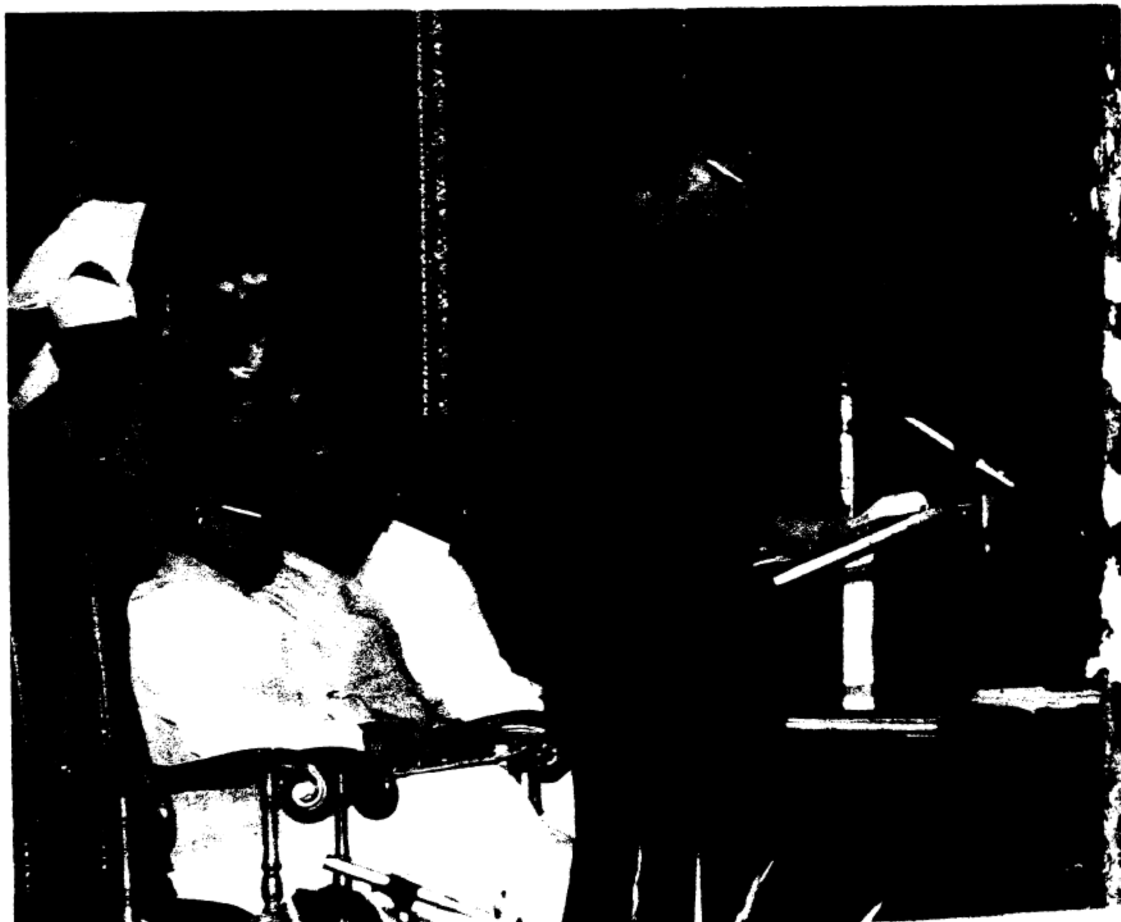
Sl. No.	Name of the Committee	Ministries/Departments
	Part II	
7.	Committee on Agriculture	(1) Agriculture (2) Water Resources (3) Food Processing
8.	Committee on Communications	(1) Information & Broadcasting (2) Communications
9.	Committee on Defence	Defence
10.	Committee on Energy	(1) Coal (2) Non-conventional Energy Sources (3) Power (4) Atomic Energy
11.	Committee on External Affairs	External Affairs
12.	Committee on Finance	(1) Finance (2) Planning (3) Programme Implementation
13.	Committee on Food, Civil Supplies and Public Distribution	(1) Food (2) Civil Supplies, Consumer Affairs & Public Distribution
14.	Committee on Labour and Welfare	(1) Labour (2) Welfare
15.	Committee on Petroleum & Chemicals	(1) Petroleum & Natural Gas (2) Chemicals & Petro-chemicals (3) Fertilizers
16.	Committee on Railways	Railways
17.	Committee on Urban and Rural Development	(1) Urban Development (2) Rural Development



The Vice-President of India and Chairman, Rajya Sabha, Shri K.R. Narayanan inaugurating the 17 new Departmentally-related Standing Committees of Parliament on 31 March, 1993 in the Central Hall of Parliament. Also seen in the picture are (from left to right) the Union Minister of Parliamentary Affairs and Water Resources, Shri Vidyacharan Shukla, the Prime Minister, Shri P.V. Narasimha Rao and the Speaker, Lok Sabha, Shri Shivraj V. Patil.

The Prime Minister, Shri P.V. Narasimha Rao addressing the distinguished gathering in the Central Hall of Parliament on 31 March, 1993 at the inauguration of 17 Departmentally-related Standing Committees of Parliament. Also seen in the picture (from left to right) are the Union Minister of Parliamentary Affairs and Water Resources, Shri Vidhyacharan Shukla the Vice-President of India and Chairman, Rajya Sabha, Shri K.R. Narayanan and the Speaker, Lok Sabha, Shri Shivraj V. Patil.

The Speaker, Lok Sabha, Shri Shivraj V. Patil addressing the distinguished gathering in the Central Hall of Parliament on 31 March, 1993 at the inauguration of 17 Departmentally-related Standing Committees of Parliament. Also seen in the picture are (from left to right) the Union Minister of Parliamentary Affairs and Water Resources, Shri Vidyacharan Shukla, the Prime Minister Shri P.V. Narasimha Rao and the Vice-President of India and chairman, Rajya Sabha, Shri K.R. Narayanan.



Union Minister of Parliamentary Affairs and Water Resources, Shri Vidyacharan Shukla addressing the distinguished gathering in the Central Hall of Parliament on 31 March, 1993 at the inauguration of 17 Departmentally-related Standing Committees of Parliament. Also seen in the picture are (from left to right) the Prime Minister, Shri P.V. Narasimha Rao, the Vice-President of India and Chairman, Rajya Sabha, Shri K.R. Narayanan and the Speaker, Lok Sabha, Shri Shivraj V. Patil.

1

North-South Relations — New Dimensions

Shivraj V. Patil

More than ten years have elapsed since the Brandt Report reminded the world about the existence of gross inequality between the rich and the poor countries. This division between the rich North and the poor South had become more pervasive during the 1950s and the 1960s when the former grew rapidly while the latter languished in poverty. The plight of poor countries deteriorated further in the 1970s as they had to take the brunt of the massive increases in the prices of oil and other commodities. The 1980s proved no better as the developing world got further entangled in the vortex of debt and deprivation.

Significant steps were taken in the immediate post-War period with the establishment of the Brettonwoods institutions-the International Bank for Reconstruction and Developemnt (IBRD) and the International Monetary Fund (IMF) together with the General Agreement on Tariffs and Trade (GATT) to promote international cooperation in the economic field. These institutions and arrangements, however, reflected the political and economic realities of the time and did not involve the developing countries to any significant extent, nor were they structured to respond to the

development needs of these countries. Thus, the significant growth achieved in 1950s and 1960s because of the stable system of exchange rates and the liberalisation of trade bypassed the developing States. The developing States began to realise that they were not sharing sufficiently in the world's growing prosperity. Recognition that the terms on which they were participating in the expanding world trade were iniquitable led to the call for a United Nations Conference, specifically to address trade and development issues. This gave birth to the first United Nations Conference on Trade and Development (UNCTAD I) in Geneva in 1964. The Conference, *inter alia,* emphasised the need for a "very tenacious campaign to stabilise and increase the developing countries' income from primary commodities, to expand their exports of manufactured goods and to make more capital available to development programmes." At the end of the Conference, the developing countries formed the Group of 77 to work for "the adoption of new attitudes and new approaches in the international economic field".

However, despite being in the majority in the UN fora, developing countries lacked the economic weight to oblige developed countries to engage in serious negotiations on structural changes in world economy. The demands of the developing countries at that time were mainly directed at obtaining a substantial increase in aid and other financial flows on appropriate terms, establishment of institutional and other arrangements to stabilise and increase their export earnings, and provision of technical assistance. These were met only to the extent that did not affect the fundamental interests of the developed countries. This was evident from the fact that the developed countries failed even to meet the targets of aid which they had accepted in principle.

During the early 1970s, developing countries became able to support their arguments and demands with a degree of bargaining power they did not have before. While the Non-Aligned Movement and the Group of 77 increased their cohesion to advance the interests of the developing world, there was also a steady dispersion of economic power in the world. The breakdown of the international monetary system, raging inflation, and a four fold increase in the prices of oil created a crisis of economic management in the industrial countries. The developing countries were, of course, severely debilitated by the recession. The prices paid for

most of their commodities had collapsed, the terms of trade had turned sharply against them, squeezing their external purchasing power, and their payments deficits had become unmanageable. For the first time in the post-War period, developed countries were made strongly aware of the need to involve the developing countries in efforts to resolve international economic problems.

There was a glimmer of recognition that constructive North-South cooperation and economic expansion in the Third World could help put the world economy on the path of healthy growth. These developments led to the convening of the two Special Sessions of the UN General Assembly– the Sixth Special Session in 1974 on the subject of 'raw materials and development', and the Seventh Special Session in 1975 on 'development cooperation'. The Sixth Special Session adopted a Declaration on the Establishment of a New International Economic Order setting out the basic principles for redressing the imbalances in the relations between developed and developing countries, together with a Programme of Action to make those principles operative.

But from then onwards the dialogue between the North and the South became progressively less productive. The international consensus necessary to mount a comprehensive assault on the problems of poverty and development did not exist in the latter half of the 1970s and in the 1980s. The Cancun Summit failed to make significant achievements. As the global economic environment worsened further in the early 1980s, major industrial powers, in their concern to deal with the problems of inflation and low growth, and to improve their national competitive positions generally pursued uncoordinated policies without regard for their wider international implications. The structural changes that took place in the world economy in the 1980s also meant that the developed countries and a few developing countries had intensified the trade, investment and technological links among themeslves, at the expense of a large number of developing countries.

The anachronistic patterns of the world economy have affected all states, amplified the economic crisis and endangered the progress of mankind. Nevertheless, no substantial progress has been made towards a balanced world economy and equitable international economic relations. The situation has further deteriorated most critically for the developing countries as a result of

rapidly rising external debts, falling export prices, increasing protectionism, high interest rates, and instability in the exchange rates. Protectionism has emerged as the greatest barrier to the expansion of world trade which has retarded the economies of developing countries. There is an urgent need to bring about further liberalization and expansion of world trade to the benefit of all countries, especially the developing countries which desperately need better access to markets for their commodities. It is essential to strengthen the multilateral trading system based on internationally accepted principles and rules.

It is also necessary to realise that the economies of the world are interdependent, and a comprehensive examination of the whole problem of trade and access for the exports of the developing countries to the markets of the industrialised countries is made along with a meaningful dialogue between the North and the South.

The world economy, today, is undergoing major changes. It is becoming more and more integrated, with the changes in patterns of production, consumption and trade due to rapid technological changes. In such an atmosphere it is incumbent upon the developing countries to integrate their economies with the world economy to take maximum advantages. Political freedom has no meaning in a world of perpetual poverty and deprivation as widespread hunger may soon lead to lawlessness and breakdown of state machinery. Economic freedom and political freedom must go hand in hand.

The massive upsurge of popular will across the globe has brought democracy and representative governments to the vast majority of peoples of the world. Democracy has attained almost universal validity. A new and historic opportunity is now available to nations of the world to bring about a new structure of international relations, in a free and uninhibited atmosphere. They can now usher in a structure which is equitable, democratic and responsive to the needs of humanity. The new wave of democracy that has triumphed in many parts of the world and the lessening of international tensions, will not be sustained if sufficient attention is not paid to development. Economic discontent breeds social tensions leading to violence in different forms,be it extremism

or terrorism. Economic crisis and social tensions cannot provide the environment needed for building up democratic institutions. Development, therefore, is a precondition for sustaining democracy. Development has to be kept at the centre of international concern and cooperation and it would be fatal to assume that development will automatically follow democracy.

It is now commonly accepted that reducing monopoly or liberalising an industrial or commercial sector is a way to encourage growth, employment, new services and lower prices. Liberalisation allows new entrants to the market who could compete among themselves resulting in overall fall in prices and improvemnt in services rendered. Privatization which is an essential aspect of liberalisation encourages new private capital and new management styles into what were till now state-run enterprises. Subjecting the business to the disciplines of the market means that it has to remunerate its capital, repay its debts and honour its interest charges and also adopt a commercial approach to all its ventures. Liberalisation also leads to the establishment of private sector companies in areas of activity where the nationalised industry was dominant or had a protective monopoly. All these encourage people to obtain a stake in the commercial life of the country. The introduction of incentive opportunity and self-enterprise has brought a new economic confidence to the countries which have adopted them.

Conditions must now be created for enterprises to swiftly respond to the fast changing external conditions that have become characteristic of today's industrial world and achieve technological dynamism and international competitiveness. Government policies and procedures must be geared to assist entrepreneurs in their efforts. Government's role needs to be changed from that of only exercising control to one of providing help and guidance by making essential procedures fully transparent and by eliminating delays. Emphasis should be on controlling and regulating monopolistic, restrictive and unfair trade practises rather than on licensing. Industrial economy has to be unshackled from the cobwebs of unnecessary bureaucratic control. The objective should be to liberate the economic forces, especially the market, from the stranglehold of the centralised red-tape. The enlightened self-interest of the individual entrepreneur should be allowed to

have free play and this will have a beneficial impact leading to the welfare of all. The objective of every responsiblegovernment should be the public good and only when the entrepreneur starts erring should the government come in with regulations. In short the role of the government should be that of a facilitator and not that of a provider. This will make everyone more responsible for his own success or failure in life. A stake in success is the best guarantor for hard work and logically, of success and prosperity for all. This policy, if pursued systematically and honestly in every country, is likely to generate a strong tendency towards the eventual rise of spatially dispersed market-oriented economies where everyone will have important responsibilities.

Nevertheless, in countries which are afflicted by destitution and poverty, the state cannot absolve itself of the responsibility to involve itself in economic decision making. It has to accept the responsibility to ensure a minimal degree of social welfare to its people. The advent of total capitalism will not certainly be able to solve all problems faced by the developing world.

The developing countries today are facing a development crisis. While there is the urgent need for bringing economic development, they are confronted with lack of capital. Any significant improvement in their situation requires greatly enhanced international attention to their difficulties. The increased awareness of global problems and the need for cooperation of all countries to deal with them is bringing home to everyone the reality of interdependence. Today, a truly global and integrated world economy is emerging. Most developing countries, as part of their restructuring policy, are aiming to enhance their integration with the mainstream of the world economy. What is now needed is recognition by the major countries that a more activist international approach is needed to effectively attack the major problems of poverty and development. There has to be a willingness to deal with issues like finacial flows, the debt crisis, access to markets and advances in technology, so that globalisation and interdependence can be equitably managed in the interests of all, bridging the gulf between the rich and the poor countries and establishing a world where all can enjoy the fruits of development.

2

Indian Political Process In Perspective

Surendranath Dwivedy

The political process of a country cannot be divorced from its national goal. It should be such as would contribute positively to the growth and progress of the country.

We need not perhaps delve into the ancient history of India to understand the goal of Indian political process. Our national goal has been very clearly enshrined in the Constitution. In the Preamble to the Constitution it is stated that the Republic of India would be secular, democratic and socialist in character. These are the primary objectives of the country which have to be implemented in a peaceful and democratic manner.

Moving the Objective Resolution in the Constituent Assembly on 13 December, 1946, Pandit Jawaharlal Nehru said, "I stand for soicalism and that India will go towards the constituion of socialist state and I do believe that the whole world will have to go that way". It was really heartening that a great democracy like India had carved out a new path by adopting both, a writen Constitution and parliamentrary democracy, to achieve the goal. Not all countries which won freedom could strike out on the path of democracy.

India's domocratic predisposition was inherent in the Gandhian non-violent movement whichbroughtus freedom for the country. Hence I think the Gandhian era should be considered as a basis of the future pattern of the country.

Our national revolution was unlike that in other countries of the world. It was not a movement for capture of power by any means nor was it a movement under the leadership of any one party or class of people, but a national movement in which the masses participated, made great sacrifices, resisted the imposition of British rule and ousted the British from power. It was truely unique in its mass character. Participation in such a large scale has no parallel in any part of the world. Thus we see that democracy was inherent in the very political objective that we had set before ourselves during the freedom movement.

The constructive programme contemplated by Gandhiji, which was an essential part of the freedom movement, had given sufficient positive trends for the future shape of things to come. It contained the essence of "*Swaraj*".

This trend was further strengthened by the "*Quit India*" Resolution which was adopted at the AICC meeting on 8 August, 1942, which may rightly be called the "*Magna Carta*" of India. It clarified as to what "*Purna Swaraj*" was for which India was fighting. This movement was never chauvinistic in character. Well before the United Nations came into being, the *Quit India* Resolution propounded that there should be a United Nations in which all countries of the world would have an equal place and they would all together work for world peace and progress. There was a clear directive in the Resolution that *Swaraj* would in a real sense belong to the labouring class, peasants and the poorer sections of the community. All would enjoy equal rights, privileges and power in free India. *Purna Swaraj* envisaged a kind of society that probably did not exist in any party of the world. It should have served as a guideline for determining any political process in India. Let us now consider whether the political powers that has evolved is actually fulfilling our national objective.

The transfer of power by Britain to India went off smoothly, and we achieved absolute right to determine our future. So a national Constitution-making body was established to work out the

framework for the Indian democratic system. The overall consideration before the Constitution-makers was to ensure that Indians by themselves could successfully govern this vast country consisting of people of diverse religious faith, races, castes, and regions. Free India would function in such a manner as would belie the impression that Indians would not be able to manage their country's affairs after the withdrawal of the British and that chaotic conditions and disorder were bound to prevail if complete freedom was given to Indians.

The Constitution-makers must be given credit for fashioning a system that has strengthened the country's integrity and sovereignty as well as made the people as a whole conscious of their political rights, as demonstrated in successive elections. Forty-five years after the achievement of *Swaraj*, how far have we neared the national goal?

We adopted the British model of the parliamentary system, with some slight modification in consideration of the very different factors that existed in our country. I am a great believer in the democratic pattern. But does the Indian Constitution and the parliamentary method, contribute to our national objective? Is the Indian Paliament a sensitive mirror faithfully reflecting the people's woes and sorrows? A question may arise as to whether even the limited objectives propounded in the Constitution are being achieved. Although the Constitution has clearly stated that there would be no concentration of wealth in the hands of a few, we have to ask ourselveswhether we have achieved this objective. Social inequality, regional and economic disparity, religious and communal conflicts have increased which may ultimately pose great danger to the democratic process.

By adopting the British model, we had envisaged that a two-party system of democracy would develop. Instead, a multi-party system has emerged, resulting in the last two General Elections in what is called a "hung Parliament". That is to say, no single party could get an absolute majority to form the Government. The system has unfortunately failed to contain certain non-democratic features in the political life of the country.

At the moment we are all concerned at the rise of disintegrating forces, emergence of fundamentalism and violence which

is disruptive of the rule of law.

Can one then strictly adhere to a system which has failed in many respects to fulfil the aspirations of the people?

It is perhaps time to think seriouly as to how and when we should modify the present system and also the Constitution so that we can reach the national goal. To me, it appears the time has come for a new orientation of our policies and priorities. The nation must be made aware of the imminent dangers that are ahead and must be prepared mentally and physically for a radical change of the political process and political system that we are following. It is evident that adequate steps are to be taken soon at the grass roots to strengthen democracy.

It may be a difficult process but a determined and steady leadership imbued with a clear national objective can boldly face the situation. The moral,ethical and soical values of the Gandhian era should serve as the guiding principles in fashioning the political system for the future. The political process must not be allowed to function in reverse gear. All right thinking people must work seriously towards the preservation of democracy in the country.

3

PARLIAMENT AND JUDICIARY

Mohd. Shafi Qureshi

India is one of the most complex and plural societies in the world. The struggle for national independence brought people of different ethnic, linguistic, communal, caste and regional groups together and through a process of mysterious alchemy welded them into one and gave them a common political identity. The common subjection under a colonial power and the common goal of liberation from its rule provided an emotional focus to the national movement and provided an impetus for the spread of national consciousness among different sections of the people.

After attaining independence, we embarked on the task of framing the Constitution for the newly independent nation, and the best legal luminaries of the land were entrusted with this work. They made thorough deliberation on each and every aspect of the socio-economic conditions prevailing in India. When their endeavours ripened into the new Constitution, approved by the Constituent Assembly, it was considered an unique document by any standard. The ideals of our Constitution, *i.e.* secularism, socialism and democracy, have been derived from our national movement. Thus there was a broad consensus about these ideals and when they got constitutional guarantee after Independence, they

had already been accepted by the people.

The Indian Constitution is the sovereign authority and in the scheme of things, Parliament,Executive and Judiciary, all different limbs of the constitution, draw their power from the provisions embodied in the Constitution in which the Parliament is the law-maker and courts are the interpreters of the law. Judiciary has been kept independent of political interference. These three authorities created by the Constitution are supplementary and complementary. They cannot work at cross purpose, neither can they interfere with each others' activities. The respective roles of Judiciary and Parliament have been clearly demarcated in our constitutional scheme. It seeks to strike a judicious balance between the doctrines of judicial review and principles of Parliament's sovereignty.

In the American Constitution, the process of formal amendment prescribed by the Constitution being very rigid, the task of adapting the Constitution to changes in social conditions has fallen into the hands of judiciary even though it ostensibly exercises the function only of interpreting the Constitution. As one of the Judges of the United States has said,"The Constitution (of the USA) is what the Supreme Court say it is". Under the English Constitution, on the other hand, Parliament is supreme and can do everything that is not naturally impossible and the courts cannot nullify any Act of Parliament on any ground whatsoever. The Constitution has assigned no limits to the authority of Parliament over any matter. A law may be unjust and contrary to the principles of sound Government but Parliament is not controlled in its discretion and when it errs, its errors can be corrected only by itself. English Judges therefore denied themselves any power to sit as a Court of Appeal against Parliament. Thus, the English political system is founded on the unlimited faith of the people in the good sense of their elected representatives.

The founding fathers of our Constitution adopted a via-media between the American system of judicial paramountcy and the English principle of Parliamentary supremacy. They endowed the judiciary with the power of declaring a law as unconstitutional if it is beyond the competence of the Legislature according to the distribution of powers provided by the Constitution or if

it is in contravention of the Fundamental Rights guaranteed by the Constitution or of any mandatory provision of the Constitution. Changes in Constitution brought about by judicial review are slow, cumbersome and time consuming. So the task of adapting the Constitution to changing social conditions has been vested in the representatives of the people. If the Parliament as the constituent body considers that the interests of the country so require, it can amend the Constitution as often as it likes. So far 72 amendments have been effected in our Constitution. The ease with which these amendments have been enacted demonstrate that our Constitution contains the potentiality of peacefully adopting changes, some of which would be considered as revolutionary in other countries. The theory underlying the Indian Constitution in this respect can hardly be better expressed than in the words of Pandit Nehru :

> No Supreme Courts, no judiciary, can stand in judgement over the sovereign will of Parliament, representing the will of entire community. It can pull up that sovereign will, if it goes wrong, but, in the ultimate analysis, where the future of the community is concerned, no judiciary can come in the way..... Ultimately the fact remains that the Legislature must be supreme and must not be interfered with by the Courts of law in such measures as social reform.

But at the same time the Parliament does not take a retrograde measure which may infringe on the powers of the Supreme Court.

As stated above, we were fortunate enough in receiving the guidance of eminent leaders of the national movement in the early stages of our constitutional experiment. But later on, the working of our Constitution has revealed certain snags and structural bottlenecks. Suitable remedial measures have to be taken to ensure its smooth functioning.

When the Constitution was drafted in 1948-49 the uncodified privileges of the British House of Commons were adopted by the Indian Constitution, but only as a temporary measure, because it was not considered practicable, at once, to grapple with the difficult problem of codifying the mass of British precedents

which constitute the foundation of privileges of the Parliament in England. But more than four decades have passed since then and the task of a fairly exhaustive codification of privileges of Legislature has not been completed as yet. However, some of the principles underlying the privileges have been settled by judicial decisions of the highest Court and the consensus of precedents laid down by the Presiding Officers of the Houses of Union and State Legislatures. Yet this issue has caused some sort of a confrontation between Courts and Legislatures recently in some States. It is no conducive to the smooth working of the Parliamentary System in a developing country like ours. Therefore, this situation could be averted by a proper solution embodied in the Constitution itself. The Constitution is a testament of faith and blue print for the future of the people. The provisions enshrined in the Constitution stand to fulfil the aspirations of the people and also to translate the pledge of the Preamble into action.

Parliament enjoys the inherent right to conduct its affairs without interference from any outside body. It is the sole judge of its procedure. Even procedural lapses do not vitiate the proceedings. Until a bill becomes a law, the legislative process not being complete, the court cannot interfere. The supremacy of Parliament is further strengthened by the mandate of the people it receives normally in every election. The Parliament is not permitted to criticise Judges, President and Governors, but the Parliament has been constitutionally armed with powers to impeach a President and a Judge thereby making his removal from his post absolute but nocriticism of his action is permitted. So the Parliament as Law-making and law-amending agency reigns supreme which should not be disputed in the interest of the people and in view of the provisions enshrined in the holy book of the nation.

4

Legislative Relations Between The Union And The States

B. Satyanarayan Reddy

After achieving Independence, India decided for itself the parliamentary form of Government and to be ruled by democratic methods and on these lines our Constitution has been drafted. The choice has been a correct one, and Legislatures both at the Union and the States have been a success. Our Constitution is federal in its structure and republican in character. It provides for a Union Government at the apex with an elected President as its Head (elected by the elected members of both the Houses of Parliament and State Legislative Assemblies); and for the States, the President appoints Governors as their Heads. The system of Government laid down by the Constitution is parliamentary both at the Union, and the States, called respectively the Union Government and the State Governments. Each Government, Union as well as State has an Executive Head *viz.* the Prime Minister and the Chief Minister, respectively, who acts, on the advice of the Council of Ministers (or the Cabinet), which is responsible to the directly elected popular Houses of the respective Legislatures. There is a distribution of powers between the Union and the States in matters of legislative, executive and financial matters. Here I would concentrate on only Legislative relations between the two.

General

In the distribution of legislative powers between the Union and the States, not only weightage has been given to the former but in cases of conflict between the Union and State laws, the principle of Union supremacy is recognised. All legislative proposals have to be brought in the form of Bills before Parliaments. No Bill can become law until it has received the approval of both the Houses of Parliament and assent of the President. The Union Parliament generally makes laws for the whole or any part of the territory of India while the State Legislature may make laws only for whole or any part of its own territory. The subjects on which Parliament has an exclusive right to make laws have been enunciated in the Union List of the Seventh Schedule of the Constitution. The States, on the other hand, have an exclusive right to make laws on the subjects enunciated in the State List of the said Schedule. In the same Schedule there is one more list called Concurrent List, on the subjects mentioned in which both the Union Parliament and State Legislatures have concurrent powers to make laws. However, if any such law made by the Legislature of a State has received the assent of the President, provisions of such latter law shall prevail over the provisions of any Union Law on the same subject in the State concerned.

If the Council of States (Rajya Sabha) resolves by the vote of two-third members present and voting that the Parliament should legislate on any subject enumerated in the State List or the House or both Houses of Legislatures of two or more States pass resolutions authorising the Union Parliament to make law on a subject in the State List, the Parliament can, in both these cases make laws on such a subject for such States.

According to article 251, if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has power to make, under article 249 and 250 then the law made by Parliament, whether passed before or after the law made by the Legislature of the State, shall prevail and the law made by the Legislature of the State shall to the extent of the repugnancy but so long only as the law made by Parliament continues to have effect, be inoperative.

If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact or to any provision of an existing law with respect to one of the matters enunciated in the Concurrent List, then the law made by Parliament, whether passed before or after the law made by the Legislature or such State, or, as the case may be, shall prevail and the law made by the Legislature of the State shall, to the extent of repugnancy, be void. But any law so made by the State has the assent of the President, then it will prevail in that State.

Parliament has also power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

It is the constitutional duty of every State to enforce Union's laws as are applicable to the State. The executive power of the State even within its own sphere, must be so exercised as not to impede or prejudice the exercise of the executive power of the Union. The executive power of the Union extends to giving of such directions to a State as may appear to the Government to be necessary for the purpose.

In case a State fails to comply with or to give effect to any directions given in exercise of the executive power of the Union, the President is authorised to hold that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution.

In times of national, political or financial emergency, the States may exercise only such powers, legislative or executive, as the Union permits. If as a result of war, external aggression or armed rebellion the security of India or any part of the territory thereof is threatened, the President may declare a state of emergency and the executive power of the Union shall thereupon extend to giving directions to the States as to the manner in which the executive power is to be exercised. The President may also during emergency suspend operation of the constitutional provisions relating to the distribution of revenues between the Union and the States and during financial emergency, require that all

Money Bills shall be submitted to the President for consideration after they are passed by the State Legislature.

It may also be mentioned that in times when a Proclamation of Emergency is in operation, the Parliament, in public interest, can make laws on subjects in the State List as well as on any subject in the three lists to implement any treaty, agreement or convention,etc.

The residuary powers of making laws on subjects not contained in any of the aforesaid three lists for the whole or any part of the territory of India, vest in the Union Parliament. Any law made by Parliament, which Parliament would not but for the issue of a Proclamation of Emergency under article 356 have been competent to make, shall after the Proclamation has ceased to operate, continue in force until altered or repealed or amended by the Legislature or other authority.

In Respect of Governors of States

The executive power of the State is vested in the Governor and is exercisable by him directly or through officers subordinate to him in accordance with this Constitution. The Governor is appointed by the President by warrant under his hand and seal and holds office during the pleasure of the President. However, his normal term of Office is five years. The oath of office of the Governor requires him to "preserve, protect and defend the Constitution and the law". The functions of the Governor may be divided into three catagories as head of the State, as a link with the Centre, and as chief executive during the President's rule, *i.e.* acting for the President.

In his role as a link with the Centre, the Governor keeps the President informed, periodically and regularly, on matters connected with the affairs of the State. There may be occasions for the Governor when he has to inform the President of any serious internal disturbances, and in certain States, of the existence or otherwise of a possible danger of external aggression.

In fact, the Union Government has the duty to ensure that the Government of every State is carried on in accordance with the provisions of the Constitution and it has no agency in a State other than the Governor, to keep it informed of happenings there,

or about any constitutional breakdown. The Governor is expected to make a report of such things to the President and can also advise him, as and when situation arises, to assume the functions of the Government of the State. The Governor is the medium through which the Union is broadly informed whether the State is complying with its constitutional duty and any other directions given by the Union Government. There are other reasons when a popular Government of the State becomes a minority Government and there is no one to command majority in the Legislature, Government must make a report to the President. The President on the advice of the Council of Ministers at the Union issues a Proclamation dissolving the Legislature and orders fresh elections. On any adverse situation, the President usually appoints the Governor as the Chief Executive of the State to carry out the functions which has been assumed by the President under the Proclamation. At this point of time the Governor works independently for the President. During this period the State Budget is passed by Parliament for carrying on the administration of the State and Parliament becomes competent to discuss all subjects of the State List and the Union Ministers become answerable to Parliament for the affairs of the State . The Budget of a State under the President's rule is presented to Lok Sabha, and Lok Sabha votes grants and the Parliament passes Appropriation Bill for the withdrawal of moneys from the Consolidated Fund of the State concerned. Parliament Committees in a way may be said to assume the function of State Committees. Whereas the conduct of the Governor can not be discussed in Parliament, his official actions can legitimately be discussed.

President's Acts relating to a State under the President's rule are made after consultation with a Parliamentary Committee constituted under the appropriate Act of Parliament. The reports and papers which are required to be laid before the State Legislature are placed on the table of Lok Sabha during the President's rule.

Other Primary Items

The Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit. In addition it may increase or diminish the area of any States and

alter the boundaries and name of any State.

It has been held by the Court that the States are not sovereign under the Constitution (*Virendra Singh v. State of Uttar Pradesh*, 1955 S.C.R. 415; *H.C. Sen Gupta v. Speaker*, W.B. H.C. (1956) Cal.). The Supreme Court in this case has observed that thewide powersare vested in Parliament to alter the boundaries of the State and even to extinguish the existence of a State. (State of *West Bengal v. Union of India*, AIR 1963 S.C. 1241).

Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or any existing laws with respect to a matter enunciated in the Union List. Every High Court of the State consists of a Chief Justice and such other Judges as the President may from time to time deem it necessary to appoint. Every Judge of a High Court other than the Chief Justice is appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State and the Chief Justice of the High Court.

Parliament may by law extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from, any Union territory.

Where the High Court of a State exercises jurisdiction in relation to a Union territory— (i) nothing in this Constitution shall be construed as empowering the Legislature of the State to increase, restrict or abolish that jurisdiction, and (ii) the reference in article 227 to the Governor shall, in relation to any rules, forms or tables or subordinate courts in that territory, be construed as a reference to the President.

Parliament may also by law establish a common High Court for two or more States or for two or more States and a Union Territory.

One thing may also be made clear that no Act of Parliament or of the Legislature of a State and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by the Constitution was not given, if assent to that Act was given :

(i) where the recommendation required was that of the Governor, either by the Governor or by the President;

(ii) where the recommendation or previous sanction required was that of the President, by the President.

Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley. Parliament in this regard may also provide by law that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as referred to above.

If at any time it appears to the President that the public interest would be served by establishing a Council, he may do so for the duty of (i) inquiring into and advising upon disputes which may have arisen between States; (ii) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or (iii) making recommendations upon any such subject, and in particular, recommendations for the better co-ordination of policy and action with respect to that subject.

The Government of India may, subject to such conditions as may be laid down by or under any law made by the Parliament, make loans to any State or, so long as any limits fixed under article 292 are not exceeded, give guarantees in respect of loans raised by any State, and any sums required for the purpose of making such loans shall be charged on the Consolidated Fund of India.

A State may not without the consent of the Government of India raise any loan if there is still outstanding any part of a loan which has been made to the State by the Government of India or by its predecessor Government, or in respect of which a guarantee has been given by the Government of India or by its predecessor Government. The Parliament may, by law, impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

The Parliament, may from time to time by law, make provision with respect to all matters relating to or in connection with,

elections to either House of Parliament or to the either House of Legislature of a State, including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

As stated earlier,our Constitution is republican and federal in character. The provisions of the Constitution suit the changing situation and carry on the sound principles of prosperity and fairplay; they are harmonious, consistent, logical, and on demand are adapting to suit Indian conditions. The necessity is that we should respect by all means our Constitution. The Governments of the Union and the States may be of the same party, or of the different parties, but they are liable to honour and follow the Constitution. In this lies the dignity, unity and integrity of our country and then social, economic and political justice of the people is assured.

5

Parliamentary System Versus Presidential System

Bhanu Prakash Singh

There are two forms of Government widely followed in the world today - the Parliamentary and the Presidential. Britain is the home of Parliamentary Government and has been widely imitated by its former colonies. USA is the home of Presidential Government which several Latin Americancountries follow.

Any question or comment about the form of Government which could be better suited to a nation in its conditions and requirements can only be made by analysing the characteristics of these two forms of Government. Also, how best the people try to keep up the system intact is also an important factor to judge the validity of any Governmental system.

The chief characteristic of the Parliamentary form is the close co-operation between the Executive and the Legislature. This is ensured by the fact that the party that gets the majority of seats in Parliament is invited to form the government by the Head of State, in whose name the Government is carried on but who does not actually rule. The Head of State inivites the elected leader of the majority in party in Parliament to be the Prime Minister who appoints the rest of the Ministers coonstituting the Cabinet.

Once constituted the Cabinet functions collectively and is responsible to the Parliament and stays in office so long as it enjoys the majority support in Parliament. Since the system ensures that the same party constitutes the Government as has the majority in Parliament, smooth functioning is assured. The Opposition functions as the 'watch-dog' of Parliament, not only keeping the Government on its toes (through questions, debates, discussion, adjournments) but also waiting in the sidelines to take over. The drawback in the Parliamentary System is that sometimes the electorate does not know who would be the person who would rule them when it is voting for a party.

The Presidential form has several contrasting features. The Executive and Parliament (Congress and Senate) are separately elected. The President does not represent the majority in Congress or the Senate nor is he accountable and responsible to them. He cannot be removed by a vote of no-confidence and continues to govern for a full term residing in his constitutional fortress. He is free to select his Cabinet from outside of both the Houses. However, the Cabinet does not operate on the principle of collective responsibilityy and its role can be more correctly described as advisory, rather than policy-making and is directly responsible to the President.

Now, before going further into examining these forms with reference to their suitability to a nation, it is relevant to enumerate a few difficulties encountered in the Presidential form in its working in the USA. One obvious difficulty is the problem faced by the executive of securing co-operation from the Parliament (Congress & Senate). Since the President and Congress are separately elected and constitutionally independent, they may, or may not, belong to the same political party. This will certainly make it difficult for the President to secure Parliamentary support. Again, in the Presidential form, the executive cannot obtain the support of Parliament by threatening dissolution of the House. But he can veto the resolutions of Parliament.

Another difficulty which the Presidential Governments have to face, stems from the fact of comparatively weaker control by the executive over the party. In a Parliamentary system, since the Prime Minister is the leader of the majority party in Parliament,

the party and Cabinet have a vested. interest in holding together. In the Presidential system, since the President may not belong to the majority party in Congress and in any case cannot be removed till he completes his term of office, the party feels no such obligation to toe the Presidential line. In a country, where parties are faction-ridden and not disciplined (dissidence marks every party), the alleged advantage of the Parliamentary system is more theoretical than real. In our own country we have seen instances of dissidents criticising their own Party colleagues.

The greatest merit of the Presidential form is its stability. When a country is undergoing significant economic transition and even otherwise facing political turmoil, the need for a strong Government is very important. Stability means the ability to complete the full term for which the executive has been elected to power. India has a multi-party system with strong prospects of future Governments being either coalition or minority Government being supported by other parties from outside. Such a situation leads to Governments being unstable, jeopardising prospects of political and economic polities. Under multi-party Cabinet system, the Prime Minister has to devote considerable time to managing dissidence. Such problems may not arise in the Presidential system which would free the executive from dependence either on its own, or other parties, and ensure him a full term in office.

The presidential system has another advantage. It enables the Chief Executive to select his Cabinet team on merit without reference to their party affiliations. Since he will not be bound to select his own partymen and MPs, he will be free to draw talent wherever it is located. In contrast, in the Parliamentary system, the Prime Minster has to choose his Cabinet from among his partymen in Parliament. And, the Government has to maintain its standing majority at all costs.

There are merits and demerits of any governmental system - be it Parliamentary or Presidential system. India has tried and tested the Parliamentary system of Government and we have greatly benefitted from it. During the last over four decades after Independence, a revolutionary change has taken place in our socio-economic fields. Our achievements have been truly on democratic

lines. The basic question that arises is not about the system that we should adopt. What is more important and essential is how best the system adopted by the people is preserved, protected and maintained for the benefit of the people. If the people are conscious of the system adopted in regard to the benefits that should accrue through it for the people in their welfare and progress, then that is success. Mere adoption of any system does not mean much. Therefore, both Parliamentary system as well as Presidential system do have advantages and disadvantages. If the attention of the people is only towards availing the advantages, any of these systems will be found useful and sustainable.

We can proudly say that our Parliamentary system has delivered goods to us. All this has been possible only through the efforts of the people. However, many changes have occurred in the recent years which would raise doubts as to why we should not go in for a different system. No doubt, a change may bring a change, but again and again changes may then be sought for. Our efforts should be to see that the system followed is scrupulously protected and maintained which will bring credibility to us rather than going in for sudden changes.

No doubt, the world has witnessed changes in the governmental systems throughout history. The best system of Government, to my mind, is the one which governs the least and serves the people in the best way.

6

Electoral Process And Reforms

S. Beant Singh

Elections may be regarded as a procedure for aggregating preferences of a particular kind. Elections bring about politicisation of a people. In a democracy, election may be defined as a process through which the political opinion of the people is ascertained. Elections give a chance to the people to actually participate in the selection of individuals who take part in the government of the State. Elections help people to crystalise their interests and to give expression to them.

In India, the birth of Indian National Congress in 1885 was an important landmark. It provided a forum through which public opinion could be channelised and gauged As a result of the new awakening, Indians demanded expansion of legislative councils, enhancement of their powers and a share in the process of lawmaking. A beginning towards this end was made in the Indian Councils Act of 1892 which provided for an elective element in the Councils. Later, the Minto-Morley Reforms or Indian Councils Act of 1909 attempted to associate the Indians not only with the process of legislation but also with the actual administration of the country. But this Act was also notorious for sowing the seeds of dissension between Muslims and non-Muslims by providing for a separate electorate for Muslims. The Acts of 1919 and 1935 at-

tempted to improve the electoral system by associating more Indians in the functioning of the Government. The 'divide and rule' policy of the British finally culminated in the partition of India in 1947.

The Republic of India adopted a new Constitution providing fundamental rights and liberties to the citizen of the country Like all democratic countries, India too has attached a special importance to elections. Accordingly, provisions regarding elections are made in Articles 324 to 329 of the Constitution. Article 324 says that the superintendence, direction and control of elections to Parliament and to the Legislature of every State and election to the office of president and Vice-President held under the Constitution shall be vested in the Election Commission. Article 326 empowers the people of India to change the content of the political power through elections. This was done by providing that all citizens above the age of 21 years (thereafter reduced to 18 years) have the right to vote, irrespective of such factors as sex, caste, colour, creed or religion. This is called *adult suffrage.*

India has witnessed ten General Elections to the Lok Sabha and several elections to the State Assemblies. There have been democratic changes of Government, both at the Centre and in the States through the process of election. To that extent, the process of election has been highly successful in India. In other words, the Indian electorate has, during the various elections, reflected election maturity, described as an aspect of the general maturation of an individual as a political person. It is the aspect which covers an individual's actions, decisions, thoughts and attitudes as a voter. Political maturity is not merely political rationalization because any reasonable person can rationalize a political issue. But his rationalization may not be politically mature. A mature action is a system-relevant action. The Indian people have reflected system-relevant maturity at the time of elections in India. Indian democracy has survived, in spite of opinion to the contrary.

Political Participation and Elections

The exact relevance of elections can, however, be analysed only through the level of political participation, which refers to the involvement of an individual at various levels of the political sys-

tem.

The extent of political participation, however, differs from one system to another. It is true that democratic systems provide the maximum chance of political participation. But even in democratic systems, the level of political participation varies from one state to another. It may vary from a keen participation, to partial or almost no interest in the political process. Moreover, a participant may not necessarily stick to only one form of participation. He may engage himself in more than one political action at a given point of time. For instance, he may be a member of a political party, he may also contest for the legislature, he may actively participate in other political activities and may also contribute to political campaigns.

Other ways of participating in the governance of a country in a democracy include electing policy and decision makers, and exercising influence over the policies and actions pursued by them. Political participation is said to be reflected by the following activities:

(a) holding political or administrative office; (b) seeking political or administrative office: (c) active membership of a political organization; (d) passive membership of a quasi-political organization; (e) participation in public meetings, demonstrations, etc; (f) participation in informal political discussion;(g) general interest in politics; (h) voting; and (i) total apathy.

L. W. Milbraith, an American scholar, developed a model of political participation. He described his trilateral hierarchy of political participation as follows : Gladiatorial, Transitional and Spectator.

Gladiatorial Activities include active participation like becoming a party member, holding public or party office, soliciting political funds, etc.

Transitional Activities include a medium-range participation like attending a political meeting and making a monetary contribution; and

Spectator Activities include wearing a button or putting a sticker or flag on personal vehicle, voting in an election or expos-

ing oneself to political stimulus.

About 60 percent of citizens, according to Milbraith's study, fall in the category of spectators, about 1-9 percent in the transitional phase and only a very small percentage, i.e. 1-3 percent fall in the first category. A large section of our citizens (33 percent) falls in the category of 'apathetics' or those who have no interest in politics.

Various agents lead people towards *political participation*. Such agents include political parties and pressure groups, trade unions, cultural organisations, linguistic or caste groups and the mass-media. All these agents play an important role in a democracy and mobilise public opinion at various levels. For instance, Political parties mobilises public opinion not only during elections but also at different levels by organising rallies, processions, demonstrations, etc. to either support or oppose the government. Pressure groups also play a significant role by indirectly affecting the decision making process.

There is, however, a section of people who do not evince any interest in politics and consequently do not participate on any account. Such a state of inertness is called political apathy. This problem of political apathy is being increasingly witnessed . Political apathy may be caused due to tensions, absence of stimulus in a particular system, cynicism, alienation,etc. Nevertheless, it is a negative phenomenon and is engaging the attention of modern political scientists.

Factors affecting Political Participation

Political participation is a complex phenomenon and many variables directly or indirectly are involved in crystalising it. Such factors include ruralisation, urbanisation, educational and occupational status, sex, economic background, age, nature of political system, etc.

Nothing mobilises the people in rural areas politically so much as an election. Through election, even the ordinary illiterate villager comes to share the democratic experience of the country in a most concrete form. The rural sector is very important in India and hence election slogans like *'Garibi Hatao'* (removal of poverty) and more recently programmes like revival of *Panchayati*

Raj are armed at mobilising the people of rural areas.

The urban electorate generally has a high sense of political participation, particularly because education, press, mass-media and better means of communication activise their political thinking and make them politically more articulate and active.

Certain typical factors affect political participation in India — regional and ethnic cleavages, caste, factional and ideological cleavages, and in some states, differences arising among tribal groups.

Let us consider how women have faced Indian politics. Women in India have held high positions right from the office of the Prime Minister to Ambassadors, as members of Lok Sabha and Rajya Sabha, Chief Ministers of States, etc. Yet, at the same time, the presence of women at the highest political levels has co-existed with a generally low rate of overall participation in the political life of the country.

Political participation is thus an inseparable part of democracy and aims at involving people (directly or indirectly) at all levels of decision-making.

Voting Behaviour

Voting behaviour is the most common and most frequently studied act of political participation. Some scholars have, however, emphasised that voting behaviour may not be a very meaningful act of participation at all; for instance, it may be a ritualistic or symbolic gesture performed as a result of various pressures, rather than being a conscious exercise of political choice.

Nevertheless, a study of voting behaviour remains an important yardstick of political participation. Voting is perceived as a source of power by some people. It shows that people are also important. It brings about a feeling of equality. Voting in urban — rural situation is governed by factors such as age, education, sex, caste, religion or economic standing. Considerations that weigh with the voters at the time of elections include the candidates' merit, candidate's helpfulness, and faith in party programme.

The rationale of deciding to vote collectively may be seen in a variety of reasons, such as local solidarity, election strategy,

political control, political education, etc.

In India, over the years, since 1952, electoral participation has increased as indicated by the table below:

Elections to Lok Sabha	Percentage of Votes cast
1952	44.63
1957	49.02
1962	53.53
1967	61.32
1971 (mid-term poll)	50.27
1977	60.00
1980	56.60
1984	63.06
1989	63.00
1991	53.00

Despite pressures of caste, regional and tribal application. etc. democracy in India has survived. It is one of the few functioning democracies of the Third World and the largest democracy in the world. Elections, on the one hand, confer legitimacy to the political system in a democracy, and on the other, bring about politicization of a people by affecting their participation in decision-making (directly or indirectly) and finally in the governance of the State.

Issues at Elections

At the time of elections, different political parties throw up issues before the electorate. In 1971, the Congress Party contested the elections on the issue of *'garibi hatao'* (remove poverty). In 1977, the Janata party contested the elections on the issue of 'democracy versus dictatorship'. In 1980, the Congress contested elections on the issue of strong government in centre and emerged successful. In 1984 Congress-(I) successfully contested on the issue of 'Unity and integrity of the Country'. During election to the Ninth Lok Sabha the Congress (I) contested elections on the issue of power to the people whereas the National Front highlighted the

issue of corruption in high places. During the elections to the Tenth Lok Sabha, the Bharatiya Janata Party raised the issue of *'Ram, Roti, insaf and Ram Rajya*, Congress-(I) of stability and the National Front, of social justice and equity.

Stages in Electoral Process

If elections are the heart of democracy, electoral process is the main artery that supplies blood to the heart. The provision for electoral process in India has been made under the Peoples Representation Act, 1951. These were amended in 1988.

The main stages of the electoral process include :

(a) *delimitation of constituencies* : The delimitation is done by the Delimitation Commissioner after every census.

(b) *preparation of voters lists* : Article 325 provides that a general list of voters will be prepared. No discrimination on the basis of religion, caste, colour, creed, or sex will be made.

(c) *announcement of election dates* : The Election Commission announces the date after consultation with the Union Government and the concerned State Governments. The Commission also announces the dates for (i) filing the nomination papers by the candidates; (ii) and withdrawal of their names.

(d) *appointment of electoral staff* : The Election Commission appoints a Chief Electoral Officer for every State and one Returning Officer for every constituency. These officers appoint several junior officers to make arrangements for elections.

(e) setting up of polling booths in every constituency keeping in view the convenience of the voter.

(f) preparation of list of candidates after scrutiny of nomination papers and withdrwal of nominations. Thereafter political parties start their election campaign. The parties issue their election manifestoes and communicate with the people through various means, such as public

meetings, newspapers, T.V., Radio, etc.

(g) polling on the due date(s), and subsequently declaration of results. The Electoral Officers issue a certificate to the successful candidate.

(h) Submission of statement of Election Expenditure to the Election Commissioner by the candidates within 45 days of the election results. excluding expenditure incurred by the political party.

It may also be noted that election petitions can be filed in the High Court of the State against election offences. If the charge is proved correct, elections can be held again. In case the election of a candidate is proved illegal, he is debarred from seeking election for six years.

Certain weaknesses in the electoral process can be highlighted. It is often noticed in Indian elections that there is a wide gap between the seats won by different political parties and the votes polled. For example, in the 1984 elections, Congress-I secured 49.3% votes and got more than 75% seats, whereas the remaining political parties together secured more than 50% votes and captured only 25% of the total seats. This means that in the Indian electoral system a party which secures lesser number of votes can still come to power. Elections are expensive and involve huge sums of money. The display of money and muscle power spreads corruption, which is detrimental to the electoral process. Further, although the election laws prohibit the use of governmental machinery, the reality is quite contrary. Often, incomplete and defective voters lists that have not been properly revised are issued. Changes in the boundaries of electoral constituencies are made to suit the interests of certain parties. During the election campaigns, political parties often solicit votes on the strength of caste, language and regional issues.

To overcome the glaring weaknesses in the electoral process, various reforms have been suggested. Democracy cannot operate without free and fair elections. The Parliament passed the Representation of Peoples (Amendment) Act in 1988 introducing several electoral reforms.

(a) The powers of the Election Commission have been increased. Officers who prepare voters list and conduct elections are under the control of the Election Commission.

(b) Registration of political parties is made compulsory. New political parties and existing ones must register within 30 and 60 days, respectively, to the Election Commission. The parties must express faith in the Constitution, in socialism, secularism, democracy, sovereignty and unity and integrity of the country. They must provide names and number of office-bearers and number of their representatives in Parliament and Legislative Assemblies.

(c) Persons who have been punished for indulging in crimes involving the spread of disharmony on the basis of caste, colour, creed, sex or religion shall be debarred from elections for 5 years.

(d) Booth capturing is a crime. Criminals of this offence can be punished with imprisonment for 1 to 3 years and/or fine.

(e) Machines to be employed for counting votes instead of counting them manually.

(f) Voting age was reduced from 21 years to 18 years by the 61st Constitutional Amendment in December, 1988.

These reforms above have not been entirely able to pull the electoral system out of the quagmire. Other suggestions include :

(a) A sitting Supreme Court Judge should be Chief Election Commissioner.

(b) Independent Election Department : The Chief Election Commissioner should have a separate and independent Election Department with its branches down to the Tehsil level under his direct control on the pattern of Indian Audit and Accounts Department.

(c) Election expenses should be provided by the Government. The ceiling imposed by Election Commission for

elections varies from Rs.1.2 lakhs to 1.5 lakhs for Lok Sabha elections, and Rs.35,000 for Assembly elections. If corruption is to be stopped, Government should provide funds to the candidates. In seventeen countries (including Australia, Canada, U.K, Argentina) election funds are provided by the Government.

(d) Candidates who indulge in election corrpution should be disqualified for longer periods.

(e) Many non-serious candidates file their nominations unnecessarily increasing the workload of the administrative machinery. This practice should be discouraged.

(f) To check bogus voting, Election Commission should issue identity cards with photographs.

(g) Time of by-elections should be fixed.

(h) Elections to the Lok Sabha and State Legislative Assemblies should be held at the same time.

(i) Proportional representation system should be introduced.

(j) An effective code of conduct should be prepared for political parties; involving religion, caste, language issues should be prohibited.

With the incorporation of these election reforms, the electoral process can become much more effective, thereby making Indian democracy a greater success.

7

Elections And Electoral Reforms In India

Lal Thanhawla

• The process of election is termed as the cornerstone of any democratic system, as it is the political means through which political opinion and awareness of the people are moulded and promoted. Election involves people into politics and public affairs through participation and mobilisation. Besides this, election provides political linkages, resolves conflicts, fulfils people's aspirations and also brings about peaceful and orderly change of authority. Through elections, the authority of Government is clothed with legitimacy. Political parties, as per the rules of parliamentary representative democracy, have to accept election results. Thus, the process gets an added significance in a parliamentary democracy where the entire responsibility vests in the people who, after adjudging policies, programmes and promises made by different political parties for the development of society, give their mandate in favour of one party for the governance of the country. More elaborately, election is a multi-dimensional concept which directly or indirectly involves the entire people, electorate, political parties, candidates for elections, election machinery, elected members, legislative bodies and the Government. Briefly, election helps people to crystalise their interests and to give expression to it. Hence free

and fair elections are regarded as the lifeline of genuine representative Government, serving an important function for both the citizens and the political system. In India also, elections to the legislative bodies are conducted on the basis of adult franchise, single member constituency, one man one vote, secret ballot, direct election and election by simple majority. These arrangements and also other conditions have been provided in the Representation of the People Act, 1951 for the sake of ensuring free and fair elections in the country. In a sense, the elections in India, however, appear to be an increasingly integrative process.

Elections thus become a very significant and sacred political exercise in a representative democracy. So it is an essential condition for the success of democracy that people give their allegiance to the democratic institutions based on the rule of law. Free and fair elections indicate such allegiance. Contrary to this, if elections are distorted and are not free and fair, democracy gets illegitimised and people's faith in democracy also gets eroded. The people would positively respond to the electoral process if the legitimacy of democracy is restored. As such article 324 of the Indian Constitution empowers the Chief Election Commissioner is superinted, direct, conrol the preparation of electoral rolls and conduct all elections. However, of late, there have been election reports and complaints by the contesting parties of serious distortions and corrupt practices like use of muscle power, money, force, violence, booth-capturing, rigging and various electoral irregularities like inciting voters on communal and religious lines, spending beyond the prescribed limits and misusing bureaucracy by posting or transfers of officials in the constituency and so on. As a result, the very constitutional premise of holding free and fair election has got weakened election after election. It will not be wrong to say that every political party has developed a vested interest in the highly distorted electoral process. In the recent past, the political game of dividing the society vertically on lines of caste, rural and urban, forward and backward, minority and majority, religion and culture, south and north, hills and plains to exploit people's sentiments for electoral gains is being played. The code of conduct declared by the Election Commission and to be followed by all concerned is often not adhered to. The voters list

often manipulated. Controversies regarding the role of the Chief Election Commissioner and Electoral Officers have also been raised. The practice of setting up an independent candidate as a 'spoiler' to contest election in India also appears to be an undemocratic feature. All these practices have degenerated the sanctity of the elections. What pains one most is that there have been no serious and consistent efforts to reform electoral process during the last four decades, though various ideas have been mooted in the past by individuals, voluntary organisations, at various partyforums by the Election Commission in its reports submitted after each general election and by the courts in their decisions on election petitions.

As the fact remains, the election machinery in India has to deal with vast and rather scattered electorate. The total electorate in 1991 was more than 540 million. 75% of this vast electorate lives in more than five lakh villages spread throughout the length and breadth of the country. The remaining 25% live in the thousands of cites, towns and small townships. Therefore, when such a vast electorate, spread over such a vast country is involved, the work concerning elections should be concentrated neither in the capital of the country nor state capitals. The election machinery should be broad based and its structure should be pyramidical and not top heavy and conical.

The election machinery should be such that it should function in every village, town and city in an independent, impartial and fair manner. There is an urgent need for radical reforms in streamlining the electoral process in the world's largest democracy.

As it has been experienced, the independent candidates who become tools in the hands of leading politicians and political parties, help in the incitement of corrupt practices. The worst is the death of an independent candidate which can lead to the countermanding of an election. Democracy operates on the basis of parties and not on the basis of independent or unattached members of Legislatures. On the one hand, there is a talk of party Government in democracy, and on the other, the participation of independent candidates in the elections is permitted and encouraged. This contradiction must be resolved by banning the partici-

pation of independent candidates in the elections. Elections are a serious competition among politcal parties, and political adventurism of the non-serious independent candidates needs to be legally checked because they in reality are fictitious contestants, having no place in democracy. Therefore, the Representation of the People Act, 1951 needs to be suitably amended.

Political parties must also evolve a code of conduct for themselves not to field candidates on caste or religious lines or those having dubious credentials. Besides, no candidate from outside should be imposed on the voters. Candidates having questionable integrity and separatist forces should be legally banned from contesting elections. Political parties should have a national character and a broad-based structure having faith in the democratic provisions of the Constitution of India. Election law should be changed so as to define the term 'political party' and its area of operation. Parties should be registered with the Election Commission. If any party polls less than one-sixth of the total votes, it should be derecognised. Likewise, the amount of security deposit and the number of proposers and seconders should be increased. If one polls less than one-fourth of the total votes, his security deposit should be forefeited. Both these exercises will help in reducing the number of independents and as well as local and seasonal political parties.

The role of money in elections can subvert any democracy. In the Representation of People Act, 1951, provisions concerning financial expendituure of the parties and the candidates during the elections have often been violated in practice by all the parties So, necessary steps to minimise the rising rate of expenditure being incurred by parties and candidates in electioneering should be taken. Party funds should be subject to public audit, or there should be a provision of compulsory audit and accounts by an agency to be named by the Election Commission. The expenditure during the elections can be contained if the number of days for campaigning is limited. Two weeks of campaigning period was given for the assembly elections of Punjab in February, 1992 and it should be enacted for the whole of India. Besides, wall writings, display of banners, playing tape recorder or video cassettes should be banned by law. For instance, countries like Finland, Norway, Denmark, Germany, Austria, Italy, Canada and Puerto Rico have

this practice in their elections. This will reduce election expenditure to a considerable extent.

Demands are often made for financial support from the Government for elections by candidates. Government-funding of elections is prevalent in many European countries. Government-funding of candidates during elections in India if introduced would provide some help to the candidates.

Rigging at polling booth to a certain extent can be prevented by taking precautionary steps. Voters can be issued identity cards. Polling stations in rural areas where rigging is anticipated due to caste factor can be equipped with better communication facilities, such as *walkie-talkies* to ensure an immediate administrative response in case of trouble. Besides, the local bureaucracy should be non-partisan. The conduct of elections depends on the fairness of local functionaries who have to manage the election-booths.

In my opinion the office of the Chief Election Commissioner needs reorganisation. A committee consisting of the Chief Justice of India, leaders of the ruling party and main Opposition party in Parliament should recommend the appointment of the Chief Election Commissioner to the President of India for final selection. While making choice of the person to be appointed as Chief Election Commissioner, his calibre, competence, and integrity should be taken note of. Besides this, the Election Commission is presently a single member body. It should be expanded to three or five members or a multi membered body to carry out the increasing workload as well as the complexities involved in its multifarious activities. This broad based Commission should have its own administrative machinery at the state level and its powers should be considerably augmented. And all efforts should be made to maintain the sanctity of the Election Commission. To enable the Election Commission to perform its task, support of the political parties in particular and theciitizenry in general is a pre-condition.

Article 324 (6) of the Constitution needs to be amended so that the Election Commission, if required,may utilise the services of the polling staff of one State for election work in another State with the consent of the Governor of the concerned State.

The main issue of electoral reforms in India is to restore the moral foundations of Indian democracy by rescuing it from the pernicious influence of money and criminals during elections. The poor and vulnerable strata of society should feel secure and independent while exercising their right to vote.

The election law in India is based on a code of conduct for the candidates. But in practice, this code is misconducted by the candidates. Legality of election law should be strengthened by involving 'influential citizens' of a constituency to give their reports on elections to the Chief Election Commissioner. Recogniton of parties should also be supplemented by legal provisions for the derecognition of parties for electoral misconduct. Fifty senior citizens in every constituency should be appointed as'vigilantegroups' on behalf of the Election Commission to report on the conduct of elections and the commission should take cognizance of these reports of eminent citizens.

A restriction should be imposed on a candidate preventing him from contesting from more than two constituencies during a general election. Otherwise, there is a danger of a candidate offering himself in a number of constituencies and stalling the election process in all of them in the event of his death. Besides this, an election should be countermanded only on the death of a candidate set up by a recognised political party. The election commission should give recognition only to those political parties which have held elections for their office-bearers in every two years, in a fully democratic way. Misuse of official machinery by a candidate should be defined as a corrupt practice attracting legal provisions of the Representation of People Act. Common man should not be influenced by the promises made by politicians and political parties.

The Indian political class should be concerned with the process of distortions in elections and they should seriously reform the electoral process. We should strengthen political system and the democratic culture.The conduct of free and fair elections is the prime need of the time for which the enlightened people, institutions and political system must act before it becomes too late. These suggestions for electoral reforms will not rid the system of all its deficiencies but they will certainly make elections in the world's largest democracy more efficient and less cumbersome.

8

India Parliament And Social Change

Chimanbhai Patel

The republican and federal structure of the Constitution of India renders it quite distinct from the Westminster model that it was sought to be based on.

Perhaps the most distinctive features which distinguish it from the so-called Mother of all Parliaments, at Westminster, are the several limitations imposed on the Legislature :

(i) by writing down the Constitution, a framework is automatically created, within which it must function;

(ii) by making provision for Judicial Review, to ensure that laws passed by Parliament may be tested for constitutionality by an independent judiciary;

(iii) and by distributing powers between the Union Government and the States, to meet the individual aspirations of all the people of all the regions of the country.

Perhaps it is these qualifications which have contributed to make the Legislatures, both Parliament and the Assemblies in the States, instruments of social change, whose policy formulations have mirrored the changing political culture and the political process in the country.

Unlike the United Kingdom, which has no written Constitution, giving the Parliament unlimited powers as a sovereign body, India has a written Constitution, laying down a definite framework. This includes not only the Fundamental Rights of the citizens, but also Directive Principles for the Union and State Governments, which have been the lodestar for ringing in social changes.

A prime example has been the Hindu law, which has seen radical change, particularly in relation to the effect on the rights of women in the 43-year -old lifespan of the Constitution.

To quote a few examples, the Sharda Act, laying down minimum ages for marriage for both girls and boys, has helped considerably in improving the health of the community, both in regard to physical health and in terms of social responsibilities and earning capacities. Concomitant drives towards the spread of literacy and family planning unquestionably enhanced the overall results.

There have of course been some lapses in implementation, with sporadic reports of child marriages in this day and age. But, as the saying goes, it is the exception that proves the rule and the occurrence of such aberrations must serve as a signal for all connected with the Legislatures, the law-makers and the law-implementers, to pull up their socks in the implementation of the true spirit of the laws.

Where traditional practices act as the Podestone of the community, it has been seen that the mere passing of laws is often not enough. It is necessary for the governments and social and non-governmental organisations to join hands to persuade communities to accept modern practices as a change for the better.

Such revolutionary legislations aimed at changing the social face of India include the Anti-Dowry Act, giving Hindu

women equal share in inheritance, and the thrust given to the spread of literacy.

The passing of such laws during the early years of our Republic may, per chance, be taken as a symptom of the early enthusiasm of the law-makers and the intelligentsia to propel the country into the international mainstream, on the model of the Western democracies.

Of late, however, there appears to be some backlash against brash modernity, a phenomenon witnessed around the world.

This upsurge of interest in our own roots and traditions has begun to influence not only fashions, but also life-styles and values, extending even to a resurgence of interest in traditional medical systems and governance patterns as embodied in the *Panchayati Raj.*

The practice of *Sati* cannot but be regarded as a horrible iniquity on the honour of women, who have, since time immemorial, been venerated in our land. The legislation against *Sati* demonstrates that Legislatures can truly act as instruments of social change.

In its short lifespan of 43 years, the Indian Parliament has passed several bills which have brought out a virtual sea-change in the social and political stage in the country, reflecting not only the changing social climate as in the case of the famous Shah Bano case, but also the changing political scene.

On 12 November, 1991, the Supreme Court of India had given its judgement, regarding the validity of the Anti-Defection law, wherein they held that paragraph 7 of the Tenth Schedule of the Constitution was *Ultra vires* of the Constitution, as the same had not been ratified by more than one half of the State Legislatures, as required under artical 368 of the Constitution. this is perhaps one of the most significant examples of Judicial Review. The pros and cons of the defection tangle of the last decades undoubtedly reflect the developing political culture. which was sought to be resolved by the Anti-defection Act.

In recent times, the Anti-Defection Act has been the subject of intense debate across political and legislative forums in the country, in the light of decisions handed down by each Presiding Officer according to his best judgement.

Speaking at the All-India Conference of Presiding Officers at Gandhinagar on 29 May, 1992, the Speaker of the Lok Sabha, Shri Shivraj V. Patil observed that in respect of the notice issued to Shri Ravi Rabi former Speaker, it had been decided that the Presiding Officers, may not subject themselves to the jurisdiction of the Judiciary. However, as a responsible institution pledged to uphold the prestige and dignity of both the Judiciary and the Legislature, it was decided to make the relevant papers available to the court to enable it to study them before handing down its decision. It was also decided that the decision of the Supreme Court would be respected by the Presiding officers and the Legislatures.

The need of the hour today is obviously the maintaining of that delicate balance among the three branches of the Government, the Judiciary, the Legislature and the Executive, which will offer the Indian people an infrastructure which will enable them to fulfil their growing social and economic aspirations.

9

Parliamentary Institutions And People's Aspirations

Hiteswar Saikia

The establishment of parliamentary institutions in our country was an institutionalised culmination of a passionately nurtured vision of an entire struggling populace. It had meant the realisation of a dream that the nation had cherished throughout the tortuous turns and corners in its path towards freedom. To one who had witnessed those trying times and had been a proud participant in the historic developments to the dawn of free India, it is but natural to have various thoughts criss-crossing one's mind about the system which we have adopted for ourselves.

The British rulers had no doubt transferred power to us in 1947 but *Purna Swaraj*, as envisioned by Mahatma Gandhi, did not simply mean the transfer of power by the British but also the nation's growth into a democracy. Naturally, the attainment of Independence in 1947 was only the beginning of the nation's journey towards the goal of democratic governance and democratic development. It was basically the beautiful vision of a country run by her people that had captured the imagination of the nation during the freedom struggle. The Constitution which we adopted on 26 November 1949 naturally reflected the collective urge of the people to have democracy as their way of life. The Constitution fashioned on the foundation of the collective will and inherent

wisdom of the people held out brilliant promises for the nation's democratic growth and the desired blossoming of the finest democratic values in all sectors of its life.

The country, through alternating spells of clouds and sunshine, has completed 42 years of its existence as a Republic. There have been times of both hope and despair. On several occasions, our democratic system itself has been put to the toughest test but on all such occasions, the inherent collective genius of the people has ensured the ultimate triumph of democratic ideals. The country has been run through these eventful decades by democratically elected Governments and the nation has found itself so much in tune with the system that it cannot think of any other system of governance. Democratic values are also deeply ingrained in our age-old traditions and any other system is naturally alien to the Indian mind.

Gandhiji had dreamt of democracy, both political as well as economic, down to the village level to ensure the fullest participation of everyone in the process of governance and development. The Successive Governments, in consonance with the Gandhian concept of *Gram Swaraj*, have tried to add more meaning and content to the system by decentralising power down to the grassroot level through the *Panchayati Raj* system. In the State of Assam, for instance, we have recently initiated a massive effort to make it more meaningful by ensuring wider involvement of all sections of the people in the democratically elected *Panchayats* and handing over a greater share of powers and funds to them.

Democracy does not, however, mean simply a system of administration and its success or significance is not limited to election of governments or the process of governance. Democracy rather has to go beyond the confines of adminstrative functioning and grow into a way of life. It has to become a part of our consciousness and get reflected in our everyday life, in our words and deeds, in our thoughts and ideas and in our attitudes and behaviour. Viewed from this angle, one wonders if the principles of democratic behaviour have really struck deep and firm roots in our senses and in our outlook. Only recently, the country witnessed gruesome eruption of violence in the name of religion in several States. Religious fanaticism took a heavy toll in the

country as a whole and left behind blazing trails of blood and tears. Our Constitution, which enshrines lofty secular ideals, defines freedom of faith as a basic right for every citizen. True democratic behaviour in this particular context should mean mutual tolerance and respect for one another's religious faith.

One often hears slogans of democratic rights but rarely of one's responsibilities in a democracy. The guarantee of one's democratic rights in fact lies in one's honouring the same right of another. But if one cares to have a closer look at the country's prevailing situation, one cannot help feeling confused and dejected. Some agitating organisations often announce agitational programmes in the name of democratic rights but their behaviour only betrays undemocratic tendencies. We have seen frequent *bandhs* and other agitational programmes being forced on unwilling citizens through picketing that turns out to terrorising or even open violence at times. We have also come across self-styled human rights activists shouting slogans of democratic rights while patronising at the same time terrorist outfits that do not honour even one's right to live. We have journals that in the name of freedom of expression are not prepared to concede the same freedom to others and try to ridicule or shout down the differing point of view. It is a peculiar situation in which full mouthed slogans of democratic commitment are shouted even by extremist groups that believe in extortions, killing and kidnapping of people with opinions different from their own.

In our democratic system, the Opposition parties obviously have a very significant and meaningful role to play. Their role in the furtherance of the nation's objectives is no less than that of the Government. In fact, vital issues and critical problems confronting us today call for concerted national endeavours and that is why our Prime Minister has often laid stress on national consensus. It needs no reiteration that irrespective of our political ideologies and party affiliations, we have to reconcile all our activities only to the priorities of the nation as a whole. It is hence naturally expected that the Opposition parties play a vital role by extending their cooperation to the Government for effectively measuring up to the vital problems. It needs to be emphasised that Opposition for the sake of Opposition hardly indicates a true democratic temperament or constructive behaviour. The future of

our democracy depends on our commitment to democratic principles and democratic behaviour in our thoughts and ideas, in our words and deeds, both individual and collective.

The sacrifice that the nation had made for attainment of freedom cannot be allowed to go waste. Apologists of the colonial power used to contemptuously remark that 'a tried and tested system of governance was being handed over to India's men of straw'. We can hardly afford to give credibility to such prophets of doom. The intrinsic and permanent values of our parliamentary institutions must prevail. The nation would do well to remember that it is not for nothing that the poet Gurudev Rabindranath Tagore looked up to that 'heaven of freedom where the mind is without fear and the head held high; a land where knowledge is free and significantly, where the clear stream of reason has not lost itself in the dreary desert sand of dead habit.'

10

PARLIAMENT AND HUMAN RIGHTS

Krishna Sahi

The Indian Parliament is the supreme legislative body for the territory of India. The Constituent Assembly, which drafted the Constitution, gave to the people of India a set of human rights which are popularly known as Fundamental Rights. They are called fundamental because they cannot be changed ordinarily. Parliament has been given the task of legislating on issues which require implementation of these human rights.

It is gratifying to note that our Parliament has done a remarkable job in ensuring the enjoyment of human rights by the people. In the field of legislation, women's rights have received their due priority. The first attempt was made by the Constituent Assembly itself, by incorporating article 15 to ensure that States should not discriminate on the grounds of sex. The Hindu Succession Act was amended in 1956 to give women a right on their paternal property. This was despite the fact that it was an age old practice to deny a share to a woman in the Hindu property. The amended Act provided that on the death of a man, his widow, son and daughter would share the property of the deceased equally. The Indian Penal Code restricted the male from marrying a second time during the life-time of his first wife. The Married Women's Property (Extension) Act, 1951 was enacted to protect the rights

of the married women. The Dowry Prohibition Act, 1961 sought to put an end to the social evil of dowry. The Act made the practice of dowry an offence for which the violator would be punished.

The Maternity Benefit Act, 1961 and its amendment Act, besides providing maternity benefits give some security to the working women. The Suppression of Immoral Traffic Act was enacted in 1956 to deal with the problem of immoral traffic in all its dimensions. Later, in 1986 on suggestion made by organisations working for women, advocacy groups and various individuals, the scope of the Act was enlarged by an amendment to provide for stringent penal provisions for offenders. The Act also provided for certain minimum standards for correctional treatment and rehabilitation of the victims.

Parliament also enacted in 1986 the Indecent Representation of women Prohibition Act, to prohibit depiction of women through advertisements or in publications, writings, paintings in an indecent fashion.

In 1987, Parliament passed the Commission of Sati (Prevention) Act. The Act became necessary in the light of immolation of a widow in Rajasthan and its subsequent glorification made by the protagonists of the practice. It was apprehended by women's organisations and eminent persons inside and outside Parliament that efforts put in by social reformers like Raja Ram Mohan Roy would be nullified, if this evil social practice is revived. The Act provides for more effective prevention of the commission of *Sati* and its glorification so that this practice is not continued. The Government has also gone into the problems of women and their emancipation from past prejudices against them. The country cannot progress as long as inequality persists with regard to half of its population. The National Commission for Women has been established under a Parliamentary Act of 1990, to look after the problems and prejudices pertaining to women and redress them as far as possible.

As far as child welfare is concerned, Parliament has attempted to protect the child in a number of ways. Some of the important child welfare legislation are the Children Act of 1960, the Children Marriage Restraint Act, the National Policy for Chil-

dren, 1974 and the Child Labour Prevention and Regulation Act of 1986. Employment of children in dangerous vocations like fireworks and allied hazardous jobs has also been prohibited.

The Juvenile Justice Act, 1986 made provisions for the care, protection, treatment, development and rehabilitation of neglected and delinquent juveniles.

Parliament has taken some hard decisions in enacting National Security Act, 1985 (NSA) and Terrorists and Disruptive Activities Prevention Act 1987, (TADA). No Government can tolerate any terrorism within its territory nor remain oblivious to the plight of victims of such acts. These acts had to be nipped in the bud as and when necessary. The larger interests of society must outweigh the assumed rights of terrorists who violate the rights of the innocent people.

The Indian Parliament has discharged its duty well in ensuring the enjoyment of human rights by the people of the country. Of course, these rights do not exist in a vacuum. While enjoying one's rights others should also be allowed to enjoy their rights. There are some responsibilities also which people in India should realise while enjoying these rights.

11

PARLIAMENTARY DEMOCRACY IN INDIA

J. S. Tilak

Pandit Jawaharlal Nehru, the first Prime Minister of India had once said, 'All our institutions, including the parliamentary institutions, are ultimately projections of peoples' character, thinking and aims; they are strong and lasting in the major, that they are in accordance with the people's character and thinking. Otherwise they tend to break up'.

In general parlance, Parliamentary democracy pre-supposes the participation by the people in which the people, the Parliament and the Government have their own responsibilities and roles to play. Our Constitution provides for a bicameral system *i.e.* consisting of two Houses: the Lok Sabha (House of the People) and the Rajya Sabha (Council of States). No doubt, the scheme of distribution of powers between Union and the States emphasises in many ways the general predominance of the Union in the legislative field. The Seventh Schedule to the Constitution gives an idea about the distribution of subjects in the three lists : (1) Union List; (2) State List and (3) Concurrent list. Constitutionally and in practice, the Parliament and the Excutive in India are linked together as partners in the conduct of public affairs. But Parliament as an apex body is a multi-functional institution performing a variety of roles.

The first and foremost significance of the Indian Constitution is that it envisages the people of India to be sovereign and to have the liberty to elect the Representatives to Parliament and Legislatures as the case may be, and to form the Government of thier own choice. The seeds of democratic ethos are deeprooted in this land. If we trace the historic background, we find that our *vedas* refer to the democratic norms and institutions which were available in our ancient society. *Rig Veda* mentions two Institutions, *i.e. Sabha* and *Samiti*. The *Sabha* was the House of Elders and the *Samiti* was the general assembly represented by common folk. Subsequently in the post-Vedic period also, we see glimpses of Parliamentary democracy. *Gram Sabha*, or *Gram Panchayats* are the later day developments in this respect. Thus, democratic institutions survived and flourished in this country in one form or the other.

Then came the British rule. The Charter Act, 1833, the Indian Councils Act of 1909, the Reforms Act, 1919 and the Government of India Act, 1935 paved the way for the Constitution of free India. Thereafter, the Constituent Assembly was set up for framing the Constitution of free India. The constituent Assembly consisted of a galaxy of persons who were giants among intellectuals and who had given everything for the cause of the Nation. They were the founding fathers of the Constitution. They discussed and deliberated extensively upon each and every clause of the Constitution. Therefore, India's Constitution represents truly the secular, socialistic and egalitarian society through democratic representative methods.

During these 45 years of independence, we have had ups and downs but considering the upheavels that have taken place in some neighbouring countries, we can say with pride that India has withstood internal and externnal threats to our unity and integrity with grit and determination, thanks to the path illumined by the Constitution.

When we look back, we find scores of achievements and several shortcomings as well. But while doing so, we can certainly hold our heads high that the balance-sheet tilts in favour of successes. During this period, several challenges threatened to uproot the very edifice of the Constitution. We have had to confront

external aggressions but we were able to maintain and preserve the sanctity of the Constitution all through. The successful conduct of periodic elections to Parliament, State Legislatures and other democratic bodies have further strengthened the strong faith and trust of the people in the system of parliamentary democracy.

On the economic front, we have been able to formulate a model of economy leading to self-sufficiency. So far as India's role in the world affairs is concerned, it is very encouraging inas - much as we have always striven hard for international peace and co-operation. India has always been in forefront in championing the cause against imperialism and colonialism at different international fora - the UN, the Non-Aligned Movement and the Commonwealth. The Indian representatives have always led a crusade against the attacks on human rights, imperialism and colonialism in all their manifestations. But while looking at these aspects with pride and satisfaction, we should not lose sight of the hard realities which represent certain shortcomings. For this, there is a need for a great deal of introspection. The question before us is whether we are able to maintain our position and improvise it to be amongst the developed democracies of the world or slide back to a position to remain a developing nation where democracy simply functions as a political machinery.

Today the picture which we see is not very heartening . A vast number of our people continue to live with acute want, unemployment and underemployment, poverty. illiteracy, ignorance, obscurantism and worst of all lack of a spirit of self-confidence and self-realisation are visible. There are millions hailing from the weaker sections of the society. They include farmers and artisians in rural parts who continue to suffer being unorganised sections. In fact, representatives of people must give voice to the grievances and views of the general public because sections of society are suffering exploitation at every point. The gigantic task of economic development and social transformation which we face today cannot be left to the government or the administration alone. What is required is dedicated, concerted and sustained effort to live upto the task before us. After all, a legislator has to be judged by the level of consciousness towards the people. The zeal and concern which a particular member shows towards the inequities in society is an important aspect in a parliamentary de-

mocracy.

Here it is necessary to stress that while it is essential that right policies and laws are formulated to meet the needs of society, it is equally important to see that they are implemented in letter and spirit. A law initially well intended and properly formulated can be circumvented by vested interests whereby justice is prevented from reaching the lower level. It is, therefore, inevitable that the entire administrative apparatus has to be fully conscious of its accountability towards Parliament. In a living democracy the administrative machinery has to be on its toes. It has to face parliamentary scrutiny through proper legislation. Various parliamentary devices should be effectively made use of by members to ensure this accountability.

Today the greatest threat to our democracy is the evil of terrorism and communalism. There is no denying the fact that at times the persons abetting terrorism and communalism have foreign supports who are bent upon destabilizing and balkanizing this country for ever. We have to think seriously about this menace.

There is also the frightening menace of poverty and illiteracy in this country. On the one hand the population of this country has increased manifold; there is no substantial increase in the rate of literacy. Without economic development one cannot think of real democracy. It is, therefore, necessary that an unrelenting war has to be waged against illiteracy and poverty.

The global situtation also is going through a sea-change. The recent development in several parts of the world leading to the triumph of democracy should be an eye-opener to students of political science as well as representatives of people in legislatures and Parliament. Development and social transformation imply reappraisal of norms and values, restructuring of existing arrangements and if necessary re-orientation of outdated attitudes and habits of thinking. The relationship between the Parliament and Executive is not a static equation but one that keeps changing all the time. The term 'bureacuracy' unfortunately continues to have an odious tinge. The time has come for the bureaucrats to imbibe a new spirit—the spirit which is required for development, the

spirit which means association with people and dedication to the service and prosperity of the nation by improving the lot of the toiling masses. We have to forge new link and attitude towards people who live in rural parts of the country and who cnstitute more than 80% of the nation. The representatives of people, particularly those from Opposition benches, have to see that a new direction to our thinking towards the poor, oppressed and those who have undergone hardships for ages is imbided so that they are provided with better amenities and minimum needs for simple living.

For the success of real democracy an enlightened public opinion and discipline is a must. In India, the Press has tremendous potential as it is its duty to report faithfully the grievances of the people. A great deal of responsibility lies on them to see that matters are presented in the proper perspective. As matter of fact, the conduct of the representatives of the people and the conduct of the newspapers should go hand in hand so that a truthful and objective reporting of the House is given.

Another question for consideration is that of Parliamentary privileges. Privileges are there to safeguard the freedom, authority and dignity of the House. These are the special rights enjoyed by the parliamentarians, in the performance of their duties towards the people without which it would be impossible for them to act with honour and dignity. At the same time it is the duty of the representatives of the people to promote peoples' faith and trust in parliamentary institutions.

One other problem which we are facing is the phenomenon of defection. This is something altogether not unkonwn to the older democracies like Great Britain. Political stalwarts like Gladstone, Chamberlain. Churchill and MacDonald were known to have changed their party allegiance at one time or other. Since 1967, this country has watched an unprecedented era of political instability and floor-crossings. Then came the era of coalition Governments constituted of heterogeneous elements, *i.e.* political parties having no ideological similatiry often coming together to share power. In fact all the national parties were suffering from this unique menace and there was some sort of unanimity among them that this menace should be put an end to. Accordingly, after

the General Election of 1984, Government introduced the Constitution (Fifty-second Amendment) Bill in the Lok Sabha and the same was passed by near unanimity. Unfortunately, certain persons who happened to be the aggrieved party in respect of provisions of the Anti-Defection Law took recourse to the Courts. Paragraph 7 of the Tenth Schedule which barred the jurisdiction of the Courts had been struck down as *ultra vires* of the Constitution by the High Court of Punjab and Haryana and an appeal was preferred in the Supreme Court. Similarly, several Writ Petitions Challenging the validity and the constitutionality of the Act were filed in the Supreme Court and in various High Courts. The Supreme Court, while disposing off the said appeal held that the provisions of Paragraph 7 of the Tenth Schedule of the Constitution in terms and in effect bring about a change in the operation and effect of articles 136, 226, 227 of the Constitution and, therefore, the amendment would require to be ratified in accordance with the proviso to sub-article (2) of article 368 of the Constitution of India. The Court further held that Paragraph 7 of the Tenth Schedule contains a provision which is independent of and stands apart from, the main provisions of the Tenth Schedule which are intended to provide a remedy for the evil of unprincipled and unethical political defections and, therefore, is a severable part. The remaining provisions of the Tenth Schedule can and do stand independently of Paragraph 7 and are complete in themselves, workable and are not truncated by the excision of Paragraph 7. The Supreme Court also observed that the contention that the investiture of adjudicatory functions in the Speakers/ Chairmen would by itself vitiate the provision on the ground of likelihood of political bais is unsound and rejected it. The Speakers/Chairmen hold a pivotal position in the scheme of parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and do take far-reaching decisions in the functioning of parliamentary democracy. Vestiture of power to adjudicate questions under the Tenth Schedule in such constitutional functionaries should not be considered exceptionable.

Thus, the Supreme Court has upheld the powers of the Speaker/Chairman, as the case may be, to give decision in respect of issues under the Anti-Defection Act. But all the same there are instances where Presiding Officers have been summoned to ap-

pear before the Court. For the smooth and efficient functioning of democracy in this country, the Presiding Officer must have unfettered powers to decide the questions coming before him. So far as the proceedings of the House are concerned, he occupies a unique position and therefore, his decision will have to be taken according to circumstances available then and there. This is a very sensitive area and hence no outside authority should be allowed to make inroads in to the proviso of the Legislature and aritcles 122 and 212 of the Constitution. For this purpose the Presiding Officer must be provided with ample and definite powers. The elaborate procedure which has been prescribed by the rules made under the Act is sufficient to take care of the matters that may come within the meaning of Anti-Defection Act.

Finally, we have to look at the happenings in some of our Legislatures which have been really depressing. Shri Shivraj Patil, Speaker, Lok Sabha, had called a Conference of Presiding Officers, Chief Ministers, Leaders of Opposition and senior leaders of political Parties in New Delhi in September 1992 to give considerate thought to the issue of framing some sort of a code of conduct' in this respect. Accordingly, after having fruitful discussion and deliberations, the Conference had passed unanimously a Resolution. The Resolution *inter alia* opined, as follows :

(1) *Feel* greatly satisfied that the Parliamentary System has taken firm roots in the country notwithstanding the Challenges from within and outside;

(2) *Compliment* the people of India for their continued faith in the principles and ideals of democracy and reaffirmation of their allegiance to the Parliament and Parliamentary Institutions;

(3) *Reiterate* their responsibilities and duties to protect and preserve the hard-won freedom, strengthen the unity of the people, defend the integrity of the country and achieve for the people a life of peace, prosperity and happiness;

(4) *Agree* unanimously that with a view to preserving the democratic and secular fabric and strengthening the Parliamentary Institutions it is necessary

that—

(i) At the time of address by the President to the Members of both the Houses of Parliament and at the time of Address by the Governor to the Houses of Legislatures, decorum and dignity of the occasion be maintained fully and due respect be shown to the President and the Governor.

(ii) The question time should be utilised fully and effectively as a well-established device to ensure accountability of the administration and that the demand for the suspension of the question Hour should not be made and acceded to except with the consensus in the House to discuss a matter of very urgent nature and exceptional importance;

(iii) The Legislatures should hold sufficient number of sittings in a year with a view to affording adequate opportunities to the Legislators to deliberate; and

(iv) Members should scrupulously observe the Rules of Procedure in order to maintain order and decorum in the House; and

(v) The Committee system be strengthened in the Parliament and state Legislatures in order to enable in-depth study and closer scrutiny as well as to ensure accountability of the Executive to the Legislature.

(5) *Suggest* that the political parties evolve a code of conduct for their legislators and ensure its observance by them; and

(6) *Urge* that the Political Parties, governments at the Centre and in the States, the Press and others concerned should help create a climate conducive to the healthy growth of Parliamentary System in the country.

The decision was also taken in the said Conference to have

Regional Conferences for the purpose of furtherance of the decisions taken at the Conference in Delhi. Let us now hope that the consensus arrived at the New Delhi Conference would dawn greater wisdom on the representatives of the people so that ugly scenes in the Legislatures and Parliament would stop for ever and that emotional outburst will not tide over decency and decorum. The success of democracy depends not so much on having well drafted and nobly worded provisions in the Constitution but it depends in the final analysis, in the way the system is worked. Democracy, liberty and the rule of law are the three faces of a trinity which presides over destiny of all liberal societies. Democracy makes a certain assumption about the capacities and virtues of men. It requires willingness of the parties and partymen to abide by certain rules of the game which calls for some measure of restraints to be exercised. It postulates that the majority shall not rule too oppressively and that the minority in its turn shall accept the verdict of the electorate. There is no denying the fact that the new emerging social forces have put their impact on the society. Great responsibility, therefore, lies with legislators who are the ultimate architects of the future of this country. It is heartening that different political parties in this country have always shown tremendous faith in democratic values and Parliamentary Institutions. To quote Pandit Jawaharlal Nehru who once said 'Parliamentary democracy demands many virtues; it demands, of course, ability. It demands certain devotion to work. But it demands also a large measure of co-operation, of self-discipline and of restraint...'

12

Parliamentary Democracy In India—Then And Now

Umeshwar Prasad Varma

The system of Government in India as based on parliamentary democracy is modelled on the British systemknownpopularly as the Westminster model and Pandit Jawaharlal Nehru was the prime artificer of this system of parliamentary democracy in our country. As long back as 1936, well before India's freedom from foreign yoke, Pandit Jawaharlal Nehru, as the President of the Indian National Congress, had declared that our objective, after becoming independent, was the establishment of a democratic State. Both as the leader of Indian national movement during the freedom struggle and as the Prime Minister of India after Independence, Pandit Nehru laid great stress on parliamentary system of Government because, he believed, it was a democratic conception. In fact, the spirit of democracy was running through his veins and he always firmly believed that in view of our country's ancient democratic traditions, parliametary democracy was more suited to meeting theaspirationsof the people and the demands of modern times. He was explicit on this point when during a debate in the Lok Sabha on 28 March, 1957, he said :

> We choose this system of parliamentary democracy deliberately, we choose it not only because to some extent, we had always thought on those lines previously, but because we thought it was in keeping with our own old tradition, not as they were, but adjusted to the new conditions and new surroundings.

Both as Prime Minister and as the Leader of the House from 1950 to 1964, Pandit Nehru played an outstanding role in building, brick by brick, the great edifice of parliamentary system, particularly the great institution called the Parliament of India. In fact he was the system builder of parliamentary democracy in India which was "the fulcrum round which his entire achievements revolved."

But Pariamentary democracy is a system of governance which has to evolve and grow; it cannot be created by some magic wand. It calls for a code of conduct for its business and envisages certain principles and policies of public ethics as its functioning base. Pandit Nehru knew it and, therefore, all through the formative years after Independence, he made conscious efforts to establish healthy traditions and conventions, wholesome practices and precedents to make parliamentray democracy an effective system. In fact as noted by his biographer, Prof. S. Gopal, "by transferring some of his personal command to the institution of Parliament, he helped the parliamentary system take root". Free and fair elections, full and frank discussions in the House on matters of public interest and importance, appreciation of informed criticism, great respect to the House and its Presiding Officer—all these were for Pandit Nehru articles of faith. Democratic parliamentary institutions thus grew as supreme representative institutions of the people. The principle of accountability of administration to Parliament was so well established that Parliament became "the grand inquest of the nation". In fact, parliamentary institutions like the Parliament and State Legislatures secured a pre-eminent position in the polity of the country. It was in this context that Nehru once said, "I am jealous of the powers of this House and I should not like any one to limit these powers.

Parliamentary system of Government is, no doubt, the best because it is one in which governmental activities always advance

the real intersts and welfare of the masses, and as Pandit Nehru said,"in the final analysis it promoted the growth of the human being and of society ..." But at the same time it is the most difficult system of governance and as has been noted, "one of the most exacting applied sciences". In a speech in the Lok Sabha on 28 March, 1957, Pandit Nehru elaborated this point:

> Parliamentary democracy demads many virtues; it demands, of course, ability. It demands certain devotion to work. But it demands also a large measure of co-operation, of self-discipline and of restraint... .

The character and content of parliamentary democracy very much depends on the quality of persons who man the representative bodies, like the Parliament and State Legislatures, as the representatives of the people. In other words, elections are the barometer of democracy and the contestants the lifeline of the parliamentary system and its set-up. During the first two General Elections, the elections were fought on an ideological plane and the contestants were men with a spirit of service and sacrifice. Leaders of all political parties then had directly taken part in the struggle for freedom under the leadership of Mahatma Gandhi.

Mahatma Gandhi along with a band of staunch nationalists like Pandit Jawaharlal Nehru, Dr. Rajendra Prasad, Sardar Vallabhbhai Patel and Ghan Abdul Gaffar Khan inculcated in the masses a spirit of altruism and devotion to the cause of public and social weal. Naturally, by their noble character and public conduct they also infused morality and social norms among the people. Ethical values and norms of public behaviour took root in the responsive soil of the society. The democratic parliamentary system was, therefore, strengthened by ideology. Public morality and principled politics kept democracy alive.

If, however, the democratic parliamentary system lacks the lustre of these virtues and if public representatives do not abide by the necessary norms, the system is bound to betray signs of stress and strain, if not of degeneration, as is evident today.

Parliamentary democracy was quite young in India but the great leaders nurtured it with faith. The plant took root very soon. But in course of time the old political culture underwent extensive

transformation causing grave damage to the sanctity of the system of parliamentary democracy. In course of time and after the demise of such public leaders as Pandit Nehru, Dr. Rajendra Prasad and Sardar Patel, the norms of political order and morality in public affairs laid down by them were not so scrupulously observed. Developmental and economic activities, for the economic growth of the country were directed, according to P.C. Joshi, towards an aggressive "assertion of the philosophy of getting rich quickly accompanied by erosion of social ethics, discipline, of the spirit of service and sacrifice" in the public field. Money and muscle power soon became the bane of Indian politics and this prevented a true reflection of the popular will, A vicious circle was set up-in elections persons with questionable character and track-record, able to command resources, human and material, got an edge over those who were upright and able but lacked resources. Naturally, parliamentary democracy gradually ceased to be an ideal system representing the will of the people.

The former President of India, Shri R. Venkataraman, in his message to the nation on the eve of the Independence Day on 14 August, 1989, highlighted this aspect of electoral politics which was gradually weakening the system of parliamentary democracy and making a mockery of it. He said:

> I wish to take this opportunity to impress upon all those who will be contesting the ensuing elections to abjure acrimony and rancour and to give no quarter to violence. I would like to make a special appeal to contestants and campaigners to ensure that nothing that they say or do aggravates communal or caste feelings....

It is evident that electoral reforms are necessary for the proper functioning of parliamentary democracy. In view of this the Election Commission of India had recommended to the Government in 1985 that persons with proven criminal records, history-sheeters,etc. were to be barred from contesting elections.

Democratic parliamentary system was,according to Pandit Nehru,a method of argument, discussion and decision and of accepting that decision, even though one may not agree with it. However, Parliament as it functions today reveals lack of the old democratic culture; there is now in evidence coercion in place of

dialogue, and at times brute force in place of persuation. No country of the world can run its democratic parliamentary system merely with the written language of its Constitution. Norms, conventions and traditions have to be established and strengthened But what is appalling is that today we are witnessing the breakdown of norms and traditions. As Pandit Nehru so rightly siad, parliamentary democracy must create in the minds of the people a feeling that "they are partners in a vast undertaking of running a nation, partners in the government, partners in industry". In other words, the fundamental problem or the purpose of the system of parliamentary democracy is to find and even create, points of common interest and to think in larger units, as well as to think and act across dividing lines of class and caste, language, religion and region.

Of late, unfortunately, religiosity, communalism, regionalism and casteism have been rearing their ugly heads. A famous French ethnologist coined the term "noyan" for a socially sick society suffering from inward antagonism. Are we not ailing from symptoms of inward antagonism, like caste, religion and communalism and regionalism? The country has somehow been pushed to a point where even nationalism and public morality appear to be on the decline.

Parliamentary democracy is a system of government which provides peaceful method of achieving all ends. In a circular letter in August, 1954, to all the Presidents of Pradesh Congress Committees, Pandit Nehru had emphasised that "the very essence of a democratic state is its functioning in an atomsphere of peace. Problems, however difficult, are solved by peaceful method — by discussion, negotiation, conciliation and persuation". But a cursory glance at the functioning of parliamentary democracy today reveals a different picture. Mass killings, abductions, destruction of public property disruption of communications and transport have become a normal mode of expressing discontent or highlighting demands. The lack of democratic culture is being witnessed not only in the breakdown of law and order in different areas of the country but also unfortunately in disorder and disturbance inside the Legislature. To address the Parliament and the State Legislatures is a solemn constitutional obligation of the President of India and the State Governors, respectively, and

utmost dignity and decorum appropriate to that occasion have to be maintained by members and political parties. But disorder is created even on such solemn occasions.

As Shri K.R. Narayanan, the Vice-President of India pointed out in his inaugural address at the Conference of Presiding Officers, Leaders of Parties and Ministers of Parliamentary Affairs on 23 September, 1992, "if the Parliament and the Legislatures are perpetually assailed by disorders and disturbances they will not be able to function ..." The problem is so acute that even Question Hour which is the most important business of the House from the point of view of public interest tends to turn unruly. Pandit Nehru took keen interest in the Question Hour and regularly attended it and disapproved of Ministers trying to evade answers. We must realise that suspension or disturbance of the Question Hour limits or even thwarts the capacity of the House, to resolve inconsistencies or fully explore the most important subjects of immediate general concern.

In fact, the problem today has become so acute that the Speaker of the Lok Sabha, Shri Shivraj V. Patil, had to call a two-day All India Conference of Presiding Officers, Leaders of Parties, Whips and Ministers of Parliamentary Affairs in New Delhi in September, 1992, to discuss the problem of disorder and disturbance inside the parliament and the Legislatures. The Conference was the first one called since Independence and, as such, indicated the acuteness of the problem as well as the anxiety of the Speaker as the guardian of partliamentary functioning, to take measures, within his powers, to halt the unhealthy trend. To say that disorder and disturbance in the House is a world phenomenon does not in any way restore to our system of parliamentary democracy the dignity and effectiveness it stands to lose.

Parliamentary democracy generally envisages representation of the people, responsible Government and accountability of the Executive to the Legislature. The essence of this is to draw a line of authority form the people through the House to the Executive, the consent of the House ultimately being required to legitimize the proposals and policies of the Government. However, in our parliamentary system, there is no dividing line of powers between the House and the Executive. The Executvie has in theory

and practice all executive powers, there being no direct decision-making power with the Legislature. Walter Bagehot described the powers of the constitutional monarch as "the right to be consulted, the right to encourge, the right to warn! The Legislature has, no doubt, the right to scrutinize, the right to question and, with its constitutional mandate, even the right to veto any proposal or policy of the Executive. But this right to veto or even to scrutinize is being steadily diluted and rendered ineffective. Pandit Nehru believed that the Parliament and the State Legislatures were the supreme representative institutions of the people. But at the same time he was conscious of the tendency of the Execuitve to dominate and by-pass the House. Speaking on the occasion of the unveiling of the portrait of late Shri Vithalbhai Patel on 8 March, 1948, he drew the attention of the Speaker and said:

> Now, Sir, specially on behalf of the Government, may I say that we would like the distinguished occupant of the Chair now and always to guard the freedom and liberties of the House from every possible danger, even from the danger of an executive incursion.

But much water has flown down the Ganges since Pandit Nehru spoke of the powers of the House in parliamentary democracy. To make the democratic parliamentary system meaningful, as he wanted, it is necessary that the House or its Committees should have the ability to investigate fully and quickly any alleged malfunctioning in the executive arm of the Government. But in actual practice, it is more difficult than before to get detailed information from the Executive or even from public servants who are called to depose before Committees. The House or its Committees should have wide access to persons, papers and appropriate assistane from the Government. The Speaker of Lok Sabha, Shri Shivraj V. Patil, in his address to the Conference mentioned above, drew attention to this aspect of our democratic parliamentary system. He said :

> In India, we do not mainly work in legislative committees, We work in the plenary of the legislature. That does not provide opportunites to the members to express their views and suggest solutions to the

> problems faced by the society and the people. If the committee system which we have today is strengthened, it may give more time and opportunites to the members ...

If the system of parliamentary democracy is to be made meaningful, a fuller utilisation of Committees is needed in order to enable the Legislature to fulfil its constitutional mandate. It is a tribute to the foresight of Pandit Nehru that as early as in fiftees he emphasised the need for subject - based Parliamentary Committees. These Committees have recently started functioning.

Pandit Nehru was an ardent democrat always prepared to consider any divergent opinion or voice in the House. Today at times, a Government enjoying a comfortable majority in the House is inclined even to bypass the House. If the Legislature is to become more relevant to the democratic parliamentary process legislative control over executive must be restored. It is suggested that Committees be given extensive powers to scrutinize or investigate Government operations, so as to protect the constitutional powers of the House from any further erosion. Also the recent initiative by the Speaker of the Lok Sabha for ensuring that there is a least 100 to 120 days of sittings of Legislatures in a year should give fuller scope for expression of views by members of the House.

Democratic parliamentary system as conceived by Pandit Nehru is a structure of governance which envisages full projection of the will of the people. He also was ever willing to share a great deal of information with the Parliament even on sensitive matters and desired that democratic parliamentary institutions should be involved in the evolution, determination and even evaluation of the policies and programmes of the Government. The point is that the public must be kept fully informed of the activities of the Government. If we fully believe in the supremacy of the representative bodies, we should work out some procedural arrangement to bring more of the important reports into the House for both debate and decision. But in seeking to expand and develop the activities of the representative institutions, the intention is not that the legis-

lature should acquire executive power but to restore to it those powers which are ancillary and necessary to control the Executive.

Modern communication and party politics as well as massive public outlays have given the executive considerable power over the lives of the people. Every effort should, therefore, be made to strengthen parliamentary democracy, to restore to parliamentry institutions their dignity an prestige, and enable the Parliament and State Legislatures to act as the restraining and guiding force they were orginally meant to be.

13

Role of Members of Parliament As Intermediaries Between The Citizen And Government

Harcharan Singh Ajnala

In a Parliamentary system of Government, Parliamentarians play a vital role in the working of democracy. The image of a democracy as a form of Government depends upon the Parliament. The image of Parliament in its turn depends upon the image of its Parliamentarians. In fact, the future of the democratic set-up itself depends largely upon the way Parliamentarians discharge their duties and responsibilities. It is indeed the primary duty of Parliamentarians to reflect the hopes and aspirations of the people who have elected them. In the present context, when regional chauvinism, religious fundamentalism, sectarianism and communalism have raised their ugly heads, jeopardising the nation's determined march towards peace and prosperity, the role of a Parliamentarian in preserving national unity becomes all the more essential and pressing.

In the present democratic set-up of the country, Parliament and State Legislatures are the mirrors of human aspirations. These aspirations are fulfilled through the medium of representatives of the people in the Parliament and the State Legisla-

tures. Since the policies of governance and development are framed by the legislators it becomes their foremost duty to hold the country together. They should bear in mind that after election they are representatives not of their constituency only but of the State as well as of the nation as a whole. They are expected to function as the eyes and ears of the people. Hence their behaviour, actions, etc. inside the House or outside it have a great bearing and impact on the national situation. In this fast changing world, the responsibilities of the Government have multiplied, particularly in a country like India where there are teeming millions,many of whom are illiterate and unemployed. The only agency to which they can look upto for the mitigation of their grievances and hardships is the member, who is the accredited representative of the public and as such acts as an intermediary between the Government and the people.

A Parilamentarian performs his duties in different capacities. Sometimes, he has to play his role as a member of Parliament or State Legislature, on other occasions as a Minister, as a party worker and many times as the spokesman of a particular interest or community or a particular group of society. Duties performed by Parliamentarians are not easy to reconcile. He owes loyalty to the people who have elected him, he is also morally and constitutionally bound to discharge his duties faithfully inside the House because of the oath taken by him for this purpose. He is required to remain loyal to the party to which he belongs and above all to the nation as a whole.

In a unitary form of Government, members of Parliament have to shoulder heavy responsibilities in serving the people of their constituencies but in the case of a federal system responsibilities are shared by members of Parliament and members of State Legislatures. A Member of Parliament represents a larger constituency and different priorities than that of a member of a State Legislature but their ultimate goal remain the welfare of the people. In our country States are allocated certain subjects and States are responsible to legislate on these subjects. The Union and States have separate spheres of work and they are divided into three lists, *viz.* Union List, State List and the Concurrent List. Most of the subjects which may concern the common man's day-to-day life are contained in the State List.

A Member of a State Assembly is expected to bring all the civic amenities to his constituency, although it becomes the duty of the Municipal Commissioners or Councillors in the cities and *Panchayats* in the villages to see that civic amenities are provided in their areas but at the same time a member is also required to keep a watchful eye on the developmental work going on in his constituency. In addition a member is also expected to help the people of his area in getting employment to the educated unemployed youth and also getting their grievances redressed from various departments of the Government and private institutions. To a great extent a member of Parliament does not have such problems to face directly. But this does not mean that the job of a member of Parilament is easy. There are some constituencies, particular in Union Territories, where there are no Legislative Assemblies or even Municipal Corporations/Committees to serve their constituents and thus, a member of Parliament has to perform all these responsibilities. For instance, Chandigarh is a parliamentary constituency only and no Corporation or Legislavtive Assembly exists there. Here whosoever becomes a member of Parliament has to perform the duties of a legislator, a councillor as well as of a parliamentarian.

Edmund Burke, the most eminent luminary of democracy in its early days in British, was elected by the Bristol constituency to the British Parliament. One day he went to Bristol and his voters in the constituency gave him a list of their several needs and stated 'we want you to do the things emunerated in the list'. Edmund Burke replied, 'It is true you have elected me but not as a delegate but as a representative in the British Parliament'. This great luminary laid down the guidelines as to what is expected of member of a Parliament and what the citizens of the country should expect from him. According to him a member of Parliament has the responsibility towards the national matters, towards his caucus, to the leadership of his party, and he has to have loyalty to his colleagues also.

Since law making is the primary duty of Parliament, so Parliament and Parliamentarians should keep in tune with the requirements of the society. While making legislation, member should always keep in mind the betterment of the public and all-round development of the country. This in turn will help in promoting

national integration. Just as the Executive is responsible to Parliament, Parliamentarians are equally responsible and answerable to the public. It is imperative for Parliament as well Parliamentarians to ensure that the benefits of every scheme, policy and project should reach even the poorest of the society.

For effectively performing the role of an intermediary between the citizens and Government, a Parliamentarian should allways maintain constant and close contact with his constituents. Because the majority of the people have reposed confidence and faith in him, an elected representative should always try to live up to their expectations. Whether the area for a particular member of a Parliament is small or large, he is duty bound to know the needs and demands of the area. It is true that parliamentary constituencies are very large and in some constituencies,especially in the hilly areas it is not practically feasible for members to keep close and constant liaison, but the member has to devise some ways through which he can have regular meetings with the electorate of his constituency, hear their grievances and get them redressed at the earliest.

The constituents expect their member to raise their grievances in the Legislature and at various other fora. It all could be possible if he is well acquainted with the rules and regulations of the House.Furthermore knowledge of rules and regulations will be useless if a Parliamentarian or legislator does not have the technique to use them effectively and at the right time. Under the rules members are provided with numerous parliamentary devices with the help of which they can draw the attention of the Government and other concerned institutions. For example, a member can highlight the demands of his area through Questions,Calling Attention Motions, Adjournment Motions, Private-Members Bills and Resoultions,etc. On any matter he can seek information from the Government through supplementary questions also. While participating in the discussion on the President/Governor's Address or Speaking on the Budget, he gets an oppportunity to air the genuine hardships faced by the people. Once a member is elected hebecomes the sole judge, for a limited period of time, as to what his constituents need and he fixes priorities of the work accordingly. If a member misjudges the needs and demands of his constituency, he will probably find it hard to get elected in the next

elections. It is a common grouse of the public in general that members once elected visit their constituencies only at the time of seeking votes during the next elections. Such members have to face the wrath of the voters.

It is also the duty of every Parliamentarian to educate the people of his constituency on matters like social and communal harmony, evil designs of disintegrating the country by anti-national forces, removal of untouchability, casteism, etc. After all, a parliamentarian is a person of great influence and status and his words are widely respected. But he should also know that if he is to command the confidence and respect of the people he has to carry all the sections of the constituency with him. Sometimes there is a clash between the interests of the constituency and the interests of the nation and sometimes the interests of his constituency and the interests of the party to which a member belongs. In this situation a parliamentarian finds himself in very peculiar positon but he should not be carried away by the directions issued by his party or by the feelings expressed by his electorate, rather he should judge himself as to what strategy and method should be adopted. If he thinks that a particular scheme or programme or project is not in the interest of his constituency or the whole area he should convince his party leaders not to implement such programmes or policies. But if he thinks that the proposed projects are in the larger interest of the country then it is obligatory on the part of a parliamentarian to make his constituents understand about the disadvantages if a particular programme is not implemented. A Parliementarian represents the whole country and not a territory or a particular class or section. It is important that he should not act in a parochial manner, and the national interest must always come first.

Inside the House a Parliamentarian should always behave in a most disciplined manner during parliamentary proceedings He should never create any undue hindrances and obstacles in the smooth functioning of the House. He can serve his countrymen more effectively and to the best of his ability in an orderly manner. A parliamentarian, if he works with devotion, dedication and with missionary zeal then only can he justify his role as a true intermediarv between the citizens and the Government.

14

Effectiveness Of Parliamentary Committees In Influencing Government Policies

H. S. Bhabhra

Parliament is the supreme representative institution of the people of India. Its primary function is to keep in close touch with the emerging needs and problems of the people and to voice their urges and aspirations. It has to keep a vigilant eye and constant watch on the administration to ensure that laws and public policies are implemented efficiently and effectively in such a manner that they do not cause any injustice or undue hardship to any individual or to any section of the society. Thus Parliament is expected to exercise an effective check over the actions of the Government. The strength of the Parliament or State Legislature lies in its ability to scrutinise the political and administrative actions of the Government.

Michael Rush has rightly remarked that the basic political function of the Parliament is to examine and question Government policy and activity. The select committee on Procedure of the House of Commons pointed out that Parliamentary control means

influence, not direct power; advice, not command; criticism, not obstruction; scrutiny, not initiative; and publicity, not secrecy. This is a very realistic sense of Parliamentary control which does not affect any Government.

The wide range and magnitude of Governmental activities has led Parliament to lay emphasis on law-making and to oversee the administration simultaneously. But Parliament as a body finds it difficult to undertake this task because it cannot use the floor-time for scrutiny of minute details. Therefore, it has deviced other methods, including various Committee to carry out this task. The effectiveness of these committees has led to the suggestions to expand this Committees System on an extensive scale so as to make the Government more accountable to the Parliament.

Mr. Woodrow Wilson, a former President of the United States of America was a strong supporter of the Committee System and had termed the Committee System as the real work of supervision and control over the executive. He even went on to record that:

> The House sits not for serious discussion, but to sanction the conclusions of its Committees as rapidly as possible. It legislates in its Committee rooms not by determination of majority but by the resolution of specially commissioned minorities so that it is not far from the truth to say that Congress in session is Congress on public exhibition, while the Congress in its Committee rooms is Congress at work.

According to Sir Stafford Cripps, the effectiveness of the Committee System depends upon (i) bringing together, within the Committee, a sufficient number of members of all parties who would be prepared to take real interest in the subject be the dealt with; (ii) ensuring a degree of continuity of membership and the attendance as this would enable the members to gain an intimate and wide knowledge of their subjects which would give them power to check and control; and (iii) building up an atmosphere of common endeavour in the Committees based upon desire to develop best possible administration.

Objectives of the Committee System

The Committees, composed of members of various political

parties, tend to promote a strong corporate sense which helps to consider questions on their merits objectively rather than on party lines. They also tend to promote an element of specialisation among members. Such Committees can usefully examine how the departments have performed with the resources available to them. Moreover the system of Parliamentary Committees helps in saving time for the House to discuss important matters and also prevents Parliament from getting lost in details and thereby losing its hold on matters of policies and broad principles.

Shri G.V.Mavlankar, the First Speaker of the Lok Sabha, while addressing the first Estimates Committee of the Parliament also enumerated the principal objectives of legislative Committees as under :

(i) to associate with and train as large a number of members as possible, not only in the ways in which the administration is carried on, but also to make them conversant with various problems that Governments have to meet from day to day;

(ii) to exercise control on the executive so that they do not become oppressive or arbitrary;

(iii) to influence the policies of Government; and

(iv) to act in liaison between the Government and the general public.

The Committees under the parliamentary democratic system are composed of men from diverse disciplines and walks of life with varying degrees of intelligence and expertise and who are possessed with a strong corporate sense which would help them to consider various questions on their merits objectively and from different angles. The members of such Committees are also supposed to promote an element of specialisation.

A Legislature is said to be at its best in the vigilance shown and the scrutiny exercised by its Committees without fear or favour. It will not be an exaggeration to say that the administration has to be on its toes as they are aware that any act of negligence, dishonesty, undue preference, waste of public money and deliberate delays in furnishing desired material to the Com-

mittees would be looked into and exposed to public gaze by a Committee.

A strong Committee System gives content to the concept of parliamentary accountability and contributes substantially to a gradual solution of the twin problems of the alienation of the back-benchers/reluctants and disorders on the floor of the House. It also gives the backbencher a sense of participation and a sense of belonging. It also improves information management in Parliament and ensures a more effective system of deliberation and decision making.

Committees give more time and opportunity to the members to make the deep and intense study of selected issues involved. Discussions and deliberations are comparatively pinpointed and issues are discussed without pride and prejudice. The members can better reflect and represent the public grievances on related issues as they get full opportunity and they can also use their expertise to review and evaluate the given facts and information. Also the Committee has full freedom to take the advice of the experts on related issues to arrive at right conclusions and decisions.

Genesis

The Committee system is not a new concept for India. It was in vogue before Independence and before the Constitution of India came into force.

The Indan Parliament has a well-knit Committee System through which it exercises its control over the Government. In fact, the Parliament's main surveillance over the Government is exercised through the three financial Committees—Public Accounts Committee, Estimates Committee and Public Undertakings Committee—which examine in detail the Government expenditure and offer suggestions and criticism, wherever necessary. These Committees are vested with adequate powers to enable them to function effectively, and their impact on the administration has been quite encouraging.

Composition of the Committees

Parliamentary Committees are necessary adjunct to the

democratic society. These Committees operate as observation posts and guarantee fair play in the political structure. But the composition of these Committees is very important and needs to be toned up. As Sir Stafford Cripps had remarked:

> Effectiveness of the Committee system depends upon proper composition and organisation. For effective functioning of the Committee, it is essential to appoint a right member on a particular Committee and the individual attributes and expertise of the members should be taken into consideration before appointing them on the Committees. For example a member with expertise in financial and economic matters and background will be more useful for a financial committee while a member with legal background can better serve on a Joint Select Committee on legislation.

Moreover Committees should not be constituted on the basis of parties but in the interest of the people, so as to reflect the real public opinion. Members may be taken from all parties on the basis of their interest in the related subjects and their personal qualifications. In order to give these Committees a non-party, non-political colour, it is suggested that the Chairman of each Committee should be appointed by the Speaker purely on merits or on seniority and no Chairmanship of any Committee should be reserved for the ruling party or for the Opposition. Merit should be the only criterion for appointing the Chairman.

In order to ensure continuity of good and proper personnel for a Committee, a fair number of experienced members along with a few new members, who have interest in the subject, should be appointed to the Committee every year so that the young members may get adequate training ensuring availability of good members throughout. It has been noticed that membership of more than one or two Committees by a single member hampers the working of the Committees. Either they absent themselves from one or the other committee, or they do not devote their whole-hearted attention and time to the Committee work. It is, therefore, advisable that as far as possible one member should be appointed on one Committee only.

Improvisation in Existing Committee System

As we have seen, the effective control over the Government and administration is achieved through the various Committees appointed by the Parliament/Legislature. But these Committees need further improvement in their working. Some important Committees are discussed here in the following pages and suggestions are also given to improve their working.

Presently, the Public Accounts Committee is, to some extent, "merely an examiner of past events" as its investigations are related to expenditures already incurred. The audit report of the Comptroller and Auditor-General upon which it relies and examines, is presented to the House much later after the actual expenditure is incurred. The result is that there are delays and procedural procrastination in the administration. To avoid this methods should be devised so that audit reports are presented to the Legislature by the Comptroller and Auditor-General within a period of six months of the close of the financial year and Public Accounts Committee should examine these reports expeditiously and present their report to the Legislature either before or during the following budget session.

When some important cases of misuse of the public money or misappropriation or irregularity come to the notice of the audit authorities, special reports should be made concurrently during the year so that the Legislature and the Public Accounts Committee are seized by the matter while the expenditure is being incurred and not after the event.

The Estimates Committee and the Public Undertakings Committee function only in selected fields and, therefore, their area of scrutiny is restricted and the scrutiny itself very often tends to be a "post-event". The usefulness of these Committees as effective instruments to oversee the administration depends to a great extent on the ability and sincerity of the members, who must make the optimum use of the occasion of cross-examination of departmental witnesses. Any irregularities noted in the course of such searching cross-examination must be strongly criticised and relentlessly pursued.

A comprehensive control over the administration can be

achieved through the Committee on Government Assurances. This Committee is vigilant and performs an active role in vigorously pursuing the assurances given by the Government on the floor of the House. The Committee has to maintain constant vigilance for effective probing of the assurances. The statements of action taken, sought for by the Committee, could reveal a wider range of departmental activities and, therefore, comprehensive control could be exercised over the Government.

Though there is no tradition to discuss the reports of Estimates Committee, PAC and PUC in either House, these reports are of considerable significance. The most valuable part of the report is derived from the oral evidence of the Government Secretaries. The oral evidence, besides providing valuable material for the report, gives an opportunity to the representatives of the executive and of the Legislature to understand each other's viewpoint after thorough discussion. But sometimes, the time allotted for such oral examination is too short, and many vital issues are left undiscussed and the effectiveness of the control of the Parliament over the administration is reduced considerably.

The most effective control on the executive by the Parliament is through the financial Committees and the success of an effective control depends very much on an efficient Chairman. The effectiveness of these Committees would be enhanced, if the Chairman is renominated for a total period of five years in the offices.

The Role of the Legislature Secretariat

The Committees should also be backed up by officers who are well equipped in Parliamentary procedure and have a keen sense of duty and broad outlook on the affairs of the State. The officers of the Committee have to act as the eyes and ears of the Committees. The effectiveness of the Committees depends to a great extent upon the efficient functioning of the Parliament or Assembly Secretariat.

The Committees need adequate Secretariat support to ensure the accountability of the executive effectively. The nature of the secretarial assistance would depend on whether or not the Secretariat is independent of the executive. There ought to be

separate staff attending exclusively to each of the Committees. The officials attached to the Committees have to be men of calibre and maturity.

The Legislature Secretariat should ensure that the people are kept informed of the functioning of the Committees and their recommendations. A practice should, therefore, be developed to keep the people informed of the functioning of the Committees through the Press. Though their proceedings are required to be kept secret, a press note can be issued regarding subject matter of examination, broad issues of the examination, witnesses examined and places visited by the Committees. After the report is presented to the House, the officer of the Committee should prepare the highlights of the report in brief and supply the same to the Press for publication.

Target oriented agenda

Our Committees are based on the British model. Many talented backbenchers in the House get no chance to be appointed to a major Committee on account of its size. Larger participation of backbenchers and Opposition members in greater number in the matter of scrutinsing and controlling the government machinery is verv much desirable. The Chairman of the Committee should conduct its proceedings in an orderly manner and ensure procurement of satisfactory evidence on each issue to draw its conclusions. The Chairman is also supposed to ascertain that no member asks the witness any irrelevant question thereby providing the witness an opportunity to evade or avoid disclosure of relevant and categorical information.

While examining a witness, members should up deal with the subject or issue pinpointedly without any deviation to other issue. The witnesses should be given adequate time; for appearing before the Committee so that they may come fully prepared and bring all facts and figures with them.

While examining a witness, members should deal with meet the members of sister Committees of other States so that they can learn from the experience of each other. Last but not the least, one should not forget the limits within which the Committees

are required to function. The Committees should restrict their function within the ambit of the jurisdiction and should desist from overriding the limits laid down under the Constitution or the rules of procedure.

The role of the Committees in a democratic set up is thus distinguished and demarcated. If they function effectively in a proper manner and within the ambit of their authority, they may not find any difficulty in exercising effective control and influence over the functioning of the executive. One should never forget that effectiveness of the entire democratic system, however, ultimately depends upon those who administer and those who are administered. The following observation of Pandit Jawaharlal Nehru is of special significance in this context:

> Parliamentary democracy demands many virtues; it demands, of course, ability. It demands certain devotion to work. But it demands also a large measure of cooperation, of self-discipline and of restraint.

A new beginning has been made by the Rules Committee of the Lok Sabha to make the Parliamentary Committees' functioning more objective and purposeful and to ensure their effectiveness in influencing the Government policies. Three Subject Committees on Agriculture, Science and technology, Environment and Forests are already in existence. The Rules Committee has proposed to set up in all seventeen full fledged Standing Committees covering under their jurisdiction practically all important Ministries/Departments of the Union Government.

This is certainly a welcome step in the right direction aimed at ensuring greater effectiveness of the Parliamentary Committees as it would go a long way in making the executive more responsive and accountable to the Legislature as also in generating increased faith among the people in the system of parliamentary democracy.

Conclusion

The role of the Committees in a democratic set-up is dis-

tinguished and demarcated and if they function in a proper manner and within the ambit of their authority, they may not find any difficulty to have proper control and influence over the functioning of the Executive.

The Committee system is the surest way in getting work done in the most efficient manner. However, the existing Committee system requires some improvement. As the well-known Parliamentary advocate in United Kingdom, Bernard Crick has suggested: "Parliament must improve its own instruments of control, scrutiny, criticism and suggestion to keep pace with the greater improvement of efficiency and increase of size in the departments of Government".

15

PARLIAMENT AND POLITICAL CULTURE

Yudhisthir Das

Political culture has been defined as the "pattern of individual attitudes and orientations towards politics among the members of a political system", by Almond and Powell in *Comparative Politics : A Developmental Approach*.

It is the "set of attitudes, beliefs and sentiments which give order and meaning to a political process and which provide the underlying assumptions and rules that govern behaviour in the political system", according to Lucian W.Pye. Collective ideas, beliefs and attitudes are transmitted from one generation to succeeding generation, thereby bequeathing a legacy. Such ideas, values, attitudes and emotions are offshoots of the congnitive, affective and evaluative orientations of a people. Further, any political culture germinates and blooms due to various historical, socio-economic and geo-political factors.

geo-political factors.

G. A. Almond, Sidney Verba, Lucian Pye, G. B. Powell *et. al.*, developed the concept of political culture as a tool to gauge political development and as an instrument for morphological study of political systems. Political culture has also been taken up as an indicator for political stability. S. E. Finer and E. Luttwak have described political systems as mature, developed, low and minimum depending on the level of political culture. In brief, the indices of political culture are: (i) Cognition of the people regarding

their system, organization and their political awareness; (ii) acceptance of the Government by the people and whether the people feel that accesion to power is legitimate; (iii) acceptance of orders of the Government and the feeling that the Government intends for their good; and (iv) the feeling amongst the people that they can influence the Government and other power holders.

Given this understanding of political culture Parliament indeed becomes relevant. The word "Parliament" is etymologically derived from the Latin *Parliamentum* meaning post-dinner conversation between monks in their cloisters. The French word *parler* meaning parley or talk is another source and akin in meaning, to the Latin word. In the 13th Century A.D. when Parliament as an institution gradually evolved, it mostly functioned as a council to redress the grievances of the people and only subsequently did it assume the role of a law-making body. Its role in the supervision of and enquiry into the performance and behaviour of Governments has widened more recently. Political scientists like Robert Packenham, who have closely watched the Legislatures particularly of the developing countries in Asia, Africa and Latin America, are of the opinion that these Assemblies perform the functions of legitimation, safety-valve, administrative overview, patronage, recruitment, socialisation and training.

Almond has classified political systems into Anglo-American, Continental-European, totalitarian and pre-industrial or partially industrialised. The last one is contextual because it speaks of a system where a country emerges from the clutches of a colonial rule and where the political culture of the erstwhile ruler is super-imposed over that of the newly independent country. The synthesis of two cultures may be a factor for legitimation of the system if there is a charismatic leader, or may result in a violent rejection in the absence of such leadership. In such systems a cult may develop around a particular family or class or caste.

How do we understand Indian political culture? To begin with, let us trace its genesis. Indian political culture can be traced back to the vedic ages. The socio-economic factors prevailing during that time very much influenced the political concepts. However, spiritualism and religious feelings influenced political thinking and concepts. In spite of the belief in divine rights of the king,

there is evidence of some form of social contract. For example the ruler was allowed a fixed percentage of revenue in lieu of protection and good governance. Existence of 'Republics' points to the presence of an element of democracy in ancient Indian polity.

The interaction with the West. from about the 18th century, gave an impetus to liberal democratic ideas. The Indian National Congress founded in 1885 became a platform for the ventilation of the views and opinions of the western educated Indian intelligentsia Ultimately under the leadership of Mahatma Gandhi these ideas and the aspirations they bred served as the catapult for the freedom struggle and Independence.

After Independence the country acquired a political system based on the Westminster model and garnished with liberal democratic ideas. In the words of D.D.Basu, "The system was improved upon not by a political revolution, but through the research and deliberations of a body of eminent representatives of the people who sought to improve upon the existing system of administration."

The Constitution which our founding fathers drafted and adopted for the nation undoubtedly is ideal. But the moot point is whether the prevailing political culture is capable of sustaining the political system. Gone are the days when charismatic leadership could bolster the system in spite of the absence of a conducive political culture. Mahatma Gandhi had said :

> I shall work for an India in which the poorest shall feel that it is their country, in whose making they have an effective voice, an India in which there shall be no high class or low class of people, an India in which all communities shall live in perfect harmony. There can be no room in such an India for the curse of untouchability of curse of intoxicating drinks and drugs. Women shall enjoy the same rights as men. Since we shall be at peace with the rest of the world, we should have the smallest of army imaginable.

One is constrained to conclude, in retrospect, that the ideals and objectives held dear by the Father of our Nation have not been fully realized.

16

Parliament As A Multi-Functional Institution

Hashim Abdul Halim

The dignified aspect of the Parliament is altogether secondary to its functions. The Parliament needs to be impressive, and impressive it is but its importance lies not in its appearance but in what it accomplishes.

The main function of the Parliament is one which we know quite well. It is the Assembly which elects our Government. The accountability of the Executive to the Parliament is continuous. The moment a Government loses the confidence of the Parliament it has to step down, and another is formed.

The second function of the Parliament is what may be called an expressive function. It expresses the mind of the Indian people on all matters which come before it. How effectively it does this depends on the people in the ultimate analysis. If the people are able to choose and elect proper representatives to speak for them then this function will be fulfilled well.

The third function of the Parliament is what may be called the teaching function. A great and open Council of able men and women ought to be able to steer the nation forward towards change and progress.

Fourthly, the Parliament has what I may call an informing function, and this is a very important one. Grievances and complaints of the people regarding administrative lapses and misconduct are laid before the Parliament.

Right to information is a vital right of the people and cannot be abridged except in very exceptional circumstances. It is on the basis of the information on vital issues that people give their mandate to the representatives in Parliament Parliament is truly the voice and conscience of the nation, and as such this is a very important function.

Then there is the function of legislation. It would be preposterous to deny its great importance.

Let us consider what is believed to be the sixth function of Parliament—financial function. I do not consider that on broad principles and omitting legal technicalities the Parliament has any special function with regard to finance different from its functions with respect to other legislation.

Thus the old notions about the functions of the Parliamentary form of Government must be modified. It must be recognised that the Parliament does not rule, it only elects the rulers and among its various functions, the most important is the educative one. It is a great forum where vital national issues are debated and national policies formulated.

17

ENVIRONMENT AND THE LAW

Shaikh Hassan Haroon

We realise that man is part of nature, not its master, and that nature is a part of man.

Until the last few centuries men and nature co-existed peacefully, or at least nature was allowed to function without undue interference by man. The earth seemed large and its resources inexhaustible, and for those living in earlier times this was undoubtedly true.

Now teeming populations overcrowd many sections of the earth. Our industries, agriculture, mining, and cities have expanded and their output and wastes are polluting hitherto unpolluted land, air and water, and are rapidly depleting the non-renewable earth resources on which all depend. Even more disturbingly, the combined overcrowding, pollution, and depletion are threatening the natural cycles.

Some scientific extrapolations go further. They logically show that if the present exponential expansion of populations continue the result will be catastrophe-starvation and collapse of man and civilization. The planet, in such an event, could become uninhab-

itable.

The present and future generations are facing a threat on account of serious deterioration of environment and natural resources. Developmental activities are leading in many instances, to pollution of air, water and soil. Our life support systems are under stress. Due to widespread poverty there is growth of slums which create health problems and lead to spread of disease. Industrial activities have aggravated problems relating to overcrowding, shortage of potable water, facilities for safe disposal of domestic and industrial wastes. Hazards of industrial accidents and risk of exposure to toxic material have multiplied. River systems and other ground water sources are severely polluted by industrial effluents and sewage. Nuclear testing practices should also be checked. The disposal of nuclear waste is proving to be a serious problem.

There is heavy loss of forest land due to destruction of forests and of habitats rich in genetic diversity. To stop this, conservation methods have to be developed to protect nature. Many plant and animal species are becoming extinct, as well as habitats rich in genetic resources such as tropical rain forests. Degradation of wet lands must be checked at all levels as these wet lands are home to rich flora and fauna, including migratory birds.

The rapid growth of populations should be controlled through family planning programmes and also public education to convince people that their individual contributions would be necesary. The concept of "zero population growth" needs to be adopted as national policy. Legislative measures may be proposed to persuade population limitation, for example, by prohibiting the persons who have large families from fighting elections. Even the taxation system may be changed to favour small families rather than large families. Research on safe and effective family planning methods must be encouraged. There is no way to reduce the growth of population other than continution of better methods of birth control, better education and a better standard of living for all.

The vast tracts of lands which are rich in mineral wealth

such as gold, manganese, iron ore, bauxite, coal should be under Government control. While extracting mineral ore, large pits are created in the form of craters which leave big scars over the area. These big pits can be developed into beautiful picnic spots by converting them into fish ponds and surrounding areas may be made green by growing trees and encouraging vegetation.

Supersonic and other aircrafts flying in the troposphere in the first ten miles of the atmosphere have already increased cirrus-cloudiness in areas such as the eastern part of the United States. The water vapour and particles they emit could also affect the ozone layer that shields the earth, and could contribute to further cloudiness. The main danger here is that the hydrocarbon emissions from aircrafts might react with sunlight to produce smog.

Oil spills, such as have occured recently, have an adverse effect on marine life. They might possibly interfere with evaporation and rainfall. The spills directly poison such filter feeders as clams, oysters, fish and many birds, and in turn affect all life dependent or feeding on them. Noise is another pollutant whose effect on human health and well being may have to be taken into consideration. In all cities, and particularly in metroplises, noises is strident and constant.

Toxic gases are released by the burning of fossil fuels. This important source of energy has, therefore, to be carefully managed and utilised in a sustainable energy generation and utilisation strategy.

There is a threat from global environmental phenomena such as possible changes in the temperature and precipitation, destruction of ozone shield and extinction of rare flora and fauna. This problem may be tackled by reducing and phasing out substances depleting the ozone layer.

We may bear in mind that earths's land area is not expandable and therefore needs greater care. Most of the available land is already in use. Only a little more can perhaps be brought into cultivation or would be suitable for industry.

There is increasing evidence that large scale use of fertilizers and pesticides may prove to be destructive in the long run. There is already evidence that the "green revolution" was not entirely without negative results.

At the individual level, we can refrain from using products containing Chloro Fluro Carbons (CFCs), and making unnecessary automobile journeys. Unnecessary energy use should be curtailed and recycling should be promoted. The researches in solar energy, wave energy, wind energy, etc., may be encouraged to conserve fossil fuels.

Global arms peoliferation has also had an adverse environmental fall-out.

Recognising that environmental pollution is one of twentieth century's biggest hazards, the United Nations convened the Stockholm conference on Human Environment in 1972. More recently plans for international action against environmental degradation were chalked out at the Earth Summit in Rio de Janeiro in June, 1992.

We may, in conclusion, make a brief mention of some important environment related legislations in India.

(i) *Water Pollution* : The River Boards Act, 1956; The Merchant Shipping (Amendment) Act, 1970; The Water (Prevention and Control of Pollution) Act, 1974; The Water (Prevention and Control of Pollution) Cess Act, 1977.

(ii) *Air Pollution* : The Factories Act, 1948; The Industries (Development and Regulation) Act, 1951; The Air (Prevention and Control of Pollution) Act, 1981.

(iii) *Radiation* : The Atomic Energy Act, 1962.

(iv) *Pesticides* : The Insecticides Act, 1968.

Some others are, The Prevention of Food Adulteration Act,1954; The Ancient Monuments and Archaeological Sites and

Remains Act, 1958; The Wild Life (Protection) Act, 1972; The Urban Land (Ceiling and Regulation) Act, 1976.

In addition there are State enactments regarding water pollution, smoke and pest control, and land utilization and improvement. The Government of India has also a separate department to deal with environment protection. The parliament has a Subject Committee on Environment and Forest to study the issues.

Humankind must learn to coexist with nature in harmony and peace. Only then will our vulnerable planet remain a safe habitat for future generations.

18

Parliamentary And Presidential Systems

T. S. Negi

The United States of America has a presidential system of Government. Under this system, the Parliament is designated as 'Congress' : the lower House known as the House of Representatives and the Upper one as the Senate. The comparison between parliamentary and presidential systems is really speaking between the Executive presidential system and the Cabinet system. In the Cabinet system the Council of Ministers bears a collective responsibility and answerability to the Parliament to a much greater degree than the President and his colleagues have in the presidential system.

While comparing these two systems and advocating the presidential system for India, one has to remember the vastness of the country, its diversities geographically as well as otherwise. The founding fathers of the Constitution were those towering personalities who had sacrificed so much for the country and served the land and its people for decades. The later generations have inherited much by way of wisdom, knowledge and experience from them. The members of the Constituent Assembly had studied various Constitutions of the world before giving a final shape to our present Constitution. I am firmly of the opinion that rather than hastily drawing a conclusion *ab initio,* that the system in force basically needs a change to the Presidential one, we have to

examine what exactly is wrong with the present system. Is the very system wrong or is it that the human material which has been manning it has failed it? We must never lose sight of the liberal provisions of the Constitution which allow amendments to the Constitution. There is ample scope for amending any part of the Constitution except its basic structure. In the last four decades, 72 amendments have already been given effect to. The basic features of the Constitution are such unchallengeable pillars of parliamentary democracy which shall have to be retained in presidential system also except of course for a dictatorial or an oligarichal President or in any distortion of democracy based on adult franchise.

For instance, regarding the respectability, authority, impartiality and the non-partisan nature of the august office of the Speaker, who is supposed to be the spokesman for, and the summit of the very spirit of parliamentary democracy, it is not the Constitution which is defective but it is we Indians who have betrayed the spirit of the Constitution. Likewise, the Zero Hour and the Zero Hour – like atmosphere even otherwise is not the result of the Constitution but of the way we have chosen to work the Constitution. Defections, like AIDS, will not automatically be rooted out just because there will be a President instead of a Prime Minister. Nor will the presidential system, simply by being such a system, cure the ill effects of multiplicity of parties. Actually, the very working of our Constitution would be easier in a certain sense if we do not have more than three well defined parties. In a country like ours we need not insist on just two parties. It will take much longer than the foreseeable future for a bi-party svstem to arrive.

If one is really serious about the debate then let us look at the problem with a two-pronged approach. First let those who are for the presidential system work out at least the clear-cut broad outlines of the presidential system. What will be the shape of things in the States? Will there be elected Governors as in the U.S.A.? As for those who share the belief that the present parliamentary system is reasonably sound but needs some improvements, they should also sit down and chalk out the defects and the desired changes. In the meanwhile, we all should strive for a tri-partite polarisation.

19

ANTI-DEFECTION LAW—SPLIT IN PARTIES

D. Sripada Rao

Ever since the split in the Telugu Desam Party and Janata Dal in the Tenth Lok Sabha, very eminent and responsible persons have pleaded for a new look at the Anti-Defection law enshrined in the Tenth Sechedule to the Constitution of India. The first reaction is to attribute every malady to the provisions of law ignoring the conduct of those who are responsible for the implementation of the Act. Is the Anti-Defection law really responsible for the present plight ?

One of the most important provisions in the Anti-Defection law is the split in the Legislature Parties. The whole gamut of case law on defections in Parliament and State Legislatures which has so far emerged pertains prominently to this aspect apart from a very few cases on other issues. According to para 3 of the Tenth Schedule, a member of the House shall not be disqualified on the ground that he has voluntarily given up his membership of his original political party if he makes a claim that he and any other member of his Legislature Party constitute a group representing a faction which has arisen as a result of split in his original political party and such group consists of not less than 1/3rd of the membership of such Legislature Party. This provision can be interpreted in two different ways. One interpretation is

that a split in the original political party of a member is a condition precedent to recognising a split in the Legislature Party by the Speaker.Another interpretation which almost all the Presiding Officers had so far consistently followed is that the Speaker is not concerned to see whether there was a split in the original political party or not before formalising the split in the Legislature Party. What the Speaker is required to do is to ascertain whether or not the faction seeking split consists of not less than 1/3rd of the members of the Legislature Party. If this requirement is satisfied the Speaker is bound to recognise split, irrespective of whether there was split in the party outside the House. Another problem that has cropped up in the context of split is whether it is a one time phenomenon taking place at a particular point of time or is it a conitinuous process where every member gets some time to make up his or her mind to decide which faction he or she should join.

The fundamntal object of the Anti-Defection law is to cure the malady of unprincipled defection of legistaors, at the same time, giving scope for realignment of forces by way of merger and split of politicalparties on ideological moorings. Alignments can be advanced not only for deserting parties but also for not deserting. But, all defections cannot be termed as unprincipled. The phenomenon of defection was not unknown to older democracies. In India too a number of stalwarts had changed their political allegiance at one timeor the other in the past, purely influenced by honest differences with the leadership of the party. The emerging political situation in India at the moment is, however, alarming.

The question whether para 3 of the Tenth Schedule is capable of admiting two interpretations is a moot point for consideration if it is read with contemporaneous provisions of the said Schedule. Clause (b) of paragraph 1 interprets 'legislature party' in relation to a member of a House belonging to any political party in accordance with the provisions of praragraph 2 or paragraph 3 or, as the case may be, paragraph 4 as the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions. Clause (c) of the said paragraph interprets 'orginal political party' in relation to member of a House as the political party to which he belongs

for the purposes of sub-paragraph (1) of paragraph 2. Explanation (a) in sub-paragraph (1) of para 2 says that an elected member of a House hall be deemed to belong to the political party, if any, by which he was set up a candidate for election as such member. 'Original political party' and 'Legislature Party' at the commencement of a particular Lok Sabha/Assembly in the first generation is the political party which set up the member for election as such member. In the first generation the 'original political party' refers only to the 'political party' which set up the member for election. The Anti-Defection law makes a clear distinction between the 'original political party' which functions outside the House and the 'Legislature Party' in the House.

Every member who takes his seat in the House after the commencement of the Disqualification Rules, 1985 made under the Tenth Schedule must deposit his election certificate issued by the Election Commission unde the Representation of People Act, 1951 with the Secretary-General/Secretary before making and subscribing an oath or affirmation under article 99 or 188 in accordance with rule 4(2) of the said rules. On the basis of the return certificates, the group of members elected on a party label automatically constitutes the Legislature wing of such party upon the constitution of the House. No member has the option to join any other political party at this juncture. The Tenth Schedule has its operation in relation to an elected member or a nominated member or a nominated member belonging to a political party from the date of his or her election or publication of nomination to the House in the Gazette. The Tenth Schedule provides for two kinds of disqualifications for being a member of the House : (i) voluntarily giving up the membership of political party and (ii) voting or abstaining from voting contrary to the direction of the party which set up the member in the election. The political party referred to in para 2 (1) and the original political party referred to in paras 3 and 4 is one and the same in the first generation. Para 3 speaks of a split in original political party. In the first generation it is none other than the party which set up the member for election within the meaning of Clause (c) of para 1 read with explanation (a) and (b) (i) in sub-para (1) of para 2. The Tenth

Schedule nowhere speaks of split in the Legislature Party. Para 3 says that the Legislature Party which eventually comes into existence must be an off-shoot of split in original political party outside the House and such group of legislature party shall command a strength of not less than 1/3rd of the members of the Legislature Party as it constituted originally on the basis of election returns filed by members under rule 4 (2) of the Disqualification Rules. Clause (b) of para 3 says that from the time of the split such a faction namely the breakaway group from the original political party outside the House shall be deemed to be the political party to which he belongs for purposes of para 2 (1) and it shall deemed to be his original political party for purposes of the said paragraph. It means, in the event of any further split in terms of para 3, there must be split in the breakaway faction of the original political party. It is argued in some quarters that there is a need to define the political party and to lay down conditions for its recognition for purposes of Anti-Defection law in as much as para 3 of the Tenth Schedule says to the effect that the breakaway faction following the split would be deemed to be the political party for purposes of para 2 (1). In the light of the above, there is no need for such a definition. The breakaway faction of the original political party is the political party to which the member belongs within the meaning of Clause (b) of para 3. On the basis of rule 4 (2), the members who are elected on a party label shall constitute the Legislature Party in the House and hence there is neither need nor scope for recognising the party.

The next point for consideration is whether the Speaker is bound to inquire into the split in the original political party before forming the split in the Legislature Party. Party system is an integral part of parliamentary form of Government and members have a dual role—they represent a party and also a constituency. Even prior to the enactment of the Tenth Schedule the party organisation and functioning outside the House was taken into consideration by the Speaker while recognising political parties in the House. Direction 121 issued by the Speaker, Lok Sabha on recognition of parties which was more or less adhered to by all the Speakers of State Legislative Assemblies reads :

In recognising a Parliamentary Party or Group, the Speaker shall take into consideration the following principles :

(i) An association of members who propose to form a Parliamentary Party —

(a) shall have announced at the time of the general elections a distinct ideology and performance of parlimentary work on which they have been returned to the House;

(b) shall have an organisation both inside and outside the House; and

(c) shall have at least a strength equal to the quorum fixed to constituting a sitting of the House, that is one-tenth of the total number of members of the House.

If any party fails to command the required minimum strength *i.e.* one-tenth of the total membership and satisfies the other two conditions, it is regarded as a parliamentary group provided its membership is at least thirty. Thus, according to the present enactment or according to the direction of the Speaker, Lok Sabha, the Speaker is bound to inquire whether the Legislature Party has an organisation outside the House with an ideology and programme of work announced at the time of generl elections either for recognition or for split. However, with the encatment of Anti-Defection law, direction 121 has no force in the light of rule 4(2) of the Anti-Defection rules in regard to recognition of parties. But the spirit of the direction is incorporated in paras 3 and 4 of the Tenth Schedule for purpose of split and merger.

Another question for consideration is when the Speaker is expected to inquire into the split. The only occasion afforded for the Speaker under the Schedule is to cause such inquiry when he recieves a proper petition under the rules seeking the disqualification of a member. Till such time, the Speaker has no authority under the Schedule to go into the question of split. In such an eventuality, if member whose disqualification as a member of the House is sought claims that he and any other member of his Legislature Party constitutes a group representing a faction which has arisen as a result of split in his original political party or such

group consists of not less than 1/3rd of the strength of the Legislature party, then the Speaker causes an inquiry. In such an inquiry, he is bound to ascertain whether there was a split in the original political party of the member on whose label he was elected. It is not that a mere 1/3rd of the members of a particular Legislature Party can go to the Speaker overnight and announce their intention to break away from their political party. The disqualification mentioned in the Schedule is for voluntarily giving up the membership of the political party on the label on which he was elected. The Speaker cannot save the member from disqualification without inquiring, in the first instance, whether there is a split in the party outside the House by merely confining himself to arithmetics of Legislature Party membership. If the function of the Speaker under the code is to ascertain the numbers there is no need to evolve an elaborate and detailed procedure for inquiry involving the service of the prestigious Committee on Privileges. The inquiry contemplated unde the Schedule or the rules made there under takes into its fold the split in the party outside. The Speakers, however, thought in their wisdom that they were not concerned with what has been happening outside the House. if that be the case they have no authority whatsoever to take cognizance of the expulsion of members from the parties which was not contemplated by the Schedule and declare the expelled members as unattached. The Speakers of Andhra Pradesh and Kerala legislative Assemblies took cognizance of acts of certain members outside the House and declared them as disqualified to be the members of the House.

It is not as though the Schedule does not take into its fold the outside events and organisation. The Schedule mentions the direction of the political parties, etc. in Clause (b) of sub-para (1) of para 2. The direction to a member of the House can be from a functionary of a political party outside the House according to the constitution of the respective parties. The label which a member carries and ultimately goes to constitute his Legislature Party under rule 4(2) is an agency outside the House. A member is disqualified for giving up that label and not the membership of the Legislature Party. The operation of the Schedule is not exclusively

intramural or confined to the four walls of the House, where the Speaker's writ runs. If the intention of the Parliament in enacting the Schedule is to confine the Speaker merely to count the numbers of the Legislature Party there is no need to mention 'the original political party' in paras 3 and 4 in connection with split or merger. There is an inbuilt mechanism in the Schedule to maintain nexus between the political party and the Legislature Party which is essential for the effective functioning of parliamentary form of Government. The Schedule casts a duty on the Speaker not to lose sight of the nexus while formalising the split or merger. A party split outside the House without the support of 1/3rd members inside the House renders it to wipe out its identity in the House and the members who engineer a split in Legislature Party without there being a corresponding split in the party outside make themselves vulnerable to forego their seat in the House albeit their command over 1/3rd legislature party.

A further question is whether split is a one time affair or a continuous process allowing the members to make up their mind as to which facton they should join. According to Anti-Defection law split is a continuous process, from the time of split in the original political party outside the House till the question of disqualification of a member comes before the Speaker and till he makes an inquiry, and gives his verdict.

Anti-Defection law does not confer the role of arbiter upon the Speaker to decide and recognise split and merger of parties save in appropriate proceedings for disqualification. In such proceedings the Speaker is bound to inquire into the split of original political party. So far, the Speakers acted on the representation of certain members foisting the split in Legislature Party without a corresponding split in the original political party and in the said proceedings what they decided was whether the breakaway faction has the required strength or not at the appropriate time of break or whether the expelled members could be joined with the break away faction to satisfy the number game. In this light, the split was considered as one time phenomenon.

Therefore, para (3) is incapable of admitting two interpretations. If there be any doubt whether para 3 can be interpreted in two ways the Supreme Court can be involved through a proper Presidential rference to ascertain the true legal position before embarking upon changing the law. In fact there is no flaw in the Tenth Schedule as pointed out by several eminent people insofar as the split is concerned.

The Anti-Defection law as it was originally introduced in parliament contained a provision to disqualify a member from being member of the House if he is expelled from the party. But this provision was dropped as a result of agreement among the parties. The Tenth Schedule as it emerged finally from the two Houses of Parliament does not contain provision for disqualifying a member on the ground of expulsion. According to the Schedule, every member is either elected on a party symbol or not set up by any political party or nominated belonging to a party or otherwise. The term 'unattached' is foreign to the Tenth Schedule. When it is not permitted by the Schedule for member to voluntarily give up his membership of the party as a corollary it is not open to his party to expel him. Even if a party endeavours to expel a member the Speaker has no authority under the Anti-Defection law to take cognizance of expulsion and declare him as unattached. However, the expelled member continues to belong to the political party on whose label he was elected and has the right to chose to which faction he has to join in the event of a split in the original political party. Till such time he makes up his mind he belongings to the party on whose label he was elected.

20

ANTI-DEFECTION LAW —PROBLEMS AND PROSPECTS

Ghulam Sarwar

The success or failure of a constitution depends much on the quality of the people who happen to work with it and less on the words used in it . While replying to the critics of the Constituion, Dr. Ambedkar had observed:

> I shall not therefore enter into the merits of the Constitution. Because I feel, however good a constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot.

After the Fourth General Elections and following the formation of Coalition Governments in many States in India, defections became a regular phenomenon. Following the widespread concern over the problem of ploitical defections, Lok Sabha passed a resolution on 8 December 1967 setting up a committee to go into it. A Committee was thus constituted with the then Union Home Minister Shri Y.B. Chavan as Chairman and with experts

and members of different political parties. The report of the Committee was laid on the Table of Lok Sabha on 28 February 1968. While the report was being considered, it was felt that a constitution amendment Bill should be introduced to consider the problem of representatives changing their allegiance from one party to another and their crossing the floor.

In order to give effect to the recommendations of the Commitee the then Home Minister of India, Shri Umashankar Dixit intorduced a Constitution Amendment Bill on 16 May 1973. The Statement of Objects and Reasons appended to the Bill sought to amend the Constitution with a view to disqualifying a defector from his continued membership of the Legislature. The Bill was referred to a Joint Committee of the two Houses of Parliament. Before the Committee could report back to the House, the Lok Sabha was dissolved and the Bill lapsed. During the period of Janata Party rule, another Bill was introduced on 28 August 1978. But it was opposed at the stage of introduction itself by some ruling party members and the Opposition and the Bill was withdrawn by the leave of the House. On 24 January 1985 again a Constitution Amendment Bill was introduced in the Lok Sabha and following its passing in both the Houses, the Fifty-second enactment of the Constitution came into existence resulting in the conclusion of the Tenth Schedule in the Constitution. This amendment, generally known as the Anti-Defection Law, aims to prevent floor-crossing which is an unhealthy practice in the functioning of the Legislatures.

Since the Fifty-second constitutional amendment has come into force there have been many cases where a decision has been taken by Speakers of Lok Sabha and also by several Speakers of various States and Union Territory Assemblies. I would confine myself to the instances and decisions of Lok Sabha and would like to cite here one or two salient features of the cases decided by the Lok Sabha Speaker under the Tenth Schedule.

Paragraph 6 of the Tenth Schedule of the Constitution says:

> If any question arises as to whether a member of a house has become subject to disqualification under this Schedule, the question shall be referred for the

decision of the Chairman, or as the case may be, the Speaker of such House and his decision shall be final.

On 27 December 1990, the then Lok Sabha Speaker, Shri Rabi Ray informed the House that a notice was received from the Registrar, Delhi High Court, requiring him to arrange to show cause in connection with a Civil writ Petition which, *inter alia,* sought to challenge the validity and constitutionality of paragraph 6 and 7 of the Tenth Schedule. On 8 Janurary 1991, the Speaker again informed the House that the High Court of Delhi, through its Registrar, had forwarded the same day a copy of an interim order passed by the division bench of the High Court directing that all the petitions presented before the Speaker under the Tenth Schedule shall not be proceeded with or pursued by the petitioners.

On 11 January 1991 the Lok Sabha Speaker informed the House that he had received another letter on the same day from the Registrar of the High Court of Delhi forwarding therewith a copy of an order passed by the full bench of High Court of Delhi on 11 January 1991. The full bench had passed the orders that they were *prima facie* of the opinion that the Speaker had jurisdiction to decide the question of disqualification of members of Lok Sabha under paragraph 6 of the Tenth Schedule and the rules framed thereunder on the petitions presented to him and accordingly they had vacated the interim order passed by them on 8 January 1991.

Anti-Defection Rules of Bihar Vidhan Sabha

The members of the Bihar Vidhan Sabha (Disqualification on Grounds of Defection) Rules, 1986 as framed by the Speaker under the provisions of the Tenth Schedule were laid on the Table of the Bihar Vidhan Sabha on 20 August, 1986 and came into force with effect from 20 September 1986. According to the Rules the leaders of all Legislature parties in the House are to furnish to the Speaker of the Bihar Vidhan Sabha a statement containing the names of members of such Legislature Party, a copy of the Rules and Regulations and Constitution of the political party concerned, etc. within thirty days after the first sitting of the House or where such Legislature party is formed after the first sitting

within thirty days after its formation or in either case within such further period as the Speaker may for sufficient cause allow. It is the duty of the leader of Legislature Party or a person authorised by him to inform the Speaker about the changes that take place in the strength of the party or in its rules, regulations constitution, etc. and also to communicate to the Speaker any instance of a member of the party voting or abstaining from voting in the House contrary to any direction issued by such political party without obtaining the prior permission of such party, person or authority. The Rules also lay down that every member must individually furnish to the Speaker a statement giving details of his party affiliation as on the date of election or nomination. According to Rules no reference of any question as to whether a member has become subject to disqualification shall be made except by a petition in relation to such member made in writing to the Speaker by any other member. The petition so received may then be considered by the Speaker to determine the question whether a member has become subject to disqualification.

Today, Anti-Defection Law is questioned on political legal and constitutional grounds. After the coming into force of the Tenth Schedule and the Rules framed thereunder, if a member of a political party is expelled from his party, he is treated as an unattached member in the House. So far as the jurisdiction of the fifty-second Amendment Act, 1985 and the Rules are concerned, there is no provision for a situation where a memmber is expelled from his political party for his activities outside the House or a conflict between the leaders of the party and a member.

In this regard an issue arises that the Tenth Schedule and the Rules framed by the Speaker of the Bihar Vidhan Sabha do not stipulate the existence of an unattached member. In such a situation, the question is whether the Speaker is empowered to declare a member who has been expelled from his party for his activities outside the House, as unattached. Neither the Tenth Schedule nor the Rules provide for the existance of an unattached member.

Another question for consideration is whether an unattached member can be included again in the original party ? What would be the facts of the decision of the Speaker regarding unat-

tached position of the member? On these aspects, Anti-Defection Law is silent.

In one instance, the Chief Whip of the Janata Dal Lagislature Party, Shri Upendra Prasad Verma formally filed Form 2 *vide* Rule 3(c) of the Members of Bihar Vidhan Sabha (Disqualification on Ground of Defection) Rules, 1986, saying that Shri Mahtab Lal Singh, who was in Janata dal and was a member of Janata Dal Legislature Party, was absent during voting on a motion of confidence in the Council of Ministers on 22 November 1990 in spite of the fact that the Chief Whip had directed him to be present in the House and vote for the motion. It was declared in para 2 of the proforma that on 23 November 1990 the matter was considered and his absence was not condoned. There was no other alternative but to proceed to take action and the member concerned was informed that the Chief Whip *vide* his letter dated 21 December 1990 had reiterated that in spites of a whip issued to members, shri Mahtab Lal Singh was absent without any prior permission or even information to the Chief Whip. Thus he had violated the whip and had done so deliberately. On request by the concerned member, the speaker gave him a personal hearing but his explanation was irrelevant.

In this regard,the constitutional provision is very clear. The concerned member did not communicate to his party functionaries, rather wrote a two-line letter to the Speaker, only to intimate that he was ill and could not attend the Session. In the letter also he stated that it was only for the information of the Speaker.

The Speaker gave his judgement and declared that Shri Mahtab Lal Singh had incurred disqualification for being a member of the Vidhan Sabha under article 191 (2) of the Constitution and in terms of paragraph 2 (1) (b) of the Tenth Schedule. Accordingly, the aforesaid member ceased to be a member of the Vidhan Sabha with immediate effect and his seat thereupon felll vacant.

Subsequently, Shri Mahtab Lal Singh filed a writ petition in the Patna High Court challenging the order of the Speaker. The case is still pending in the High Court.

Here, I would like to mention that there is a provision in the Tenth Schedule that no Court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of House. But this provision had been decleared as being *ultra vires* of the Constitution by a full bench of the Punjab and Haryana High Court. In appeal against the order of the Punjab and Haryana High Court, the Supreme court also observed that the court has jurisdiction to review the case.

Several constitutional experts and jurists have pointed out some shortcomings in the Anti-Defection Law. According to them, the implementation of the present law is difficult as it leaves so many problems unsolved,though it is supposed to curb the evil of defection. To my mind, provisions should be made to deal with the unsolved problems like split in party, merger of party or parties, outside activities of the Legislators,etc. Realising the difficulties, I am of the view that there is sufficient ground or need to amend the Anti-Defection Law.

21

Constitution Of India As An Instrument Of Economic Growth And Social Justice

Ishwar Singh

India has gone a long way in terms of economic growth during the past years. As regards achievements, perhaps one could say that during the past four decades India has had many impressive gains. Today, India can manufacture a wide variety of industrial goods and it is self-reliant in regard to its essential needs. India has been able to place herself in the list of top industrialised nations of the world. Substantial progress has been achieved in the development of the Indian economy in terms of increase in output investment, saving, industrialisation, self-sufficiency in scientific, technological and entrepreneurial manpower. No other developing country, except China, could boast of a sophisticated industrial base that India possesses today. A country that imported even pins at the time of its independence is capable of producing steel, cement and fertiliser plants. Its achievements in the field of space, telecommunications and computer are highly impressive.

The Government of India established the Planning Commission in March, 1950 to prepare a plan for the most effective and balanced utilisation of the country's resources. It has since

then been functioning as the nodal agency of economic planning. The aim of these plains was towards establishing a more egalitarian society. Poverty elimination was only a part of it. The programme envisaged abolition of privileges by birth, caste and community. Several welcome steps were successfully taken in this direction. The institution of princes was abolished; Zamindari was done away with, tenants were given security of tenure and fixation of rents and overall development of citizens had been raised.

The Constitution of India has entrusted us with the task of nation-building, of transforming an ancient civilization into a modern political society, of evolving a secular, nationally integrated and democratic Indian society, which guaranteed freedom, equality and social justice to all its citizens without discrimination of caste, creed, religion and sex.

It should be our endeavour to improve the quality of life of millions of our people who are living in want and deprivation. The betterment of the rural poor should receive the Government's closest attention. The Government has to develop appropriate linkages so that the pressure on land in rural areas is eased and more employment opportunities are generated with a view to tackling the problems of unemployment, under employment and low incomes. Administration has to be made more responsive and we have to ensure that every rupee spent on development reaches the intended beneficiaries. Existing policies on financial assistance need expansion for rural housing and primary health in rural areas.

The very Preamble of our Constitution gives us a resolution to build India into a Sovereign, Socialist, Secular, Democratic Republic and to secure to all its citizens social, political and economic justice. It guarantees equality of status and of opportunity. It also guarantees liberty and fraternity. We are proud of our laws, which have great vision and depth. It is true that we have not been able to apply them in the measure that we had intended. The laws which effect social problem, especially like untouchability, women's rights and other such areas are to be tackled on a multiple front. There are now two great objects to be achieved, one to see that the laws are just, the other that they are justly administered.

Economic Growth

The Constitution of India provides ample recognition to freedom of economic activity. The Directive Principles of State Policy ensures the economic development of the citizens. Article 39 reads :

The State shall, in particular, direct its policy towards securing :

(a) that the citizens, men and women equally, have the right to an adequate means to livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender-age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that children and youth are protected against exploitation and against moral and material abandonment.

The Fundamental Rights and the Directive Principles constitute the conscience of our Constitution. The purpose of the Fundamental Rights is to create an egalitarian society, to free all citizens from coercion or restriction by society and to make liberty available for all. The purpose of Directive Principles is to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution. The Constitution seeks to fulfil the basic needs of the common man and to change the structure of the society through such a social revolution. It aims

at making the Indian masses free in the positive sense. Without honestly implementing the Directives Principles, it is not possible to achieve the welfare State as contemplated by the Constitution.

Privatisation

Article 19 (1) (g) ensures freedom to practice any profession and to carry on any trade, business or occupation. Similarly, trade, commerce and intercourse between and among States shall be free (article 31). The right to property (article 300-A), though no longer a Fundamental Right, is nevertheless powerful enough as a constitutional right to command respect for private property in any State.

In order that "privatisation" measures conform to the constitutional schemes, these must satisfy the goal values of the cardinal Directive Principles of State Policy embodied in articles 8(1) and (2) and 39(a), (b) and (c). Even on a pragmatic view, the Constitution prescribes pathways to "privatisation". Article 43-A mandates that the State shall take steps by suitable legislation or in any other way to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.

Planning

The planning system adopted in the country is worth highlighting. Although planning is a concurrent subject in the Constitution, the areas of development are clearly earmarked for the Centre and the States. Although long-term plan perspectives are visualised, normally five-year plans are prepared. Within this framework, annual plans are drawn up. This is an operative document with programme details and outlays. The targets are also specified. The National Development Council (NDC) is at the apex of the planning body. This Council is assisted by the Planning Commission, a non-statutory body. These two agencies determine the strategies and priorities to approach to plan formulation and federal resource transfer to the State for plan purposes. Through these five year plans, Indian economy has shown a sea change in development.

Indian Economy

The Integrated Rural Development Programme (IRDP) and National Rural Employment Programme (NREP), distribution of house sites, electrification, energisation, setting up of primary health sub-centres; implementation of ceiling laws, schemes for Scheduled Castes' and Scheduled Tribes' families, dryland agriculture, irrigation, power and family planning were thrust areas covered under the 20-point programme.

Eradication of poverty has been carried forward through the green revolution. Forty-five years ago, 2/3rds of India's population was below the poverty line. Today, 2/3rds of the population has come above the poverty line.

With the nationalisation of Life Insurance Corporation in 1956, of Commercial Banks in 1969, and of General Insurance Corporation in 1973, followed by amendments in the IDBI, Act in 1975, the ownership and influence of the Government of India over the financial system in the country has become a pervasive factor. The nature of this relationship between the financial system and the Government is quite different than Reserve Bank, which is expected to exercise monetary and credit control. Besides, the all India financial institutions, viz., IDBI, ICICI (whose efforts in industrial financing are supported and supplemented by LIC, GIC and UTI), there are at least two institutions in each state (including Financial Corporations and Development Corporations), which provide term finance by way of loans and share capital.

The evolution of the Indian banking system has proved as an instrument of economic change. In order to furnish superior banking pattern, the first step in this direction was the nationalisation of the Imperial Bank of India in 1955. Social control on banks in 1968 was followed by the first phase of nationalisation of 14 banks in 1969. The second round of bank nationalisation was made in 1980 when 6 more banks in the private sector were nationalised. The geographical expansion of these banks was also one of the remarkable achievemennts of the Indian banking System.

Agricultural growth is not easy to measure. In the post-Independence development scene in India, the agriculture sector

presents a curious paradox. The sector has witnessed some startling breakthroughs in production during the 'green revolution.' Particularly heart warming has been the growth in the production of foodgrains enabling the nation to put an end to the frequent occurrence of famines and meeting the requirements of rural and urban India. Now our Country has achieved self-sufficiency and something to spare for other poor nations.

The course of speedy development of the Indian economy is quite impressive. From industry, trade, irrigation, power, energy, science, technology, agriculture, dairy to education, health and mixed economy; and from Jawahar Yojna to Industrial Policy, we have created a sound national economy. Our Constitution has worked as an instrument to shape the things to reality.

Directive Principles of State Policy

Social order, justice-social, economic and political; the weaker sections; these words occur in Part IV of the Constitution under *the Directive Principles of the State Policy.* Articles 38 to 46 deal with the subjects connected with social justice. It will be worthwhile to note this. Article 38 reads :

> The state shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life.

Article 39 deals with certain principles to be followed by the state; article 40 with organisation of village Panchayat; article 41 with the right to work, education and public assistance in certain cases; article 42 with the provision for just and humane conditions of work and maternity relief; article 43 with living wages, etc. for the workers; and article 45 with provisions of free and compulsory education for children.

Then comes article 46 under the heading "Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections." This Article is relevant here because here "social justice" is specially referred. The article reads :

> The state shall promote with special care, the education and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

Like many provisions of the Constitution, article 38 was also based upon article 45 of the Constitution of Ireland of 1937 which reads that "The state shall try to protect the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice and charity will inform all the institutions of national life." The Constitution of the Federal Republic of Germany also provided for a similar objective in its article 20. The Indian Constitution has made minor amendments and substituted social, economic, political for the word "charity" in the Irish Constitution. Thus, it will be clear that this provision dealt with the economic aspects of the life of the people. This article was further amended in 1978 and another clause was added to it. This clearly indicated that the article was expected to minimise economic inequalities and provide social justice in economic terms. Clause (2) of article 39 reads thus:

> The state shall in particular strive to minimise the inequality in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only among individuals but also among groups of people residing in different areas or engaged in different vocations.

This amendment was intended to guarantee that the State shall try to eliminate the inequalities between people engaged in different professions in one area and also among people of different areas. The amendment was effected by the Constitution (44th Amendment) Act of 1978.

Just as the provisions of right to work, living wages, free and compulsory primary education and uniform civil code remained unattended, so were articles 38 and 46. However, it can be said that legislations relating to industrial and agricultural workers were partially implemented in the true spirit of article 38. But it was clear that industrial workers and others like them rep-

resented only a fragment of the weaker sections. The welfare and representation of the Scheduled Castes and Scheduled Tribes were covered under Part XVI of the Constitution under the heading—*Special Provisions Relating to Certain Classes.* That was the outcome of the Report of the Advisory Committee on Minorities, Fundamental Rights, etc. which dealt with the Scheduled Castes and Scheduled Tribes along-with the provisions for Muslims, Sikhs, Christians, Anglo-Indians, Parsees, etc. In this Chapter articles 330,331,332 and 333 dealt with the representation in the Lok Sabha and Legislative Assemblies of State; article 334 initially provided that political representation was for 10 years alone; articles 335, 336 and 337 referred to the claims in services consistent with maintenance of efficiency in administration; article 338 dealt with the appointment of a special officer; article 339 with control of the Central government on Scheduled Areas and the welfare of Scheduled Tribes; article 340 with the appointment of a Commission to investigate the conditions of backward classes; and articles 341-342 empowers the president to declare castes, races or tribes which shall deemed to be the Scheduled Castes and Scheduled Tribes.

Social justice enshrined in the Constitution is much concerned with classes or sections of people where our constitution framers thought, they will be deprived of it. A class of people whose living standard is high in economic prosperity, education, health, production, etc. is already within the sphere of justice. That is why certain special provisions had to be made in the Constitution to provide economic benefits and social justice. And it was possible only through making such provisions in the Constitution which is the instrument of economic growth and social justice of all the citizens living in the Indian Union.

It was recognised that in a poor country like India, the weaker sections constituted the majority of the people rather than the minority. First, it was Shri Jayaprakash Narayan who explored the problem of weaker sections of society in the village. He was appointed Chairman of a study group set up to report on the welfare of weaker sections of the village community. The report was published on 16 October 1961. The study group observed:

> While all sections of community must be helped to advance, special and urgent attention needs to be paid to those who are in greatest need of the help, that is, to the weaker sections. In Gandhi's concept of 'Antyodaya' (the last first) we have a clear direction from the father of nation...one thing is absolutely clear, however, that the uplift, welfare and emancipation of the weaker sections cannot be accomplished without a comprehensive social revolution, encompassing all facets of Indian society. A distinguishing feature of the Indian revolution must be the destruction, root and branch, of the caste system, without which the bulk of the weaker sections can never come into their own.

Even before this report was published, the Estimates Committee of Lok Sabha, in its 48th Report, had observed:

> Weaker sections of society should be defined and criteria for special assistance laid down on the basis of economic status and educational and social backwardness. This would result in larger and larger sections of society passing out of the category requiring special assistance and enable them to attain special equity, while safeguarding the interests of those who are still in need of such special assistance. A large proportion of those requiring such special assistance would continue to come from Scheduled Castes and Scheduled Tribes and other Backward Classes for sometime to come, while not debarring deserving cases from other sections of society. Progressive emancipation from economic backwardness should help the people belonging to the Scheduled Castes and Scheduled Tribes to overcome the special backwardness.

Social Legislation

Social legislation can be classified into three main categories :

(i) Social reform legislation, mainly pertaining to the per-

sonal laws of the Hindus, Muslims, etc.;

(ii) Social welfare legislation; and

(iii) Labour welfare legislation.

Social welfare legislation encompasses welfare of women and children, the Scheduled Castes and Scheduled Tribes and other Backward Classes and is aimed at improving the lot of the down-trodden. The Suppression of Immoral Traffic in Women and Girls Act, 1956, the Children Act, 1960, the Untouchability (Offences) Act, 1955, the Drugs (Control) Act, 1950, the Narcotic and Psychotropic Substances Act, 1985 deserve special attention.

The Maternity Benefit Act, 1961, the Women's and Children Institutions (Licensing) Act, 1956, the Orphanages and other Charitable Houses (Supervision and Control) Act, 1960, the Medical Termination of Pregnancy Act, 1971 and the Dowry Prohibition (Amendment)) Act, 1986 are milestones in the field of women's welfare.

As for child welfare, the Children Act, 1960 which aims at the overall development of the child, the Young Persons (Harmful Publications) Act, 1956, Motor Transport Workers Act, 1961 and the National Policy for Children (1974) are significant achievements met through the constitutional provisions.

Special efforts have also been made to promote the welfare of the Scheduled Castes and Scheduled Tribes and other Backward Classes. The Constitution has prescribed certain protective measures and safeguards for these classes either specially or by way of insisting on their general rights as citizens with the object of removing the educational and economic disabilities they are subjected to, besides providing for their special representation in the Lok Sabha and the Vidhan Sabhas. Another important legislation in this field, the Untouchability (Offences) Act, 1955 has been amended to become the Protection of Civil Rights Act, 1976. Commissions and Committees have also been set up to meet the cherished aims.

In order to improve the lot of the weaker sections of the society, the Parliament, in pursuance of article 46 of the Constitution, amplified clause (3) of article 15 by adding clause (4) of this article enabling the state to make laws for the benefit of

the socially and economically backward classes and Scheduled Castes and Scheduled Tribes. The first Backward Classes Commission was formed in 1952 and the Second in 1979 which is popularly known as Mandal Commission.

In the field of labour and labour welfare, laws relating to labour-management relations Industrial Disputes Act, 1947 and Industrial Employment Standing Orders Act. 1947 and Industrial Employment Standing Orders Act, 1966; laws dealing with social security measures, Employees State Insurance Act, 1948; Employees Provident Fund Act, 1952 and Maternity Benefit Act, 1961 and laws providing for minimum standards in respect of wages, leave, hours of works, weekly holiday, welfare, health, safety, etc. Minimum Wages Act, 1948; Payment of Bonus Act, 1956 and the Bonded Labour System (Abolition) Act, 1976 are the hallmarks of well-planned democratic system.

It is a fact that India has progressed under the existing Constitution. It is a fact that there are problems, challenges and barriers facing us today but it is also a fact that India can surpass all developing countries if all the precepts of the Constitution are really put into practice.

22

Parliament As An Instrument Of National Integration

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The genesis of the parliamentary system in India can be traced to British rule in India spanning over two centuries. This is, however, not to suggest that it is the pure transplantation of the British institution on Indian soil. Democracy in India has ancient roots. Representative institutions have flourished since vedic times.

The feeble beginning of the parliamentary system in India can be traced to the Indian Councils Act of 1861. This was followed by the Indian Councils Act of 1892 and 1909. The government of India Act of 1919 established a bicameral Legislature at the centre for the first time. The government of India Act, 1935, introduced such modifications as were necessitated by the introduction of "atonomy' in the Provinces.

However representative and responsible Government remained largely a myth. British Policy was also responsible for

sowing the seeds of division of society along communal lines, as can be seen from the provision of the communal system of election in the 1909 reforms. It can also be described as the first step towards the partition of the country. Therefore, the primary concern for the freedom fighters on India's independence was the unity and integrity of the country. With this objective in view, our Constitution was framed. We have one citizenship, one flag, one Constitution for the whole country. There is also one integrated judiciary. The remark made by Dr. Ambedkar that 'Our Constitution is federal in peace and unitary in emergency', eloquently explains the intention. In a pluralistic society like ours, Parliament works as a great national integrator and mediator. In this forum persons with different shades of opinion, thoughts, ideas and background tend to agree, accommodate and tolerate one another thereby arriving at many conciliations necessary for unity and integrity of the country.

Parliament of India represents all sections of people with their varied socio-cultural identities, ethos and genius, at the national level. It, thus, works eminently as a strong integrating force in the country. It is the people's institution *par excellence* and the most convenient institution through which people's grievances, aspirations and urges are articulated in a democratic manner and their genuine socio-political and economic problems resolved. However, the function of Parliament has undergone fundamental changes. Parliamentary business is no longer confined to only law-making. Parliament is now a multi-functional institution. To be more explicit, presently Parliament devotes only one-fifth of its time to law making-the rest of its time being devoted to the various socio-economic, grievances-ventilation and welfare-oriented measures, either in-depth discussion and deliberation thereon.

Indian society is pluralistic in nature. There are numerous religious, linguistic, cultural and ethnic groups. In such a society, conflict of ideas, interests, approaches and objectives is natural. Parliament is the highest forum for resolving such conflicts through discussion and deliberation. Our Parliament represents all shades of opinions and views as well as concern the aspiration and urges of our vast population from all parts of the country. In Parliament, therefore, the feeling of oneness, sense of belonging to one country is very high. Petty differences of opinion,

interest and narrow outlook and approach get dissolved in Parliament when issues of national interest, unity and integrity are deliberated by members. Parliament thus plays a very important integrational role in our society.

There are institutional means aimed at forging national unity and integrity, in our parliamentary polity. The all-India Presiding Officers Conference and the Conference of Secretaries of Legislative Bodies in India held annually, are important and effective means. The remark made by the first Speaker of Lok Sabha, Shri G.V. Mavalankar is worth quoting here in this context. He said:

> It is necessary for the Presiding Officers to meet annually to compare notes, take stock and discuss particular difficulties which arise from time to time in the working of democracy and gain from mutual experience and also to strengthen the conviction that the precedents that we are setting from time to time are sound ones. Such meeting are also necessary for personal contacts which inspire us to stand together and work with collective thought and strength for advance of democracy, not merely in form but in substance.For, in essence, all state Legislatures and the Lok Sabha and Rajya Sabha together constitute the grand Parliament of the country.

Similarly, many administrative and procedural matters are discussed at conferences, seminars and symposia at the national level under the guidance of Secretaries-General of Lok Sabha and Rajya Sabha from time to time. Such discussions as well as exchange of thoughts and views, to create a sense of oneness and unity. Parliament thus symbolises the oneness of the entire Indian masses. Our Constitution, also, through its Preamble proclaims that the ultimate source of all power rests with the people of India in whom sovereignty vests.

Moreover, our Constitution is the creation of our own people. As we open our Constitution which is the *lex loci* of the country, we find the stirring words of the Preamble. Besides other ideals, its objective is to promote the unity and integrity of the country. In this context the statement made by Sardar Vallabhbhai Patel

in the Constituent Assembly on 12 October 1949, is of great relevance. He said :

> I am sure the House will note with gratification the important fact that unlike the scheme of 1935, our new Constitution is not an alliance between democracies and dynasties but a union of Indian people built on the basic concept of the sovereignty of the people.

Thus our Constitution has built-in provisions for ironing out divergent thoughts, attitudes, and approaches arising out of religious, linguistic, cultural and social factors. The unitary system of Judiciary, Audit and Accounts, Election system, overriding powers of Parliament in legislation, territorial Parliament/Assembly Constituencies without any communal, religious or ethnic distinction are some of the very important means to forge unity and integrity of the country. Naturally, in view of historical experience and necessity, our Constitution is biased towards a strong centre.

In Parliament, members from all parties of the country irrespective of caste, creed, religion or ethnicity, meet and exchange their views on matters of common concern to the country. Though they may belong to different castes, creeds, religion and social status, they stand on equal footing in Parliament as public representatives. Sectarian or centrifuga forces have no place in Parliament. This creates a feeling of national unity and integrity of the highest order. The very atmosphere created by the galaxy of members makes for a national perspective.

This process, begins at the state level. In Nagaland, for example, there are as many as 16 major Naga tribes with their own culture, tradition and distinct way of life. All these tribes have also their own dialects. They are all distinct tribes in their own way. Yet all of them are proud of belonging to the State and the Nagaland Assembly has been the effective unifying forum in this process. The members of Nagaland Assembly deliberate, debate and discuss on socio-economic and political matters for the common good of the state as a whole. This is the institutional process in all the State Legislatures, creating ultimately a United India at the national forum—that is the Parliament.

Thus Parliament has been found to be the most potent conflict-resolution mechanism in our pluralistic society and a vital instrument of national integration. Parliament, therefore, functions as a melting pot of diversities of Indian society. The magnificence and majesty of the Parliament building itself impels all the members to put nothing above the unity and integrity of the country. It can, therefore, be rightly summarised that the Parliament and for that matter, all the State legislatures which together constitute the grand Parliament of India, constitute the most effective instrument of national unity. Let us not, therefore, fail the Parliament and in return we can rest assured that Parliament will not fail us.

23

ANTI-DEFECTION LAW

Keshari Nath Tripathi

The real foundation of parliamentary democracy lies in the freedom of speech and expression and the right to form association. These are Fundamental Rights under the Constitution of India. Political parties, which are nerve-centres of democracy, are born out of these freedoms and are mainfestation of collective enjoyment of these rights for common objects set up by them. Disagreement with the ideals of a political party, or dissent with the managers thereof, may persuade a member of the party to leave it or join another political party. His freedom to do so is absolute, though he may suffer certain disqualification, if he happens to be a member of a Legislature. Defection from one political party to another, or deserting a political party, would have been a legitimate exercise of the aforesaid rights for members of a Legislature but for the Constitutional restraints by the Tenth Schedule of the Constitution which is commonly called Anti-Defection Law.

An evil with a cancerous growth, the pangs of political defections were gradually heading to swallow the democratic system itsellf. Abuse of the status of a legislator brought to prominence the unethical side of the freedom of speech and expression and the freedom to form association. The Tenth Schedule was enacted for cleaning public life by providing for disqualification on the ground of defection. The laudable object of putting an end to

horsetrading by legislators has only been partially achieved by the Anti-Defection law. Nearly eight years of existence of the Tenth Schedule has witnessed several discrepancies and loopholes in it.

Though the pollutive dimensions of defection affect the democratic system even outside the Legislatures, the Anti Defection law, as it stands, has limited operation in defined circumstances relating to a legislation's conduct *vis-a-vis* the Legislature.

Disqualification on the ground of defection is attracted if a legislator voluntarily gives up the membership of the political party to which he belongs or where he votes, or abstains from voting, contrary to the directions issued by the party or by the person or authority authorised by the party in this behalf, without obtaining prior permission and if such voting or abstention has not been condoned within a period of fifteen days from the date of voting or abstention Provision has also been made for disqualification of nominated and independent members under specified circumstances.

Paragraph 2 of the Tenth Schedule is confined to the activities of a member of a legislature party within the Legislature. There is no difficulty in implementation of the Anti-Defection law in cases covered by paragraph 2 of the Tenth Schedule. It is open, though at sufferance, to a member of a legislature party to voluntarily give up the membership of his political party or to vote, or to abstain from voting, contrary to the directions issued by his political party or by the person or authority authorised by the party in that behalf. In both these cases the member will be disqualified for being a member of the House on the ground of defection.

Several problems may, however, arise or may be anticipated while enforcing paragraph 2 of the Schedule. In cases of voluntary giving up of the membership of a political party, a question may arise regarding the point of time with reference to which the giving up of the membership of the party is to be considered. Normally, the point of time when intimation about giving up of the membership is conveyed by the member or the party to the Speaker/Chairman is the relevant point of time. This question may assume importance where a party is claimed to have been split and the members causing the split give up the membership of the party individually or at periodic intervals.

Ordinarily it is expected that when a member of a political party voluntarily gives up the membership, he shall do so in the manner laid down by the Constitution or rules of the political party. The law is that if a statute requires in thing to be done in a particular manner, it has to be done in that manner or not at all. The Tenth Schedule itself does not lay down any manner in which a member may give up the membership of his political party. The Constitution or rules of a political party cannot be said to be statutory constitution or rules. Still they are binding on the members of the party. There is some sanctity of the constitution or rules of political parties or legislature parties in view of the rules framed in the exercise of powers under paragraph 8 of the Tenth Schedule which require the filing of a copy of the Constitution or rules of the political party/legislatures party before the Presiding Officer. Substantial compliance with the form or the manner for giving up of the membership may be sufficient for the purposes of paragraph 2 of the Tenth Schedule. If there is total non-compliance with the prescribed manner, it can be said that the members should not be deemed to have at all given up the membership of the political party and as such will be deemed to continue to belong to the same political party.

Paragraph 2(a) does not require that a member must give up the membership of his political party in writing. Oral giving up of the membership is not forbidden but it is fraught with all the dangers attending oral transactions. When membership is sought to be given up in writing, the writing or signature of the member must be genuine. Genuineness of the signature or writing is a question of fact, and when questioned, it has to be decided on evidence.

Voting, or abstaining from voting, contrary to the directions by the political party or by the person or authority authorised in this behalf, is a ground for disqualification. Hence the competence or power of the body or the person issuing directions by the party may be open to challenge. If the constitution or rules specify any office bearer, body or person for conveying the directions of the party, the direction, must be communicated by the specified office bearer, body or person. Failure to do so may result in avoidance of disqualification. Similarly, the authorisation in favour of any person or authority to issue a direction to a member

to vote or to abstain from voting, may also be questioned for want of competence in the person or body authorising and the person or authority authorised.

It has been found in the past, that some political parties, not recognised by the Election Commission, entered into an arrangement or adjustment with some recognised political parties, in such a manner that candidates set up by the former party were allowed to describe themselves as members of the latter party and contest the election on the election symbol reserved for the latter party. If successful, these members were registered as members of the latter political party, that is, the party on whose election symbol they contested and won the election. The organisation and the office bearers, and also the disciplinary control over the members of the two political parties continue to be different from each other. A question may arise as to whether paragraph 2 of the Tenth Schedule will apply to a case where the member, elected as aforesaid, voluntarily gives up the membership of the unrecognised political party or votes, or abstains from voting, contrary to the directions issued by such party or by the person or authority authorised by it, in this behalf. Perforce the explanation to Paragraph 2(1) provides that the disqualification will not be attracted in this situation even though the member actually belonged to the unrecognised political party and had described himself as a member of the recognised political party merely for using the latter's election symbol at the election. Even expulsion of such a member by the unrecognised political party thus stands to lose the member without affecting his membership.

A problem may also arise where, without there being any formal split in a political party, there are two or more groups in the party and each group claims itself to be the real party and tries to bind all the members of the legislature party by its decisions. This controversy will have to be decided on the basis of the constitution or rules of the political party, the number of members and their allegiance to a group or its leader and other allied matters depending upon the facts of each case.

The constitution rules and byelaws of a political party are not statutory in nature, but they do acquire some constitutional sanctity as they are required to be filed before the Presiding Offi-

cer under the rules framed in the exercise of powers under paragraph 8 of the Tenth Schedule. When called upon, the validity of the constitution or rules and byelaws of a political party can be tested on the anvil of the law of the land and if any provision therein is found to be forbidden by any law, the same can be rendered ineffective and the consequences can be determined accordingly.

Apart from these, there are other problems which may also be visualised in the implementation of Paragraph 2 of the Tenth Schedule. Right of dissent is claimed to be the ostensible basis for defection. However, dissent expressed by a member of a political party, in a manner other than that mentioned in Paragraph 2 of the Tenth Schedule will not attract disqualification on the ground of defection affecting the membership of the Legislature.

Paragraphs 3 and 4 of the Tenth Schedule are in the nature of exception and deal with split and merger, respectively. Split in a party was also at one time justified on the ground of right of dissent, freedom of speech and expression and right to form association. But absoluteness of this proposition was curtailed while enacting the Tenth Scheduule and a legislator's right of dissent in parliamentary domain was restricted and regulated.

The spirit underlying the Anti-Defection law is that where a person has been elected to a Legislature as a member of a political party, he should not leave the party and, if he does so, he should quit the membership of the Legislature. Split in the legislature party, however, saves his membership of the Legislature. But there are certain pre-conditions for a split within the meaning of paragraph 3 of the Tenth Schedule. These are :

(i) The claim for split must be made by a group of a legislature party representing a faction;

(ii) This faction must have arisen as a result of split in the original political party, meaning thereby that if the original political party has not split the mere existence of a faction or group in the legislature party will not be sufficient for a split in the legislature party. The distinction between a 'legislature party' and 'original political party'

is noteworthy in this contest; and

(iii) The number of members of a legislature party claiming the split must not be less than one-third of the members of the legislature party.

It is only when the aforesaid three conditions are satisfied that the faction shall, from the time of split, be deemed to be a political party to which the members of the faction belong. The crucial requirement of a split of a legislature party is the existence of a group of not less than one-third members of a legislature party. The faction must be the result of a split in the political party. Anti-Defection law is not concerned with the activities of a member of a legislature party out side the House or with what has led a member to form, or join, a group or faction. The relevant consideration is that the number of such members should not be less than one-third of the members of the legislature party (and not of the political party).

The words "from the time of such split" in clause (b) of Paragraph 3 are not without significance. They are also likely to pose problems in arriving at a decision when a claim for split is made. Several problems may arise in connection with the split in a political party.

A question which may call for answer is whether split in a party is a one-time one-action process or is it a culmination of a series of action of several members spread over for some time and, in the case of latter, what is time upto which the process of split may continue. Split in a party may not be brought about in a minute. It has to be the result of some concerted and deliberate action on the part of one-third or more members of a legislature party. Deliberations resulting into split of a party may be promoted by any motive but are likely to take some time though the outcome of deliberations may be expressed at any specific point of time. It is possible that some members of a party (who may be more or less than one-third in strength) may cause, or express in favour of a split first and send an intimation to this effect to the Presiding Officer and other members (whose number may be less than one-third of the number of a legislature party) may follow. There may be a time gap between the two actions though they may form part of the same series. In such a situation what is to

be looked into is whether there is any continuity in action and to find out this the time gap between the two actions has to be reasonable. An unreasonably long gap of time between two actions may break the series and may make each action independent of each other, the fate of the members participating in each action depending on the number of members. Thus it is not an absolute proposition that split must be a one-time one-action process.

If a claim for split is made collectively by one-third or more members of a legislature party there should be no problem. But it is conceivable that individual members totalling one-third or more members of a legislature party may intimate the Presiding Officer individually about his giving up membership of political party and forming, or joining, another group or faction or party. Such individual intimation may be simultaneous or at periodical intervals. Will such individual member stand disqualified? If the action of an individual member is considered in isolation with the individual intimation of other members, disqualification is the inescapable result. On the other hand, if the individual member's action is considered as a part of a series of action with other members, the finding would be that there is a valid split and all the members will escape disqualification. The interval of time in this situation becomes insignificant.

Cases of expulsion of a member of a Legislature by his political party also poses problems. It has come to notice that where the leadership of a political party finds that some members of the party are likely to form, or have formed, a group or faction or the likely to join another political party, and want to take advantage of the provision relating to split, they take a pre-emptive action and expel such members from the party. Very often, the expelling political party takes care to see that members are expelled either in a very small group or individually so that they may not take advantage of paragraphs 3 and 4 of the Tenth Schedule. On expulsion, these members are treated as "unattached members" and separate seats outside the block of the political party are allotted to them in the House.

The position of an expelled member, treated as an unattached member after expulsion, is peculiar. The Anti-Defection

law neither applies to expulsions nor deals with the status of an expelled member. It does not provide for any disqualification consequent to expulsion of a member by a political party. An expelled member does not lose membership of the Legislature. It is open to an expelled member to challenge his expulsion in a court or in any other appropriate proceedings. The Anti-Defection law does not prohibit a member from challenging this expulsion before the Presiding Officer of the House of which he is a member. Whether it is competent for a Presiding Officer to ignore or nullify expulsion of a member or hold it to be invalid and thereby force a political party to accept an unwanted member? What is the effect of expulsion in face of specific deeming clause in Explanation to Paragraph 2(1) of the Tenth Schedule which says that for the purposes of this sub-paragraph an elected member of a House shall be deemed to belong to the political party by which he was set up as a candidate for election? Can a member be treated as an unattached member despite this Explanation? Is it within the competence of a Presiding Officer to look into the grounds of expulsion or to prevent political parties from acting arbitrarily or capriciously in expelling its member or to enforce compliance with the constitution or rules of the political parties or the rules of natural justice? How long can an "unattached member" continue to be unattached and can he at all join any other group or political party?

A Presiding Officer may, on some occasion, be called upon to answer one or more of the questions relating to Anti-Defection law. His decision is supposed to be final then. The Supreme Court has also not disagreed in principle with finality being attached to the decision of the Presiding Officer, but it has struck down the finality clause for want of ratification by the required number of States. Thus a Presiding Officer's decision is open to judicial review. Should it continue to be open to scrutiny by Court or should there be provision for appeal before any specified Court or tribunal? The desirability or otherwise of a provision for appeal against the decision of a Presiding Officer requires serious consideration. One view is that the high office of a Presiding Officer should not be made a subject matter of controversy by allowing any appeal againt his decision. As a high constitutional functionary, he is supposed to act impartially with reason and follow the rules of

natural justice. No motive should be imputed to him. The contrary view is that no man is infallible and a Presiding Officer, who is a political person, may sometimes be induced by political considerations in making his decision. Both views have their own logic and need to be seriously considered.

The above are only some of the problems relating to implementation of Anti-Defection law. These lacunae in the law have to be filled up. When political ethics is on the path of eclipse, when healthy democratic traditions are dying, when games of destabilising and demolishing Governments are played through the stick of defection and public awareness is found wanting in creating the desired impact on the conscience of unscrupulous legislators. The Anti-Defection law requires a broader base and strict adherence. The prospect of facing disqualification on the ground of defection must serve as a real deterrent. It is this prospect which shows the brighter side of this law and a hope for healthier democracy in the country.

24

ELECTORAL REFORMS

J. Chokka Rao

Elections are the cornerstone of a democracy. They are an expression of popular will. In India which is the largest democracy in the world, elections constitute the bedrock of the democratic system. Holding of free and fair elections is, therefore, a *'sine qua non'* of democracy. India has witnessed ten General Elections since independence. Every General Election - the last held in May 1991 with an electorate of 521 million has been hailed as a unique democratic exrcise.

However, almost since the First General Election in India, doubts have been expressed about the soundness of the electoral system. A number of views on this subject have been expressed in the Parliament on public platforms, in committees etc. highlighting the numerous inadequacies of the present electoral system. A need has also been felt from time to time of the urgency to bring about substantial electoral reforms and this has been engaging our politicians, academicians and intellectuals. But despite such discussion nothing concrete has emerged. There is an imperative need to bring about radical electoral reforms in our country.

Firstly I will deal with the burning issue of the misuse of muscle power and money power, which has been a growing con-

cern all these years, and which has attracted the attention of the Parliament and State Legislatures. Any serious effort in bringing about electoral reforms has to tackle this issue first and foremost. Over the recent years, muscle power has manifested itself in certain regions where booth capturing is the rule rather than the exception. While it is a fact that money is certainly required by political parties for running for elections, however, the basic argument is, where is this money to come from, and how much of it is really required?

In 1952, elections were not as costly as they have become today. Besides the higher value of the rupee at that time, the political parties had field cadres and organisational network and this in turn meant less expenditure to canvass for election. It was an era where the ideal of service and sacrifice was the motto of the day. Now with the growing alienation of political parties from the people, elections have become stupendously expensive. As a result, political parties have to resort to various methods to procure the money to fight election. It is here that money power manifests itself. It is an undisputed fact that money comes from various levels of business and industry. While it would not be possible to suggest either enforcement of a ban on expenditure or a ceiling on the amount of money to be incurred by the candidate or concerned party, I would suggest, that as the first step towards assisting political parties to discharge their legitimate functions in a democracy effectively, it might be possible to allow States/ Centre to grant some funds to candidates for contesting elections. As former Chief Election Commissioner, Shri R.K.Trivedi has commented:

> This malady has assumed alarming proportions. The huge expenditure incurred by candidates and political parties have no relationship to the ceiling prescribed under the law. The candidates and their political parties look to big money-bags for their funds to contest elections, thereby adopting a formula which establishes the chances of winning in direct proportion to the money spent. That in course of time this triggers chain reaction leading to corruption at various decision making levels, does not seem to bother them.

In the western countries, candidates contesting elections are given considerable assistance by the State. In U.K.,a parliamentary candidate is entitled to send free of charge to each of his electors, one postal communication,containing matter relating to the election and the Post Office is reimbursed by the Treasury. Further, during his campaign a candidate is allowed to hold meetings in schools situated in his or adjacent constituency, free of charge. In addition, broadcasting time is also made available free of charge and only nominal charges are made towards broadcasts on T.V.

In France, Government reimburses candidates on certain spcific terms, such as posters, notices, circulars, voting papers, etc. Although in most of these western countries, the constituencies on an average have a far smaller population, nevertheless, it is only a pointer to the fact that there is an organised system of State/Government funding of election campaign which does in fact, minimise to a considerable extent, misuse of funds. In India there is an immediate need to impose a rigid code of conduct on political parties to enforce audit expenditure on elections. This should be enforced by way of legislation. All political parties should publish their accounts annually and these should be audited by agencies specified by the Election Commission.

In fact, one of the indirect beneficial consequences of Government/State funding could very well be the disincentive for mushrooming of parties, and discouraging a large number of independent candidates contesting elections. Government funding is again vitally important because it ensures equality of opportunity to all political parties, representing different sections of society in conducting their election campains in a fair manner. This would definitely minimise administrative malpractices. There is an urgent need to reduce the large number of independent candidates in order to reduce the burden on the exchequer. There have been numerous recommendations made on this count by suggesting raising of security deposit; forfeiture of deposit if the candidate fails to secure 1/4 of votes; increasing number of proposers to ten; and if the contested independent fails to secure the deposit, he shall not be allowed to contest the same election as an independent candidate in future. I would suggest that only those candidates who have secured 51% of votes polled should be de-

clared as elected. Otherwise, they should be asked to stand for election again. As of now, elections are determined on the basis of relative majority of the valid votes polled. It is not necessary for a candidate to secure an absolute majority.

An off-shoot of such a process will be the drastic reduction of the number of political parties which contest any given election. In the recent years, there has been a sudden proliferation of political parties, more so, regional parties. Our electoral battles have tended to concentrate around personalities rather than ideologies and principles.

In the present system, candidates who have not got clear majority can also be declared as elected. In almost all elections, people are often more certain of what they are opposed to rather than what they support. Negativism is also evident in many election alliances, where the main purpose seems to be to defeat a party or individual, rather than win on sound ideological issues.

Such personality-oriented politics has greatly jeopardised our present electoral process. Parties have proliferated only to confuse our voters by pumping them with confusing and overlapping ideologies. This definitely is a setback in giving a clear mandate to a single party specially in the States. As a result, coalition Governments and minority Governments are formed. This also precludes the need to have a compulsion both morally and legally for same ideologies to come together under one banner.

What is required is that people should join together and influence the establishment to grant the right of negative or rejection vote. By giving people the right to express their disapproval of all who, in their view, have subverted the democratic system, the electoral system will automatically be cleansed of its present evil of fielding candidates who are not acceptable.

These two factors, i.e. right to reject all candidates and absolute majority will ensure that parties are compelled to choose candidates who are acceptable to all. This would in turn mean that candidates will have to transcend the narrow barriers of castes, communalism, etc.

Over the years, there has been an endless number of debates on the electoral process and the need for electoral reforms,

in India. The debates have gone on *ad-nauseam*. However, what has strongly emerged is that on the basis of our experience of the last 45 years of electoral politics, the distortions in representative democracy caused by electoral malpractices and deficiencies necessitate an urgent need to revitalise the present electoral system. If we are to bring about any meaningful reform, then we should first start with the reformation of our present electoral system. In this context, issue of identity cards is also very necessary so that bogus voting is not resorted to.

All political parties should therefore urgently come together on a common platform, to arrive at a consensus on electoral reforms, which has indeed become extremely necessary given the present situation. Academicians, intellectuals, etc. must also give this a serious thought.

25

PARLIAMENT, EXECUTIVE AND JUDICIARY

P. G. Narayanan

India's Parliament occupies a unique position in the country. The position, authority and responsibility that have been vested in this body have to be viewed in the context of our freedom movement. **In our scheme of things Constitution is the sovereign authority and the Parliament, the Executive and the Judiciary - all different limbs of the Constitution - draw their power from the Constitution.**

In a democracy, the democratic institutions must be able to absorb, reflect, represent and satisfy the democratic aspirations of the people. Therefore, the constitutions and laws in a country have a regulatory function. A constitution or law connot be imposed on the people. It has to help society to move in a steady and orderly manner. People make law and not laws the people. Law is not above the people. That constitution and law are the best which have the willing acceptance of the people. These are rudimentary principles or any free democratic society.

Our Constitution has created three authorities—the Parliament, the Executive and the Judiciary. They are complementary and supplementary to one anther. All these authorities have been assigned their respective roles and no one can encroach upon the

powers of the other andallmust function within the four walls of the provisions of the Constitution. That is why it is stated that they derive their power from the Constitution.

In connot be said that the Parliament, the Executive and the Judiciary are parallel bodies. They connot work at cross purposes nor can they interfere with the other's activities. But amongst the three, Parliament remains supreme. Its power and authority are all-pervading and its domain overrides all our territorial and geographical limits. It can even make and unmake the States' boundaries. We have as many as twenty five regular States with Legislatures and governments of their own. Parliament's authority extends to all these regions and the laws made by Parliament are applicable to the whole country. notwithstanding similar laws that might have been enacted in any of the States.

Parliament enjoys an inherent right to conduct its affairs without interference from any outside body. It is the sole judge of its own procedures. Even procedural lapses do not vitiate the proceedings. Until a Biill becomes law, the legislative process is no: complete and the courts cannot interfere.

The supremacy of Parliament is further strengthened by the mandate of the people it receives normally in every five years. The Parliament is not permitted to criticise the Presidents, Governors and judges nor the Speaker of the Lok Sabha is expected to decide the constitutionality of a particular legislation. But Parliament has a right to impeach a President or a Judge thereby making his removal from his post absolute, but no criticism of his action is permitted. The courts have no right to interfere in the proceedings of the House either. They can only interprete the law, if challenged and comment whether or not a particular enactment or action of the executive authority contravenes any of the provisions of the Constitution. Courts are mere interpreters of law, whereas Parliament is the maker of law. While interpreting law, Courts cannot completely igore the social purpose that the Constitution has in view. Modern society has not only to takle into account the existing knowledge, but also interpret it for the public, so that the decisions and laws become useful and intelligible.

The Parliament's authority to amend the Constitution is

supereme. In this context, the role of Parliament becomes very important and is of utmost significance. As the Constitution vests cartain powers with the judiciary it enjoins upon the Executive the power to implement the Directive Principles of State Policy which have broadly outlined the social and economic objectives of the Constitution. The Executive is accountable to Parliament. An elected Government can only be removed by a motion or by a vote of no-confidence expressly made by the House. It is also quite in consonance with the spirit of democracy that such a right remains only with the lower House of Parliament or State Legislatures. Parliament has to honour the mandate that the people have given to it. It has to act in the direction given to it by the people whose mandate overrides all other authorities and restrictions.

The Indian Parliament, on the whole, has asserted its supremacy in the political life of the nation. The mambers are vigilant. The Government's various activities are scrutinized by Parliament and the Government is accountable to Parliament.

Taking all these factors into consideration one could surely come to the conclusion that Parliament's control of the Executive is much more direct. As far as interpretation of law is concerned the Courts are supreme in their own field.

Parlaiament's writ over the Executive runs in various ways. This supremacy of Parliament has to be maintained and any attempt to curb its authority to give an edge to the Executive by taking recourse to various constitutional measures has to be resisted.

As regards the image of Parliament, no scientific study has been conducted. There is criticism of a gradual deterioration in parliamentary standards and the quality of debates. We often heard people even comparing the olden days of Parliament with the present, saying, "what a fall in debate, dignity and decorum". It would be wrong to assume that the new representatives who are elected are not good enough. It is true that barring a few, most might not have the benefit of a sophisticated education. That does not disqualify them nor can it be asid that they are incapable of presenting the problems of their constituents.

What is needed is a change in the system of functioning of

our legislatures. It is necessary to devise some method by which more Members could participate and contribute, which they are now unable to do especially in a large House due to lack of time. Is it not advisable to introduce the committee system as it prevails in the USA.

Parliament cannot remain the same as it was a few years ago. It has to change with the passage of time for after all, it is a living institution which represents the will, the urges and aspirations of our people.

26

CONSTITUTIONAL AMENDMENTS

S.S. Ahluwalia

In a democratic country, the Constitution is described as a "superior" or "supreme law" with "perhaps greater efficiency and authority", and "higher sanctity" and greater permanence than ordinary legislations. In principle, the nation's ideology and the aspirations of the constituent masses in a democracy are capitulated in their Constitution.

With the change of times and the emerging needs of the country, its emphasis in the governance also witness changes and since a democratic Constitution must be responsive to the changing needs of the constituent masses, the Constitution ought to have provision to amend itself in order to remove any inadequacy that may come up before the society.

Hence, while the essence of a Constitution ought to be rigid in character, a certain amount of flexibility is also to be made implicit therein because, as Pandit Nehru had observed in the Constituent Assembly, "if you make anything rigid and permanent, you stop a nation's growth, the growth of a living, vital, organic people". One cannot follow the same status forever and it has to be changed according to the changing circumstances and the demands of the political society for the improvement in its political institution.

To accommodate the emerging changes in the thrust and priorities of a nation's tryst with destiny, several provisions in its Constitution are amended from time to time which, in other words means, to repeat, substitute or add new provisions in the Constitution.

Although the conduct of all democratic societies are invariably determined by the Constitutions of their respective countries, the procedure of amending the Constitution varies from country to country.

The acts of Amendment of an unwritten Constitution like that of Britain takes place by ordinary and imperceptible process of judicial interpretation, legislation, changes in conventions and such other processes. This procedure appears to be extremely flexible if compared to the procedures involved in several other democracies, particularly in those with written Constitutions, like that of India, where the authority of the Parliament or Legislature is limited within the framework of Constitution. The Legislatures, in India cannot go beyond the limitations imposed by the Constitution, nor can the Courts which interpret the Constitution go so far as to remake it. Any change in the Constitution has to undergo rigorous procedure involving not only both the Houses of Parliament but also the Legislatures of the States. The dynamism of the American society is manifested in its apparently simple procedure prescribed for amendment of the Constitution of the United States of America. But in reality, perhaps due to the obsession of the US society with the protection of the federal character, the procedure has proved to be more conservative than the known conservative societies in the democratic world in the matter of amending the Constitution.

Article V of the U.S. Constitution provides for two different modes for proposing Constitutional amendment, viz.,

(a) Either by two-thirds vote of both the Houses of Congress; or

(b) By a convention called together on the application of the Legislatures of two-thirds of the States.

An amendment proposed in either of two ways are to be ratified by the Legislatures or by convention of States, respectively. But unless it is specified by the Congress, there is no time limit within which the States have to ratify or signify their refusal to ratify any proposed amendment. Obviously such liberty left at the disposal of the States to undermine any unitary authority over the jurisdiction of the States may, however, tend to render the fate of a proposed amendment of the Constitution uncertain and frustrate the very purpose of an amendment. For example, an amendment proposed way back in 1924 by the US Congress to regulate and prevent employment of persons below 18 years in age has not been able to secure ratification by the States till today. Perhaps to tide over such constraints, particularly of uncertainties in enforcing an amendment, changes in American Constitution have been effected more through judicial interpretations to keep pace with the changing needs of the society, than by formal amendment of the Constitution.

Among the written Constitutions, the modes of amendment of the French Republic has been simplified over the years to manifest its flexibility. The Constitution of the Fourth French Republic, was open to amendment in the ordinary process of legislation, subject only to certain specified majority. It adopted further simple modes for amendment in the Fifth Constitution of 1958, allowing both the President and the Parliament to initiate an amendment which would need to be passed by the two Chambers of Parliament - the amendment initiated and passed by Parliament shall become effective only by a referendum whereas the one initiated by the President need not be put to referendum.

But unlike Indian and other democracies, in Australia, Japan and Switzerland, amendment of the Constitution can be effected basically by referendum.

The Indian Constitution seems to have struck a balance between the complex and simple procedures for amendment and created one of the finest models. As per the Indian concept, formal amendments have an important place in a written Constitution and more so where the system is federal because for preserving the federal system the power to change the Constitutional provisions cannot be concentrated in the hands of one of the parties

alone. Keeping this factor in mind the founding fathers of the Indian Constitution have given the authority to amend the Constitution to the Parliament but at the same time has provided that certain amendments would need to be ratified by at least one half of the State Legislatures.

The Indian Constitution, which has been described as both "rigid" and "flexible", provides for three categories of amendments, as is narrated in the following pages. But the widest scope of Parliament in amending the Indian Constitution, however, is inherent in clause (5) of article 368 of the Constitution, which reads as : 'For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article'.

Clause (5) along with clause (4) of article 368 was inserted by the Constitution (42nd Amendment) Act, 1976 and came into force with effect from 3 January 1977, as a consequence of a peculiar development that arose due to observations made by the judiciary of the country who in the post-Constitution India are held to be the final authority as far as interpretation of the Constitution is concerned.

Until 1967, Supreme Court of India held that Parliament could pass a Constitution Amendment Act, in accordance with the requirements of article 368, to amend any provision of the Constitution, including the Fundamental Rights and even the provisions of article of 368 (Ref: Unanimous judgement of five-judges bench in re : **Shankari Prasad** *vs* **Union of India,** 1951; the majority judgement in **re : Sajjan Singh** *vs* **State of Rajasthan,** 1965).

But in 1967 in the historic case of **Golak Nath** *vs* **State of Punjab** a majority judgement of 6 : 5, in an eleven-member Special Bench observed that though there was no expressed exception from the ambit of article 368, Fundamental Rights included in Part III of the Constitution cannot be subject to the process of amendment provided in article 368.

However,many people argued that had it been the objective of the founders of the Indian constitution to make any of the pro-

visions unamendable or immune, they could have made a specific mention about the same at least in article 368. In the absence of any such explicit provision in the Constitution, the Courts could not arrogate the authority to imply limitations of the amending power of Parliament.

In 1973, in *Kesavananda Bharati vs State of Kerala*, the Supreme Court of India reversed its earlier decision given in the Golak Nath's case and upheld the authority of Parliament in amending any or all the provisions of the Constitution, including those related to Fundamental Rights. The Court also held that the power to amend under article 368 would be subject to certain implied and inherent limitations and Parliament would not amend those provisions which would affect the "basic structure" of the Constitution.

Incidentally, none of these judgements of the Supreme Court which dwelt upon the point of 'basic structure did try to define what the 'basic structure' is. Some individual members of the judiciary like Justice Chandrachud have, however, identified the "basic structure" as : the sovereign democratic Republic structure of polity; equality of status and opportunity of an individual; and governance by laws and not by individuals.

However, to set the prospects of controversies to rest, the Constitution of India was amended in 1976 for incorporation *inter alia* of clause (5) in article 368. Despite insertion of the said clause, Constitutional Amendments, besides other legislation, enacted by the Parliament have remained exposed to scrutiny and review by the Supreme Court.

With the passage of time, the procedure of amendment of the Constitution has established itself to be flexible enough to respond to popular aspirations. This distinction of the Indian Constitution, from those of several other democracies, is evident not only from the number of amendments (72) carried out in the Constitution but also in some of the amendments carried out subsequently to repeal the amendments enacted earlier.

For example, by virtue of the Forty-second Amendment Act, 1976, Parliament enlarged the scope of article 31C by including within its protection any law to implement any of the Directive

Principles enumerated in Part IV of the Constitution, implying, for instance, that no compensation under article 31(2) would be payable for acquisition of land if it is taken to build a school for imparting compulsory primary education.

But the Constitution (Forty-fourth) Amendment Act, 1978, besides making significant changes in the provisions of several articles, reversed some of the amendments carried out by the Forty-second Amendment Act, 1976.

Any critical analysis of the amendments enacted so far is beyond the scope of this article but it would be appropriate to highlight the Directive Principles of State Policy, enlisted in Part IV comprising of articles 36 to 51 of our Constitution, which enshrine the basic concepts of a welfare State, and continue to maintain their prestine status.

Article 37 of the Constitution states that "the provisions contained in this Part shall not be enforceable by any Court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws." Though the efforts of the State has basically veered around these "principles", citizens have no legal right to compel the State to abide by the same. For instance, the provisions of right to work, right to education and right to public assistance in certain cases, as enshrined in article 41, remain to be realised because, as the directive principles are not enforceable by any Court, it cannot be held to be law, much less constitutional law and, therefore, its non-observance by the State does not entail any legal consequence. To my mind, Parliament could have manifested greater concern for the welfare of citizens, had it exercised its authority in shifting at least some of the vital provisions from the Directive Principles to the main Constitutional provisions through amendments of the Constitution.

Amendment Procedures

There are three distinct modes of amending the Indian Constitution which are laid down in article 368 of the Constitution:

(i) Firstly, those amendments of the Constitution that can be effected by a simple majority in the same manner as is re-

quired for the passing of an ordinary law. Amendments contemplated in this category were carried out recently in the following articles :

(a) Article 4 deals with creation or reconstitution of a State within the Indian Union. The States of Arunachal Pradesh, Goa, Mizoram and the National Capital Territory of Delhi were created under this article.

(b) Article 169 (3) provides for the creation or abolition of Legislative Councils in the State Legislatures. The Legislative Councils of Punjab, West Bengal, Andhra Pradesh and Tamil Nadu were abolished under this article.

(c) Article 239-A giving authority to constitute centrally administered areas.

(d) The Sixth Schedule to the Constitution making provisions of administration of Tribal areas in North Eastern States.

(ii) Secondly, those amendments of the Constitution that can be effected by a special majority as laid down in article 368. In other words it means that all Constitutional amendments must be effected by a majority of the total membership of each House of Parliament as well as by a majority of not less than two-thirds of the members of that House present and voting.

(iii) Thirdly, those amendments of the Constitution which require, in addition to the special majority referred to in second category above, ratification by resolutions passed by not less than one-half of the State Legislatures. This category comprises amendments in the following provisions which require such ratification :

(a) the manner of election of President (articles 54, 55);

(b) the extent of executive power of the Union (article 73);

(c) the extent of executive power of State (article 162);

(d) provisions dealing with the Union Judiciary (chapter IV of part V);

(e) provisions dealing with the Courts in the States (chapter V of part VI);

(f) the setting up of a High Court in a Union Territory (article 241);

(g) Distribution of legislative powers (chapter I of Part XI);

(h) the representation of States in Parliament (Fourth Schedule);

(i) any of the lists by the Seventh Schedule; and

(j) the procedure of amendment of the Constitution (article 368 itself).

Bills to Amend the Constitution of India

A Bill to amend the Constitution of India can be introduced in either House of Parliament. It may be introduced by a Minister or a Private member. From 1952 to November 1966, amendment Bills brought forward by the Union Government were introduced by Ministers in the Lok Sabha. The first Bill introduced in the Rajya Sabha was the Constitution (Twenty-second Amendment) Bill, 1966 which was introduced by the then Minister of Home Affairs Shri Y.B. Chavan on 21 November 1966. However, this Bill was passed by the Rajya Sabha and transmitted to the Lok Sabha but it lapsed on the dissolution of the third Lok Sabha. Thereafter, between 1966 to 1988 only one Bill, namely the Constitution (Forty-first Amendment) Bill, 1975 was introduced in the Rajya Sabha by the Minister of Law, Shri H.R. Gokhale on 9th August 1975. However this Bill also met with a similar fate when it lapsed following dissolution of the Fifth Lok Sabha in January 1977.

Since March 1988, several Constitution (Amendment) Bills proposed by Government were introduced in the Rajya Sabha namely: (a) The Constitution (Fifty-ninth Amendment) Bill, 1988; (b) The Constitution (Sixty-first Amendment) Bill, 1988; (c) The Constitution (Sixty-second Amendment) Bill, 1989; (d) The Constitution (Sixty-fourth Amendment) Bill, 1990; (e) The Constitution (Seventieth Amendment) Bill, 1990; (f) The Constitution (Seventy-first Amendment) Bill, 1990; (g) The Constitution (Sev-

enty-sixth Amendment) Bill, 1992; and (h) The Constitution (Seventy-ninth Amendment) Bill, 1992.

The procedure which is followed before and after the introduction of a Constitution (Amendment) Bill is similar to that of an ordinary Bill. The proposed Bill is circulated to the members in advance by the Secretariat of the House in which it is sought to be introduced. The day on which the Bill is included in the List of Business, the member-in-charge moves for leave of the concerned House to introduce the Bill. Generally introduction of such Bills is not opposed. However, instances are there when introduction of Constitution Amendment Bill was opposed. For instance, on 24 November 1988 the motion for leave to introduce the Constitution (Sixty-first Amendment) Bill, 1988 by Shri P. Shiv Shankar, the then Minister of Human resource Development was opposed in the Rajya Sabha. As is the normal practice the fate of the Bill is decided by division with the simple majority as was done in the instant case. On the motion thhe House was divided as: Ayes : 51; Noes : 34.

The motion was accordingly adopted and the Bill was introduced.

Passage of Constitution Amendment Bills

A Constitution Amendment Bill, with exception to some articles and Schedules which can be amended by simple majority even without treating them as Constitution Amendment Bills, has to be passed by each House of Parliament by a special majority, *i.e,* majority of the total membership of that House and by a majority of not less than two-thirds of the strength present and voting in the House. Abstention in a voting on Constitution Amendment Bill will imply that the member does so only to indicate his intention to abstain from voting. As such he does not record his vote within the meaning of the word 'present & voting'. The term "present & voting" implies voting in favour or against the motion at the time of voting. This opinion of the Attorney-General finds place in rules 155, 157 and 159 of Rules of Procedure and Conduct of Business in Lok Sabha and almost uniform procedure is followed in the Rajya Sabha. Accordingly, the requirement of special majority has been adopted for all the stages of the Bill right from the stage of introduction of the motion that the Bill be taken

into consideration. A number of Constitution Amendment Bills have fallen through on this account. The first Bill in this regard was the Constitution (Seventeenth-Amendment) Bill, 1963 which was introduced in the Lok Sabha on the 6 May 1963. The Bill was referred to Joint Committee of the Houses. On the 28 April, 1964 the Bill, as reported by the Joint Committee was taken up for consideration by the Lok Sabha. The motion for consideration of the Bill could not muster the special majority prescribed by article 368 of the Constitution and the Bill fell through as the motion for consideration of the Bill was declared as not carried in accordance with the provisions of the Constitution.

Similarly on 5 September 1970 the motion for consideration of the Constitution (Twenty-fourth Amendment) Bill, 1970, as passed by the Lok Sabha, was put to vote in the Rajya Sabha and the Houses divided : Ayes: 149; Noes: 75. To qualify the requirement of 'two-thirds of present and voting' the requirement was short by only one-fourth of a vote and the motion for consideration of the bill was declared as not carried in accordance with the provisions of article 368 of the Constitution and the Bill fell through. The Constitution (Sixty-fourth Amendment) Bill, 1989 and the Constitution (Sixty-fifth Amendment) Bill, 1989 also met with the same fate in the Rajya Sabha on 13 October 1989. The "special majority" norm is also followed in passing of each clause and schedule to the Bill and finally for the motion that the Bill be passed. Other motions such as the Bill be referred to Select Committee of the House or Joint Committee of the Houses or Bill be circulated for eliciting public opinion thereon are passed by simple majority only. Similarly the short title, long title and enacting formula and amendments to clauses or schedules are also adopted by simple majority. After a Constitution Amendment Bill is passed by one House in accordance with the provisions of article 368 of the Constitution it is transmitted to the other House through a message. The other House may agree with the Bill as such or may return the Bill with amendments. So far, only one Bill each, has been amended by Lok Sabha and Rajya Sabha. The Constitution (Forty-fourth Amendment) Bill, 1978 was amended by the Rajya Sabha whereas the Constitution (Seventy-sixth Amendment) Bill, 1992 was amended by the Lok Sabha. The Amendment made by the other House has to be agreed to by the originating House;

otherwise the Bill will become dead as there is no provision for joint sitting in respect of Constitution Amendment Bills. Because of this fact, both the Houses had in these cases agreed to the amendments made by each other in the Constitution Amendment Bills.

Every motion regarding a Constitution Amendment Bill and clauses and schedules thereof, which has to be carried by a special majority, has to be adopted by compulsory division. The Chairman in the Rajya Sabha and the Speaker in Lok Sabha while announcing the result of the division makes a special mention that the motion/clause has been carried by a special majority prescribed by article 368 of the Constitution.

Ratification by State Legislatures

Amendments which seek to make any change in the provisions referred to in the proviso to clause (2) of article 368 of the Constitution require in addition to the special majority in Parliament ratification by resolutions passed by not less than one-half of the State Legislatures to that effect before the Bill is presented to the President for assent. Though there is no time limit stipulated in the Constitution for the ratification by the States, a convention of 2/3 months has been set in and even in some instances it was done within a week's time. For instance the Constitution (Thirty-ninth Amendment) Bill, 1975 was passed by Lok Sabha on 23 July 1975 and by the Rajya Sabha on the 24 July 1975.

The Bill was assented to by the President on the 1 August, 1975 after being ratified by the requisite number of State Legislatures. Similarly the Constitution (Fortieth Amendment) Bill, 1975 was passed by Lok Sabha as well as by Rajya Sabha on the 8 August 1975 and the Bill was assented to by the President on the 10 August, 1975 after being ratified by at least 17 State Legislatures.

Till now 74 Constitution Amending Bills (including the two on *Panchayati Raj* and Municipalities) have been passed by the Houses of Parliament. Out of the 74 Bills 31 were ratified by the State Legislatures (the Constitution Amendment Bills on *Panchayati* Raj and Municipalities are still under ratification process.

By including these two ratifications, 33 would be ratified by the State Legislatures. The resolution of a State Legislature ratifying a Constitution Amendment Bill generally reads as under :

> That this House ratifies the amendments to the Constitution of India falling within the purview of clauses and of the proviso to clause (2) of article 368 there of proposed to be made by the Constitution (--th Amendment) Bill, 19- , as passed by the House of Parliament".

Assent to Constitution Amendment Bill

After a Constitution Amendment Bill has been passed by both the Houses of Parliament and if it does not attract the provisions contained in the proviso to clause (2) of article 368 of the Constitution, it is presented to the President for his assent by the Secretariat in whose possession the Bill lies after being passed by both the Houses of Parliament through the Ministry of Law (Legislative Department). Two assent copies are endorsed by the Chairman/Speaker with a certificate to the effect that the Bill has been passed by the Houses of Parliament in the following form:

> 'The above Bill has been passed by the Houses of Parliament in accordance with the Provisions of article 368 of the Constitution'.

Where a Constitution Amendment Bill which has been ratified by the State Legislatures under the proviso to clause (2) of article 368 of the Constitution, the endorsement on the assent copies is made in the following form:

> 'The above Bill has been passed by the Houses of Parliament in accordance with the provisions of article 368 of the Constitution and has also been ratified by the Legislatures of not less than one-half of the States by resolutions to that effect as required under the proviso to clause (2) of the said article'.

When the assent copies are submitted to the President he has to assent such a Bill because President cannot withhold his assent on a Constitution Amendment Bill.

Some historical facts about Constitution Amendment Bills in India

The Constitution of India came into force on the 26 January 1950. It was amended for the first time through the Constitution (First Amendment) Act, 1951 by the provisional Parliament by which clause (4) was added to article 15 empowering the State for making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Some other amendments were also made by it. The Lok Sabha was constituted in 1952 and Rajya Sabha also came into existence in the same year. The First Constitution Amendment Bill passed by the Parliament was in fact the Constitution (Second Amendment) Bill, 1952 which was introduced by the then Law Minister Shri C.C. Biswas in the Lok Sabha on the 18 June 1952. This Bill was referred to Select Committee of Lok Sabha on 11 November 1952 and the report was presented within a week on 18 November 1952. The Bill was passed by Lok Sabha on 15 December 1952 and Rajya Sabha on 19 December 1952.

The first Constitution Amendment Bill which was referred to Joint Committee of the Houses was the Constitution (Third Amendment) Bill, 1954 which was introduced in the Lok Sabha on the 6 September 1954. The first Constitution Amendment Bill which lapsed due to the dissolution of the Lok Sabha was the Constitution (Fifth Amendment) Bill, 1955 which was introduced in the Lok Sabha by the then Minister of Law Shri C.C. Biswas on 21 November 1955. The Bill had lapsed on the dissolution of the First Lok Sabha.

The first Constitution Amendment Bill which was withdrawn in either House of Parliament was the Constitution (Sixth Amendment) Bill, 1955 which was introduced by the then Minister of Law Shri C.C. Biswas in the Lok Sabha on 21 of November, 1955. The Bill was withdrawn in the Lok Sabha on the 18 April, 1956. The First Constitution Amendment Bill which fell through in the Lok Sabha was the Constitution (Seventh Amendment) Bill, 1955 which was introduced in the Lok Sabha on 28 November, 1955. The motion for reference of the Bill to a Select Committee of the Lok Sabha was moved in the Lok Sabha on 30 November,

1955. The motion could not be carried as it did not obtain the support of the special majority as required by rules and the Bill fell through.

The First Constitution Amendment Bill which was negatived after the motion for consideration of the Bill was declared as not carried in accordance with the provisions of article 368 of the Constitution was the Constitution (Seventeenth Amendment) Bill, 1963 introduced in the Lok Sabha by the then Minister of State to the Ministry of Home Affairs Shri Hajaran on 6 May 1963. The motion for consideration of the Bill could not get through in Lok Sabha on 28 April 1964.

The First Constitution Amendment Bill introduced and passed in Rajya Sabha was the Constitution (Twenty-second Amendment) Bill, 1966 which was introduced by the then Minister of Home Affairs Shri Y.B. Chavan in the Rajya Sabha on 21 November, 1966. The Bill was passed by the Rajya Sabha on the 9 December 1966. The Bill remained pending in Lok Sabha and lapsed on the dissolution of Third Lok Sabha. The first Constitution Amendment Bill which was withdrawn after the presentation of the report by the Joint Committee on the Bill was the Constitution (Twenty-second Amendment) Bill, 1968 introduced in Lok Sabha on 10 December 1968. The Joint Committee presented its report on 12 March 1969. The Bill was withdrawn in Lok Sabha on 2 April 1969.

The First Constitution Amendment Bill negatived in the Rajya Sabha was the Constitution (Twenty-fourth Amendment) Bill, 1970 which was introduced in Lok Sabha on 18 May 1970. It was passed by Lok Sabha on 2 September 1970. The Bill was taken up for consideration in the Rajya Sabha on 5 September, 1970 and the motion for consideration of the Bill was declared as not carried in accordance with the provisions of article 368 of the Constitution. The first Constitution Amendment Bill which lapsed while being under scrutiny of Joint Committee was the Constitution (Thirty-second Amendment) Bill, 1973 which was introduced in the Lok Sabha on the 16 May 1973. The Bill was referred to the Joint Committee of the Houses. The Bill lapsed on the dissolution of Fifth Lok Sabha without being reported by the Joint Committee.

A chapter on Fundamental Duties was added to the Constitution by Constitution (Forty-second Amendment) Act, 1976.

Efforts were made to amend the various provisions of the Constitution by Constitution (Forty-second Amendment) Act, 1976 and similar exercise was undertaken by way of the Constitution (Forty-fourth Amendment) Act, 1978 which reversed the amendments done by the 42nd Amendment Act. If we look at the subject matters of Constitution Amendment Bills in India we find that the First Schedule has been amended maximum times through Constitution Amendments. It has been amended as many as five times and each time a new State was created within the Union. Article 356 has been amended six times only to extend President's rules in the State of Punjab. This was done through the 48th, 59th, 63rd, 64th, 67th and 68th Amendment Acts to the Constitution. At the same time we find that some articles which ought to have been amended because they have become outdated have not been amended so far. Take for example, article 45 of the Constitution, which directs the State to provide compulsory education to children below fourteen years of age within ten years of the commencement of the Constitution. Now this is the forty-fourth year of our republic but neither the time of ten years has been extended nor free and compulsory education is being provided to the children. Similarly, article 343 which declares Hindi to be our official language and provides that English shall continue to be used for fifteen years for official purposes after the commencement of the Constitution. This article has also not been touched so far by the Parliament. There are several other articles of the Constitution which needs to be reviewed and amended for which we may hope that the needful will be done in due course by our Parliament.

To conclude, we may say that though our Constitution is a writen one and also federal in character, but for the amendment, our Constitution has avoided those difficult processes as contemplated by the U.S. and Australian Constitutions. Our Constitution in this respect is partly flexible and partly rigid. It has been changing according to the demands and for the improvements in our political institutions. We hope, in future too, our Constitution will continue to guide our destiny.

27

Reforming The Government — The Presidential Alternative ?

J. K. Jain

Let it be recognised at the very outset that it may be unwise to seek drastic, sweeping and sudden changes in the structure of Government unless this becomes absolutely necessary since it would in the first place, be a task of gigantic proportions. Moreover, the outcome of such changes can never be perfectly predicted. Evolutionary change is one of the fundamental principles that underlines a democratic polity, and it is not through abrupt radical legislation that new directions are to be sought, but rather through the gradual development of ideas in the public consciousness.

However, a time comes when an idea ripens to fruition, and it is the duty of the leadership of a nation to take it up for very serious consideration even if it involves a dramatic break with the past. The proposal to replace the prevailing system of Parliamentary democracy with a Presidential system such as that which exists in USA has been doing the rounds for some years now.

The idea of a Presidential form of Government is not new, and was, in fact, considered (though perhaps summarily) by the

framers of India's Constitution. It was, however, rejected as unsuitable for the Indian condition primarily perhaps, because the leadership of the freedom struggle had a clearer understanding and certainly some experience, in the operation of the Westminster model that was eventually selected.

It will, nonetheless, be edifying to recall the reasons that were given for favouring the Westminster model over the American Presidential system. Dr. B.R. Ambedkar, as Chairman of the Drafting Committee, made an authoritative statement justifying this preference in his introduction to the Draft Constitution in the Constituent Assembly on 4 November, 1948[1].

> A democratic executive must satisfy two conditions: (i) it must be a stable executive, and (ii) it must be a responsible executive. Unfortunately, it has not been possible so far to devise a system which can ensure both in equal degree. You can have a system which can give you more stability but less responsibility or you can have a system which gives you more responsibility but less stability. The American and Swiss systems give more stability but less responsibility. The British system on the other hand, gives you more responsibility but less stability. The reason for this is obvious. The American executive is a non-parliamentary executive which means that it is not dependent for its existence upon a majority in the Congress, while the British system is a Parliamentary executive which means that it is dependent upon a majority in Parliament. Being a non-Parliamentary executive, the Congress of the United States cannot dismiss the Executive. A Parliamentary Government must resign the moment it loses the confidence of a majority of the members of the Parliament.

Looking at it from the point of view of responsibility, Dr. Ambedkar pointed out :

> A non-Parliamentary executive, being independent of Parliament, tends to be less responsible to the

> Legislature, while a Parliamentary executive, being more dependent upon a majority in Parliament, becomes more responsible. The Parliamentary system differs from a non-Parliament system inasmuch as the former is more responsible than the latter but they also differ as to the time and agency for assessment of their responsibility. Under the non-Parliamentary system, such as the one that exists in the United States of America, the assessment of the responsibility of the executive is periodic. It takes place once in two years. It is done by the electorate. In England, where the Parliamentary system prevails, the assessment of responsibility of the executive is both daily and periodic. The daily assessment is done by members of Parliament through questions, resolutions, no-confidence motions, adjournment motions and debates on Addresses. Periodic assessment is done by the electorate at the time of the election which may take place every five years or earlier. The daily assessment of responsibility which is not available under the American system is, it is felt, far more effective than the periodic assessment and far more necessary in a country like India. The Draft Constitution in recommending the Parliamentary system of executive has preferred more responsibility to more stability.

This was Dr. Ambedkar's and the majority of the Constituent Assembly's rationale in choosing the Parliamentary system for India. We now have over four decades of experience of the functioning of the system to evaluate the soundness of this logic. However, it needs to be pointed out that the weaknesses of the system were already evident to some even at that time. Shri Karimuddin had stressed that a Parliament executive as contemplated in the Draft Constitution was bound to be weak and vacillating, as the Ministers had to depend on communally minded supporters.[2] Shri Ramnarayan Singh was in favour of all powerful Presidents who would be responsible for the work done and who will choose their Ministers and Secretaries.[3] Supporting this view, Shri Shibban Lal Saxena pleaded strongly for a President elected

by adult suffrage to be in charge of the nation with the right to choose the executive.[4] These misgivings were confirmed even in the early years of independence and Shri K.M. Munshi, an eminent jurist and a leading member of the Drafting Committee of the Constituent Assembly, commented on the experience of the first 17 years of the Constitution:

> Those of us who supported the British Cabinet system, to which we were accustomed, thought that it would work effectively in India, but I must confess that we have failed to evolve the two-party democratic system.[5]

It is felt that a Presidential system would ensure that the entire electorate votes on national as opposed to regional issues, since the President would require wide support from all parts of the country. His campaigns, consequently, would be based on a unifying platform that would emphasise the common heritage and problems of this country, and would tend to help people perceive themselves as possessing common goals and interests. Eventually, with the political system oriented towards a nationalistic ideology, the fissiparous trends would tend to grow weaker.

The instability that was believed to be an inevitable price to pay for the responsibility of the Parliamentary form of Government has become too costly for the nation, without any real benefit in terms of a more accountable system sensitive to the needs of the poor and the needy. With a succession of minority Governments, defections, splits, and a politics of conflict, the developmental efforts of the Government have suffered considerably. Moreover the experience of frequent mid-term polls, the drain on the exchequer, and the paralysis of the decision-making machinery during election time has become unbearable for the economy.

What is more, the Parliamentary system as prevalent in India, distorts the actual preferences expressed by the electorate. It has been seen in the past that most parties project, not a coherent ideology, set of issues of public policy, or any clearly defined stand, but rather a single or a group of charismatic leaders. Evidently, if the people's sentiments and aspirations are directed

towards a single leader, it would be much fairer to allow them to directly choose him or her.

In comparison with these drawbacks of our system, the Presidential system offers a better option. In the first instance, the people vote exactly for what they want. The Presidential candidates are clearly identified with a set of programmes that they represent, and the people are free to choose the individual or programme they prefer. Moreover, the President, once elected, does not have to carry the onerous burden of a recalcitrant Parliament that dogs his step. His existence in office is not threatened by every group of malcontents to come along, nor does he have to appoint Ministers because they are in a position to pressurise him. In other words, the President is an executive head of Government who is actually empowered and free to exercise his functions to the best of his abilties.

In the event of the failure of the Government to tackle national issues, moreover, there are no alibis available to the President, as he is responsible for everything his Government achieves or fails to do. He selects his own team and is consequently answerable for their follies and failure, as he must be for his own.

It is, moreover, not true that the President in the American system is accountable only to the electorate at the polls. The American Legislature is not altogether toothless, and every major policy decisions of the President is discussed and endorsed or rejected by it. Of course, the President exercises veto powers. But then, again, it would not be possible for him to identify with a particularly unpopular policy, since the moral authority of the Congress and the Senate is great, and he would eventually have to contend with the turning tide of public opinion as well.

Indeed, the American system, with its commitment to freedom of information, is far more responsive and accountable. Even in matters of appointments to high offices, such as those of judges to the higher judiciary, it has been seen that the Senate and the Congress possess the powers to block the appointment of candidates favoured by the President.

The clinching argument, to my mind, is the complete separation of powers that is possible under it. In the Parliamentary system, even if the independence of the judiciary is guarded very much, the fact that the Executive is drawn from the majority party in Parliament makes the separation of the executive and legislative functions impossible. Such a separation is essential if the basic features of democratic Government are to be protected in a political system reflecting the contradictions and conflicts of Indian society. The requisite separation of powers is possible only under a Presidential form of Government, and, in a system so completely dominated by feudal sentiments, a truly democratic polity can emerge only under this form of political organisation.

The matter, however, is not as simple as that. A shift from a Parliamentary to a Presidential form of Government would perhaps involve amendments to what would be conceived as the basic structure of the Constitution, and at the present stage of jurisprudential development, this has been placed outside the scope of the powers of the Legislatures. Nor does the Constitution define any alternative procedure for amending the Constitution, or for appointing another Constituent Assembly to redraft the constitution (and a substantial redrafting would certainly be required if the requisite changes are to be made).

Far from being disadvantages, these are, in fact, guarantees that no hasty changes will be brought about. Clearly, the only available method of introducing constitutional changes of such a magnitude is to carry the debate on the Parliamentary Vs. Presidential system to the people, and, if the pressures of public opinion reach a certain level, it will be necessary for the political leadership to then devise methods to give concrete shape to the people's aspirations. Since the Constitution was given by the people of India to themselves, clearly, it is only they, who can collectively sanction fundamental changes in its structure. When the debate on this issue breaks out of the sphere of the intelectuals and the political leadership of this country, and spills into the streets and hearts of the people, it would, perhaps, be possible to explore the option of a national referendum to decide the matter.

END NOTES

1. c.f.B. Shiva Rao, *The Framing of India's Constitution: Select Documents*. Vol. V. Indian Institute of Public Administration, 1968. pp. 341-42.
2. *Ibid*. p. 342.
3. *ibid*.
4. *Ibid*. p. 343.
5. Munshi, K.M.,*Pilgrimage to Freedom*, p. 274.
6. c f. Chapter entitled 'Parliament in India : Between the Intention and the Execution.'

28

Constitution Of India In Precept And Practice

Satya Prakash Malaviya

The Constituent Assembly which was constituted to draft the Constitution of India worked during the period 1946 to 1949. On 26 November, 1949, the Constitution was finally adopted and it came into force from 26 January, 1950. The present Articles 355 and 356 of the Constitution were the draft articles 277-A and 278 of the draft Constitution. Both the articles were considered, debated, discussed .and adopted by the Constituent Assembly on 3 and 4 August, 1949 and they read as:

> Article 355. *Duty of the Union to protect states against external aggression and internal disturbance :* It shall be the duty of the Union to protect every state against external aggression and internal disturbance and to ensure that the Government of every state is carried on in accorance with the provisions of this Constitution.
>
> Article 356. *Provisions in case of failure of constitutional machnery in States :* (1) If the President, on receipt of a report from the Govrernor of a State or otherwise, is satisfid that a situation has arisen in which the Government of the State cannot be

> which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may, by Proclamation -
>
> (a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State.
>
> (b) declare that the powers of the Legislature of the state shall be exercisable by or under the authority of Parliament;
>
> (c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provision of this Constitution relating to any body or authority in the State.

The *Ram Janma Bhoomi-Babri Masjid* structure at Ayodhya was demolished on 6 December 1992. It is improtant to note that at the meeting of the National Integration Council (NIC) which met on 2 November 1991 during discussions, the then Chief Minister of Uttar Pradesh gave an assurance that pending a final solution, the State Government would hold itself fully responsible for the protection of the *Ram Janma Bhoomi-Babri Masjid* structure. The said assurance was incorporated in the resolution passed by the NIC.

The NIC again met on 23 November 1992 and addrressing the meeting, the Prime Minister Shri P.V. Narasimha Rao said :

> We last discussed this issue on the 18th of July this year. Useful discussions were held but we did not succeed in passing any resolution, in view of opposition of some of our friends here. We took note of the construction that was going on in violation of the orders of the Court, in particular, the order passed

> by the High Court on 15 July, 1992. By this order of the 15th July the High Court had restrained the Parties from undertaking or continuing any construction activity on the 2.77 acres of land which had been notified by the Government of U.P. for acquisition. The Court had also directed that if it was necessary to do any construction on the land, prior permission from the Court could be obtained. The Chief Minister of Uttar Pradesh assured the NIC that his Government was making sincere efforts to stop the construction. Despite the assurance given by the Chief Minister, the construction activity did not stop.

The Prime Minister in efffect said that the construction proceeded in violation of the Court's order and High Court's order passed on 15 July 1992. In this meeting, the NIC after considering all aspects of the *Ram Janma Bhoomi-Babri Masjid* dispute and the report of the Government, extended its whole-hearted support and cooperation in whatsoever steps the Prime Minister considered esential in upholding the Constitution, the rule of law and in implementing the Court's order.

As the subsequent events showed, the U.P.Government had miserably failed to prevent the violation of the High Court's order. By 5 December 1992 it was evident that a situation had arisen in which the Government of U.P. could not be carried on in accordance with the provisions of the Constitution but the Union Government did not invoke article 356. The developments in Ayodhya could have been avoided had the Union Government been alive to the situation and timely invoked articles 355 and 356 of the Constitution. The Union Government, to my mind, also failed to take note of the utterances of the Chief Minister that the subject matter was a matter of faith and Courts could not decide on matters of faith.

On 21 December 1992, speaking in the Lok Sabha on a motion of no-confidence in the Council of Ministers moved by Shri Atal Bihari Vajpayee and others, the Prime Minister observed thus:

> The question is what had happened to the Constitution of India in this process. It lies shat-

> tered. What happens to article 356 ? It lies shattered. I would like constitutional experts to go into it where is it that the President of the Union finds that a situation has arisen whereby the governance of the State cannot be carried on according to the Provisions of the Constitution? What is that precise point? We have dismissed State Governments times without number. But in no case was the practical implication of article 356 tested.... When does that moment arise when we come to the conclusion that the governance of the State cannot be carried on according to the provisions of the Constitution? If only one word had been there, in article 356 which says "a situation has arisen" - if after that it could have been added -"is likely to arise", then the Governor gets, the President gets a greater leeway. But then, one has to go into a greater detail. This is the first time in the history of the Constitution, in the histroy of article 356 when it has been put to a test, it was never put to before and it has not been able to stand to the test. Never mind who used it, never mindwhodid not use it, howsoever you look at it, you will find that there is a lacuna and that would have to be made good.

It has been said a number of times that it is not the Constitution that has failed but those entrusted with the duty of working the Constitution have failed. I am alive to the remarks of Justice V.R. Krishan Iyer, a former Judge of the Supreme Court and a constitutional expert, who in his article titled "*Some Mutational Reflections on the Constitution*" wrote that article 356 cannot be converted into a constitutional terrorism or political nostrum for resolving other problems.

On 26 November 1949,the day the Constitution was adopted Dr. Rajendra Prasad, the then President of the Constituent Assemmbly, said thus :

> Whatever the Constitution may or may not provide , the welfare of the country will depend upon the way in which the country is administered. That will de-

> pend upon the men who administer it. It is a trite saying that a country can have only the Government it deserves. Our Constitution has provision in it which appear to some to be objectionable from one point or another. We must admit that the defects are inherent in the situation in the country and the people at large. If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the Country.

He added prophetically:

> After all, a Constitution, like a machine is a lifeless thing. It acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them. There is a fissiparous tendency arising out of various elements in our life. We have communal differences, caste differences, language differences, provincial differences and so forth. It requires men of strong character, men of vision, men who will not sacrifice the interests of the country at large for the sake of smalller groups and areas, and who will rise over the prejudices which are born of these differences. We can only hope that the country will throw up such men in abundance.

It was on 6 December 1956 that the Chief architect of our Constitution, Babasaheb Dr. Bhimroa Ramji Ambedkar passed away and ironically it was on 6 December that the events in Ayodhya took place. People's faith in the Constitution, Parliament, Judiciary and Executive stood shaken.

Introducing the draft Constitution as finalised by the Drafting Committee and moving the resolution that it be taken into consideration in the Constituent Assembly on 4 November 1948, Dr. Ambedkar said:

> The Constitution, as settled by the Drafting Com-

> mittee is workable; it is flexible and it is strong enough to hold the country both in peace time and war time. Indeed, if I may say so, if things go wrong under the new Constitution, the reason will not be that we had a bad Constitution. What we will have to say is, that man was vile.

Further on 25 November 1949, Dr. Ambedkar had remarked in the Constituent Assembly:

> I feel however good a Constitution may be, it is sure to turn out bad becuase those who are called to work it, happen to be a bad lot. However bad a Constitution may be it may turn out to be good if those who are called to work it happen to be a good lot.

Participating in the Constituent Assembly debates on draft article 277-A (now 355) on 3 August 1949 Shri H.V. Kamath observed:

> We have laid according to this article certain duties upon the Union Government. Firstly, it should defend every constituent unit against any external aggression. Secondly, it should protect the State against internal distrubance. I suppose Dr. Ambedkar and the Drafting Committee mean that the Union Government should prevent any internal distrubance from occurring in the States. Lastly, the duty is laid upon the Union Government to see that the Government of every State is carried on in accordance with the provisions of the Constitution. As regards the last, I am wholeheartedly in agreement with that provision that the Union Government should make it a point to see that every State honours and observes the Constitution in letter as well as in spirit.

In my opinion, in the case of the Ayodhya incidents, the Union Government did not rise to the occasion. I do not agree with the view that because of a lacuna in article 356, the Government could not take action against the U.P. Government. The defect lies not in articles 355 or 356 but the failure on the part of the Union Government to invoke them at the proper and appropriate time.

29

Role Of Individual And Independent Members

Ghulam Rasool Matto

I became the member of Rajya Sabha in 1982. At that point of time, there were three members in Rajya Sabha belonging to Jammu & Kashmir National Conference which constituted 3/4th of the total strength of the Members in Rajya Sabha from the State of Jammu & Kashmir.

Despite the strength of our party we were able to get very little time to participate in the discussion in the House. The time is allotted by the Chair on the basis of the strengh of the Party or the Group. The total number of membership in the Rajya Sabha is 245. So if one hour is allotted for discussing a subject, it works out to less than 0.25 minutes per member. Even for a 4-hour discussion, only one minute per member is his due share. Sometimes when the Chair was generous enough, we got even 5 minutes to discuss an important issue. During those days, we had important matters about Kashmir to discuss almost everyday but we could not do justice to discussing these issues in the Parliament. In the mean time, one of our Members retired and the National Conference was left with only two members. The same position obtained with Congress (S). They also had a strength of

two or three members. There were other parties also who had a strength of only one or two members like R.S.P., Forward Bloc , Muslim League, Akali Dal, Sikkim Congress, Congress (J), etc. There were some independents also.

Shri S.W. Dhabe of the Congress (S) and myself met and mooted the idea of having a united party of all such individuals and groups but the rules of the Rajya Sabha came in our way. No such group with such heterogeneous composition could be re-congnised by the Rajya Sabha Chairman.

We then held a bigger meeting in which some senior leaders like late Sankar Prasad Mitra, former Chief Justice of the Calcutta High Court and Shri A.G. Kulkarni, the veteran Parliamentarian also participated. The idea of a group of 5 or above being recognised by the Chairman stipulated that they should belong to a party which has a definite constitution and programme. But we had individuals and groups having opposite views on national issues or subjects under discussion in the Parliament and hence the question of being recognised as a Group could not arise.

We decided to make a representation of the Chairman that he should recognise this Group only for the purpose of allotment of time for discussion and not for any other privilege as is given to a Group. The late Sankar Prasad Mitra personally met the then Chairman, late Justice M. Hidayatullah in this connection.

The case was well argued and the Chairman granted recognition to the Group which we then called as "United Association of Members" (U.A.M.) for the purposes of allotment of time only. Each group or individual had his own policy on any subject being discussed but for the purposes of allotment of time for discussion of a subject in the House the Group would be recognised.

About 24 members enrolled in the U.A.M., including one Independent member from Jammu & Kashmir, and elected Shri A.G. Kulkarni as the Leader and Chief Spokesman, Shri S.W. Dhave as Chief Whip and myself as Whip. Myself and Shri. Dhabe would coordinate the working of the Group. If there was a 4-hour discussion on any subject, our group would be allotted the time for 24 members. As the Whip of the Party, I would approach each member of the group to know if he was interested to speak on the

subject or a Bill which was on the agenda of the Rajya Sabha for the day or on a subject of his interest. For instance, I was interested in discussion on Kashmir and I would automatically be the concerned speaker if it was discussed. Similarly, another member Lt. Gen. J.S. Aurora (retd.) would speak on Punjab. Shri A.G. Kulkarni would always be our spokesman for asking clarifications on a statement made in the House on finance or general law and order situation. While discussing Bills, I would ask every member if he was interested in speaking on the subject. In fact I would prompt and motivate members to speak. I tried to make the whole Group speak on one or the other Bill in his individual capcity.

In a day-long discussion, we had enough time for two members to participate in the discussion but otherwise one Member always participated.

As our time was already fixed, we would be called upon to speak and as Whip of the Group, I could have already given the name of the member who would speak on that subject. As we were not a Group in the technical sense of the word as per the rules, our Group's number came only in the last to speak. I recall that on no occasion (except at the time of seeking clarifications to a Statement made in the House) the concerned speaker of our Group did have less than seven to ten minutes to speak and in a day-long discussion on a subject, the members would speak for 15 to 20 minutes. I was also interested in Economics and in the discussion on budget, I used to speak for half-an-hour

After Shri Kulkarni joined the Congress (I), Shri S.W. Dhabe became our Leader and Chief Spokesman and myself Chief Whip / Whip. On shri Dhabe's retirement, our Group shrunk in size but remained active and working. Then I became the Chief Spokesman-cum-Chief Whip.

I had to work very hard. I had to evolve the day's strategy according to the agenda of the day. I also had to know when a Statement will be made in the House so as to nominate the speakers. I was generally present in the House throughout the day.

Sometimes very piquant situations also arose. Generally when Bills were discussed we were reminded to give the name of our speaker to the Chair. I would sometimes fail to persuade any

member to speak. Perforce, I had to participate in the discussions. There were occasions when I had to speak even 3 or 4 times a day. There were occasions but very rarely when two members wanted to speak on a subject when the discussion on it was for a short time.

The Group continues to function even today. For personal reasons, I had to stop being very active, although I am a member of the group. At present the group with a different nomenclature is functioning with Dr. Subramaniam Swamy as the Chief Spokesman.

The experiment has worked very well and needs to be emulated by the other House of parliament as also by State Legislatures. This experiment has given an opportunity to many back benchers to speak frequently and for a longer period of time than they could ordinarily get. All this is being done without violating the rules of the House of compromising the stand of the particular member on the issue. Of course, this arrangement needs to be understood in its essence by those who participate in such a Group. The main idea that has to be kept in view for each member of such a Group is that he should think whether he would be better off being a part of such an arrangement or fighting the battle alone for getting more time and having impetus to speak on more and more subjects on more and more occasions. The odds are heavily in favour of participation in such a Group for individuals and very small groups. This experiment has proved very successful in our case. In general terms, it means that under such an arrangement more and more individuals and independent members and very small groups will be able to take effective part in the proceedings of the House.

30

Some Issues of Electoral Reforms in India

Chaturanan Mishra

It is a matter of pride for all of us that we have in India, since independence, an uninterrupted democratic systm of Government based on adult franchise. The whole world is gradually moving towards democratic system of Government. In Kingship, dictatorship, including dictaatorship of proletariat succession, leads to violent struggle including civil wars whereas there is an orderly and smooth succession in democracay. In a democracy, people have a sense of participation in forming the Government and hence it is the best form of Government.

The most important criteria of democracy is to have free and fair elections. It is here that some deficiencies have recently crept in our democratic system. In India, we had one of the longest periods of feudal system based on various layers of caste system which denied even basic human rights to the lowest strata of society. We have a modern Constitution but that Constitution has so far not become the way of life of our people and the old

caste and feudal system, despite being anemic, continues in real life, particularly in the villages. In pursuance of this, the weaker section in many places are not allowed to cast their votes. In the 1984 elections, after addressing a meeting in the district of Aurangabad of Bihar, I was going to leave when a group of villagers, mostly *dalits* came near and asked me, what is the use of delivering such lectures when so far in our life we have not seen what a ballot paper is. If booth-capturing continues a day will come when we will have only the signboard of democracy. Election Commission, in its various reports, has mentioned this but in successive elections, impersonations and booth capturing are increasing by threatening the very base of our democracy. Various institutions, seminars, workshops, committies like the Justice Tarkunde Committee and Parlimentary Committees have examined this issue and given their opinions and recommendations. All the Governments had during the last one and half decade promised various electoral reforms but no one fulfilled it.

The question is how to check large-scale impersonations or booth capturing ? identitvcards can check impersonations to a great extent. In the Municipal Election in Sikkim and Andhra Pradesh, indentity cards were issued to the voters and the experiment worked well. While this practice should be introduced the main effort should be to rouse the consciousness of th people which can ensure full guarantee against impersonation.

In my opinion, we should switch over to the 'List System' of election in the State Assemblies. If this comes into force then for instance.he whole of Bihar would be one constituency It would be difficult to capture such a large number of booths. Caste and communal appeals, though not ruled out, but also be substantially weakened. Since we are having coalition Government even under the present system we will have no difficulty in the lists system of election. After experimenting the lists system in the State Assemblies, we can later on experiment it for Lok Sabha elections. One benefit of this system is that all the parties who have even the minimum strength get represented in the Legislature thereby reflecting the true feeling of the people. In the present system minority votes succeed to get majority seats in Parliament and State Assemblies. Lists system will to a great extent reduced the number of independent

candidates also, which recently has gone abnormally high.

If we want to stop booth capturing in the practical sense, then we will have to go beyond the election laws and break the feudal hold in the villages by having proper land reforms, etc. because it is the feudal lords who maintain their hold on the society and indulge in activities such as booth-capturing. Dr. Ambedkar has rightly observed in his speech in the Constituent Assembly on 25 November 1949 :

> On the 26 of January 1950 we are going to enter into a life of contradictions. In politics, we will have equality and in economic and social life, we will have inequality. In politics we will be recognising the principle of one man one vote and one vote one value. In our social and economic life we shall, by reason of the social and economic life, continue to deny the principle of one man one value...We must remove this contradiction at the earlist possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up.

The issue of momery power is always present in the elections. This i ssue has been discussed since the day of the Santhanam Committee and Wanchoo Committee. There is no full proof method to check this but state funding of elections can to some extent help the parties of weaker sections to come up for competition. However this has not been introduced so far. Perhaps some type of self-imposed code of conduct by the political parties can help in this matter.

Recently, the office of the Election Commission was in controversy. The proposal to have three-member Election Commission to be constituted by the consensus of the Prime Minister, the Leader of Opposition and the Chief-Justice should be implemented to put an end to the controversies relating to this august office.

In my opinion, legislature should have better liaison with the people so that the people take more and more interest in the parliamentary works and elections right from the preparation of electoral rolls till the formation of the Government.

31

Parliamentary And Presidential Systems—A Comparative Study

Naunihal Singh

Parliamentary System

The most widely adopted form of representative and Constitutional Government is the parliamentary system, or, as it is sometimes called, the "Cabinet" system. Most of the nations that have achieved independence since World War II have adopted some form of it, with varying degrees of success. In a Parliamentary government the executive is divided into two parts: first, the Head of State, and second, the Head of Government.

Let us examine the comparative status of a parliamentary form of Government in some countries of the world.

Great Britain

The British form of Parliamentary Government has been the most effective, and it is the model for the majority of the new Parliamentary States. Although many of the British features have been copied, none can be duplicated, because they are so grounded in British history, experience and tradition.

The hereditary monarch is the most ancient institution in British Government; the ruling sovereign enjoys a position of political neutrality, free of partisan strife, and can claim, as no person can, to represent the entire nation. Since the seventeenth century, the executive functions, previously performed by the monarch, have been taken over by this Ministers. The functions have been institutionalized so that their exercise is less a matter of personal discretion than of ministerial responsibility.

The sum-total of executive authority today, as well as the office of monarchy, is represented by the institution of the Crown, an abstraction. The Crown powers are related primarily to the executive and administrative process; but have legislative and judicial character as well.

Constitutionally the Queen has many duties : to make appointments, issue administrative rules, summon and dissolve Parliament, assent to legislation, make treaties, and so on. Even though these acts are performed as Crown powers on the "advice" of Ministers, the Queen is not merely a figure-head. She is advised on all significant developments and major policy decisions are discussed with her.

The Prime Minister ordinarily, is appointed by the monarch because the voters have given the party that he leads a majority of the seats in the House of Commons. His role as party leader is, therefore, crucial to his power.

The Cabinet is composed of those Ministers whom the Prime Minister invites to serve as a deliberative council with him. The Cabinet is collectively responsible for its acts and policies. Whatever its internal differences, it must always display a united front, a challenge to the leadership talents of the Prime Minister.

The Cabinet is the central institution between the executive and the legislative branches, and its functions are broad. The members must decide collectively, broad matters of policy, involving foreign affairs, finance, and other issues of concern to the entire Government.

France

mentary system similarly to Britain's. The French Cabinet of the Third Republic (1871-1940) was weak and unstable because of the multi-party system, extreme ideological differences between major political groups, weak party discipline, frequent party scandals, and other crises.

The Constitution of the Fourth Republic (1946) contained several provisions intended to give a new stability to the Cabinet and greater scope for leadership by the Premier, but these failed to change the ability of the Governments to cope with serious domestic and foreign problems.

Widespread frustration with a system in which the National Assembly could not govern led to the support of General Charles De Gaulle's proposal for a new Constitution, and its adoption in 1958. In the Fifth Republic, the President is choosen for a seven-year term. A Constitutional amendment of 1962 provided for popular election, an innovation in French practice. The President is intended to be more than a titular Head of State and is given power to act as arbiter between the Government, the parties, and Parliament.

The President appoints the Premier and members of the Cabinet who must resign their seats in Parliament if they accept. The Government may still be forced to resign by a vote of censure, passed by an absolute majority of the National Assembly.

Thus, an attempt is made to apply both the principle of a limited separation of powers, which De Gaulle insisted was the essential basis of executive stability, and the principle of ministerial responsibility, which French tradition views as essential to representative Government. The President is further empowered to dissolve the National Assembly, though not more than once a year.

Germany

In contrast to France, the German tradition has been to over concentrate authority in the executive and make it formidably strong. The German preference for a stable and highly concentrated centre of authority is demonstrated in the Bonn Constitution, adopted in 1949, and in the politics of the German Federal Re-

public.

The federal President is elected for a fiive year term by a special federal assembly composed of the members of the *Bundestag* and an equal number of representatives of the *Land* (State) *Diets*. His powers are nominal, and all of his political acts are counter-signed by the Federal Chancellor, who is the political executive, chosen by the President because he commands a majority in the *Bundestag*. Thus, the essential principle of ministerial responsibility is maintained.

However, the office of Chancellor is considerably more powerful than that of an ordinary Prime Minister. He alone is specifically authorised to determine general policy. He chooses and dismisses the Ministers, who need not be members of Parliament, but may be high ranking civil servants or have *Land* government experience. The Chancellor is under no obligation to consult his Cabinet colleagues and, in practice, he does so far less than his British and French counterparts.

A unique feature of the German system is that the *Bundestag* may vote a lack of confidence in the Chancellor only. It simultaneously elects a successor by a majority vote. Because of this so-called "constructive" vote of no-confidence, the Chancellor is virtually certain to stay in office unless a majority opposing him is equally united behind another leader, or unless a general election alters the political composition of the Legislature.

Israel

The State of Israel, founded in 1949, has a weak President and a strong Prime Minister. Israel's parliamentary system reflects British influence, but it also bears the imprint of its first Prime Minister, David Ben-Gurion. Though the office of Prime Minister resembles its British counterpart, the Cabinet is far less powerful than it is in Great Britain. The Israeli Cabinet must be created from extensive coalition bargaining.

The President, who is elected by the *Knesset*, serves for a term of five years. His powers are limited: he signs treaties after they are ratified by the *Knesset*, appoints diplomatic representatives, signs all official documents, except laws concerning his own powers, and makes routine appointments. In the exercise of his

most important power, that of appointing the man who is to form a new Government, he must first consult representatives of various parties in the *Knesset.*

The Prime Minister must be a member of the *Knesset,* because only a member can form a government, but the other Ministers need not be members. No government is considered legally constituted until it has received a vote of confidence from the legislature; that is, a non-confidence vote applies to the Government as a whole.

India

With the dawn of independence, India has followed the model of parliamentary democracy. Despite continuing problems, India has achieved some successes. The executive branch is headed by a President, Vice President, Prime Minister and Council of Ministers. Although opinions vary on the actual role and powers of the President, he is more than a figurehead. As the constitutional Head of the State, he has the right to be kept informed and to express his views.

However, the President cannot override the advice given by his Ministers. Normally, he exercises the executive powers, which include various vetoes, some financial powers, and authority to issue ordinances while Parliament is not sitting, on the advice of the Prime Minister and the Council of Ministers.

The Constitutional provisions that give the President the right, at least in theory, of exercising great independence are the emergency powers. These powers can be used if there is a threat to internal security, such as war or internal disturbance, if the constitutional machinery of a State is unable to operate for some reason, or if the financial stability or credit of Indiia or any part of it is threatened.

In practice, these emergency powers have been invoked only on the request of the Prime Minister and, in general, they have been used with firmness and discretion. However, the state of emergency declared during the Chinese invasion of 1962 was

not lifted when the immediate threat no longer existed.

The success of the relationship between the President and the Prime Minister depends on their respective personalities, and so far, it has seemed to work well. For in India, as in many other countries without a long-standing tradition of institutionalized parliamentary democracy, non-political forces and personalities play a large role in decision making.

Japan

The formal political structure of Japanese Government is among the most democratic and rational in the world, although it divests the Emperor of all political or executive functions. Nevertheless, the Emperor remains an important symbol for the focus of Japanese loyalty. Not "Chief of State", but only a "Symbol of the State", the imperial institution is far weaker than the British monarchy.

The executive power is vested in the Cabinet, headed by the Prime Minister, who is chosen by the *Diet.* All Cabinet members must be civilians; and a majority of them, including the Prime Minister, must be members of the *Diet.*

If a Cabinet loses the support of the majority of the members of the lower House, it must either resign, whereupon the Diet begins the process of choosing a new Prime Minister, or it can dissolve the lower House and call for new elections.

In addition, the Cabinet has the informal function of serving as the leadership of a political party or coalition of parties upon whose support its position depends. Its relationship to the legislative branch is particularly close and it is collectively responsible to the *Diet;* Ministers must, in fact, attend sessions of the *Diet* and reply to members' questions. The Cabinet is the dominant element through its power to grant patronage and enforce party discipline.

An Evaluation of Parliamentary System

Especially in its effective British form, the parliamentary or Cabinet type of executive does produce a close union of effort between the executive and the Legislature. Because the executive is, in effect, a governing board drawn from the Legislature, it can

provide a positive leadership and can resolve any breaches between the two. There is, as well, always a clear distinction between the government majority that leads and the Opposition that criticizes.

The tenure of the executive is not fixed, but rests, instead, upon the continuation of majority support in the Legislature. The executive, therefore, is an excellent vehicle through which to express the popular mandate. And because it may be voted out at any time, its policies must always stay attuned to public opinion.

In addition, the Cabinet is flexible, it can adjust to emergency demands that require centralised political authority. Finally, the Cabinet represents a considerable accumulation of political experience. Its members spend years of apprenticeship in a parliamentary career, and when the party is out of office, in the Opposition.

To offset these advantages, the parliamentary executive must work within a degree of uncertainty about the time available to plan programmes and to carry them out. The very fusion of the executive and the Legislature that creates advantages also creates the danger that one or the other will over-extend itself, with very little means available to prevent it. Although the forces of custom and public opinion are effective in Great Britain, they, are not always so firmly established elsewhere. Thev mav result in an over-powerful executive, or less likely, a dominant and irresponsible Assembly.

Clearly, the parliamentary executive is most effective when supported by a stable majority, which is most likely to be found in countries having a strong two party system. Many countries that have instituted the cabinet system have been hampered in their operation by their multiparty systems, which have created indecisive and unstable Cabinets. Other countries, with either a one-party or a weak two party system, have created parliamentary executives that have bcome unresponsive and authoritarian.

Ironically, many countries have chosen the parliamentary system in preference to the presidential system, which they feared might become dictatorial; yet their failure to operate the cabinet system effectively has in many instances led, precisely to dictatorship.

The Presidential System

An American contribution to political invention is the presidential type of Chief Executive, which originated in the Constitution in 1789. It has not been as widely adopted as the parliamentary type of executive. Most of the attempts to institute the system have been in Latin America, in countries directly associated with the American experience, such as Liberia and the Philipines, and in some of the new African States. Many of its advantages have not been widely appreciated: that it might provide a much needed strong and stable centre of power in a newly created State embarked on the difficult road towards self-government.

The presidential system provides for a Chief Executive who is elected for a definite term of office, who holds a wide public mandate as a result of his election, and who is largely independent of the legislative branch for the conduct of his administration. His formal powers are defined in a documentary constitution. Because he is both Chief of State and political leader of the Government, his prestige and authority are doubly enhanced.

United States of America

The American presidency is usually the model against which other such offices are compared. The President is indirectly choosen through the electoral vote of the States. His term of office is fixed for four years, and according to the twenty-second Amendment, adopted in 1951, "no person shall be elected to the office of the President more than twice". The President may be removed from office by impeachment for serious crimes but this has never occurred.

The Constitution enumerates the President's executive authority in Article II which states that "the executive power shall be vested in a President", "that he shall take care that the laws be faithfully executed" and that "he shall take an oath to preserve, protect and defend the Constitution".

He is the Commander-in-Chief of the armed forces, he may grant pardons and reprieves for offenses against the United States: and he may require the opinion, on pertinent subjects, of the principal officer in each of the executive departments.

The President is authorised to give Congress information from time to time on the State of the Union, and he may recommend measures for their consideration. He may call special sessions of Congress; if the Houses disagree on a time for their adjournment, he may determine it; and all bills and joint resolutions passed by Congress must be submitted to him for approval. These basic constitutional provisions give but limited insight into the nature of the office and its actual powers, which have grown steadily since the office was created.

The American Cabinet, like the British, is composed of the principal department heads of the executive branch. This, however, is the only similarity. The members of the Cabinet are appointed individually as secretaries of the major departments; their principall functions are administrative; they may not be members of Congress, though they may be chosen from it.

Collectively, the Cabinet members have consultative and advisory functions, but the President is free to utilise them as he chooses. The Cabinet arose informally and is not provided for in the Constitution or in statutes. The President may select the members, who are his subordinates rather than his colleagues, on any basis he desires, subject to Senate confirmation. He is free to accept or reject their advice, and in case of differences, his judgment is final.

Latin America

The most extensive experience with the presidential executive outside the United States has been in Latin America. Most of these States won their independence from Spain in the first half of the nineteenth century. The formation of their executive reflected not only the neighbouring American model, but also French ideas, the tradition of personalism and absolutism inherited from the Spaniards, and the prominence given to the successful military leaders who won the long bitter fight for independence, and the unsettled political conditions after independence.

All the States undertook to establish in some degree the separation of powers principle. After a century of political development and constitutional revision, governments in Latin America now commonly reflect the trend of indigenous experience toward a

dominant executive.

Most Latin American Constitutions provide for the popular election of a President for terms between four and six years. All candidates must have performed military service in the past six months or a year. Most countries prohibit re-election, though in practice the restriction is not always observed.

Many Latin Americans consider this rule, which is intended to limit the abuse of power through "continuism", to be essential to the maintenance of constitutionality. Although the President may continue to exercise political power after his term has expired, the choice of his successor is very significant. The office of Vice-President has been less successfully developed in Latin American than in the United States.

The President usually selects the official candidate to succeed him, and his choice is complicated by military pressures and the lack of real party organisational freedom. The successor is likely to be a cabinet Minister in a key position such as War or Defence.

In much of Latin America, the major task of government is to maintain order. Weak administrations are quickly overturned, and a *caudillo*, or military chief, commonly takes power. Most Latin American Presidents, therefore, have substantial emergency powers and authority to initiate legislation and even to govern by decree. They may declare a state of siege and suspend constitutional rights; they may collect and spend taxes; they may appoint local governors and intervene in provincial government.

The Constitution made the President the Head of the armed forces, a power that may be the key to the exercise of all his other powers. His powers of appointment are even greater than those of the American President; this freedom is further strengthened by his control over the Legislature, which grants approval as a formality.

The President's role in legislation is even greater in practice than in constitutional stipulations, which vary from country to country. The President, through his Ministers, presents legislative programmes to the Congress, including the annual budget in the form of an Appropriation Bill. He has strong veto powers, which

can be overriden only by large majorities.

An Evaluation of the Presidential System

On balance, the presidential type of executive has fewer advantages in principle than the cabinet type. The presidential executive has met the test of time in the country of its origin, demonstrating its capability of producing able national leadership within the framework of the constitutional system.

The President's fixed term of office assures stability, particularly vital in times of crisis. The executive is not dependent on the Legislature yet each has important means of restraining the other. The voter has greater opportunity, at least in form, to participate in the selection of the executive.

Generally, the system has the distinct merit of providing a stable executive even without the presence of stable legislative majorities.

The principal disadvantages of the presidential type of executive largely reflect the merits of the cabinet type. No direct executive leadership of the Legislature is provided, and, as a result, the President must often make extraordinary efforts—summoning all his resources of patronage, prestige, and personal influence—to accomplish the enactment of a unified legislative programme.

The executive and legislative branches may be controlled by different parties, producing the possibility of a deadlock over important issues. Because of the fixed term of office, elections may be held at times when there may be crucial political issues to decide.

The Presidential system does not preclude the establishment of dictatorial government, as Latin American experiences have shown.

Should India switch to presidential system?

Some years ago, there took place some kind of debate on the desirability or otherwise of a presidential form of government for India. During the debate, it was argued that the presidential system, whether of the American or the French variety, would

endow the incumbent with excessive political powers, for these would not be subject to continuous parliamentary control. The President is not dependent upon his enjoying the support of a majority in the Legislature. But in a presidential system, he must face Parliament that is equally autonomous, as in the case of Congress in the U.S.A.

The British Prime Minister's primary responsibility is to Parliament and he does not detach himself from it so as to enjoy a status that is not directly connected with his political responsibilities. Outside the Westminster, the Prime Minister speaks as representaive of Parliament and Head of the Council of Ministers, but not as somebody above and beyond it.

In following the Westminster model, the Indian Constitution separated the practical political responsibilities of the Head of Government from the symbolic and ceremonial functions of the Head of State. This delinking is important for several reasons. Any Government may take unpopular decisions or commit mistakes; these may turn a substantial section of the citizens against it. But opposition to the government is to be distinguished from loyalty to the State.

Performances of ceremonial functions imply that the person concerned is above controversies; this cannot be the case with a political leader in a democratic society. Since time is extremely limited and highly precious, and the work of Government complex and demanding, political office-holders cannot afford to waste their time and, thereby, set a poor example to others.

The ritualisation of political offices is one of the reasons that public life has become increasingly bureaucratised. If political office holders are busy performing ceremonies, rites and other symbolic acts, which impose their own constraints on them and discourage them from taking hard decisions, the responsibility tends to be passed on to bureaucrats and they also resort to symbolic acts for which the red-tape is eminently useful. Indecisiveness and drift often lead to tragic consequences.

However, if we decide to stick to the parliamentary system, it might be well to take into account that adversary politics does not suit the Indian personality or ethos. It has deep implications

for the party politics and parliamentary procedures. In particular the functioning of government must be separated from ceremonies and rituals.

If we want an efficient and effectively run nation we will have to restructure our government, and possibly our Constitution.

In politics, the validity of an idea is of often destroyed by the corrosive power of suspicion. What if an elected President turns into a dictator? The *'what-ifs"* have killed the idea even before it could be objectively studied. That does not mean that it should not be considered again.

It is not as if the presidential form of government is a panacea for all our political ills. What should be borne in mind is that after 45 years of functioning under a system that was very carefully worked out by some of the very best minds in the country, a need has been felt to change it. And that need has to be met.

Many concerned Indians in high places had long been thinking of suitable alternatives to the prevailing political system in the country which Shri J.R.D. Tata once described as "one of 20th century major political anachronisms". But what was the alternative? Addressing the Indian Merchant's Chamber in February 1968, twenty-five years ago, he himself answered the question:

> What, then, is the alternative? Might it not be a presidential system of federal government in which a Chief Executive at the Centre and elected Executive Governors in the States are elected for a term of years, during which they are irremovable, and free to govern through Cabinets of experts appointed by them and who may, but need not, include professional politicians. There can be many variations of this system...

It is interesting to note that Mr. Tata then suggested as "a first step" the appointment by Parliament of "a high-powered Commission" to undertake a comprehensive study of the problem and to recommend "such revision of our Constitutions as would ensure the attainment of the desired objective". That, Shri Tata added, would "require an act of great courage".

In 1952, the Congress polled 45 percent of the popular votes but won 74.43 percent of the parliamentary seats. in 1967 it won 40.73 per cent of the votes but managed to get 64.42 per cent of the seats. Even at the height of its popularity in 1984 it could win only 49.10 per cent of the votes which enabled it to obtain 78.64 per cent of the seats. The majority Opposition always lost, because it was disunited.

A presidential form of government would alter the situation drastically. It would give a fair chance to the Opposition,unless its constituent parties were cussedly at cross-purposes, to field a presidential candidate.

The question is whether the Opposition can ever unite on an agreeed candidate. But introducing the presidential form of government will at least have the salutary effect of polarising forces and could even end up in a two-party system. And is not that a wholly desirable proposition?

But before even a Parliamentary Commission is appointed there should be a minimum agreement among all major political parties that there is an urgent need for change.

It is well to remember that the founding fathers did give thought to a presidential form of government when the Constitution was in the process of being made. If they rejected the concept, it must have been because they felt, in the context of their own experience of functioning under the Government of India Act, 1935, that the parliamentary form fully met India's political needs. If today many feel the need for change, surely it is out of their fresh conviction born out of sheer experience, that a change is indeed needed.

All the arguments in favour of the presidential form of government rest on one basic premise: party based politics generates too many pressures and leads to compromises, whereas personality based politics can ignore these pressures and enable the leader to strike out his own line of action on national problems. But this is precisely the danger of the whole position-persons above parties, image-building above ideological appeal, television cosmetics above the rough and tumble of patient party-building.

Today when the country is facing grave threats to its very integrity and unity from secessionist and fissiparous forces, the need for a strong and stable Centre cannot be overemphasised. Stability at the Centre is a matter of supreme importance; it is indeed a question of life and death for us as a nation. Stability was not important in the past as the party in power normally had an absolute majority in the Legislature. Recent events have shown that this position may not last long and we may be confronted with a state of political instability at the Centre. One major consequence of this would be weakening of the Central Government and one cannot but shudder at this prospect. It can imperil our very existence as an independent nation. It can indeed pose a threat to our liberty and integrity and undermine the very foundations of the nation.

The history of India reveals that whenever the Centre became weak, the country disintegrated. It is no mere accident that the brightest chapters of India's history have always synchronised with the times when the country possessed a strong and stable government at the Centre.

All this may point to the need for a change over from the parliamentary system. But there are over-weighing reasons which plead for circumspection. Some shortcomings and defects have, no doubt, come to the surface in the functioning of the parliamentary system here, but the fault lies not so much in the system itself as in our own weaknesses of character and the way we have worked the system.

Is there any certainty that we will get rid of the weaknesses of character the moment we change over to the presidential system? Is there any guarantee that the difficulties which have marred the functioning of the parliamentary system would disappear or that we shall not be confronted by perhaps worse difficulties, if we switch over to the presidential system?

Something, no doubt, would have to be done to find a cure for the maladies that afflict the existing system. Any move in that direction must receive unstinted support. It is, however, one thing to plug the loopholes in the system and quite another to discard it and take to another system. No one can say that the present system is inherently unsuitable and difficult to work.

A change should be called for only if there is reasonable certainty that the new system would work better. In the absence of checks and balances, as in the United States, and strong democratic traditions the chances of subversion of the democratic processes by those in the seat of power and the danger of the system degenerating into totalitarianism are much greater under the presidential system.

A country like India needs a strong and stable government at the Centre. It would not, however, be correct to say that the presidential system is the only way to ensure this. The working of the parliamentary system in the United Kingdom, Canada, Australia, Sweden and Norway give ample evidence of a strong and stable government under that system.

One noteworthy thing in these countries, however, is the presence of only two main parties. We, in any case, have to avoid the experience of shortlived governments at the Centre, a phase the Germans and the French passed through after the First World War. We must find some means to combat the evil. The Germans have now evolved a remedy for that. Likewise in the Fifth Republic in France, it is much more difficult to pass a vote of censure against the government.

The parliamentary system does not preclude the induction of talented men from outside the party into the Cabinet, as is sometimes argued. Pandit Nehru did it and his experience in this respect was not unhappy. Under the provisions of our Constitution, it is always open to the Prime Minister to get talented persons elected to the Rajya Sabha and, thereafter, (or even prior to that) induct them into the Cabinet.

Any move to bring about a major change in our constitutional set up would have the effect of opening a Pandora's box. This is bound to lead to different political groups exerting all kinds of pressures and pulls. There is also the absence on the national scene of great stalwarts like Sardar Patel, Pandit Nehru and Rajaji, who with their astuteness, sagacity and broad vision could give a proper direction in a difficult situation. Today when the country is alredy faced with a number of problems, it would hardly be prudent to get entangled in another controversial issue.

Indeed, the case for a Prime Minister chosen directly by the people is based on the assumption that somehow such a person would represent the sovereign will of the people. And yet, when we talk of "the people", do we mean the people as voters or as a community of the entire living population? Could the opinion of voters in elections, especially in the present system of electoral representation, be accepted unquestionably as true judgements of the vital interests of the community?

By and large, the move for a plebicitary Prime Minister rests upon the very belief that underlies the accepted theory of popular government, the belief that there is a public which oversees and directs the course of events.

> Walter Lippmann held that this public is a phantom. For if all power is in the people, if there is no higher law than their will, and if by counting their votes, their will may be ascertained then the people may entrust all their power to anyone, and the power of the pretender and the usurper is then legitimate.
>
> This is the supreme politial heresy of our time ... we have seen a majority of the people vote away their own right to continue to live by majority rule, we have seen the declared enemies of human freedom allowed to exploit free institutions until they had captured the power to destroy them, the rule of the fifty-one per cent is a convenience.... but it may easily become an absured tyranny if we regard it worshipfully, as though it were more than a political device.

In the United States, the presidential form of Government has encouraged the functioning of the two-party system. The President has to be elected by majority vote of the electorate. This implies that there have to be strong parties or combination of similar parties much before the election and only then it is possible for a candidate to win. There was to be an identity of programmes before the eyes of the electorate and much in advance of the election.

In France, there was total failure of the parliamentary system during the period of the Fourth Republic. Between 1946 and 1958, there were as many as 26 governments.

This led to the adoption of a new Constitution, which gave a prominent role to the President and a much lesser role for the National Assembly. As in the case of the US, under the new Constitution in France, the President relies very heavily on experts, intellectuals, the top-most brains of the country, administrators and top civil servants.

The most serious drawback in the parliamentary system in India is that a few defectors can hold the ruling party to ransom. In the parliamentary system, the Government is formed exclusively out of the legislators and it must necessarily fall in case it loses its majority in the Legislature. A thin majority can lead to certain temptations for the legislators.

The presidential system, on the other hand, ensures greater stability, particularly in respect of developing countries like India. Under the presidential system, the President is not dependent upon the will, whims and fancies of the legislators. He is elected directly by the electorate and has a fixed term. He cannot be removed except under very extreme circumstances such as treason, corruption and serious crimes.

This enables the President to devote his time, attention and energies to the main job of governing the country. It is not left to the legislators to judge the performance of the President, who is directly answerable to the electorate.

Moreover, in a presidentiial system, the majority by which a President is elected becomes totally irrelevant after his election. Even if he has won the elections by a margin of one vote, he can stay in power for the full term.

Another important problem that confronts the parliamentary system in India is that the Prime Minister has to depend on the legislators for choice of Ministers. It is not open to the Prime Minister to take talent from outside of the Parliament. The hands of the Prime Minister are tied due to the choices available and also due to party politics, pulls and pressures and factionalism within the party itself.

The strongest argument against the presidential form of government is that it concentrates excessive power in the hands of one individual, particularly in the case of the United States. This is not a correct statement. Under the American and even the French systems there are certain checks and balances which govern the relationship between the President and other wings of the State.

In the United States the requirement of seeking Senate's approval for all executive appointments, including ministerial appointments, judicial appointments and the wide legislative authority that the Congress has, coupled with the power of impeachment given to the Senate, are positive checks on the powers of the President. The Senate also has the power of confirming and ratifying foreign treaties and also acts as an investigating body into a variety of matters.

In the light of the assessment attempted above, of the advantages and disadvantages, respectively, of both the parliamentary and presidential systems of government, let us consider whether a presidential system be all that unsuited to India. To my mind, the answer is no.

32

Speaker In The Lok Sabha And The House Of Commons

B.N. Pande

I

The Speaker In Lok Sabha

The Office of the Speaker of the Lok Sabha is an essential adjunct of our parliamentary democratic polity. Immediately after the result of election of the post of Speaker is declared, the Prime Minister and the Leader of the main Opposition Group go to the seat of the Speaker-elect, bow to him and conduct him to the Chair. Felicitations are offered by the Prime Minister and other members on behalf of different sections of the House and the Speaker makes a brief reply. Thereafter, the House proceeds with its regular business, if any, on the list of business.[1] The election of the Speaker is also notified in the Gazette by the Secretariat.[2]

In India, the Speakers follow several traditions and conventions established by the Speakers of the British House of Commons. Even during the tenure of Sir Frederick Whyte, who was a nominated Presiding Officer, the British model of Speakership was generally followed. The Presiding Officers in Britain keep themselves completely aloof from party politics. Shri Vithalbhai Patel, the first Indian Speaker of the Central Legislative Assembly, dissociated himself from the *Swarajist* party of which he was an active member prior to his election and during his entire term of office he kept himself aloof from party interest. In the election of

1926, he did not contest on the Congress ticket but stood as an Independent candidate from his old constituency and was returned unopposed.[3]

The Presiding Officers who succeeded Speaker Patel in the Central Legislative Assembly—M. Yakub Ibrahim Rahimtoola, Sir Shanmukham Chetty, Sir Abdur Rahim— held more or less similar views on the need for impartiality and non-party character on the part of the Presiding Officer.[4]

With the advent of popular Government in the provinces in 1937, the question of a Presiding Officer severing his connections with his party became slighty more open but on the whole there was an agreement that impartiality demanded sincere attempts to break previous political connections.

The question as to how far the Speakers should be connected with their political parties and how far they should take part in politics has been engaging the attention of the Conference of Presiding Officers of Legislative Bodies in India since long. The 1951 Conference was of the opinion that a convention should be established that the seat from which the Speaker stands for reelection should not be contested. In regard to the role of Speaker and the non-party character of his office, Speaker Mavalankar defined the contours and parameter that remains equally true today. He said:

> It is obviously not possible, in the present conditions of our political and partliamentary life, to remain as insular as the English Speaker, so far as political life goes. But the Indian Speaker acting as such will be absolutely a non-party man meaning thereby that he keeps aloof from party deliberations and controversies. He does not cease to be a politician merely by the fact of his being Speaker. We have yet to evolve political parties and healthy conventions about Speakership, the principle of which is that once a Speaker, he is not opposed by any party in the matter of his election, whether in the constituency or in the House, so long as he wishes to continue as a Speaker. To expect the Speaker to be out of politics altogether without the correspond-

> ing convention is perhaps entertaining contradictory expectations..... Though a Congressman, it would be my duty and effort to deal with all members and sections of the House with justice and equality, and it would be my duty to be impartial and remain above all considerations of party or of political career.[5]

The Conference of Presiding Officers held at Gwalior in 1953, adopted a resolution to the effect that a convention should be established that the seat from which the Speaker stands for re-election should not be contested in the elections, and steps for making a beginning in that direction may be pressed upon the Government by the Chairman of the Conference.[6]

In pursuance of the said resolution, Shri G.V. Mavalankar took up the matter with Pandit Jawaharlal Nehru. The Working Committee of the Congress considered the matter and sent a communication to Mavalankar which was disclosed by him at the Conference of Presiding Officers held at Srinagar in 1954 in the following words:

> Obviously they (the Congress Working Committee) accept the desirability of laying the wider convention that the Speaker's seat should not be contested but that will require the concurrence of other political parties which they felt was not possible to obtain. But the important point is that they have accepted that it is a right convention and further they have also accepted the position as set out, in my letter, that so far as possible they should not set aside a Speaker while considering his nomination for general election and then his election to the Speakership. So far as possible the practice should be to give him the party ticket so that his future candidature at the general election is assured. I think, so far as it goes, the decision is a good advance in the desired direction. All conventions grow bit by bit and have to be built up step by step. In my view, we have laid the first brick very firmly and we have now to strive further.

He also emphasized :

> The Speaker has to abstain from active participation in all controversial topics of politics. The essence of the matter is that a Speaker has to place himself in the position of a judge. He has not to become a partisan so as to avoid unconscious bias for or against a particular view and thus inspire confidence in all sections of the House about his integrity and impartiality. If we are able to build up this convention on our own, then only we shall be able to justify, in course of time, the other one about the Speaker's seat being uncontested.[7]

Speaker Ayyangar accepted the view held by his predecessor in this matter. While assuming the office of Speaker on 8 March 1956 he said:

> I assure every section of this House, and every group and even every individual who does not belong to any particular group that I will never let down their privileges. A member's privileges as a member shall be constantly before me. I shall try to stick to traditions, follow the older ones and whenever new ones have to be established, you may take it from me that I will try to do that..... I do not make any difference between party and party.[8]

At the time of his election as Speaker for the second time, Shri Ayyangar, while referring to a suggestion that he should cease to be a member of the Congress Party, pointed out that though he was not resigning his membership from the party, but he would so conduct himself in the office as to infuse confidence in the minds of all to raise the standards, conventions and traditions of the House.[9]

Speaker Ayyangar continued to be a member of the Congress party but he resigned his membership from the Congress Parliamentary Party.

The present position is regarding Speaker's seat is that like any other member, he represents his constituency from which he

is elected to Lok Sabha[10] and his seat is contested.

The principal duty of the Speaker is to regulate the proceeding of the House and to enable it to deliberate on and decide the various matters coming before it. Thus in considering the various notices or points raised before him the Speaker should always bear this in mind and where in doubt, he should act in favour of giving an opporunity to the House to express itself. The Speaker should not so conceive his duties or interpret his powers as to act independently of the House, or to override its authority, or to nullify its decisions. The Speaker is a part of the House, drawing his powers from the House for the better functioning of the House, and in the ultimate analysis, a servant of the House, not its master.[11]

Further, the Speaker should not normally on his own raise a matter and then give his decision thereon. He should give his ruling which has the effect of reversing a decision already taken by the House on any matter.[12]

While the Speaker has considerable discretion in regard to adjourning the House, this discretion has to be exercised by him within reasonable limits and in a manner so as not to obstruct the working of the House.

Speaker N. Sanjiva Reddy[13] pointed out in the Emergent meeting of Presiding Officers in 1968 that it was the first duty of the Speaker to enable the House to function and not to shut it out. The House was paramount, not the Speaker who could claim inherent right to override or bypass the House, or to arrogate to himself powers and functions which belonged to the House.

In one instance, in the Punjab Legislative Assembly, the Speaker's decision to adjourn the House for two months created a serious crisis as the Assembly had yet to pass the budget for the year 1968-69. In this case, the Supreme Court observed :

> The Legislature cannot be allowed to hibernate due to adjournment by the Speaker for a period beyond 31 March while the financial business languished and the constitutional machinery and democracy itself are wrecked.[14]

It is not for the Speaker to give his rulings on legal issues or to pronounce on the legality of a ministry. In elucidating this concept, Speaker Sanjiva Reddy observed:

> If a controversy arises as to whether a Ministry is 'legal' or not, the proper forum to settle the matter in the Court. But the House is not helpless for even if the Court upholds the appointment of the Chief Minister and the other Ministers, the House can vote them out of office if it wants. The Speaker does not come into the picture at all, and if he takes upon himself to pronounce on the legality of the Ministry and precludes the House from expressing its views in the matter he is arrogating to himself the functions of the House and the Courts. Not only that, if the Speaker just does not allow the House to function, he is, in effect, releasing the Ministry from its obligations and responsibility to the House.[15]

The Speaker has to act according to the atmosphere in the House. Some times when the situation in the House becomes tense and tumultuous, incriminatory words are uttered or unruly scenes interrupt the proceedings, the Speaker should by his subtle wit and spontaneous humour defuse the tension, and by his patience and liberal approach calm down the House to orderly discussion.

II

The Speaker in the House of Commons

The Speaker's office in the House has a long tradition behind it. Selwyn Lloyd, who was the Speaker of the British House of Commons for three terms in his authortative book—Mr. Speaker Sir:[16] traces the history of this August office from 1258. He observed:

> To call a man Speaker who does not make speeches is a touch of parliamentary humour. This is one of

> several misconceptions about the House of Commons which I hope to dispel or at least explain.
>
> Every Speaker knows that his behaviour is under close scrutiny and subject to constant criticism. His hope is that the criticism will come in equal measure from both sides of the House. If he is too authoritative, he is likely to be called arrogant. If he lets the House discipline itself, or fails to do so himself, he is called weak. He can never do exactly right, or satisfy completely the other 634 members.

The acceptance of the impartiality of the Speaker has resulted in his being entrusted by the Commons, over the last one hundred and twenty five years or so, with more and more powers, discretions and responsibilities. His independent status is recognized by his salary being a charge on the Consolidated Fund and so not subject to the need for an annual vote. He ceases to belong to a political party on his election to the chair.

Maintenance of Order

The Speaker's first duty nowadays is to preserve the order and dignity of proceedings in the House. He has wide powers in this regard. He can call members to order for the use of unparliamentary language, for unbecoming behaviour, for irrelevance and for tedious repetition. He can order members to resume their seats, or to widhdraw a word or a phrase. In accordance with the Standing Orders, the Speaker can order a member to leave the Chamber. If a member does not obey him, he can 'name' that member, whereupon the suspension of the member from the service of the House is moved by the Leader of the House or the senior Minister present. If the member does not leave the House, he can be removed forcibly by the doorkeepers or messengers acting under the Serjeant-at-Arms at the order of the Speaker.

If grave disorder arises in the House, the Speaker has the power under the Standing Orders to adjourn the House or to suspend the sitting for a stated period. By custom he also has power to suspend the sitting informally if he considers that this would assist the transaction of business.

Speakers in the House of Commons consistently had to

rebuke members for sedentary interruptions, or for too lengthy supplementary questions or interventions. Frequently members indulge in conversation with one another, sometimes to such an extent that the Speaker cannot be heard. In 1593, Speaker Coke admonished some member when he saw them whispering. He said that it was not the manner of the House that any member should whisper or talk secretly for here only public speeches are to be used.

Narrating his experience in his book, Mr. Speaker Sir, Speaker Selwyn writes:

> Where I had to be very firm was over the use of Unparliamentary language. Erskine May contains a list of words or phrases disallowed over the years, but there is not always time to refer to it...In 1973 I was asked to rule whether the expression 'a pack of lies' was in order ..I said that since 1921, the Chair had ordered the following words to be withdrawn - 'a lie', 'that's a lie: 'he is lying', 'liar', 'deceiving', 'lied to the House', deliberately misleading', 'deliberately misled' 'a damn lie'..Frequently the word 'lie' is used in the heat of the moment..It was a word which I was not permitted to allow and that I was sure the member would think of some other way of making his point. By doing it slowly, I gave the member time to recover his temper.

Once, Speaker Selwyn took the matter of unparliamentary behaviour very strongly. He expressed that when strong feelings exist or are aroused, there are times when the Chair can appropriately be deaf or indeed blind. According to him, sometimes he went to the absolute limits of tolerance, perhaps beyond them. If members use unparliamentary or act in an unparliamentary manner and when ordered to, refuse to withdraw or desist, then the Speaker has to act in accordance with the Standing Orders because then the reputation of the House and the position of the Chair are at risk.

Parliamentary temperature, Speaker Selwyn believed, is unpredictable. Out of a clear sky there suddenly comes a storm. All seems quiet and in the next moment a single interjection or

incident produces pandemonium. The Speaker must walk delicately all the time. When the storm comes, he can occasionally perform the role of a lightning conductor, but he has to be wary.

The Speaker has practically no control over the subjects for debate. They are settled by Government and Opposition, if not by agreement, certainly after discussion by what are called the 'usual channels' , which means consultations between the Whips. There is by Standing Order a half-hour debate each day at the end of other business, on the motion for the adjournment of the House. It is then that private Members have the opportunity to raise matters involving the Government's administrative responsibilities. On four days of the week, the subject to be raised is chosen by ballot, but on one day the Speaker chooses it. He also chooses the subjects for discussion on the motion for the adjournment which, after any questions and statements there may be, occupies the whole of the last day's sitting before each recess. The Speaker selects the back-bench speakers from both sides of the House.

The Casting Vote

If there is a tie, the Speaker must give a casting vote. The principles upon which the Speaker acts are now well recognized by the House. In the event of a tie he casts his vote for further discussion, or, if no further discussion is possible, against a final decision for change.

The first reading of a Bill is a formality, but the second reading usually involves a wide-ranging debate. If there were to be a tie in the division on the second reading, the Speaker would vote 'aye' to allow opportunity for further discussion.

After a Bill has received a second reading, it goes to a Committee, either a Standing Committee, or a Committee of the whole House. Then it comes back again to the House for the report stage. If there is a tie on an amendment moved during that stage, the Speaker votes for the Bill as it left the Committee and against the amendment, whether it is moved on behalf of the Government or of the Opposition.

If there were to be a tie on the third reading, the final stage, the Speaker would vote 'no' on the grounds that a change in

the law requires a majority in the House, and should not be made on the Speaker's casting vote. The same would apply to a motion whether moved by the Government or not.

Selection of Amendments

Perhaps the most important of the discretions entrusted to the Speaker is the power to select the amendments to be discussed. In the case of motions, or Bills at their second reading, report stage or third reading, the Speaker has complete discretion.

Privilege

The Speaker's task is to rule whether a motion relating to an alleged breach of privilege or contempt of the House should be given priority over other business. Generally, within twenty four hours Speaker has to consider the matter. If the Speaker decides in the affirmative, a motion is usually moved that the matter be referred to the Committee of Privileges or Select Committee of the House. But sometimes the matter is disposed of there and then by the House.

What the privileges of Members are and what constitutes contempt of the House opens up an abstruse and complicated subject. In early days, the Commons had to fight tenaciously for its privileges not only against the Crown, but also against the House of Lords. The privileges claimed by the Speaker-elect at the beginning of each Parliament are 'freedom of speech in debate', 'freedom from arest' and 'free access to Her Majesty'. Erskine May defines contempt as an act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes any member or officer of such House in the discharge of his duty or which has a tendency directly or indirectly to produce such results may be treated as a contempt even though there is no precedent of the offence.

The present tendency is for the commons not to seek to

Minorities

It is the Speaker's duty to give minority parties their due importance in the House. For obvious reasons the big parties do not care for minority parties. Equally, the big party establishments often overlook the minorities within their own ranks. Frequently, members of the big parties would come up to the Chair and respectfully suggest that they also have their rights. At the question time and in debates, the Speaker has to take a great deal of trouble to try to be fair.

Summing up his experience, Speaker Selwyn Lloyd, has aptly said:

> It is not, however, the perfection of procedures or the excellence of facilities that really matters. It is the men and women who use them.
>
> ... A member of Parliament has two roles to fulfil. He or she can mitigate hardship, prevent injustice, held individuals and act as a speedy means of communication between the ordinary citizen and the ministerial mandarins. Secondly, when some great issue presents itself, the House of Commons must function as the common jury of the nation. What is needed to sustain both these roles is character, common sense and judgement.

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11. Report of the Page Committee, Para 35.

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33

Parliament—The Fountainhead Of Social Change

Sushil Kumar Shinde

Parliament in a democratic society represents the 'sovereign will' of the people. All that Parliament ordains, represents the fulfilment of some social need or aspirations of the people for development. It also often provides for the course of development of the society for the times to come. The supreme will of the people in a democracy, expressed through Parliament, comprising their elected representatives, becomes the law of the land. The law that it makes signifies an attempt at meeting some felt social need or aspirations for development. All legislations, enactments, resolutions and directions given out by Parliament, go to meet certain social demands and desire of the society for development—social, economic or political. The law that legislatures make, either seeks to satisfy some express or felt need and aspirations of the society or to bring about a definite social change. Since social need and aspirations for development continue to change and demands continue to grow with social, economic and technological advancement within and outside the society, the law also must change to keep pace with social pressures and demands. Law must remain in harmony with social development and changing social values. Law must also develop in tune with the demands of society and

anticipate future social pressures.

While change is the law of life, change is also the life of law. Law to be effective must command spontaneous respect of the subjects it governs. It has to grow and change in line with the growth and development of society. For law that is static and rigid, such as that represented by outdated customs and usages, impedes the progress and development of the society.

While social heritage represented by customs and usages may sometimes be relevant where there is no codified law, yet it is no law if it goes out of date. Our heritage is rich but not without aspects which need to be changed. Hence the need for abolition of out-dated customs such as the *Sati Pratha, Purdah* by women, child marriages and the like, which militate against the spirit of democracy and equality before the law.

However the law that society continuously formulates and enacts, must serve as potent instrument for social progress and development, rather than as an impediment. In a parliamentary democracy, Parliament or the Legislature, comprising the representatives of the people acts as such an instrument.

Society is a living organism and is in the process of constant evolution and development, a constant change, a change for the better. If this chain of social development stops, society will be devoid of life. The yearning for development is the spirit which imparts life to society, the body politic. For the fulfilment of this desire for change, for a better life, society looks to Parliament, which represents the sovereign power in a democracy, embodying as it does the sovereign will of the nation.

If a nation constitutes the body politic, the Parliament can well be construed as its brain, and the Executive as the limbs. In the context, the legislators who are in constant touch with their constituents and the outside world can well be construed as the sensory nerves, and the bureaucracy as the motor nerve

The framers of the Constitution of India, had set out in the Preamble, a definite path for the Parliament to follow. The Constituent Assembly, not only acted as a supreme legislative body to

lay down the basic structure of the State organisation and its mechanism, but also to prescribe the basic social objectives that Parliament and the Government are expected to pursue. The "People of India" as represented in the Constituent Assembly expressed their resolve to constitute India into a "Sovereign,Socialist, Secular, Democratic Republic". The social objectives, as laid down in the Preamble, precisely are to secure to all citizens-JUSTICE,social,economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the nation. All that Parliament legislates essentially falls within the parameters set out by these objectives. The Parliament thus necessarily acts as a potent instrument of social change and development in securing these objectives.

The Parliament, in tune with changing times and social developments, took the opportunity to modify the basic objectives, aforesaid. Through the Constitution (Forty Second-Amendment) Act, 1976, it modified the basic resolve of the People of India as embodied in the Preamble of the Constitution itself, *from* constituting India into a "Sovereign Democratic Republic" *to* "Sovereign, Socialist, Secular, Democratic Republic", thus underlining the need for bringing about socialism and promoting secularism, while establishing and promoting a "Sovereign Democratic Republic". This amendment also emphasised the need for assuring not only the "unity", but also "the integrity of the Nation" for "integrity" constitutes the spirit of oneness and solidarity of the nation, a potent cohesive force amongst the people. This was considered necessary in view of the veritable divisive forces of communalism, secessionism, casteism and sectarianism then raising their hydra-heads within the society.

The Constitution of India does not merely prescribe, the nature, structure, organisation and mechanism of the State, but incorporates some outstanding features, by way of providing "The Fundamental Rights of the Citizen and the Directive Principles of State Policy" in Parts III and IV, thereof. These are two basic aspects that go to constitute a truly healthy, democratic welfare state.

Part III devoted to Fundamental Rights confers on all Citizens certain basic rights irrespective of caste, creed, sex or place of birth. These rights guarantee to all citizens certain conditions, conducive to full and fair development of personality. In the words of Prof. Harold Laski, these rights represent the conditions without which personality cannot develop to its full potential. Fundamental Rights thus guarantee complete equality before the law and equality of opportunity in matters of public employment, freedom of speech and expression, conscience and religion, to assemble peaceably and without arms, to form associations or unions, and the protection of life and personal liberty. These rights can be enforced by an individual even against the state. To keep pace with social developments and changing times Parliament from time to time altered and modified some Fundamental Rights too. A remarkable example of such modifications is provided by the omission of the fundamental "Right to Property" by deleting article 31 from the Constitution, under the Forty Fourth Amendment to the Constitution, enacted in 1978. This represents a fine example of the law not only reflecting social change but also removing an impediment in the way of development of society towards socialism.

The Constitution provides for Directive Principles of State Policy, which the State, shall strive to pursue and follow. These principles prescribe the guidelines for good governance. They contemplate the social order that Parliament would strive to achieve, a social order in which all citizens shall have adequate means of livelihood within equitable distribution of material resources and no concentration of wealth.

Remarkable amongst the principles of State Policy enumerated under article 39, is clause 39(f), which provides "that the state shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

Various laws have been enacted to meet different social needs and aspirations from time to time. In particular we may mention in Land Reform Acts, which secured the abolition of

zamindari. Untouchability was abolished by law. Employment of children below the age of 14 in hazardous jobs and factories was prohibited under article 24 of the Constitution itself. Article 45 directs the state to provide for free and compulsory education for all under the age of fourteen years. Article 46 enjoins on the state to promote with special care the educational and economic interests of the weaker sections of the people, particularly the Scheduled Castes and Scheduled Tribes and to protect them against exploitation.

Parliament and Legislature through various legislations have made provisions for adequate living wage and minimum wages for workers. All possible measures are taken to ensure participation of workers in management of industries.

Laws have been enacted by Parliament to ensure that women are given their due place in society. To protect them from exploitation, laws on marriage, divorce and inheritance have been enacted by the legislature from time to time.

Since necessity is the mother of invention, legislation to provide for a definite contingency, often follows the event. Yet there are many examples of pro-active legislation, in anticipation of socio-economic needs.

All legislation one way or the other is social in nature, whether it concerns, political, social or economic development. In a restricted sense, however, the term "social legislation" is used to denote such laws as are aimed at providing some exclusive benefit or advantage for accelerated development of the deprived, exploited or under-previleged class or weaker sections, like women, children and the *Harijans* and *Adivasis*. All land reforms laws, various labour laws, laws related to advancement of SCs & STs and various legislations for marriage, divorce and others conferring rights to property on women strictly fall within the meaning of social legislation. It may, in conclusion, be said that there is no legislation, no enactment,discussion or motion in Parliament which does not have some social bearing. Parliament through its enactments and legislations either accelerates or brings about social change. Parliament thus is pre-eminently the fountainhead of social change and social development.

34

Parliamentary Reforms

Bhogendra Jha

The Parliamentary system of Government in India derives its origin and sustenance from and is based on the Constitution of India which came into force on 26 January, 1950. Under our parliamentary system there is a clear demarcation of responsibilities and functions of the Legislature, Executive and Judiciary. But supremacy of Parliament remains an indispensable and integral part of our system of Government.

The Constitution itself provides for its amendment by a two-third majority to meet the exigencies of the developing situations. There have been seventy-two amendments of the Constitution so far. Thus, continuity and change are guaranteed in the very framework of the Constitution of India.

The debatable question is whether any parliamentary reform is required to make our system more effective and at the same time more democratic.

Members of Parliament certainly play a very significant role

in strengthening our parliamentary system. Members can by the required majority enact any law they deem fit. Any member of Parliament can raise questions and problems to draw the attention of the Government and the people. A member can also move bills and raise discussions, etc. through Parliamentary Consultative Committees, members can tender advise and suggestions and through statutory, financial and other Committees they can submit reports containing findings, criticisms, suggestions, etc. on specific issues pertaining to the functioning of the Government.

But the Parliament or any member of Parliament for that matter has not got the entire responsibility to ensure effective implementation of the various measures, enactments, schemes, etc. involving the everyday life of the people. This primarily is the responsibility of the Executive.

Since members do not have a direct hand in execution and implementation of the laws and policies enacted or adopted by them, they find themselves helpless to a certain extent in ensuring effective or preventing defective implementation. They have got to be satisfied by raising the problems in Parliament in one form or the other. And sometimes unable to face the dissatisfied constituents, members have to look for new constituencies, for fresh mandate. On the other hand, the officers charged with implementation or execution plead helplessness before the people on the ground that they have to implement only on the basis of the directions and decisions from above. Thus our 'sovereign' people are driven from pillar to post, and the sovereign Parliament is left complaining against defective implementation.

But can this dilemma of legislation *vs.* execution be resolved? The party to which the author belongs had put forward some crucial suggestions for amendment to the Constitution. This was aimed to make our parliamentary democracy more implementation oriented, our elected representatives more accountable and responsible for actual implementation and our bureaucracy more responsible partners in our democratic fabric.

The main features of these suggestions were (i) making electoral constituencies and developmental and administrative units co-terminus; (ii) elected representatives to head the developmental and administrative bodies with membership consisting of elected

representatives of lower organs and bureaucrats and technocrats responsible for execution; and (iii) Standing Committees of the elected representatives attached to each Ministry at the Union or State levels with statutory powers and responsibilities.

The above steps will help us march towards a more purposeful 'working democracy'. To a great extent, the parliamentarians in the process would get enriched with concrete practical experience as a feedback in their legislative tasks. The bureaucracy would become an integral part of our parliamentary democratic system. This would also help the electors to get both the legislators and the executors in the same body and at the same place to discharge their responsibilities formally and more meaningfully.

35

ELECTIONS AND ELECTORAL REFORMS

Vishwanatham Kanithi

Election processes in democracies across the world today are not uniform. The time has perhaps come for the largest world body, the United Nations, to evolve, through consultation and discussion, a practicable election formula to be followed by independent member countries of the U.N.O. No single system or method followed by one or the other country is totally fool-proof. An attempt can perhaps be made by experts in this field to formulate a system which would have the approval of all countries.

Towards this end, all direct elections may be held once in five years, preferably on the dates fixed according to the convenience of the respective countries. They must be based on universal and adult franchise with the voting age fixed between 18 and 20 years. There should not be any restriction to becoming a voter. Citizenship must be the determining factor. Minimum educational qualifications and good personal conduct must form preconditions along with nationality and age, to contest as candidates for any election. All direct elections within a state must be held on the same day. Indirect elections can be held at a later date. The Presidential form of Government is to be preferred as it ensures greater stability, responsibility and accountability. There should

not be any mid-term elections. By-election can be allowed to fill the vacancies. All elections must be conducted on the basis of manifestoes.

A multiparty parliamentary system must be adopted, and within that, a three-party model, representing the 'Right' 'Left' and 'Centrist' forces. No shift of alliances must be permitted from the time of filing of nomination to completion of term of office by a candidate, although it should be permissible for a party to offer support to another to form the Government. A single party, two parties or all three parties together can form the Government.

The election deposit must be of two kinds, non-refundable and refundable. The non-refundable amount should equal the cost of application, other papers and a copy of the required voters list (each candidate must purchase a set of latest voters' list). The refundable deposit can be Rs. 100/-,Rs. 500/- and Rs. 1000/- for Block, Assembly and Parliamentary elections, respectively. The refundable amount may be forfeited if the candidate does not get 10% of the polled votes.

Election expenses must be borne by the candidate or his supporters and not by the Government and audited accounts of all concerned must be produced with the returns. Radio and television appearances must be treated as chargeable expenses. Voters must be supplied with identity cards. Electronic voting machines must be installed to ensure free and fair polls.

There must be an election code of ethics and conduct and those who violate it must be debarred for life from contesting elections. This will reduce election offences. All election litigation must be completed within 6 months from the date of election. This will keep all contestants on guard. Offenders must be tried in a special court, set-up for the purpose.

Only specially qualified and able persons with expertise should be considered for the post of Ministers, so as to encourage educated and enthusiastic persons to contest elections.

36

Constitution Of India — An Appraisal

Sumitra Mahajan

It is already more than forty years since our Constitution came into force. It would be appropriate to take stock of what has been achieved over these years in the light of the ideals which the Constitution embodies.

There is no denying the fact that we have made significant achievements in many areas. We have been able to overcome the chronic food shortage and the miseries that followed. Recurring famine and floods have been controlled to a very large extent. The rate of mortality among the people has been reduced and longevity has increased. In this vast country of diversities, the change from feudal economy, though slow, has been perceptible and steady. In matters of education, our achievement is no less significant and we have the largest concentration of scientific and technical man-power. Most significant of all is our ability to sustain the growth of democratic institutions.

Yet we find ourselves confronted with several crises. Fifty

percent of Indian population is living below the poverty line. We have not been able to fulfil several promises we made to Indian citizens. The access to adequate means of livelihood to every citizen remains a distant dream. The gap between the poor and rich is increasing. Civic morality is lacking. Several Fundamental Rights appear meaningless. Justice Bhagwati has rightly said of the Fundamental Rights that "it has become a choice between freedom of few against the freedom of many." We have a notion of right without any corresponding obligation towards society. We will do, what law asks for, otherwise not. Morality is infact a product of law.

We have not been able to provide within a period of ten years from the commencement of the Constitution, free and compulsory education to all our children within the age of fourteen years as provided for in the Constitution. The situation has on the other hand worsened by the kind of education we give to our children in different types of schools. Education imparted in these schools is on different patterns and this is a glaring denial of equality of opportunity to the children. It is time to prescribe uniform syllabus to prevent the serious consequences for the society at large.

We have also failed to practise our commitment regarding replacement of the official Language from English to Hindi. Continuance of English as Official Language beyond 15 years after the commencement of the Constitution not only contravenes the constitutional commitment but also allows English language to enjoy the pride of place in our public life. It appears, our political leaders encourage the spread of English in total disregard of what Mahatma Gandhi said of its baneful effect: "The foreign medium has made our children,particularly, foreigners in their own land."

Similar is the case with prohibition. Our actions and our ideals are at complete variance. Why this variance? If this is not practical, why not change it and be a realist?

Another grey area is the transitional provision in the Constitution with regard to reservation. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislature is extended every ten years. Should it be extended like this *ad infinitum* or should it be discontinued?The same is the case with reservation in services. It does not make sense to have reservation in

services on caste basis alone in disregard to economic criteria. This way the backward classes are denied their due benefits.

With regard to the ideals envisaged for decentralisation of power, one is forced to believe that we prefer what we do not intend to put into actual practice.

No democracy can survive long if there is deviation from the principles enshrined in the Constitution to fulfil the expectations of the people of that country. That is why introspection as also retrospection become essential so that we may not lose sight of our ideals and vision.

Our policies must be guided by the national interest and the interest of the people at large which the Constitution makers had in mind. Now it is high time for self-evaluation and self-introspection.

On 26 November 1949 when the Constitution was formally adopted by the Constituent Assembly, the President of the Constituent Assembly, Dr. Rajendra Prasad made a moving valedictory speech,in the course of which he observed :

> If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution. If they are lacking in these, the Constitution cannot help the country. After all, the Constitution, like a machine, is a lifeless thing. It acquires life because of the men who control it and operate it and India needs today nothing more than a set of honest men who will have the interest of the country before them.

37

Parliamentary Legislation And Social Change

Hannan Mollah

Indian civilisation is one of the oldest civilisations of the world. We are carrying forward the heritage of the oldest human society in the world. This great civilisation has evolved through ages, brick by brick, by amalgamating different ideas and experiences of innumerable nationalities and ethnic people, several foreign invasions and by assimilation of so many civilisations from various parts of the world. Unity in diversity is the true spirit of our civilisation. We have achieved our diverse thinking, through various aspects of social, political, cultural and spiritual life.

At the same time, with the change of mode of production and production relations we have passed through various phases of social development. Various methods of economic and social exploitation painted the various social strata in differenct colours. It is not the intention of the author to describe the histroy of all the social, political, economic and cultural transformation of class-struggles and social advancement. The limited purpose is to glance at the changes that occured in our society through legislation, mainly since independence of our country.

Every society changes at a slow pace and that is more so of Indian society. Despite many external changes there is not change in the internal soul of our society. In fact, several factors are responsible for social change. Basically, the contradictions among the various classes, created by the productive forces and production relations play a major role in changing the society. The conflicts of different super-structural aspects are continuously influencing social life and causing innumerable actions and reactions in the society and they are also bringing several changes in the society. All these processes influence each other and accelerate social change. All these upheavals in society and movements for social change create such a situation which is sought to be given a permanent shape by legal recognition. We are influenced by various levels of thinking and consciously make laws, through our Parliament and Legislative Assemblies. These Acts acquire the strength of changing various existing social realities and changes did occur in the society by such laws, in course of time. But, if the society is not prepared to accept any change and is not ready to accept any such law, these Acts remain unimplemented for long even after their enactment by Parliament. On the other hand, if an Act, envisaging changes, is backed by adequate social movement and class struggle, then such an Act plays an important role in changing social practices and beliefs.

If we look at the Acts passed by our Parliament in the last four decades, we would find that these laws have helped our society to change its various facets to a considerable extent. Though Parliament normally does not bring about basic changes in the entire soical system and social structure but outside Parliament, struggles sometimes force certain changes in the society. The changes brought by parliamentary legislation are significant, wide ranging and no boubt beneficial to the society. We have changed our society from a colonial enslavement to an independent country, through a freedom struggle spread over several decades. Such kind of struggle is necessary to change our society further, to achieve complete freedom from exploitation and oppression of the down-trodden. Before discussing the role of Parliament in social change, we may have a look at such laws which influenced the society to accept some changes even before Independence.

The longest phase of Indian histroy is that of the feudal society. As a result, the inluence of feudalism is still dominant in our social behaviour. All the backwardness, characteristic of any feudal society, are deeply entrenched in our social life. Along with them, the new features of modern society, brought about by the development of capitalism are also increasingly taking shape. All these changes are not always taking place smoothly and without resistance, but the old ways are gradually giving in because they are not in a position to stop such changes for long. Of course, the acute economic and social unevenness occasionally stands in the way of social change. In a large part of the country, there is fullfleged development of various nationalities; at the same time, a large section still has not crossed the ethnic stage of development; we can even find population below the ethnic state of consciousness. So, there are a wide range of differences, distinctions and diversities in the social life of the Indian population. But still we find a tune of unity all through — the tune of Indianness — the tune of Unity in Diversity. That is one of the main characteristics of Indian civilisation

Social Legislation before Independence

In ancient India, the laws might not have had any role in bringing about a social change. The society mainly was ruled by religion, scriptures and their various interpretations. The social usages had tremendous authority on the society. According to *Manu*, 'Immemorial custom is transcendant law'. The influence of these customs on Indian society even today is not of less significance. The social reform movements developed again and again and created an atmosphere for changes in the age-old immobility of our social fabric. Though our rural society maintained many obsolete social practices, the new waves of changes were also washing out many of those outmoted remnants from our social life. The state of *status qou* of ancient and medieval ages, was facing a serious onslaught due to the new trends. Parliamentary legislation was also playing an important role as an instrument of such changes. And new movements for social reform also created an atmosphere under which these changes became acceptable to the people.

A series of social struggles against immobility of fedul so-

cial system, social oppression, social discrimination, atrocities against women, lack of human rights, slavery and social enslavement, barbaric social customs, and continuous fight for change and modernity, created an atmosphere in favour of social change. As a result even some legislation were passed to back such changes by the states. These social reform movements also helped to lay the foundation of the struggle for freedom. During British rule, laws were enacted to curb the barbaric social practice called *Sati*. A strong social movement was launched by RajaRam Mohan Roy to abolish this practice and in 1829 the *Sati* Prevention Act was passed. Subsequently the Hindu Widow and Remarriage Act, 1856 was passed to strengthen anti-sati movement and it became an instrument in the struggle for the emancipation of women from social oppression. The Female Infanticide Prevention Act, 187C was passed to stop the abominable practice of killing the girl child. Another legislation, the Special Marriage Act 1872, recognised the right to marriage between believers of different religions. This Act was amended in 1923 to legalise inter-caste marriages. The child Marriage Restraint Act was passed in 1929 to stop the social evil of child marriage. These were some important legislations towards strengthening the social position of women and paved the way for the struggle for equal rights of women in the society. Some other notable legislations in this regard include the Madras Children Act, 1920 which gave a legal sanction to the attempt of protecting children from social oppression and the Beggary Act, 1943 of Bengal which made some provisions to prevent beggary among children and to provide for children's homes, etc.

During this period, the growth of industrialisation began and capitalism started taking roots in our economic life. New factories were set up. A new class of toilers was born. To facilitate the new generation of industrialists, the Workmen Breach of Contract Act, 1859, the Employees and Workmen (Disputes) Act, 1860, the Indian Penal Code 1860, etc. were enacted. But in course of time, the growing movement of the workers for their rights, forced some other Acts also to be passed by the Government such as the Factory Act 1881, the Workmen's Compensation Act, 1923, the Trade Union Act, 1926, the Industirial Disputes Act, 1929, the Payment of Wages Act, 1936, etc. Thus even before Independence

itself, certain Acts were passed for bringing some changes in our society as a result of social movement and growing consciousness among various sections of the people. These led to some changes in our outlook towards Women's status in society, social practice of marriage, crime against child, child labour and rights of the working people. Hence, a new approach developed towards social problems as opposed to the old feudal social outlook.

Changes in Indian society after independence and role of legislation

Normally, by change of society, we mean change of social structure. Social change envisages change in various aspects of social life and it also includes change in social outlook and beliefs. According to Jones, "it is a variation in or modification of any aspect of soical progress, social pattern, social interaction or social organisation". It is a change in the old ways of life. Devis puts it thus: "large number of persons are engaging in activities that differ from those which their immediate fore-fathers engaged in sometimes before". According to Gainsberg, "by social change, I understand a change in social structure, *i.e.* size of society, the composition or balance or its parts or type of its organisation".

In India, various changes have taken place in our society since independence, dut to different reasons. Religions, new social and political forces, economic reasons, industralisation, changes in approach to religious and moral outlook, massive exodus or refugees after partition, various welfare schemes of the Governments, change in law and newly developed social contradictions and class-struggles have contributed to multifarious change in our soical fabric. These chanages take place some times slowly, some times at a faster pace; it becomes faster if it is backed by popular support.

Now we shall discuss how our Parliament and parliamentary legislations have played an important role in bringing various significant changes in our society. Generally, by social legislation, we mean those laws which are consciously formulated and enacted for social progress. These are mainly enacted as the reflection of the will of the people to remove social discrimination and to establish social justice Social legislation, provides for the orderly regulation of social relationship and for the welfare and se-

curity of all individuals in the social units.

In our country, the Constituent Assembly, laid down the foundations of several social changes in newly independent India. The Constitution of India—the highest law of the land is itself an instrument of change in various aspects of our society. This fudamental law of the land has attacked the *status quo* of many existing social systmes of feudal concepts and practices in the society.

In the Chapter on Fundamental Rights of the Constitution, large number of rights against social injustice are recognised and guaranteed. Article 14 eliminates the social discrimination that existed between man and man in the feudal society, by providing equality before law. Now constitutionally at least, all citizens are equal in the eyes of law, though there do exist other realities which prevent equality in practice. It is true that however good a law may be, it does not produce the desired result to the prospective beneficiaries, if it is not implemented properly or there is lack of will to implement it or there is no powerful soical movement to enforce its implementation. But it is also true that the recognition of a right is a necessary precondition for the enjoyment of the right. In view of that we should not undermine the importance of the fact that the Indian Constitution has, by recognising these rights, created an atmosphere which helps social movements for realisation of these rights and ensures changes in social behaviour.

Article 15 of our Constitution rejects those social discriminations which existed in our society on the grounds of caste, religion, race, sex and place of birth. Article 16 also guarantees equality of opportunity in matters of public employment.

One of the worst inhuman and uncivilised soical practices in our country was untouchability. But article 17 abolished that soical sin and on the basis of that the Parliament enacted the Untouchability (Offences) Act, 1955. Our society even today, might not be free from that obscurantist social practice and some unfortunate people might still face such behaviour in particularly some rural parts of the country, but still this Act of Parliament was a step in the right direction for creating an atmosphere of social equality and for inspiring people to fight against such social evils.

Article 19 guarantees the right to freedom and becomes an important instrument in the struggle for change in our society. In rural India, the landlords forced the 'Begar' system on the rural poor who were compelled to work for the landlord and to remain their slaves. But article 23 prohibits such traffic in human beings and on similar forms of forced labour. Article 24 prohibits child labour. On the basis of these articles, a large number of Central and State legislations have been passed.

Article 25, which guarantees all religions to enjoy equality in treatment, also ensures the freedom of conscience and free profession, practice and propagation of religion to all citizens. To protect rights of identity, language, culture and other specific aspects of religious and linguistic minorities, articles 29 and 30 were formulated in the Constitution. Proper implementation of these articles may definitely help many changes in our social behaviour.

Though there are many difficulties in the implemention of these articles and the vested interests of diverse ideologies are active to un do many of the benefits provided by the Constitution there is no doubt that proper implementation of these articles will definitely pave the way for more social change.

Directive Principles of State Policy and Social legislation

In the Chapter on Directive Principles of State Policy of our Constitution a large number of directives are enshrined which give the State clear direction to bring about change in society. Though these direcives are not enforceable in the court of law, Parliament and State Assemblies always keep them in consideration and correspondingly make several acts which have definitely brought many changes in our society. These directives also create an awareness about many means of social changes; for example, the right to an adequate means of liveli-hood, distribution of material resources for common good, prevention of concentration of wealth, equal pay for equal work, protection of childern and weaker sections, promotion of justice, right to work and education, participation of workers in management, better conditions of work, uniform Civil Code, promotion and development of Scheduled Castes and Scheduled Tribes, protection of environment, etc. Many of these directives have inspired several social movements

during the last four decades and many of them were transformed into Acts. On many directives social and political struggles are developing all over the country, such as struggle for right to work and education and participation of workers in management.

The movement for social justice has taken roots in many parts of our country. Parliament has passed an Act for equal wages for equal work for women. A draft Bill was prepared for workers' participation in management which may be taken up by Parliament soon. The Monopolies and Restrictive Trade Practice Act was also inspired by the directives. Many acts for the welfare of children and other weaker sections were passed by Parliament over a period of time.

A mention of some such Acts would be appropriate at this place. According to directives of articles 39 and 43, the Minimum Wages (Amendment) Act, 1950, 1951 and 1954, the Industries (Development & Regulation) Act, 1951, the Employment of Children (Amendment) Act, 1951, the Plantation Labour Act, 1951, Industrial Dispute (Amendment) Act, 1953, the Factories Act 1954, the Children Act, 1960, were enacted within the first decade of the commencement of the Constitution.

As per provisions of article 40, the State Assemblies enacted their Panchayat Raj Acts and the Central Act on Panchayat Raj was passed recently by the Parliament. Likewise, article 41, inspired Parliament to make laws like the Employees Provident Fund Act, 1952 and the Employees State Insurance Act, 1948.

Article 42 was the guiding spirit behind the Maternity Benefit Act, 1961. According to article 43, the Khadi and other Handloom Industries Development Act, 1953 and the Khadi and Village Industries Commission Act, 1956 and many other State laws were enacted.

On the basis of article 44, many social legislations were made such as the Hindu Marriage Act, 1955, Hindu Minor & Guardianship Act, 1956, The Hindu Adoption & Maintenance Act, 1956, Hindu Marriage (Validation & Proceedings) Act, 1960, etc. A large number of laws on education were passed according to the directive of article 45. Article 46 again helped the enactment of the Untouchability (Offences) Act, 1955. As per article 47, the

Prevention of Food Adulteration Act, 1954 was passed by Parliament.

The social reform movements and the struggle of the toiling people raised those demands for long and built up public opinion in favour of them. The situation was created for their social acceptability and Parliament duly recognised them in the form of legislations.

Social legislations for improving Status of Women

One of the Acts of Parliament, the Hindu Marriage Act, 1955, brought an important change in the lives of the largest section of Indian people. By this enactment some progressive changes were achieved in the Hindu society. This Act opposed caste consideration in marriage and prohibited polygamy among Hindus. Besides, it accepted various customs of Hindu Marriages prevailing among different sections, including registration of marriage.

In 1956, the Hindu Succesion Act was passed by Parliament. This strengthened the social status of Hindu women and they got a right on their paternal property. Another Act called the Hindu Adoption and Maintenance Act was also passed in the same year, which enhanced the rights of women further.

The Dowry Prohibition Act, 1961 sought to put an end to another criminal social practice. People belonging to almost all religions, caste or community are victims of this and women from all sections suffer from this evil in our society. Inspite of the Acts, the dowry-crime against the women is still plaguing our society. Recently Parliament passed the National Commission of Women Act, 1990 and entrusted the Commission to look into this aspect so that constitutional and legal rights of women are protected.

In protecting the dignity of women, we may mention another piece of legislation called the Suppression of Immoral Traffic in women and Girls Act, 1956. This is the first social legislation in the direction of curbing prostitution.

But, some times narrow outlook or pressure from vested interests hamper the process of social legislation. In such cases, Parliement would have to play a more positive role by reflecting

the real progressive public opinion so that we could bring about social progress in the true sense.

The Maternity Benefit Act, 1961 and its amendment Act of 1988 determined the eligibility terms, etc. for payment of money during pregnancy This Act also made provisions against violation of this Act and this gave some relief and security to working women. Besides the social-welfare laws mentioned above, to establish economic rights of the women, Parliament passed the Equal Remuneration Act, 1976 and it was further amended in 1987 which gave women equal wages for equal work and certainly it was a step towards preventing economic discrimination on grounds of sex.

Children's Welfare Acts

In our old feudal society, many oppressive and reactionary approaches towards children were Prevalent. But the progressive social thinkers always raised their voice against these practices and social reform movements were organised for the welfare of children. Indian Parliament after Independence enacted some laws for the betterment of children and directed the Government for taking various welfare measures for their development. Under various labour laws, employment under the age of 14 is prohibited. In spite of that, this evil practice is still existing in different parts of the country. We have to build up many struggles to combat such atrocities and create social consciousness against it. But we need not underestimate the role of the Acts passed by Parliament in this regard. The Factory Act, 1948, the Mines Act, 1952, etc. have made provisions against employing children in hazardous jobs and services. The Juvenile Justice Act, 1986 made provisions for proper care for the neglected children and the juvenile delinquents and for their rehabilitation. Parliament would have to take more initiatives to protect and develop our children.

Land legislation

India is an agricultural country and as such the rural society is also feudal, and basically guided by feudal concepts of life. So the existing land relation plays a dominant role in our social life. The system of landlordism made the feudal lords most

powerful and they ruled over the society in all respects. The colonial rule also strengthened that social system. In the post-independence period the progressive social and mass struggles demanded abolition of landlordism and implementation of radical land reforms so that the land relations changed to bring about a change in the social relations. Accordingly, Union and State Governments took up the issue and various land laws were passed in the last four decades. In terms of law landlordism has been abolished. In our federal constitutional set up, since land is a State subject, State Assemblies enact their Land reform acts. Thousands of cases are filed against these laws. The interpretation of these laws by the Supreme Court and the High Courts creates many complexities. To remove those hurdles, Constitution was amended on several occasions. In 1951 itself, article 31 was amended by the First Constitutional Amendment. All the land laws for the abolition of landlordism were taken out of the purview of law courts, by inserting acticle 31(A) in the Constitution. The Constitution has been amended to facilitate land laws by the Constitution (Fourth) Amendment Act, 1955, the Constitution (Twenty-fifth) Amendment Act, 1971, and the Constitution(Forty-second) Amendment Act, 1976. In 1978, the Constitution (Forty-fourth) Amendment Act abolished article 31 itself. Recently another Constitution (Amendment) Act brought many land laws under the Ninth schedule of the Constitution.

But all these acts, by and large, increase the volume of our statute books. Hardly there is land reform in the country except in some States like West Bengal and Kerala. Due to proper implementation of land reforms, we find some positve change in land relations as in social relations in these States. The large number of people in the rural areas of West Bengal, Kerala and Tripura are poor and marginal peasant or share croppers and agricultural labourers but their social status has definitely improved oue to land reforms. But in most of the other States, the concentration of land is still in fewer hands and land laws remain on paper. If there is no strong peasant movement the necessary social pressure cannot be created for implementing land reforms. We cannot say these laws are all in vain because they have recognised the need of land reforms and created a consciousness about it. Some times we need some laws first and we fight later for their implem-

entation. But if there is a law, struggle for its implementation is easier than something which is not recognised by law. Our Parliament and Assemblies have so many laws for social change through land reforms and the institutions themselves would have to take necessary initiative for implementation of these laws so that some real changes occur in our souity

Labour Laws

With the growth of capitalism in our country, a large number of industries developed and a big contingent of workers also came into being. Their struggle for their rights became an integral part of our social movement and influenced our society to a great extent. With the growth of trade union movement, they achieved legal recognition of many rights which never existed in our society. After Independence Indian Parliament took congnizance of this fact and enacted many labour legislations for improvement of the life of the working people. The individual freedom of the worker, 'the right for proper working conditions and the right to live a decent and dignified life in the society, are gradually being accepted by the society. The Industrial Dispute Act, 1947, the Minimum Wages Act, 1948, The Plantation Labour Act, 1951, the Factory Act, 1948, The Mines Act, 1952, the Merchant Shipping Act, 1958, the motor Transport Workers Act, 1961, the Beedi and Cigar Workers Act, 1966, The Payment of Bonus Act, 1965, The Payment of Wages Act, 1982, etc. are some of the laws made to protect the interest of the unorganised workers, though a large section of them, such as agricultural labourers, and construction workers, etc. are still kept out of protection by any legislation.

Conclusion

According to Karl Marx, "The ultimate cause of all social changes and political revolutions are to be sought not in the minds of men, in their increasing insignt into the eternal truth and justice, but in the changes in the mode of production and exchange". These basic causes of change would operate in the society through different contradictions existing in it. At the same time, the interactions of various forces in the super structure also would continue to influence social behaviour. Change through

peaceful means is most desirable if it is allowed to take place. But if it is obstructed it would follow its own natural course.

Slow and gradual changes are always happening in society and will continue in future too. The real necessity of any change in society is always reflected in the social movement which creates the atmosphere of such change and it is wise to recognise this in time and allow it to occur. Parliament, as the institution which represents the will of the people, should naturally take note of it and give it a legal shape so that it helps the society to progress. As we have seen our parliament has enacted a large number of social legislation and found that they have changed many obsolete practices, customs, behaviour and beliefs and abolished some institutions which existed in our semi-feudal and semi-colonial society. They have also raised the level of consciousness on different aspects of life which, in turn, encouraged many more social reform movements. Inspite of several limitations, many Acts of Parliament have become instrumental in the struggle for reforms but still they are not adequate and it is the responsibility of Parliament itself to remove those inadequacies.

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38

Parliamentary Democracy — An Assessment

Vasant Pawar

> The world that we have made as a result of the level of thinking, we have done thus far, creates problems that we cannot solve at the same level that they were created.
>
> *Albert Einstein.*

Democracy has in recent times shown new vibrance and got new adherents in Eastern Europe and Russia. These budding democracies have joined the ranks of the community of democratic nations, to which India is proud to belong. However, in some instances misuse of power has had a corrupting influence with the result that there has been a loss of faith in the system. There is a general impression that modern day democracy has lost the spirit of consensus and humaneness as well as concern for equality. Violence has unfortunately marred the system. We in India have to make a serious attempt to rid our polity of these afflictions in order to preserve the health of our political system.

Ancient India has been home to republican Governments. Lichchavi was one such important republican state. The great saint, Gautama Buddha said of Lichchavi that so long as the

Lichchavi assembly met regularly, so long as its members ruled unitedly and with consensus, so long as its members did not quarrel over petty benefits and selfish interests, the Lichchavi republic would remain powerful.

Nearer our times Gandhiji said democracy requires flexibility of mind, and tolerance for the view points of others. Intolerance is harmful to truth.

The institution of Parliament has unfortunately suffered a setback. There are delays and disorder within Parliament. Political parties are no longer primarily commited to nation building. Power has corrupted the political system.

Democracy all over the world is showing signs of stress, and needs to be redefined, especially as communism has failed as a political system, and capitalism seems to be bese with its share of problems. In our country, Veteran members of the ruling and Opposition parties agree that there are crucial lacunae in the system. Absenteeism of members from the House is a matter of serious concern. Whips are routinely being issued. The serious business of Parliament is hampered by delays caused by trifling or contentious issues.

The Goverment and the Opposition parties must take responsibility for maintaining parliamentary decorum. The Presiding Officers, the Opposition Parties, the Government, and the media are the four corner-stones of parliamentary democracy and they must all discharge their functions honourably.

The main work of Parliament and Legislature is to enact laws. However, many trivial issues are raised in Parliament and the Legislatures. The standard of debates has been going down. Even the President's address to Parliament gets disturbed at times.

It appears as if some legislators are adding to the problems of parliamentary institutions. The problem of fatigue and decay and excess could be dealt with firmly by commitment to the cause of democracy, and with more accountability.
yet precious little is done to arrest the deterioration. All agree on the need for maintaining the decorum and dignity of the House. However enactments of laws or amendment of rules would not change the scenario without self-discipline and firm commitment to democracy.

In olden days, grassroot activists and workers were sure of popular support. Good work was the passport to power. But today, it is no more the same. The dubious role of money and muscle power is like incurable gangrene in the bodv politic of democratic system. Politicking by other means has to be rooted out. But who would do it, if not we?

In this context, the suggestion made by the Prime Minister, Shri P.V. Narasimha Rao is worth consideration. He has prescribed for our malady a moratorium on contentious issues through consensus. If people in a developing democratic country like India accept a moratorium by choice for a period of three to four years, the task of nation-building would rise on our agenda of priorities. As the late Shri Y.B. Chavan used to say, 'democracy is like the *Wari* (a holy pilgrimage). Each and every one has to be devout and dedicated and disciplined'. In short if democracy is looked upon as a responsibility both joint and several, distributive justice for all would be the order of the day.

The Duke of Wellington once suggested: 'You must build your parliament upon the river so that the milling crowds do not exact their demands by sitting down around you'. The Duke however, could not foresee the 'loud' behaviours inside the House.

The malaise that is afflicting our body politic is symptomatic of ill-health-syndrome. Politics is made up of three Ms-men, money and muscle power. Politics to my mind must be made more people oriented, and that is the responsibility of all-voters, politicians and above all rulers. Unless all the three rise together, democracy would become *demonocracy* and that will sound the death-knell of democracy.

39

Socio-Economic Background Of Legislators

Moreshwar Save

A brief survey of the composition of the Houses of Parliament and State Legislatures during the early years reveals that a large number of representatives were freedom fighters, lawyers, teachers, doctors and trade union leaders.

However, the Parliament and Legislatures today have a different story to tell. Although leading political parties are still banking on the support of senior members, a large number of youngsters have made it to the House. Parliament has members who are in the early 30's or late 20's. The young are becoming ethusiastic and assertive. We have to carefully balance the impulsiveness of the younger generation with the wisdom of the older generation.

The socio-economic background of legislators is a point of concern. We still have a selection process based on caste and economic standing. With improved literacy rates, spread of knowledge and education, the aim should have been to elect a disciplined educated,and hardworking band of representatives. Money

power has become very important, as cost of elections is enormous. Public spirited men of character who identify themselves with needs of the common people rarely get elected.

Attitudes generally incline towards safeguarding one's political interest. There is hardly any spirit of sacrifice, or a genuine identity with the trials and agony of the common folk.

However, there are legislator, who have been businessmen or lawyers or press persons, and have made valuable contributions. There are some others whose standing in the House rests on the strength of their character.

We can look to these legislators to set positive goals in key areas such as agriculture, industry, education, and communication. The future of this country must be decided by the fearless attitudesof men of character trying to shape the destiny of the country. The Presiding Officers in the Parliament or Legislature will have to spot talent and give encouragement. Let the people decide that the most dedicated, learned and effective candidate should be elected.

40

Parliamentarians And The International Co-operative Movement

Sudhir Sawant

Justice and equity are the two most vital objectives that concern all parliamentarians, the world over. Parliamentarians must necessarily fashion out designs that can provide a fair quality of life to people they represent. A fair distribution of wealth in society will essentially be the dominant feature on the national and international agenda notwithstanding ideological considerations or reforms. Parliamentarians, individually and collectively, must explore a method of harnessing peoples' power towards economic development. This can best be done by employing the cooperative model of economic enterprise.

Cooperative movement is accorded very low priority in international affairs and economic relationships, possibly because it is considered analogous to public sector enterprise and is perhaps out of fashion in current economic thinking.

The current thrust to free market economy can be based on a form of private enterprise comprising both private capital as well as private cooperative capital. Cooperatives are essentially a form of private enterprise. We must view the co-operative enter-

prises as institutions which can compete and flourish in a free market economy. Today cooperatives have established clear leadership in some agro-based form of industrial production as for example, sugar. In India also, the cooperative banking sector has been very successful. In westen Europe, cooperatives have been leaders in industry in many sectors such as ceramics, construction etc. Practically 60% of Agriculture in Europe is in the form of cooperatives These cooperatives are strong economic forces which have contributed to distribution of economic wealth in Western Europe.

Co-operatives in India

The co-operative mevément in India has been relegated to a few areas. Strong political motivation is an essential precondition for the success of the cooperative movement. Maharasthra is a good examplé of a state where the movement has succeded. The once dry, arid and unproductive region of Western Maharasthra stands today transformed after 30 years of co-operative movement. There was no public or private investment in this region. But, political resolve, peoples' participation and government financial backup in the form of low interest rates and concession in taxation have resulted in phenomenal economic prosperity and social transformation.

Indian cooperative movement so far has been restricted to the agricultural field. There exists a need to explore new avenues in service and industrial cooperatives. We must evolve a joint strategy to develop the co-operative movement in all sectors as a private enterprise. Hence the international experience must be a guiding factor.

The cooperative formula offers to the worker (operator, technician or craftsman an effective way in which he may achive a decisive share in the means of production. Thus, cooperative associations or systems have a strong democratic basis. This is the way of the collective entrepreneur. One vote per head, to link the interests of the member to that of the co-operative by means of aconstitutionof a patrimony which is indivisible even between generations. This will be an instrument and not a dominant factor in the cooperative.

So far in India various institutions like the national co-operative development council have worked out many schemes

which have been utilised well in some areas of the country. However, the success in most areas is limited. There is also need to promote inter-state cooperative movement and international coopertives especially in the service sector, such as insurance, banking and tourism.

Future Directions

The transformation of the productive system poses new problems, such as need to accentuate and exploit functional inter-connections between the enterprises, the widening of the horizon beyond the national boundaries and beyond traditional channels of cooperative trading. There exists urgent necessity of having modern tools of management, technology and finance dealing with a market without frontiers

At the international level various associations of co-operatives can be organised in the form of federations devoted to special areas. Cooperative banking has been largely successful the world over and this form can be utilised to form an international Co-operative bank on the lines of IMF and World bank. To make the co-operative movement effective at the national and international levels, steps should be taken to integrate all the institutions functioning in the co-operative movement, to monitor the work of all sectors of co-operative movement, to establish links before co-operative movement and various government programmes and to promote interantional co-operative movement through joint ventures between co-operative societies of various nations.

Conclusion

The new world order calls for a change in the economic framework of society, to improve the quality of life of every individual.

The great debate on the merits of public and private sector can perhaps give rise to a third alternative. In economies across the world the private sector as well as the public have been plagued with problems. Nor have the socialist and capitalist models of society procured for their citizens the desired quality of life.

Given this scenario, an alternative such as the cooperative movement needs be reassessed as a method of economic

growth and more equitable distribution of wealth. This concept can easily integrate with the requirements of free market economy and be a dynamic instrument of social change as also establish the economic basis of international co-operation between the developed and developing countries.

International co-operative movement can easily provide a new agenda for North-South dialogue, as also the economic foundation for regional co-operation. This can also serve as a method of promoting private entrepreneurship with a large base of shareholders and a more democratic control of the means of production. Inevitably, the promotion of weaker sections of society would be integrated with economic growth and democracy.

41

Role Of Women In Parliamentary Democracy

Chandraprabha Urs

Women play an important role in shaping the destiny of a nation. Any decision taken by Parliament in its policy framework or otherwise have a significant effect on every person, especially women. It is hence necessary to involve women in the process of administration and planning of various welfare programmes.

Out of 550 members in the Lok Sabha, there are very few women members and similar is the case in the Rajya Sabha. It is very difficult for a woman to get the ticket of any national political party and even if she gets the ticket, in most of the cases, the party functionaries do not extend their full co-operation. A woman member is elected by sheer merit of her selfless, dedicated and sincere work done in the constituency and particularly the welfare of the women folk. Unless women members are not elected to the Parliament and the State Legislatures in large numbers, the Legislatures would be deprived of the representation of a substantial chunk of the people in the country. In my opinion a constitutional amendment should be carried out to reserve at least 30% of the seats in Lok Sabha and in State Legislatures for women. Similarly, in Rajya Sabha elections also it should be ensured that out

of the total seats available once in two years at least 30% of seats should be filled up by women. Since all the policy decisions and programmes decided by the Legislatures are being implemented by the Executive, certain portfolios like Education, Health, Social Welfare and Housing should be given exclusively to the lady members. At present, members of Parliament particularly women members are not being properly involved in the implementation of the welfare programmes in their own States. Once elected, members are completely cut off from the States affairs. They should invariably be appointed to the various Committees constituted in the States to implement welfare programmes, etc. and also to the Boards like Water Supply Board, Housing Board, Electricity Board, etc. It should be ensured that all the papers and correspondence by the concerned Department or the Secretary to Union Government concerning the scheme or the project proposed to be undertaken in the members constituency should be sent to the member also so that members may help in whatever way they can for its speedy approval at the Union level.

Women members should be fully involved in the literacy, nutrition, health and other social welfare programmes. They should associate themselves with statutory authorities. More women officers should be appointed to certain key posts in the Government. Women should head the Committees or Commissions constituted to enquire into the atrocities against women and related issues like divorce and dowry harassment cases, etc. The number of women judges should also be increased and a separate court should be provided in all districts to hear both civil and criminal cases where a woman is a victim. The lady legislators should also be sent to other countries under various programmes to enable them to study the working of the parliamentary institutions of these countries.

In my opinion a separate Training Institute should be set up in each State to provide leadership training to women so that they can rise to the occasion and actively participate in the democratic process.

42

PARLIAMENTARIANS—LINK BETWEEN THE PEOPLE, THE PARLIAMENT AND THE GOVERNMENT

C.K. JAIN

The hallmark of democratic form of Government is its representative character and responsiveness to the needs and aspirations of the people. The rulers, in a democratic set-up, are responsible to the people through their elected representatives who primarily serve as a link between the people, Parliament and Government.

Parliament, as the supreme representative institution not only embodies but also reflects the wishes, hopes, urges, aspirations and even frustrations and deprivations of the people. It highlights their problems and difficulties and impresses upon the Government the need to mitigate them and work towards the ultimate objective of providing richer and fuller life to the common man. Parliament is composed of individual parliamentarians who are the accredited representatives of their respective constituencies. On the one hand, they are the law makers for the whole

country and on the other, they, as representatives of the people, are responsible for the well being of their respective constituents. This representative character gives them a unique position and they serve as a link between the people, Parliament and the Government. How effectively and efficiently they discharge this primary duty of theirs, becomes instrumental in earning them a better image, which in turn contributes to the image of Parliament as an institution. Actually speaking, the future of parliamentary democracy depends upon the effectiveness with which the individual parliamentarians play their role.

Multifarious Role of Parliamentarians

Parliamentarians are called upon to simultaneously act in several capacities. First and foremost, they are the people's representatives. At the same time, they may be Ministers, Leaders of the Opposition or Presiding Officers. Side by side, they are party workers and spokesmen of a particular group or community in the society. And above all, they are the custodians of national interests.

However, the most important role which the parliamentarians are called upon to play is to effectively represent their respective constituencies, protect their interests and ensure their development. In this respect, parliamentarians are two-way link between the people on the one hand and the Parliament and Government on the other. The have to convey to the Government the grievances of their constituents, either by voicing them in Parliament or by way of personal communications to the concerned authorities, including Ministers. At the same time, they have to keep their constituents fully apprised not only of the prevailing political mood but also of their own endeavours as also of the Government towards mitigation of their sufferings and redressal of their grievances.

Parliamentarians to work for Collective Good

People, particularly the constituents, expect their parliamentarians to help them not only in matters of common interest but in their personal matters also as for instance, in securing admissions for their wards in educational institutions, allotment of a house, shop, agency, L.P.G. gas connection, telephone and so on.

But parliamentarians should be able to draw a line between personal and collective interests of their constituents as also of the nations as whole. They should pursue only such matters as might ensure the greatest good of all or at least the 'greatest good of the greatest number'. At the same time, they should grant personal favours only when these do not compel them to compromise collective interests or subject their own position to abuse.

Accountability to the People

In a representative democracy, it is the people who are the sovereign. They are the masters of their own destiny. They elect representatives to become parliamentarians who act on their behalf for the collective good. Since parliamentarians are people's representatives first and foremost, they are accountable to their masters for all their actions. In a democratic set-up, *Praja* is the real *Raja*. Therefore, their will has to be respected as it alone can form the basis of the state edifice. Being the mirror of people's aspirations, the institution fo Parliament embodies as well as reflects the sovereign will of the people. Parliamentarians should, therefore, know the pulse and understand and appreciate the urges, the hopes and the aspirations of the people. They should always maintain a close and a constant liaison with the people. This way, they would not only be able to influence the thinking of the Government but would also mobilise and if required, mould, the public opinion in support of the governmental schemes for the development of their areas which would contribute substantially to the developmental process of the country as a whole.

Continuity of Association

Since parliamentarians are elected for a fixed term, they should keep themselves in constant touch with the people so that at the time of the next elections, they are in a position to show to the people as to what they had promised and how far they have been able to fulfil those promises and what has been the sum total of their achievements in thier respective constituencies, state and the nation as a whole. They should not only maintain this continuity of assotiation but should also make people realise that it is only through this continuity that parliamentarians can properly and effectively play their role as a link between the *Lok* and

the *Rajya.* It is only this way that real benefits can accrue to one and all. Here what Kautilya stated in his *Arthashastra* comes true. He had said :

> The happiness of the king lies in the happiness of the people and his welfare is akin to their; what is dear to his people is dear to him.

Reconciling Conflicting Interests

Occasions might arise when parliamentarians may find that on certain matters, national interests are somewhat in conflict with those of their respective parties or the constituents they represent. In such situations parliamentarians should strive to maintain a harmonious balance between the two, as parliamentarians obviously have in their minds interests first of those who elect them as Members of Parliament and second, of the political parties whom they belong to and who sponsor them at elections. But above all, they should place interests of the nation while, at the same time, avoiding denunciation of their parties' policies in public. Indeed they have to be opinion makers too if the national interest so demands.

Judicious Exercise of Judgement

In a situation where reconciliation in conflicting interests do not seem to be possible or it becomes extremely difficult to do so, parliamentarians would do well to give precedence to the national interests above all other interests. They should be courageous enough to tell clearly their parties or the constituents as to what they feel and should not allow themselves to be swayed by emotions or extraneous considerations when it comes to safeguarding national interests. In this connection, Gandhiji once made very apt observations when he said:

> Those who claim to lead the masses must resolutely refuse to be led by them if we want to avoid mob law and desire ordered progress for the country. I believe that mere protestation of one's opinion and surrender to the mass opinion is not only not enough but in matters of vital importance leaders must act contrary to the mass opinion if it does not com-

> mand itself to their reason.

Similarly, Sir Edmund Burke had observed :

> It ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence and the most unreserved communication with his constituents. Their wishes ought to have great weight with him; their opinion high respect; their business unremitted attention. It is his duty to sacrifice his repose, his pleasure, his satisfaction, to theirs and above all, ever and in all cases, to prefer their interest to his own. But his unbiased opinion, his mature judgments, his enlightened conscience, he ought not to sacrifice to you, to any man or to any set of men living... Your representative owes you not his industry only, but his judgment, and he betrays, instead of serving you, if he sacrifices it to your opinion.

Use of Procedural Devices

In order to prove an effective link between the people on the one hand and the Parliament and the Government on the other, parliamentarians must make full use of all available procedural devices—questions, discussions, Calling Attention Motions, Adjournment Motions, Special Mentions and so on—to bring to the notice of the House matters of public importance and actively participate in its day-to-day business. This way they would not only bring to bear their special knowledge, experience and expertise in the shaping of the national policy but would also contribute towards redressal of public grievances.

It is not enough that parliamentarians should have a sound knowledge about parliamentary rules and procedures so that their knowledge, experience and expertise could be utilised to the optimum advantage but they should also be able to pick up and know the application of the right procedural device to achieve their objectives. This, indeed, is all the more necessary and relevant because of the sophistication added to the Rules of Procedure in recent years.

Parliamentarians' Qualities

Only persons motivated with the spirit of sacrifice and community service should think of entering the august body of Parliament. They should be shining examples of self-sacrifice and willing to serve the nation and its people to the best of their ability, sincerity and integrity. Although they may specialise in one or two areas, it is necessary for them to know something of practically everything and keep in touch with day-to-day developments.

Lord Bryce had also expressed similar sentiments when he had remarked :

> Democracy assumes not merely intelligence but an intelligence elevated by honour, purified by sympathy and stimulated by a sense of duty towards the community.

Observance of Discipline and Decorum

In order that they are able to master the skillful use of parliamentary devices, parliamentarians should not only do their homework but should also observe, faithfully and scrupulously, the rules of responsible and dignified behaviour inside the House. They should obey the rulings from the Chair as a matter of habit. Further, they should also be time-conscious and refrain from wasting precious time of the House in creating disturbances and disorderly scenes, thereby hampering smooth conduct of the parliamentary business. They should use every minute of the House most effectively and purposefully. This they can achieve by cultivating habits of self-discipline, tolerance, exemplary conduct and result-oriented approach. This way they would be able to guarantee to the nation, full-scale constructive debates in the House on all matters of public importance and set an example before the people of disciplined and orderly behaviour which people will gladly follow, coming as it does from their leaders. Lord Krishna has said in *Bhagvad Gita* :

मद्‌भदाचरति श्रेष्ठस्तल देवो तरो जनाः

स मत्प्रमाणकुरुते लोकस्तदनुवर्ततेः

(Whichever may be the way of life that a superior man adopts that very one is followed by other poeple too. What he

might make his guiding principle, the world too behaves likewise).

There is another saying in Sanskrit according to which the path that the great men tread becomes the path for others to follow.

Conclusion

The common collective goal of parliamentarians of all hues is the attainment of a fuller life for their people. Their effectiveness, whether individually or collectively, depends on the seriousness with which they take up their assigned roles and discharge their public and parliamentary duties. Efficient discharge of their duties enable parliamentarians to effectively put forth public grievnaces before the Government and mobilise state apparatus to find out timely solutions. By playing their link role effectively, parliamentarians can make the Government realise its accountability towards Parliament and through it to the people. How successful parliamentarians are in discharging their wide ranging duties and playing their multifarious roles effectivly would, in the ultimate analysis, depend on their knowledge, hard-work, optimum utilisation of available parliamentary devices and above all, the degree of their faith in the representative institutions as an effective instrument of service to the people.

It is on the successful performance of their assigned role by parliamentarians that the successful working of a parliamentary democracy rests as they belong to an institution which is the life blood of democracy and is known to be the best instrument for the people to get their rights. Earnest, pains taking and diligent legislators would certainly prove to be a very strong link between the people, Parliament and the Government.

43

Ecology and Environment—Role of Parliaments, Executive and the People

Har Swarup Singh

Introduction

Environment is the aggregate of all the external conditions which affect the life, survival and development of an organism. Any unfavourable alteration in any of these ingredients constituting environment is tantamount to pollution. Unfortunately, such undesirable changes are increasingly being brought about by human beings *e.g.*, through letting out fumes and exhausts in the atmosphere, or even by the simple act of throwing out garbage on the streets. The hazards from our polluting proclivities have been magnified by scientific advances and technological applications. Our sins of commission and omission have already resulted in serious pollution and degradation of the environment and have affected the ecological balance adversely. However, in addition to the materialism of the affluent in the developed world and their highly consumer oriented life styles which cause exploitative and reckless use of natural resources, the large populations and widespread poverty in the less developed countries have also contributed to the current sorry state of affairs.

There has been world-wide consciousness in the last couple of decades of the need to protect the environment and to draw up environmental policies which would ensure development and economic growth on a sustainable basis for a secure and healthy future for mankind That is why the United Nations Charter and its other instrumentalities give primacy to man. Technological progress should never claim as its lethal price, the right to pollute the essentials of life which belong to every member of the race. The United Nations Conference on Human Environment held at Stockholm in 1972, provided the necessary impetus to all nations to make concerted efforts for preservation and improvement of the global environment. The Stockholm Declaration, *inter alia*, stated :

> Man is both creature and moulder of his environment which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet, a stage has been reached when, through rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and man-made, are essential to his well-being and to the enjoyment of basic human rights, even the right of life, itself.

Principle No. 1 of the same declaration went on to say :

> Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.

Although awareness about environment and ecology was heightened as a result of the deliberations at Stockholm, not much concrete action resulted. In fact, over the years, environmental degradation has intensified and we are decidedly in a worse position now than at the time of that first major international conference on the subject. These unfavourable develop-

ments promoted world leaders to take stock of the situation and develop plans for international action by holding discussions at the Earth Summit in Rio de Janeiro, in June, 1992, and in extended preparatory meetings prior to the Rio Conference.

The Earth Summit, the United Nations Conference on Environment and Development (UNCED), was fruitful on the whole. Notwithstanding the rhetoric, some points were unanimously stressed for the first time — that the global environment is threatened; that developed countries are largely responsible for many of the ills afflicting the environment and developing countries would need financial and technical help towards solving problems of a global, regional and local nature; and that a significant proportion of the solutions lies in collective action. World leaders from around 172 countries endorsed an agenda embodying the notion that economic growth must be integrated with environmental protection. The UN Secretary General, Mr. Boutros Ghali felt that "a great stride has been taken towards our goal, which is, simply stated, saving our planet".

Some major, specific achievements of the Conference were:

(i) The Rio Declaration on Environment and Development, a 27-point statement of the rights and obligations of governments committed to sustainable development;

(ii) Agenda-21- Adoption of the Action plan for Sustainable Development into the 21st Century.

(iii) The Climate Change Convention, signed by 153 countries; and

(iv) The Bio-diversity Convention, signed by 155 countries.

The Conference also called on the UN General Assembly to establish a Sustainable Development Commission to carry on the work of the Rio Summit, adopted a Framework Convention on Desertification and a non-binding Statement of Forest Principles. The latter accommodates the views of developing countries, and especially of India where forests are more than a source of timber. Forests indeed are the sustainers of life for many tribal and other segments of India's population who depend on them for fuelwood, fodder, grazing facilities, as a source of minor forest produce, etc.,

and even for shelter.

Specific decisions aim to make the working of the Global Environment Facility—GEF (controlled mainly by the World Bank) more equitable, and to strengthen the activities of the United Nations Environment Programme (UNEP).

India took a very active part in both the Stockholm and Rio Conferences and made a significant contribution. This should not surprise anyone in view of India's rich heritage which lays accent on nature and environment. Our *Vedas* propound that nature pre-existed man. In the *Taittiriya Upanishad*, the idea of evolution is suggested as follows :

> "From that very Atman ether came to be, from ether, air; from air, fire; from fire, water; from water, the earth; from earth, herbs; from herbs, food; and from food man came into existence."

Our ancestors recognized the importance of the tie between man and his environment. The *Samaveda* states that "The earth, sea, sky, stars are all woven together by soft strains of divine music. It vibrates echo through the corridors of time in the endless canopy of the sky." It is, therefore, all the more incumbent upon us to protect the purity of the environment which is accorded religious sanctity in our heritage.

The Role of Parliaments

Parliaments have a crucial part to play in the field of environmental protection. Politics, as practised currently in most countries, takes a short-term view of things whereas environmental decisions need a long-term perspective . In other words, tendencies for political expediency are in direct conflict with environmental imperatives. Hence, legislation has to provide a framework for achieving the objectives of sustainable growth.

Realising this basic necessity for appropriate legislation, the Parliaments of many countries have provided legal framework and safeguards for preservation of the environment.

India, true to the spirit of the international declaration at Stockholm, introduced in Parliament by the Forty-Second

Constitution Amendment in 1976, a new Directive Principle of the State Policy in Article 48-A, dealing with protection and improvement of environment and safeguarding of forests and wild life. The amendment also imposed on the citizens in Article 51-A(g) a fundamental duty to protect and improve the natural environment, including forests, lakes, rivers and wild life and to have compassion for living creatures.

The Constitutional amendments towards sound ecology and protection of the flora and fauna of the country have been upheld by the superior courts. The Courts have given an environmental dimension to the protection of life guaranteed under Article 21 of the Constitution. To illustrate, the Andhra Pradesh High Court observed in T.Dhamodhara Rao v. Special Officer, Municipal Corporation of Hyderabad (AIR 1987 AP 171):

> It would be reasonable to hold that the enjoyment of life and its attainment and fulfilment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature's gifts without which life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violative of Article 21 of the Constitution. The smoke poisoning by the polluted atmosphere caused by environment pollution and spoilation should also be regarded as amounting to violation of Article 21 of the Constitution.

The Supreme Court has clearly recognised the unarticulated right to a wholesome environment as a right to life under Article 21 of the Constitution in a number of cases. A few land mark cases on the point are the Dehradun Quarry Case (AIR 1988 SC (2187); Ganga Pollution Case (AIR 1987 (4) SC 463); and Automobiles, Electricity Generating Units and Hazardous Industries Pollution Case relating to M.C. Mehta v. Union of India [1991 (1) SVLR (C) 341].

The urban environmental groups also frequently invoke Article 14 of the Constitutoin to get quashed arbitrary municipal permissions for construction activity that is contrary to development regulations. They have also been successfully challenging Government sanctions for mining and other environmentally hazardous activities.

Our courts have tried to establish inter-generational equity based on the Directive Principles and Fundamental Rights. The core of the doctrine of inter-generational equity is the right of a generation of human beings to benefit from the cultural and natural inheritance from past generations as well as its obligation to preserve such heritage for future generations. Hence, even the right guaranteed under Article 19(1)(g) of the Constitution to practice any profession or to carry on any occupation, trade or business should be limited by the theory of inter-generational equity.

The law makers even during the British regime had been alive to the need for controlling the abuse of natural resources. They employed two general principles, *viz.* sovereignty over common property and the principle of criminal liability for dealing with violation of laws pertaining to environment. A few enactments in the past that were geared towards protection of environment include some sections of the Indian Penal Code; The Poison Act, 1853; Oriental Gas Company Act, 1857; the Police Act, 1861; Northern Canal and Drainage Act, 1873; Obstruction of Fair Way Act, 1881; Indian Fisheries Act, 1897; Explosive Substances Act, 1908; Poisons Act, 1919; Boilers Act, 1923; Forest Act, 1927; and Motor Vehicles Act,1939.

In addition, the provincial legislatures had enacted many laws having environmental content, especially those pertaining to town planning, local bodies, public ports and forests.

In the post-Independence era, there has been a spurt in developmental activities in India. Economic growth involves exploitation of non-renewable and renewable natural resources often leading to discharge of waste which pollutes air, water and soil, and affects human health adversely. Such a situation has necessitated the substitution of environmentally compatible technologies, conservation through recycling, etc., changes in processes, technology and plant operation as well as substitution of input materials and modification of end products. It was in this context and subsequent to the United Nations Declaration on the Human Environment in 1972, the Parliament of India enacted legislations to provide for prevention and control of the abuse of environment, although piece-meal laws like the Damodar Valley Corporation (Prevention of Pollution of Water) Act, 1948, River

Boards Act, 1956, and the Merchants Shipping (Amendment) Act, 1970, had been passed earlier.

To meet the emergent necessity of prevention and control of water pollution, Parliament enacted the Water (Prevention and Control of Pollution) Act, 1974. It aimed at checking the pollution of water and maintaining or restoring its wholesomeness. Parliament also enacted the Water (Prevention and Control of Pollution) Cess Act, 1977, to provide for the levy and collection of cess on water consumed by local authorities with a view to augmenting the resources of the Central Board for the Preservation and Control of Water Pollution. The Air (Prevention and Control of Pollution) Act, 1981, was enacted by Parliament to provide for prevention, control and abatement of air pollution.

There has subsequently, been greater concern for the environment on account of significant decline in environmental quality, increasing levels of pollution, loss of vital soil cover, *flora* and *fauna*, excessive presence of harmful chemicals in ambient atmosphere, larger risks of environmental accidents and the growing threat to life itself. As a matter of fact, the legislators thought it necessary to have a general legislation for environmental protection, besides focusing on specific types of pollution or on specific categories of hazardous substances. Hence, Parliament enacted a general legislation called The Environment (Protection) Act, 1986, to enable co-ordination of the activities of various regulatory agencies, creation of an authority or authorities with adequate powers for environmental protection, regulation of the discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening environment, and deterrent punishment to those who endanger human environment, safety and health. The Act, in force from 19 November, 1986, marked the culmination of an important stage of parliamentary efforts to protect environment and regulate the exploitation of resources affecting our eco system.

The Indian Parliament has, therefore, done a great deal to provide a legal framework enabling many important steps to be taken, positive or preventive, to protect and improve the environment. As a result, today there is widespread awareness about the environment and resurgence in the whole area of environmental

sciences, environmental engineering and, above all, environmental law.

The problems pertaining to the environment, however, vary in different parts of the nation. It would, therefore, be difficult to protect and control the environment only by having a national regulatory and guidance system. The diversity in the nature and degree of pollution problems to be dealt with and the range of interests make it imperative to take note of regional differences and develop detailed principles consistent with area-wise characteristics and peculiarities.

Under these circumstances, the States should have a greater role to play in maintaining the eco-system and for this purpose there must be adequate devolution of powers under the Constitution. It would perhaps be justified and proper to include a separate entry on environment and pollution in List-III or Concurrent List in the Seventh Schedule to the Constitution, so that there would be a free and increased interaction between the Centre and the States to arrive at a common ground to deal with environmental problems of the nation. As suggested by the Supreme Court in Shriram Food and Fertilizers case (AIR 1987 S.C. 965), there must be a separate environment Court, the membership of which should include ecological experts. The penalty for environmental laws are needed to ensure a pollution free, or at least a less polluted, environment. The Environment (Protection) Act, 1986, should be reviewed periodically, perhaps every few years, in the light of experience gained and should be consolidated or amended, as necessary.

The Parliament can make a difference by passing legislation which would take a long term view of development, ensuring growth at a pace which can be maintained. This is necessary because environmental and ecological concerns mandate a far-sighted approach. It is thus clear that Parliament has an extremely important part to play in ensuring a safe environment and sound ecology.

One measure to help Parliament in its tasks would be the introduction of a new type of Committee System with wide powers and specialised staff on the lines of Congressional Committees in

the United States. The realisation that the Committee System needs strengthening is growing. The Prime Minister, Shri P.V. Narasimha Rao, concerned about improving the working of the Parliament referred to the Committee System in his Address to the All India Conference of Presiding Officers, Leaders of Parties, Whips and Ministers of Parliamentary Affairs, held in New Delhi on 23 September, 1992. To quote the Prime Minister:

> The Speaker has been in consultation with many of us, of all the parties, trying to change the working of Parliament and I hope similar things will be done in the States also. I heard that the Committee System is already in vogue in some States, notably Kerala, may be some other States. We would like to experiment with this system here in Parliament and I would like to assure you that we would co-operate to the utmost extent in making this successful. The Committee System is able to bestow greater attention on the material before the Committee, on the issues that arise out of that matter and it is always good to have a smaller Committee in which things are thrashed out in greater detail before it comes to the House. We would like this system to be introduced as early as possible and I am sure, we will be able to make a success of it.

This would be an excellent beginning but the ultimate goal should be to move to a more effective Committee system, as suggested earlier, under which Parliamentary Committees will have more powers and their own small but competent staff.

There is also an urgent need to educate better the individuals elected to the Parliament and State Assemblies, about environmental issues and motivate them to utilise legislative powers to enact laws which are idealistic as well as practical. Their fund of knowledge has to be expanded and facts updated through better documentation and reference service and research support on important issues.

The Role of the Executive

Mere laws, howsoever voluminous but confined to statute

books, have no value in the absence of proper and active implementation. There must be strict enforcement of legal provisions. It is indeed the first and the foremost duty of the executive to ensure this. There must be a separate, independent agency or agencies with full freedom of action to attend to pollution control. No vested interest should be allowed to scuttle the provision. The existing Pollution Control Board under the Water Act and the Air Act do not appear to ensure adoption of adequate pollution control measures. There is need for separate environmental courts having on the Bench experts to hear and try environmental cases.

The next major concern of the executive should be to draw up a proper environmental policy for a rational and comprehensive assessment of the environmental impact. There is no denying the fact that accelerated industrial growth aggravates the problem of environmental deterioration. It is, therefore, necessary to dovetail major elements of the industrial and environmental policies. For achieving development, we obviously cannot afford to dispense with industrialisation. This makes it imperative to develop and apply science and technology to achieve industrialisation with environmental protection as a built-in component. In other words, industrialisation should be harmonized with environmental protection with the help of latest scientific and technological advances. The State should take the initiative to call for accelerated development of procedures for designing environmentally compatible technologies and should bring about institutional changes that affect engineering design, encourage basic research and education having strong environmental content, and should give preferential treatment and fiscal incentives for desirable innovations. For this purpose, where necessary, a new branch of engineering to deal with the study and design of environmentally compatible technologies may be considered along with ensuring that concepts related to pollution control are also incorporated directly into the normal engineering curricula of individual disciplines.

A major obligation of the executive towards our ecological system is the checking of population growth and eliminating poverty. *Nature*, the respected scientific weekly, while recently suggesting intensified population control programmes, said that success in this area should be made a pre-requisite for granting World Bank assistance. The qualitative material and statistics

collected prior to the Rio Conference warned that, at the existing rates of growth, about five billion human beings more will be added to world population within the next sixty years. However, on account of diplomacy and political considerations the Conference expressed the hope that all countries would do their best to arrest the population explosion.

In India, well over 50,000 babies are born every day. This rate of growth, if not arrested, would decidedly lead to a catastrophe.

Environmental preservation depends on a complex interaction of income levels and population pressures that contribute to both environmental and economic instability. As late Prime Minister, Smt. Indira Gandhi observed, poverty is the greatest pollutant. The rural poor largely depend directly or indirectly on agriculture and on the environment for their income. This is reflected in deforestation, cultivation of easily erodable lands and overgrazing of natural pastures. Thus, environmental problems are inextricably linked with the problems of growing population.

Population control must be combined with increased efforts to improve productivity of land through better transfer of technology and research focused on practical problems. New high-yielding crop varieties and more efficient use of farm inputs must be emphasized. The choice of crop and non-crop enterprises should be guided by sound agro-climatic regional planning principles which lay stress on resource conservation and a sustainable pace of growth. Planners and administrators should fully appreciate the limits of earth's carrying capacity and understand the vital link in the poverty-environment nexus. They must see to it that adequate public resources are pumped in for the physical and institutional infrastructure needed to increase productivity, expand employment opportunities, raise incomes, reduce extreme year-to-year and spatial variations, check population growth, improve health and educational facilities, as well as undertake direct public action to conserve resources and rehabilitate degraded areas. All these measures command urgency as we can no longer afford to sacrifice long term environmental stability for short run survival.

What is more important is that the State should be a trend setter for environmental development programmes and projects.

The State Governments and Government Undertakings have not been very enthusiastic about utilising some fiscal incentives, announced in the last budget, for environment-friendly projects. There are a number of instances of violations of the eco-system in disregard of law. The functioning of the municipalities and other local bodies with regard to sanitation of the areas within their limits is an example of the neglect shown by them towards healthy environment. There are some projects having unfavourable environmental impact and it is for the Government to stop these in keeping with the country's desire to protect the environment in general, and to adhere to the commitments made at the Earth Summit, especially regarding the implementation of Agenda 21, and honouring the Conventions on Climate Change and Biodiversity.

The Role of the Public

It is, of course, not for the legislative and the executive branches alone to work for safeguarding the environment. Involvement of the people is absolutely necessary at different levels. We, the people, need to get fully involved in the concern and care of the environment and in fact the basic moves in many areas will have to originate at the grassroots level.

There must be concerted action on the part of the Parliament, the executive wing and the public, the voluntary agencies, committed individuals, scientists and other professionals, and the media, all collaborating to preserve and promote a stable and healthy eco-system. As rightly observed by Justice Ranganath Mishra, the former Chief Justice of India, in Rural Litigation and Entitlement Kendra v. the State of Uttar Pradesh (AIR 1987, SC 359) :

> Preservation of the environment and keeping ecological balance unaffected is a task which not only the Governments but also every citizen must undertake. It is a social obligation and let us remind every Indian citizen that it is the fundamental duty as enshrined in Article 51A(g) of the Constitution.

In any tragedy affecting environment, the people are the direct victims of the accidents or endemic pollution. This has been

true right from the Buffalo Creek Mining Disaster, in West Virginia, USA, in 1972, to the disastrous chemical gas leak at Bhopal in 1984. It is, therefore, necessary for the people to protect their interests. We have tc create all round awareness and encourage the public to participate in the regulatory processes of the State for environmental protection and co-operate with the authorities. Consciousness must be created in them through the media regarding the extent of pollution and the need for a clean environment, and for a concomitant change in our life styles. The enforcement agencies should ensure public participation in decision making as it would facilitate presentation of alternative views which otherwise may neither be presented nor considered by these agencies.

It appears that our pollution laws do not lay due emphasis on the idea of public participation and this is something which the parliamentarians should take into consideration. In essence, public participation involves both information dissemination as well as feed back from the public. In this context, the present unsatisfactory state of affairs has been highlighted by Justice V.R. Krishna Iyer in his book *A Random Miscellany, Legal and Other* while discussing the topic "Environmental Pollution":

> The truth, however, is that, statute-wise, public law in this branch is an infant, profession-wise, the lawyer unlettered, knowledge-wise, the judge innocent, the legislator ignorant and the administrator indifferent. A new Nature Conservancy Jurisprudence and activist legal culture must be nourished, if justice to life in nature is to emerge as a human right and a directive principle fundamental to the governance of the nation.

The people will have to organise themselves into suitable pressure groups to influence environmental policy and also to stand as watch-dogs against any attempts at environmental degradation. The *Chipko* Movement, Kerala Sastra Sahitya Parishad and Environmental Organisation on Silent Valley Project, among others, are examples of groups that have made a difference. Such voluntary organisations for the cause of environmental conservation must be given support and encouragement in every State and

at the national level. Voluntary organisations, intelligentsia, academicians, leaders, students and others should enlist for environmental conservation and use techniques best suited to particular needs and the local situation. Such techniques may include display of posters, meetings, small group discussions, debates, workshops/seminars, enquiries about environmental pollution, processions, representations to the authorities concerned, enlisting legal help, changing the power structure, etc. These techniques are bound to motivate people. The environmental degradation can certainly be checked with people's active participation in environmental issues and activities.

The Rio Declaration on Environment and Development fully recognises the role of the public. Principle 10 states that "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level."Women's "vital role in environmental management and development" is recognised in Principle 20, and Principle 21 recommends that "the creativity, ideals and courage of the youth of the world should be mobilised to forge a global partnership in order to achieve sustainable development and ensure a better future for all." Principle 22 refers to indigenous people and their communities, and other local communities; these "have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development."

The role of the public and of non-governmental organizations (NGOs) is also highlighted in Agenda 21 adopted by UNCED, which devotes a whole chapter to the subject. It opens with the statement:

> Non-governmental organizations play a vital role in the shaping and implementation of participatory democracy. Their credibility lies in the responsible and constructive role they play in society. Formal and informal organizations, as well as grass-roots movements, should be recognised as partners in the implementation of Agenda 21. The nature of the independent role played by non-governmental organi-

zations within a society calls for real participation; therefore, independence is a major attribute of non-governmental organizations and is the precondition of real participation.

In order to encourage NGOs, committed individuals and the public at large to play due role in environmental activities, Government will have to take a number of measures, including :

—creating wide public awareness about environmental issues and the seriousness of the challenge facing mankind.

—providing access to information available with official agencies.

—giving opportunity for participation at planning/decision-making stages; inputs from non-governmental sources towards policy development processes will be particularly helpful when based on field experience and an understanding of the problem at the grassroots level.

—developing formal procedures and mechanisms for involving the people and non-official agencies at all appropriate stages of implementation of sustainable development programmes.

—encouraging cooperation among the NGOs themselves so as to increase their effectiveness as co-collaborators and as partners of the Government where desirable and feasible.

—associating NGOs with the evaluation and monitoring of activities in order to use their experience and expertise, and to broaden the base of non-official assistance and support towards achieving environmentally sound and sustainable development.

—extending financial assistance to NGOs, as necessary, for augmenting their role as social partners of the Government.

—developing procedures to ensure continuous interaction with non-governmental organisations.

It is heartening to note in this context that the Union Ministry of Environment and Forests recently organised a Workshop of Indian NGOs as a follow-up of the Earth Summit. Under the Ministry's sponsorship, the organisation of the meeting was handled by a Delhi-based NGO—Development Alternatives. The interest taken by Shri Kamal Nath, Union Minister of State for Environment and Forests, in NGO affairs and in seeking their contribution to the cause of environmental protection is certainly praise-worthy. The meeting deliberated upon important issues of co-operation between the Government and the NGOs and some ideas emerged regarding continuing consultations. Such collaboration among the Government, the NGOs and the public augurs well for the environment protection movement in India.

44

Parliament And The Communication Media

Chintamani Panigrahi

When I look at the working of Parliamentary system of Democracy in India, some lines from a poem by Robert Frost, always come to my mind. He wrote,

"Two ways lead into the woods

And I took to the road

Less travelled by

And that makes all the difference."

When the founding fathers of our Constitution chose to adopt parliamentary democracy as the system of government, another system was also working vigorously in some countries. We chose to establish an egalitarian and socialist society through the system of parliamentary democracy. Though it was fraught with many difficulties, the system has worked well through many a stress and strain. It has come to stay and indeed, has taken firm root. This constructive role of Parliament needs to be appreciated.

With a population of over 87 crores now, India is the largest democracy in the world. The people of India must be proud to be the citizens of a sovereign socialist secular democratic Re-

public.

Under the Constitution of India, the Parliament, which consists of the Rajya Sabha (Council of States) and the Lok Sabha (House of the People), is the repository of the aspirations of the people of the country, which enacts legislations from time to time for the smooth running of the Government and welfare of the people and also performs various other functions. The Parliament is thus supposed to mirror the urges and aspirations of the people of the country as a whole.

The total number of seats in the Parliament is 795 (Rajya Sabha-250 and Lok Sabha-545). In other words, there are in all 795 representatives of the people in the Parliament, who ventilate the grievances of the people, discuss their demands and suggest suitable solutions to the Government during the Sessions of the two Houses of Parliament.

Since Parliament is located in New Delhi, except for those belonging to the neighbouring States, it is not possible for the vast masses of the country to even have a glimpse of Parliament House. As far as members are concerned, it is well-nigh impossible for them to visit their respective constituencies and brief all the people about their performance in Parliament. Hence, it is very essential that the people of the country should know what is happening in Parliament. Till a few years ago, newspapers and radio broadcasts were the media which used to inform the common people about the proceedings in Parliament.

In a democratic polity like ours, free flow of information is absolutely necessary to ensure free and fair functioning of the Union and State Governments. In this context, the practice of telecasting select proceedings in Parliament, which was introduced recently, is an important event in our parliamentary history. It has enabled the people at large to watch on television how their elected representatives conduct themselves in Parliament. One only hopes that in due course of time, people would be able to watch the entire proceedings in Parliament live on television so that they will be able to get well acquainted with the proceedings, as well as practice and procedure of Parliament. It would on the one hand, make members of Parliament very alert. On the other hand, the voters would be able to judge for themselves how effectively their

representatives are able to put across their grievances and aspirations on the floor of Parliament. Most importantly, live telecast of parliamentary proceedings would go a long way in producing able parliamentarians.

The common people of our country are not fully aware of the significance and ramifications of many a crucial issue discussed in Parliament. This disconcerting reality underscores the importance of timely and accurate presentation and dissemination of information by the media, so that a critical appreciation of the various remedial measures suggested by the parties/groups in Parliament, may be generated across the length and breadth of the country, to make our democracy truly vibrant.

The various committees of Parliament undertake very important subjects for study and scrutiny, and these need to be focused well in the media. Further, the reports of the Committees present the true picture about the implementation of various programmes by the Government through its agencies and are also very informative about the working of various Ministries. The work of these Committees needs to be adequately highlighted in the media, and their many recommendations deserve to be publicised. This would not only serve to speed up remedial action but would also restore, in the minds of the people, confidence in the greatest representative institution of the land.

45

Parliament And The Executive

Yagya Dutt Sharma

The parliamentary and constitutional form of Government in India is a three-dimensional system comprising the Parliament, Judiciary and Executive. Parliament is supreme in this form of Government. Judiciary and Executive are the subsidiary institutions which help in its functioning. In the late sixties a debate ensued as to whether Parliament or Judiciary is supreme.

In fact, our constitutional framework admits of no such debate. Both Parliament and Judiciary are constitutionally supreme in their respective spheres. Parliament is supreme insofar as enactment of laws is concerned. But when it comes to examining whethere the laws enacted by Parliament are within our constitutional framework, Judiciary is supreme.

The Executive has its own role to play. Dadasaheb Mavalankar, speaking at the first meeting of the Estimates Committee on 18 April 1950, said :

> Though we have been conversant, for a long number of years, with parliamentary form of Government, we never had the substance of it, inasmuch as Government was neither responsible nor responsive to the House. The powers of the House were restricted and the House had not the liberty of shaping the policies of Government as

> they desired. As a result we have been accustomed to work the parliamentary forms of Government, in a spirit and manner far different from those in the House of Commons.

But the role and composition of the Executive in a democratic set up is so vast that it is very difficult to regulate it. Executive functioning has become bogged down in what is commonly called "red-tapism".

Executive is not one individual. It is a vast set up. It functions in its own way. It is governed by several rules and regulations. In such a situation, if the Executive is lacking in efficiency, working capacity, sincerity of purpose—in sum, dutifulness—the crisis of 'red-tapism' deepens further.

But it would be unjust to blame only the Executive. In the event of political instability, decision making becomes a long and tortuous process Owing to political instability the officers of the Executive do not dare to take any decision. To a substantial extent, it is essential to provide Constitutional protection to the right of the Executive to take independent decisions.

In order to render the Executive more efficient, it is essential to ponder over the following issues seriously:

(a) The President of India should convene an all-party Conference for framing an ideal political Code of Conduct. Prior to that a draft should be sent to senior parliamentarians, experts on the Constitution and Chancellors of Universities for consideration and extensive discussion, before finalisation.

(b) Creation of a favourable working climate for the Executive; and

(c) Review of the nature and working of some Committees.

46

PARLIAMENTARY PROTESTS —NEED FOR CHANGES IN FORMS

Virendra Varma

In a parliamentary democracy, Parliament is the highest institution representing the political sovereignty of the people. It is supreme within the sphere allotted to it by the Constitution. It has the powers to pass laws impose taxes, sanction budget and punish for contempt. In order to have the right to govern, the Executive must have legitimacy from the Parliament/State Legislatures which can frame and guide its programmes and policies in the governance of the country.

The degree of esteem in which the people of a country hold its Parliament is a sure sign of the success and maturity of the democratic process in any country. By this standard, it seems as if the rating of the Parliament in our country has gone down somewhat over the years. It is agreed by all that the first Parliament was held in high esteem not only by the people at large but by its members also. While the country looked towards Parliament with admiration, the members took their parliamentary business seriously and maintained dignity and decorum in their behaviour. In spite of differing ideologies and regional loyalties, they pulled together for the common interest of the country. Rising above narrow personal, party or regional considerations, they acted with dignity and self-restraint in the service of the nation.

Today, to my mind, neither the people at large nor its own members look upon the Parliament with the same admiration and respect. Not only has the standard of debates gone down, even mutual respect among members is lacking. Even the President in Parliament and Governors in Legislatures, are not allowed to discharge their constitutional responsibilities without interruptions. Their addresses are interrupted by slogans and walk-outs although these constitutional heads represent the nation and the states, respectively, while addressing the Houses and are only discharging their solemn constitutional responsibilities. It was, therefore, only apt that a Conference of Presiding Officers, Leaders of Parties, Whips and Ministers of Parliamentary Affairs and others was convened in the Central Hall of Parliament in September, 1992 to discuss these matters.

The views expressed by various speakers at this Conference on discipline and decorum in the Parliament and the State Legislatures reflected the prevailing concern over the deterioration of the functioning of the Parliament and the State Legislatures. It is gratifying to learn that consensus had been evolved at this Conference on certain matters and some corrective action may soon be taken to ensure that parliamentary democracy function in our country in the manner envisaged. However, persistent efforts have to be made at all fora for corrective action and members of Parliament and the State Legislatures, Ministers, Presiding Officers and the Leaders of all Opposition parties must appreciate the true dimensions of this problem.

There can be no doubt that the system of parliamentary democracy is best suited for a country of India's size, known for her heterogeneous society encompassing diverse cultures, different languages and different religions. This being so, every care has to be taken to strengthen parliamentary democracy and thereby the integrity of our country. All members together constitute the august body of Parliament. Therefore, the attitudes and the antecedents of the members would not only determine the character of Parliament and but also the way its proceedings are conducted. Political parties used to select their candidates on the basis of their competence, character, integrity and service to the people. However, the considerations that seem to count today for selection of candidates are caste and the ability to win by whatever

means. Let us not forget what Gandhiji had said,"the means cannot be divorced from the ends". So there has to be a check on the entry of people with criminal links to Parliament and State Assemblies. All political parties should agree that attributes like character, knowledge and commitment to the nation and service to the people would govern selection of candidates in future. When elected on the basis of free and fair poll, such candidates can lend dignity to the proceedings of our Parliament and State Legislatures. On the other hand, if the election process suffers from the malaise of booth capturing, rigging and voting on considerations of caste, creed or religion, the entire parliamentary system stands threatened.

The newly elected members are quite zealous and enthusiastic in the discharge of their responsibilities. They are keen to contribute to the proceedings of the House and show their mettle. But aselsewhere training is necessary for them; some knowledge of the processes and procedures of the Parliament and State Legislatures is absolutely necessary to enable them to understand the subtleties of parliamentary procedure. There has to be a method of imparting such political education to the newly elected members, either by the political parties themselves or through some other mechanism as may be evolved on the basis of consensus. For example, if members are not aware that the Question Hour is the most important mechanism to question the Executive on its acts of commission and omission and that its suspension is only a reprieve to the Government they may unwittingly ask for its suspension. But once they known that there is no advantage in suspension of Question Hour they will not make such a request. Similarly members have to be educated about the purpose of Zero Hour. Zero Hour is meant to provide an opportunity for raising matters of urgent public importance. When such matters of importance take place the Government on its part must anticipate the demand for discussion and must be prepared for a reply; yet it is not always possible for the Government to collect all the facts in a short period. Hence, members' insistence for raising matters during Zero Hour must only be with a view to expressing their concern. Having made their point, members should be willing to accept a Minister's request to give him time for a reply. It must be appreciated that unless the Minister collects all facts he will be in

no position to make a worthwhile statement.

As mentioned by some illustrious speakers at the above mentioned conference, it is the duty of Legislators to raise in the House matters of great importance for a constituency or section of people, or on which people feel agitated. The Ministers should be sensitive to such requests. But there seems to be an impression that a straightforward and simple expression of such resentment does not elicit a satisfactory reply or merits press coverage. This creates a feeling of frustration, and"extra-parliamentary practices" of raising slogans, sitting in the well of the House, tearing of papers and disobeying the Chair are resorted to. Ironically protest seem to attract greater media attention. Therefore, the Press too has a role to play. The Press can,by the way it covers the proceedings of the Parliament and State Legislatures, play an effective role. It can, for example, choose to highlight only the important matters raised in the House. According to a recent study one sitting of the Lok Sabha costs Rs. 48,000/- an hour. Can our country afford the luxury of wasting Parliament time on matters which are of trifling nature? Members must devote their time and energy in contributing to the framing and implementation of policies for the welfare of the people, passing of laws, controlling the expenditure of the Government on various programmes and on matters of national and international importance. But with every passing year, less time is spent on legislative business. Bills are passed without adequate discussion. When a bill is under discussion the attendance is quite low; it seems that the interest of the members is limited to only Question Hour and Zero Hour.

The importance of discussion and debate on the budget must be realised. Members have an important role in guiding the Government, in checking implementations of programmes and in controlling unproductive expenditure. When the valuable time of Parliament is spent in unproductive protests, important business tends to be transacted without adequate debate and scrutiny. While the Parliament meets only for 100 to 110 days, most of the State Legislatures hardly meet for 40 to 50 days in a year. Members,thereforedo not get sufficient opportunity to raise matters of public importance. It is, therefore, necessary that the number of sittings both in the Parliament and state Legislatures are substantially increased and each Session of the Parliamment/State

Legislatures is of sufficient duration.This would enable purposeful discussion on the performance of the Executive, the Budget, supplementary demands and on other matters of national and interantional importance. Members' involvement in the business of the Legislature would be total and their motivation high. They would come to the House well-prepared to contribute to the proceedings of the House.

The role of the Executive in making the parliamentary process useful is important. A sincere and efficient Executive can ensure that legislative proceedings remain meaningful and also that discipline and decorum are maintained in the House. On the other hand if the ministers try to be evasive or come to the House without adequate preparation or abstain themselves during important discussions the frustration of the members of the opposition and even the ruling parties, is quite understandable.

The role of the Speaker in conducting the proceedings of the House is equally important. He must be fair and impartial and must give a fair opportunity to all the members to put their views before the House. He must also ensure that the Ministers are present during important discussions. Then alone, would all members have a sense of satisfaction and involvement. There would then be no excuse for"extra-parliamentary protests"since the rules of procedures and conduct of business would provide sufficient opportunities and devices to elicit information in the form of raising questions, calling attention to matters of importance, adjournment motions, breach of privileges, censor motions and even no-confidence motions against the Government. Intelligent use of these devices would certainly serve as a check on Government. However, when there is breach of discipline and disorder in the House, the entire House irrespective of party affiliations, has a responsibility to help the speaker in restoring order. The conduct of a guilty member in an extreme case may be treated as contempt of House and the House should not hesitate even to terminate the membership of the guilty member. Not only would such a provision have a salutary effect on all the members but would also go a long way in restoring the glory of the Parliament and the state Legislatures. This ultimate step should,however, be taken in very exceptional circumstances. The remedy for the malady, after all, lies with the members of Parliament and State Assemblies themselves.

47

Parliament And National Integration

Renuka Ray

The spontaneous character of the 'Quit India' Movement with the prospect of freedom in the offing gave an added impetus to the Independence struggle. But actual freedom came later and with it came the partition of India which diminished its glow. When Panditji made his famous speech on the midnight of 14 August, 1947, the migration of Hindus and Muslims from one side to the other with all the violence and terror it involved, had already started in the western part of the subcontinent, Gandhiji was a much saddened man and there were many who felt like him, particularly those in Bengal and Punjab which had been divided. Perhaps the most unfortunate were the people of the frontier region under Khan Abdul Gaffar Khan and the 'Red Shirts' who were handed over to Pakistan, although they had been in the forefront amongst those who wanted British domination to end and India to be set free under Gandhiji's non-violent non-co-operation movement.

Naturally when the last attempt towards keeping India in-tact at the united constituent Assembly had failed, those who remained in India felt that the constitution must be drawn up in

such a manner as to prevent further division. It was then considered that Parliament would have to play a vital role in the national integration of what remained in India after partition.

Later Gandhiji decided to go to Noakhali and be with the minorities when the country was dismembered. As we know, he had to remain in Calcutta and it was due to his efforts that there was no upheaval or violent reaction in either Bengal (both West and East) as long as he was alive.

The Fundamental Rights in the Constitution we drew up, state in no uncertain terms that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any one of them. And again that the state shall not deny to any person equality before the law. These are fundamental rights along with some others which are enforceable through courts of law. However, some of the most important and vital rights are in the Directive Principles of State Policy through which alone a welfare state can be brought into existence. But the Directive Principles include vital as well as unimportant matters. As Shri T.T. Krishnamachari very aptly remarked in his final speech on the third reading of the Bill in the Constituent Assembly, 'The Directive principles are the dustbin of our sentiments'. Even today the most important of these directives has not been implemented.

In the early decades of Independence, the principles that ennabled the national freedom struggle were emphasized and the overall development of the country went on without let or hindrance. Those who had brought freedom to the country became the leaders who inspired us and the nation.

However, from the 70s the glow that had inspired us gradually faded. The values which inspired us during the struggle for freedom and soon after dependence, have lost their sanctity. We fervently hope that our parliamentary system will be able to cope with the present situation of drift and play a vital role through which national integration will be strengthened.

The Ayodhya problem which has now become a major issue was first raised in the post-Independence days. When it first surfaced Pandit Govind Ballabh Pant was the Chief Minister of Uttar Pradesh. He gave it no quarter at all and said that *Ram Janambhoomi* and *Babari Masjid* were historical issues and should be placed under the act governing historical monuments. Religion in this regard was irrelevant to our times. However, after he left U.P. for the Central Government, his strictures were not followed, and now we are faced with a problem which could spell disaster for us, if not put down ruthlessly. It has given impetus to the rise of the communal forces in India.

But there are other issues also with which we have to contend particularly in regard to the issue of Union - State relationship. Divisive forces are rampant in some States. Such issues as the demand for Jharkhand has to be dealt with firmly.

Parliament has now to come forward as an effective institution for national integration. The difficulties that have so far crept in, of which we are all well aware, can be overcome.For that, Parliament, where members from all parts of the country and all parties and sections meet together, has to playan effective role. This can be done if political parties can be induced to take up the assertion of nationhood as a major issue, or if a national party comes into existence, where all will combine and are able to carry on the Government. This is not easy as we would have to restore the functioning of the Parliament to its democratic process as in the early decades of Independence. The atmosphere has deteriorated today on account of the lack of a sense of values. There was a time when the voter could exercise his vote without being subservient to any monopolistic trend or to political machinations which have since marred the electoral process. Some of the worst offences such as violence and corrupt practices during electioneering in spite of the best efforts of the Election Commission have to be overcome before we can expect the Parliament to play the role that was intended.

It was assumed at its inception that the parliament would be a means through which the needs of the different parts of the country would be considered through the members representing

their constituencies and action taken through united effort, in the service of the nation at large. In the early years the parliament did play a very effective role towards achieving national integration particularly in the grim aftermath of partition. This seems to have given way to a sense of complacency in later years which is now endangering the unity of the nation itself.

Members of Parliament seem less concerned now with constituency work at least. Members of Parliament travelled less often and spent their recess mostly in their constituencies so that they were well aware of their needs and could put them before the Parliament. National integeration was their main objective after the country had been divided and their endeavour was to find ways and means of cementing unity.

The Sarkaria Commission had made an in-depth study of Centre-State relations and had put forward suggestions for improvement. It had also pointed out that democracy to be successful requires effective participation of the citizens. It has laid stress on proper functioning of Zila Parishads and Municipal Corporations. The Panchayat system should not only be introduced in all States but must be effective and special emphasis must be given to the role played by Harijans, tribals and women who have to be specially trained to participate.

Any detailed investigation of the Panchayats which have been set up in some States shows that those who play a leading role in these bodies often belong to the upper class of society, and are still averse to any improvement in the position of the lower classes. This situation must be urgently remedied. But the trouble does not end here.

We many consider one or two other issues raised by the Sarkaria Commission. Tax on dividends used to be collected by the States but by an amendment, in the Constitution, has been placed under the Corporation Tax which goes entirely to the Central Government. This has naturally caused resentment amongst the states concerned. The Commission had recommended that the Tax should be transferred back to the State's share but this has not been carried out so far. There are other details which the Commission had suggested should be changed to increase the State's share but none of the recommendations so far have been

implemented by the Centre. This has resulted in great resentment. This has become an acute problem in the relations between the Union and the States. It is high time that the attention of Parliament is drawn to this issue. It must play again the important role it did after the advent of freedom.

The members of the Constituent Assembly had felt that the Panchayat would be the means through which national unity could be strengthened. In recent years we find that party politics have become so important that instead of emphasizing on the fundamentals of the problem, party issues and even personal gains in some cases, have unfortunately crept into the Parliament to such an extent that attention to national unity is not given due consideration. As for wider representation, here I may point out, that with regard to women, instead of their number in Parliament or the State Legislatures increasing the actual number is going down. This is all the more surprising when women are playing increasingly important role in all fields of activity. Also men and women who can play a major part in the development of the country are not necessarily selected by political parties. We have reached a critical stage where we have to realise that it is of utmost importance that Parliament should consist of those who will unite, irrespective of party, for national integration above all other considerations. If we neglect to do this, then the future of India will be in jeopardy.

48

PARLIAMENT AND FOREIGN POLICY

Samarendra Kundu

In the Preamble to the Constitution of India, the people have solemnly resolved to constitute India into a Sovereign Democratic Repubic. The Constitution also resolves to secure to all its citizens–Justice. Liberty and Equality. For these noble goals to be achieved, the institution of Parliament has to play a crucial role. Besides, those who hold the reigns of power being commanded by the will of the people, are also entrusted with the task of protecting the unity and integrity of the country, make all-round development, and thereby provide happiness and prosperity to the people. The foreign policy of a country in this backgound is not merely a manifesto of the political parties. It is much broader than the narrow confines of the vision of parties. It represents the ethos, hopes and aspirations of the poeple and are expected to work towards realising the values enshrined in the Preamble to the Constitution.

Thus, the essential thrust of the foreign policy of the country is the work of the entire nation, much above the narrow grooves of the parties. As the language of a person is the vehicle and expression of his soul, the foreign policy of a country should express the ethos andexpression of the soul of the nation. While shaping the foreign policy, its identity should essentially be 'We, the People'! It should also be based on the consensus of the politi-

cal parties and important groups in the Parliament.

To my mind, a Foreign Affairs Committee or a Subject Committee on Foreign Affairs should have been constituted from the inception of the Parliament. The powers, rights and privileges over and above the existing privileges of the members of the Committees must be stated clearly. These powers must clearly indicate that the Committee should work to implement the consensus principle on foreign policy and final decision on policy matters and priorities in foreign policy projections would be decided by the Governmnet.

Our foreign policy has grown with our freedom movement and as such has to reflect the ethos of the nation. Four important Conferences are important landmarks in the evolution of our foreign policy. They are : the Asian Relations Conference held in 1947 in Delhi which was attended by 250 delegates from about 25 countries; the All-Asian countries Conference of 1949; the Asian Socialist Conference held in Rangoon; and the Bandung Conference of 1955 represented by the Prime Ministers of the then free countries of Asia and Africa. These Conferences aroused great expectations as they projected to work for peace, non-violence, non-interference, non-aggression, disarmament and above all self-reliance and to build solidarity among the Asian coutnries. Mahatma Gandhi had told the Asian Relations Conference: "Go away with the thought, Asia has to conquer the West through love and truth". Nehru said: "We have no design against anybody, ours is the great design of promoting peace and progress all over the world... We propose to stand on our legs... We do not intend to be the play things of others". At the Asian Socialis Conference in Rangoon and at the Bandung Conference, Prime Minister Pandit Nehru played a dynamic role to shape India's foreign policy. His words were almost final say in such matters. He continued to play his international role in spite of India's relatively limited mobilisation of national power. In the emergence of non-aligned groups of third world, he was one of its important spokesmen.

All those issues were discussed from time to time in Parliament. parliament used to give lot of time for discussion on foreign affairs. The debates in the Parliament would prove that it has helped a large extent to shape the foreign policy on a consensus

basis. If we take a look at the debates in Parliament over our foreign policy and our external relations, we will see that members have always taken keen interest in the subject. The Suez crisis of 1956 and the developments in Hungary in the same year, both generated lively discussion in Parliament. Perhaps it was during the India-China conflict of 1962 that Parliament asserted its voice which eventually led to the resignation of the then Defence Minister Shri V.K. Krishna Menon. The issue of our non-alignment being tilted in favour of one bloc in the early years has also come in for discussion. When the Janata Party Government came to power in 1977, it resolved to follow a policy of genuine non-alignment. In the early 1980s the developments in Afghanistan became an issue which was seriouly debated in Parliament. An analysis of all these debates will show that the Indian Parliament has played a glorious role to shape and even improve upon foreign policy directions from time to time.

49

Material and Spiritual Needs—Concerted Action For Survival

Sushila Nayar

Everyone needs food, clothes, shelter and gainful employment. Next comes the need for education and health care facilities. Important and urgent requirements as all these are, once man has them supplied, he begins to hunger for something more. He wants freedom, self-expression, self-realisation. It has been rightly said, "man does not live by bread alone". And yet bread is most important. Gandhiji used to say: "To a hungry man God appears in the form of bread."

There is a spark of divinity within every human being and there is also a little bit of the devil in him. Each keeps trying to dominate, so that we have good men, godfearing, loving, generous men ready to share and help others and we also have the opposite kind who are selfish, self-centered greedy, ready to exploit whenever they get a chance, be it the natural resources of this earth, or the less advantaged human beings. It is a sad fact that the latter type have been the dominating influence in recent times, with the result that more than half the world today is unable to get even the basic needs of life and humanity is divided between the haves

and have-nots. Among the haves, some have become over-affluent and others are at different levels of affluence. The have-nots are at different levels of deprivation. This naturally leads to discontent, resentment and violent upheavals in society.

The world has become a small place with modern means of fast transport and speedy communication. Advance of science and technology has led scientists to realize the truth of what our ancient sages had known centuries ago from their spiritual perceptions. Guru Nanak's statement "Lakhan Akashan Akash, Lakhan Patalan Patal" in the 15th century is a reminder of another ancient rishi's vision of this planet earth as a small family, "Vasudhaiva Kutumbakam". Now science tells us that earth is only one of the many planets that we know little about.

Man in his arrogance has lost sight of the sane advice given by our sages. Instead of treating this planet earth as one small family, he has sought to exploit the resources of this planet for himself and his small family and friends or his own nation. In advanced countries man has been using the natural resources at a speed which is much too great for nature to replenish. The result is pollution from modern industrialisation on the one hand and on the other, rapid exhaustion of the scarce resources of this earth. This has now led to the realisation of impending disaster and to a movement for sustainable development. Man must learn to use the natural resources in an equitable manner, keeping in mind the needs of all other nations as well as the needs of the coming generations. It is the industrialised nations which are using up the major share of the resources of the earth with the USA alone reported to be consuming over 45%.

Most of the wars of the past century or two, were fought for the control of natural resources. The main aim of colonialism and imperialism was to capture the raw materials and the markets in the poor underdeveloped countries to sell their finished products made from the raw materials of developing nations. In the process the colonial powers played havoc with the local small-scale industry. India's village economy was destroyed in order to make room for British goods. All this has resulted in an ever-widening gap between the developed and developing countries. The rich are be-

coming richer and the poor are becoming poorer.

A realisation, however, is now growing that the present exploitative system cannot continue for all time to come. Man has to think in terms of sustainable growth and development which will use natural resources at a speed which nature can cope with and compensate. Man has to understand that the natural resources are not to be monopolised by a few nations and also that the present generation must also leave something for the coming generations.

Moreover, the poor cannot be the consumers of industrial goods to any appreciable degree. The industrialised nations have therefore come to realize that they must do something to fight global poverty and hunger in their own economic interests, apart from any altruistic motives they might have.

The population problem is also adding greatly to the poverty of the underdeveloped nations. Nowhere in the world have efforts at controlling population growth succeeded unless the level of living of the poor was raised and with better education they became motivated to limit the size of their families. It is well known that fall in birth rate has followed economic growth and improved standards of living among the developed nations. The same is true of the developing nations, as we know from our own experience in India. Education of women and creation of employment opportunities for them are most effective in reducing the birth rate.

Large population results in pressure on land. Forest land is cut down to provide fuel and for cultivation, even though it may be poor land producing too little to enable the hard working cultivator to meet the minimum needs of life.

Deforestation leads to soil erosion. In Europe chemical fumes of certain industries are killing trees, resulting in global warming, and rise of sea level, submerging certain coastal towns. Deforestation also results in floods which carry away the top soil and reduce the quality of land, leading to spread of deserts and silting of water reservoirs. It is estimated that every year 6 million hectares are being degraded to desert-like conditions. In 30 years this will amount to an area roughly equal to Saudi Arabia. More than

11 million hectares of tropical forests are being destroyed each year. Over 30 years, it is estimated that this will cover an area equal to that of India.

Thus it can be seen that there is an intimate relationship between population, forests, land and climate. Reduction of forests leads to floods on the one hand and to reduced rainfall on the other, resulting in scarcity of water, drought, and famine. We used to think that water was freely available for all. But now we know how scarce water can be when the rains fail, resulting in crop failures and famines. There has been scarcity of even drinking water in some parts of India, such as Rajasthan, Gujarat and Maharashtra, in certain dry years.

Increasing industrialisation is also resulting in water shortage because of excessive use of water by certain industries. Use of subsoil water for industrial purposes with powerful pumps in coastal areas in Gujarat, has resulted in sea water being drawn into the affected wells, making the water saline and useless for human consumption and even for industries.

We know that certain gaseous products of modern industry are destroying the protective ozone cover of the earth. This has led to an increase in the incidence of skin cancer. These gases are also destroying the world's archaeological treasures. The damage being done to the Taj Mahal at Agra, one of the wonders of the world, by the Mathura refinery, is an example.

According to the World Commission on Environment and Development report titled *Our Common Feature :*

> During the 1970s, six times as many people died from 'natural disasters' each year as in the 1960s, and twice as many suffered from such disasters. Droughts and floods, disasters among whose causes are widespread deforestation and overcultivation, increased most in terms of numbers affected. There were 18.5 million people affected by droughts annually in the 1960s, but 24.4 million in the 1970s; 5.2 million people were victims of floods yearly in the 1960s, compared with 15.4 million in the 1970s. The results are not in for the 1980s, but this disaster-prone decade seems to be carrying for-

ward the trend, with droughts in Africa, India and Latin America, and floods throughout Asia, parts of Africa, and the Andean region of Latin America.

Advanced technology is assisting in the reduction of damage to environment in certain developed countries and in consumption of scarce natural resources. At the same time these countries are using all the means at their disposal to sell the outmoded technology to the developing countries.

The developed countries, realizing that they may not be able to have the benefits of science and technology all to themselves for all time to come, are now pressing for changes in patent laws. The developing countries must guard against this new threat. The latest attack is in the form of the Dunkel proposals. Unfortunately the developed countries have a strong representation in the world decision-making bodies which can take decisions favourable to them and unfavourable to the developing world. This must change.

Human resources development is a crucial need in order to build up technical knowledge and capabilities and to develop new values to help individuals and nations to cope with the challenge of rapidly changing social and environmental and developmental realities. Knowledge shared globally will assure greater material understanding and lead to greater willingness to share the available resources in an equitable manner. Therefore the new Dunkel proposals on patents must not be accepted.

The developing countries must be free to develop on their own, technology suitable for their needs. For instance, the technique of producing renewable energy and fertilizer from animal and human waste and other organic household wastes had been developed in India many years ago. But it has not been widely used. It is only recently that Government has taken an interest in popularising this useful and simple technology and training village workers for the purpose. We have known for over 30 years, how easily *gobar* gas plants can be set up to provide fertilizer, energy for cooking and lighting, etc. and at the same time improve hygiene. Why have we not made wider use of this knowledge so far?

There are many other ideas which can be developed and

made use of by the developing countries.

Science and technology has opened greater vistas for material advancement for man, but emotionally and spiritually, by and large, man continues to remain at a primitive level with unlimited greed and acquisitive drive without any concern for the needs of others. This has resulted in disparities of income between nations and within nations. The resulting discontent manifests itself in various ways. We have had anti-social elements indulging in thieving and robbery, and there have been small and big wars, for generations. A recent development is terrorism, which threatens to make a mockery of democracy and freedom.

Another problem facing India and the world is religious bigotry and fundamentalism. Instead of peaceably practising their religion men are fighting in the name of religion, even though their lives may be the very negation of the basic principles of their own religion. Hungry ignorant masses easily fall victim to this type of false propaganda.

As for the problem of nuclear radiation which may put an end to the human race, there is fortunately a growing realisation that nuclear weapons must be eliminated at the earliest. However, the dangers of the use of nuclear energy and accidental radiation therefrom are not sufficiently realised. There has to be an end to the development and use of all nuclear energy, including the so-called peaceful uses thereof, besides putting an end to nuclear weapons of destruction till such time that some harmless source of nuclear energy for peaceful purposes can be harnessed. There is research going on for this purpose on the hydrogen atom as in certain other areas. But harnessing of the atomic energy also requires exploitation of exhaustible natural resources. Concerted action is therefore called for to ensure wise use of limited resources, prevention of pollution, and sustainable development which will provide enough to meet the needs of all, all over the world without exhausting the resources of our earth. This is essential in the interests of survival of human kind.

A search for solutions for the various problems mentioned is urgently needed. Scientists, political and community leaders must join hands for this purpose. Parliament can make laws, and laws can be useful. But laws have to be implemented by human

beings. We urgently need to develop the mind of man, his understanding and his vision.

Mahatma Gandhi told us that acquisitiveness is not a sign of true civilisation nor does it lead to happiness. Voluntary reduction of wants and voluntary sharing of what we have with those who are in need, alone can give happiness, inner joy, peace and plenty.

This attitude of mind cannot be inculcated by making and enforcing laws. It requires a process of education, a process of emotional and spiritual maturity which is beyond the power of Parliament.

Several political leaders seem to think that if they could only have power at the state and central levels, they would be able to solve all problems. It is an empty dream. Power can be a means of achieving success in ensuring better conditions of life only if it is exercised by right type of men and women, men and women for whom power is a means to an end and not an end in itself.

How do we find the requisite solution? How do we inculcate the right values which alone can put an end to the problems facing us by promoting emotional and spiritual maturity so that we can have the right type of administrators and right type of political leaders, in fact, the right type of leadership in all spheres? Right type of education may be the answer.

A mother is the first teacher who imparts values to her child. Next comes the primary school teacher. But what if both the mother and the teacher have not had the right type of education themselves? What do we do? We know there are good mothers and good teachers and good administrators. In fact there are good people in every sphere of life. But there are also plenty of bad ones. There has to be a concerted effort by men and women everywhere to see to it that the good people do not remain silent and leave the field to the bad ones. Good people with right values must get together and organise themselves to face and overcome the problems of inequality and exploitation, violence and religious bigotry.

We can also learn from good books and it is necessary that books emphasising the right value system, books free from bigotry and hatred for any religion, books which lay emphasis on the basic values common to all religions, are introduced in our education system. On religious teachers of all faiths rests a heavy responsibility. They must refuse to be used for political purposes. Political leaders must be guided by the basic principles of religion, by moral and ethical values which are common to all religions.

We have to understand that the culture of India is a composite culture. Hinduism with its rich heritage of Vedas, Upanishads and teachings of innumerable sages has influenced and enriched all other religions that came to India and it has in turn been enriched by them. Ours is the land where Hindus, Muslims, Sikhs, Jains, Buddhists, Zoroastrians, Christians and Jews have all learnt from one another and collectively enriched the culture which stands for tolerance and equal respect for all religions.

All of us must make a concerted effort for the development of our country's human and natural resources and requisite technology to meet the material and spiritual needs of all our people, irrespective of their caste or creed. The distortions appearing from time to time must be corrected by religious teachers and rulers and all men of vision. This is the urgent need all over the world, for we are, indeed, one family. All men must learn to live in peace in their own interest and create conditions under which peace can prevail, and together they can produce plenty to meet everyone's legitimate and reasonable requirements.

In the face of the dangers posed by pollution, rapid exhaustion of natural resources, including destruction of our forests, and consequent global warming, the dangers of nuclear radiation, the intemperate forces of fundamentalism spreading hatred and intolerance and the havoc wrought by terrorism, concerted action by all has become an urgent necessity. This can only be undertaken by men and women with clear vision, sense of values and strong political will.

50

Telecasting of Parliamentary Proceedings

R. C. Bhardwaj

Parliament represents the people. Necessarily, the people should be given chance to comprehend the extent to which Parliament contributes in shaping thier destiny and through them that of the nation. This can be done by having better public understading of the variety of issues being discussed by Parliament and the various processes by which these are discussed. Parliamentry proceedings, no doubt, are covered by the newspapers, journals, etc. But they suffer from several handicaps. First, because of the space constraint they give only limited coverage and that too to only selected items of business discussed by Parliament. Secondly, their circulation is not as large as is the coverage of Radio and Television. Thirdly, the mass media has its own appeal, attraction and way of presention. Telecasting, therefore, is the best practical, immediate and direct method to disseminate information about the actual working of Parliament. It also reflects the accountability of the Government to Parliament and through it to the people at large.

Telecasting brings to the notice of the public, as the Speaker, Lok Sabha, Shri Shivraj V. Patil observes, "all the aspects of the activities of the Government—favourable, not so favourable and unfavourable." People also become better informed about the performance or non-performance of their representatives. This helps in creating correct public opinion which may be of immense help at the time of general elections. The cost involved in telecasting the parliamentary proceedings is nothing as compared to this educative value which is bound to make parliamentary democracy stronger, healthier and more meaningful.

Prior to telecasting, proceedings of Parliament had been kept in cold print in the form of *Hansard*. Very useful insofar as it goes, it has to be admitted that this is a poor substitute to audio-visual record. Written words not only lack the emotion and passion with which these had been said, they also fail to indicate the visual response of the other members present in the House. In other words, written record fails to register the complete prevailing ambience in the House at the given time. This is taken care of by television coverage which can provide "the most accurate possible record of House proceedings". Archival importance apart, it can serve as a "valuable information source for Members and staff in carying out their respective functions in the legislative process."

Convined of its importance and utility, some countries (like USA, Canada, U.K., Hungary) have been telecasting live their entire proceedings. In some other countries (like Austria, Egypt, Germany, Japan) live telecast is done on special occasions such as President's Address, Budget speech, major speech by Prime Minister, etc. In some of the countries (like Bulgaria, Czechoslovakia, U.A.E.) proceeedings of Parliament are recorded and these are telecast subsequently.

Telecasting In India

In India, a beginning was made when the President's Address to the members of the two Houses of Parliament, assembled together in the Central Hall, was telecast/broadcast live, by Doordarshan/All India Radio, for the first time on 20 December, 1989. The President's Address to the Parliament was telecast/broadcast live in the subsequent year as well. However, these were purely *ad*

hoc arrangements.

Serious consideration to this issue was given when Shri Shivraj V. Patil, in his capacity as the Deputy Speaker of the Ninth Lok Sabha, mooted for the first time a very comprehensive proposal highlighting the feasibility, technical viability, modalities and the general advantages of telecasting of parliamentary proceedings.

The matter was considered by the General Purposes Committee of Lok Sabha at its meeting held on 28 August, 1990. The Committee authorised the then Speaker, Shri Rabi Ray to constitute a Joint Sub-Committee of both the Houses to examine the desirability, technical feasibility and cost involved in televising the proceedings of both the Houses and to make suitable recommendations for their consideration. Accordingly, the then Speaker, Lok Sabha constituted a Joint Sub-Committee with 6 members from Lok Sabha and 3 from Rajya Sabha with Shri Satya Pal Malik as its Chairman. This Committee could not proceed with their work as the Ninth Lok Sabha was dissolved on 13 March, 1991, though the issue of televising parliamentary proceedings remained alive.

After the constitution of the Tenth Lok Sabha, the matter was taken up afresh by the Speaker, Shri Shivraj V. Patil, when he held discussion with the Leaders of Parties and Groups in the Lok Sabha. In a meeting with the then Minister of Parliamentary Affaris, Shri Ghulam Nabi Azad, the then Minister of Information & Broadcasting, Shri Ajit Kumar Panja and senior officers of the Lok Sabha Secretariat, Ministry of Information & Broadcating and CPWD held on 18 November, 1991, it was unanimously agreed that televising of the Question Hour might begin on an experimental basis. The matter was considered in depth first by the General Purposes Committee of the Lok Sabha and then at a joint sitting of the General Purposes Committee of both the Houses on 26 November, 1991. It was decided to record the proceedings of the Question Hour in the Lok Sabha and the Rajya Sabha. These recordings after adding the question in the text form and voiced over and then superimposing the name of the members of Parliament and the Ministers were to be telecast the next morning. It was also decided that the Question Hour in the Lok Sabha and

the Rajya Sabha may be telecast on alternate weeks.

Within less than a week after the above decision was taken, the Question Hour of the Lok Sabha was telefilmed on 2 December, 1991 and teleccast on the following morning from 7.15 A.M. to 8.15 A.M. This experiment continued throughout the remaining Winter Session of 1991. Doordarshan made a survey to assess the extent of viewership awareness among the vieweres and their reactions to these telecasts. The survey revealed that the viewership of morning service at least once during the course of week had increased form 60% to 94%. The number of regular/frequent viewers had gone up from 24% to 53%. All-India average of awareness of parliamentray telecasts was 87%. As regards opinion about these telecasts, 38% respondents found them interesting, 52% found them satisfactory and 10% did not find them interesting at all. 75% respondents at all-India level wanted that these telecasts should continue.

During the next inter-session, the Speaker, Lok Sabha constituted a 10-member Parliamentary Committee, uder the Charimanship of Shri Sunil Dutt, M.P., to suggest improvements in the lighting and audio systems. On the recommendations of this Committee, necessary modifications/changes were effected.

With a view to making further improvements in the entire televising arrangements, the Speaker deputed an Indian Parliamentary Team to visit U.K., France and Germany in June, 1992 to study the technological and procedural aspects of televising of parliamentary proceedings. The 7-member Team led by Shri Ajit Kumar Panja, the then Minister of Information and Broadcasting, including the author, held discussions with the managements and engineers who have planned, designed and installed the systems in the three countries. Besides discussions, the Team made use of the opportunity to observe the proceedings of the House of Commons in London and the National Assembly in Paris. The Team also observed the systems of televising in actual practice. They studied the technology and design of the individual systems and collected information on the procedures being followed by the three countries in implementing the same. On return, the Team submitted a comprehensive report making

Meanwhile, encouraged by the public response to the initial phase of televising the Question Hour, the General Purpose Committee of the Lok Sabha decided not only to continue with it but also to expand the scope of telecasting further. Accordingly, besides the President's Address on 24 February, 1992, the presentation of the Railway Budget and the General Budget were televised live for the first time on 25 February, 1992 and 29 February, 1992, respectively. These too were very well received by all sections of the people. Further, important speeches of the Prime Minister, Leader of Opposition and Leaders of the other Parties during the discussion on Motion of Thanks on President's Address, general debate on Budget and discussions on Demands for Grants of the Ministries like Human Resource Development, Agriculture, Food, Rural Development, Civil Supplies and External Affairs were telefilmed in order to project the views of various parties for the benefit of the viewers. It was arranged with Doordarshan to telecast these speeches on Mondays when there is no telecast of the Question Hour. The first such telecast was made on Monday, 23 March, 1992 with the speech of Shri Somnath Chatterjee, M.P., Leader of CPI(M) Group. Complete discussions on the Demands for Grants of the above-mentioned Ministries were also telefilmed for archival use.

Broadcasting

In July, 1992 the Speaker directed that the proceedings of the Question Hour should be broadcast also by All India Radio. In pursuance of this decision, technical arragements were worked out in consultation with the officials of AIR for the broadcasting of the Question Hour beginning from the Monsoon Session of 1992. The first broadcast of the Question Hour was made on 21 July, 1992 on the national hook-up at 9.30 P.M. on Delhi 'B'. According to the decision then taken, when the Question Hour in the Lok Sabha is broadcast, the Question Hour in the Rajya Sabha is telecast and in the following week it is vice versa. While the T.V. recording of the Question Hour is telecast the next morning, the recording by the All India Radio is broadcast in the night the same day.

Norms For Coverage

Televising, used objectively, would not result in demeaning

in any way the authority of Parliament. To ensure that such authority is protected and enhanced and the public image of this supreme legislative institution is not diminished, certain healthy guidelines are essential in projecting parliamentary activities to the general public.

For the above reason, the Select Committee on Congressional Operations, which conducted the 90-day test of broadcast coverage of the daily proceedings of the US House of Representatives in 1977, had opined:

> The operation, management and supervision of a system of television coverage of House proceedings should be a responsibility of the House itself and should not be delegated or contracted out to groups outside the Congress. Television must communicate what the House does and how the House does it. The substance and procedure of House floor action should not be dominated or unduly influenced by the medium through which that action reaches the public. As a means of protecting the integrity of the House as a legislative institution, therefore, the House should accept its management responsibility.
>
> Conversely, House management of a television system need not and should not imply in any way the imposition of editorial control or any form of censorship of the content of televised coverage of House proceedings.

In countries like the United States of America, Canada and the United Kingdom, where complete gavel-to-gavel live televising is in vogue, the respective legislative bodies manage and control, under certain well laid out guidelines, the complete televising activities of their legislative proceedings. To the extent such guideline are followed, the need for direct editorial intervention either by the legislative authorites or official media is obviated.

As a general rule, the practice in most of the countries is to focus only on the Member who has been recognised by the Speaker and has the floor. Members' reaction, etc. while another person has the floor is generally not shown.

Focussing on the official action in the House is essential in order to provide complete uninterrupted and accurate television coverage of the House proceedings. Removing the cameras from the Member(s) participating in debate in order to pan the Chamber for colour or reaction shots not only interrupts the continuous coverage of official proceedings but also distracts viewers from the official business of the House without providing anything in its place of comparable educative value.

The use of the broadcast coverage of House proceedings, live or recorded, for political purposes or as part of a commercial advertisement is strictly prohibited in most of the countries. Such control is very important to maintain the dignity and integrity of the legislative institutions.

As regards the position in India, the following guidelines are observed while telecasting live the President's Address to the members of both the Houses assembled together in the Central Hall of Parliament:

(i) To ensure solemnity and dignity of the President's Address, the camera may be focussed most of the time on the President;

(ii) Only wide-angle shots of the members of both the Houses may be taken occasionally;

(iii) Television cameras may not show close-up of any member;

(iv) Cameras may not be focussed on Press and Public Galleries or empty benches in the Central Hall;

(v) Cameras may not be focussed on any interruption or disorder during the President's Address and in case of such disorders, the cameras should be focussed only on the President, If feasible even the disturbing sound may be cut out;

(vi) No shot may be taken from the back of the dignitaries.

Norms for telefilming of proceedings of Question Hour provide that it may not include: (a) what is unparliamentry; (b) what is repetitive in nature; (c) what has been expunged by the Presid-

ing Officer. In short, the extant rules regarding preparation of the record of proceedings of the House are also applicable to the telefilming thereof.

The other norm is that what usally forms part of the Question Hour should only be telefilmed. Normal activities during the Question Hour, besides Questions, could be; (i) obituary reference on passing away of any member; (ii) welcome to a visiting foreign parliamentary delegation; and (iii) oath taking by a new member. Only such activities which take place during the Question Hour can be telefilmed for being telecat the following day.

During the Question Hour on 3 April 1992, when some members sought to bring in and discuss matters extraneous to Question Hour, the Speaker, Lok Sabha, Shri Shivraj V. Patil, ruled :

> Well, this is your Question Hour and we can discuss it also. Every day, I should not be required to speak like this. I have found that Members have started agitating on issues like this, at the start of the Question Hour. I am saying on the floor of this House that if any agitation of this kind is going to be started on the floor of the House, at the start of the Question Hour, it will not be shown on TV, and today there is no TV coverage. I am making it very clear that discussions of this kind will not go on TV.

In a meeting of the Speaker with Leaders of Parties and Groups in Lok Sahba on 30 March, 1992, it was decided that in case Question Hour was suspended on any day, there may not be any telefilming on that day.

Doordarshan undertakes only the telefilming of the proceedings of the Lok Sabha and the Rajya Sabha. Their editing is the responsibility of the respective Secretariat. This work is attended to by Doordarshan at the suggestion and supervision of the some senior official(s) of the concerned Secretariat as per the approved guidelines.

Films On Parliamentary Matters

As an extension of telefilming of parliamentary prceedings,

the Speaker, Shri Shivraj V. Patil, conceptualised the idea of preparing video films on different parliamentary practices and procedures. This is to give a new dimension to orientation programmes for new members of Parliament and State Legislatures.

To take the assistance of members of Parliament in the preparation of such films, the Speaker constituted a Committee on Parliamentary Films. The compostion of the Committee, constitued on 22 December, 1992, is as follows :

Shri Mani Shankar Iyer	Chairman
Shri Arvind Trivedi	Member
Shri Mohan Singh Deoria	Member
Prof. Malini Bhattacharya	Member
Smt. Dipika H. Topiwala	Member

The functions of the Committee are : (i) to select suitable topics for video films on Parliamentary Practices and Procedures: (ii) to get the scripts prepared and finalised for such films; (iii) to lay down guidelines for making such films; and (iv) to suggest technical and other arrangements for shooting the films.

A beginning has since been made in this direction. Four films since prepared are: (i) `Private Members' Bills'; (ii) `Parliamentary Questions'; (iii) `Parliamentary Etiquettes and Manners'; and (iv) `Parliamentary Committees'. The work regarding production of more such films is in hand.

In short, the experience of telecasting of parliamentary proceedings in India so far has been very informative and useful one.

51

INFORMATIONAL NEEDS OF MEMBERS

J.M. James

The image of the Legislature and its credibility as a representative institution solely depends on the role and functions of its members. A Legislator, whether inside the House or outside it, is a bridge between the people and the Government. Today, in a democratic society, where the principle of Welfare State is adopted as the prime principle, legislation has become a complex affair. The application of science and technology to human welfare and progress, and the state's control over it have further added to this complexity.

The business of the Legislatures everywhere is not confined only to law-making but is also becoming more and more involved with the hot controversies over the burning topics of the day. A wide range of subjects, issues and problems touching almost all spheres of state and national and international activities come up for discussion before the Parliament and State Legislatures from time to time. In the present technological and scientific era, developments are taking place in every sphere at an amazingly fast rate. The members representing the people are expected to keep abreast of all these developments in order to be able to make effective and timely contributions to the proceedings of the House. For this, every member requires to receive a regular flow of information and also the feedback on a variety of subjects.

Again, in a parliamentary democracy, Legislature being the watch-dog of various governmental and other institutions covering industrial, commercial, scientific and technological functions, the Legislators should have some specialised knowledge on these matters for effective scrutiny and supervision. But it is too much to expect that all Legislators should have specialised and up-to-date information on each and every matter that comes up for discussion in the House. Moreover, a modern Legislator is under great pressure of day-to-day work in and outside the constituency. In the midst of the multifarious duties, one cannot spend much time to do his own studies or research and to equip himself for his task in the House.

In these circumstances, it is necessary that there should be some method by which Legislators could be provided with up-to-date information and data on subjects likely to come up in the House. The obvious first choice is to provide him with a well-equipped library and then to place at his disposal a team of research and reference workers who could help him with ready information and material whenever he is in need of it.

In all democratic countries, there is a library attached to its Legislature for the use of its members. If the members of the Legislature remain uninformed about the values of rights, duties and responsibilities, it may lead to many administrative maladies ending in chaos or anarchy. To prevent such a grave social situation it is necessary to educate the Legislators about the Parliamentary Procedures and conventions and also to keep them well informed. Once a member is elected to the Legislature, the responsibility of informing and educating him lies, to a great extent, with the library which serves his personal as well as political purposes. There is virtually no limit to the range of subjects which may come before the Legislature. So a Legislature library has to be fairly general in its coverage too.

Parliamentarians of today require more service than what a conventional library could render. It is the duty of a Legislator to scrutinise and critically analyse the proposals, policies and conduct of the Government. In order to meet such objectives, it is essential that members should have access not only to a well equipped library, but also receive, on a continuous basis, factual, up-to-date data and objective information on a wide range of day-

to-day problems demanding legislative measures. They may often need information at a very short notice, not only for a debate that is scheduled to take place but also the debate that is actually going on in the House. Hence, each library must develop its own institutionalised sources of information through an information reservoir and latest dissemination procedures.

Information, in a sense, is the very basis of our existence. It has become a critical process and a part of modern decision-making as well as socio-economic development. The ultimate purpose of information is to put knowledge to work, and in turn, to improve the quality of the Legislator. Only well-informed Legislators can contribute to a debate that is thorough, substantial and well founded on facts. Bills passed after such debates will be less open to criticism by the public and the Press or scrutiny by the Judiciary. Thus, it can be seen that information is indispensable for the functioning of a true democracy. For an active and intelligent participation in the parliamentary debate, the elected representatives are supposed to be sufficiently well-informed about the issues of the day.

The reference service provided by the Legislature Library should also be different from similar services available in other libraries. It should keep members well informed on the regional, national and international issues. Reference facilities can be provided through the supply of on-the-spot references contained in the published documents; collection of material, factual data, statistics, etc. involving study and referencing work; preparation of bibliographies on important Bills coming up before the House;and preparation of reference notes on important topics that may come up before the House. In fact, the reference section should possess readily available material which will help a Legislator to compose a speech, a motion or a question, or to criticise or answer the benches sitting opposite to him.

The reference staff must always be in a state of alert and readiness particularly when the House is in Session. Information given to a member may immediately become public property. He may quote it in the House; he may use it for an interview. Whenever he uses it, his argument would collapse, if a key fact had been left out, or his staff had put a decimal point too far to the left, or to the right.

The technological development has brought about great changes in the systems of information generation and transmission. Computers, telecommunications, micro-electronics, printing and reprographic technologies have emerged to shape what is often called information technology. Information technology has not only the potential to transmit information at greater speed and with greater precision but also the capacity to deal with a great mass of variegated information. Computers have now made it possible to store and retrieve a large quantity of data in minimum possible time. They have proved their worth in serving the information needs in the West and we also should prepare ourselves for introducing computer services in our libraries. In the case of library collections, microform material is fast replacing printed material.

Catalogues, indexes, annotated accession lists and bibliographies, abstracts, topical publications, documentation of selection articles, paper clippings and comparative statistical charts present information and help the users in locating material. Newspaper clippings form an important item of work in the Legislature Library. Searching for recent news, important editorials, selected articles, decisions by the Chair in the various Legislatures, important judgements of the courts on legal and constitutional matters, etc. form the important items of the newspaper clippings.

As such, it appears as if we are already late to think of the necessity of enunciating a 'National Information System on Parliamentary Affairs'. We have seen that Library and Information Services are vital for parliamentary functioning in a true democratic society. Relevant information makes deliberations of members meaningful and emphatic. So we should realise the value of coordinating state Legislature Libraries and Parliament Library and initiating new programmes relevant to the matters of parliamentary interest, taking advantage of the latest advances in information technology to enable them to work as a system.

As per the information available from the Computer Centre of the Lok Sabha Secretariat, data stored and available in *Parlis* database for on-line retrieval relate to nearly two dozen subjects, among others, parliamentary questions and proceedings, Bills, bio-data of members, Presidential and Vice-Presidential elections, directions, decisions and observations from the Chair, micro-film

of parliamentary proceedings, library management functions, Parliamentary Committee reports, Council of Ministers, President's rule, by-elections, member's references, statistical tables relating to agriculture, economy, energy, industry, labour, Parliament and railways and pay-rolls of officers and staff of Lok Sabha Secretariat. Further expansion would cover areas such as parliamentary activities like Papers Laid on the Table, Subject Committees, reports and pay rolls of members, rare collections of Parliamentary Museum and Archives, Management Information System and telecasting of parliamentary proceedings.

What is envisaged here is the availability of information from various sources, including the Parliament, State Legislatures, the judgments of courts and other information relevant to the proper function of the Parliament and Legislatures. To achieve the same, resources from different agencies engaged in various walks of life can be compiled and contributed to the system discussed herein.

Such a system can ensure that members have access to timely, precise and reliable information. It can also ensure maximum utilisation of accumulated knowledge in science, technology and social sciences for the betterment of society and the development of the nation based on freedom, equality and justice.

In a developing country such as ours, acquisition of knowledge is the very base for its survival, progress and strength. A Legislature Library is responsible for the development of the personality of the Legislators by keeping them well informed and their intellect in constant exercise. A wide and well-knit Legislature Library network strengthens and democratic principles such as political equality, tolerance for opposite points of view, respect for rights of others and improvement of social, mental and moral faculties. The State Legislature Libraries should develop various programmes of mutual co-operation and resource sharing. In this manner, they should be in a better position not only to make the best utilisation of their resources, but would also meet the varied and complicated information needs of their Legislators. With its vast and multifarious regional, cultural, social, economic and political problems, the need for organising such a set up is more than imperative in our democratic polity.

52

Role And Experience Of Members Of Legislatures In The Committees

C.S. Janakiraman

The tasks of a Legislature in the parliamentary form of government are discussion of public affairs and inquest into the administration. The Committee system was introduced and employed to realize these objectives. Parliamentary Committees are an integral and useful adjunct to the work of Legislatures and legislators. The legislators have to face and solve complex problems. The executive has administrative machinery, experts and civil servants for assistence but the Legislature finds itself handicapped in this regard. The Parliament and State Legislatures need an agency of its own in which the whole House has confidence. The most practised method devised for the purpose is the setting up of a number of Committees composed of a small number of members of the Legislature, to which matters may be referred for investigation and report prior to consideration by the House. The Indian Parliament and State Legislatures has set up a vast network of parliamentary committees and legislature committees to aid and advise them in their work. A good deal of Parliamentary business is thus conducted by these Committees.

The enormous volume of work before a Legislature and the limited time at its disposal makes it impossible to discuss every matter at length on the floor of the House In order to expedite the work quickly and with reasonable care, the need for an agency to share this responsibility and in which the whole House has confidence it was felt necessarry to introduce the Committee System. As has been observed :

> No Legislature can function effectively without the aid of some Committees. Discussion of details is impossible at a large meeting which is unwieldy to debate anything but broad principles. For these reasons, all democratic Legislatures elect smaller groups to discuss matters in detail and these bring the result of their discussion back to the larger body for decision.

The Select Committees on Bills are constituted to deal with matters relating to policies while the financial matters are dealt with the Estimates Committee, the Public Accounts Committee and the Committee on Public Undertakings. And for the inquest into administration there are the Consultative Committees for each of the important departments of Administration. In Tamil Nadu Legislative Assembly besides the three financial Committees, namely, Committee on Estimates, Committee on Public Accounts, Committee on Public Undertakings and Privileges Committee are elected by theAssembly from among its members according to the principle of proportional representation by means of single transferable vote and the members of the other eight Committees are nominnated by the Speaker.

The principal objectives of these Committees are:

(i) to associate with and train as large a number as possible, not only in the ways in which the administration is carried on, but also to make them conversant with the various problems that the Government have to meet from day to day;

(ii) to exercise control on the Executive so that they do not become oppressive or arbitrary;

(iii) to influence the policies of the Government;and

(iv) to act as a liaison between the Government and the general public.

The powers, privileges and immunities of these Committees and their members are the same as those of the House. A Committee may take oral and/or written evidence or call for documents, in connection with a matter under its consideration, examination or investigation and has the power to send for persons, papers and records. A witness may be called either by a letter or by issue of formal summons to give evidence before the Committee.

The Committees, composed of members of various parties promote a corporate sense among members, contribute to the consideration of matters on merits and in a non-partisan manner. Membership of these Committees makes for some degree of specialisation among members in particular fields. It has also helped to develop a certain proficiency and expertise in the techniques of inquiry into complex working of government departments.

Members should evince keen interest in the delibrations of the Committee. They should try to go deep into the subject matter before it and find out the truth behind them. During the period of the Fifth Tamil Nadu Legislative Assembly, the members of the Committee on Estimates for 1973-74 found out that during the year 1970, a huge accumulated stock of paddy and rice belonging to the Co-operative Marketing Federation in various godowns in Thanjavur District and some stocks in a certain Mill at Madras had been illegally exported to Kerala, West Bengal and Maharashtra under false railway receipts and forwarding notes, most of which contained forged singnatures of known and unknown persons. The Committee recommended a thorough investigation into the matter.

Likewise, during the period of the Third Assembly, the Members of the Committee on Public Accounts for 1966-67 found out an illegal transaction in respect of about 400 grounds of vacant land by the Madras State Electricity Board by direct negotiation with the parties instead of acquiring the land under the Land Acquisition Act there by resulting in the loss of about Rs. 2.80 lakhs to the State Electricity Board. The Committee recommended a thorough investigation of the matter and to fix individual responsibility of concerned officers and to take suitable action against them.

Any Secretary to the Government can be called by the Chairman of the Committee for oral evidence. When the Chairman and his Committee meet the Secretaries to the Government it should be the primary duty of the witness to suggest any valuable improvement in the system. Both parties at such a meeting are on the same side of the barricade; on the other side of the barricade is the search for truth. A legislator can make useful contribution in the Government bills in the House and as well as in the Committee. All members of the Legislature may not have the opportuities or be in a position to make their full contribution on the legislative floor of the House. In this situation,Committee work offers to the studious and serious minded member ample scope for Constructive contribution. While nominating members for various Committees political parties may well keep in mind the aptitude, background and special interests of individual members. Besides improving the quality of work in Committees this will render the private member's parliamentary life more fulfilling. From the Parliament's side, specialisation could be promoted by ensuring some kind of continuity of membership in Committees, particularly in the Financial Committees.

Financial Committees demand exacting work and wholehearted dedication. In addition to the study of voluminous material, members have to attend the sittings of the Committee concerned, sit through evidence, make on-the-spot visits, etc. The work of these Committees accelerates the process of familiarisation with administrative matters and provides insight into the working of government organisations. Thus it has immense value in formulating and putting across realistic and constructive proposals to bring about the desired improvements in the interests of the public at large whom the members have the proud privilege to represent. While ensuring fuller and in-depth examination of matters and judicious consideration of issues, Legislature Committees also help in substantially saving the time of the House. That apart, membership of Committees help members develop deeper insights into the complex working of Government machinery. It also provides them with opportunities to make their own contribution based on their individual background to the work of the Legislature thereby rendering their parliamentary life more fulfilling and fruitful.

53

Parliament And Judiciary

N. H. Muttalageri

The functions of Government—whether Union or State-have been distributed among the Legislature, Executive and Judiciary. The Legislature makes laws and controls the Executive. The Executive executes the laws made by the Legislature and carries on the administration. The Judiciary interpretes the laws made by the Legislature and punishes those who violate the law of the land. Each organ has to work as per the provisions of the Constitution of India.

Relationship between Legislature, Judiciarv and Press in a Democratic set-up

The Legislature claims that it has power to decide by itself matters arising in connection with the proceedings of the House. The Judiciary contends that it has power to interpret the Constitution. Article 105 of the Constitution deals with the powers, privileges and immunities of the Houses of Parliament and of its members and Committees thereof and article 194 provides for the powers, privileges and immunities of the Houses of Legislature and of its members and Committees thereof. In Clause (1) of these article it is provided that subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of

the Legislature, there shall be freedom of speech in the Legislature. Clause (2) states that no member of the Legislature shall be liable top any proceeding in any court in respect of anything said or any vote given by him in the Legislature or any Committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of Legislature of any report, paper, votes or proceedings. Clause (3) provides that in other respects the powers, privileges and immunities of a House of the Legislature and of the members and the Committees of such Legislature shall be such as many from time to time be defined by the Legislature by law, and until so defined, shall be those of that House and of its members and Committees immediately before the coming into forrce of the Constitution (Forty-fopurth Amendment) Act, 1978. Before this Constitution Amendment Act came into force the powers, privileges and immunities were the same as those of the British House of Commons.

No Legislature in India has so far defined the other privileges and therefore the Legislatures are having the same privileges as that of the House of Commons.

In the case of *Homi Mistry Vs. Nafisal Hassan (1957)*, Supreme Court held that the warrant issued by the Speaker of the Uttar Pradesh Assembly in pursuance of a resolution of the House, fell within the category of judicial warrants and could not therefore draw the protection afforded by article 22(2) of the Constitution.

The House has exclusive control over its internal proceedings and the jurisdiction of the court is barred by Articles 105(2) and 194(2). The Orissa High Court in *Surendra Mohanty v. Nabhakrishna Choudhary* held, that 'no law court can take action against a member of Legislature for any speech made by him there' even when a member in his speech in the House casts reflection on a High Court. The courts have also held they have no jurisdiction to interfere in any way with control of the House over its internal proceedings or call in question the validity of proceedings on the ground of any alleged irregularity of procedure.

The Supreme Court in the *Searchlight* case had given its interpretation of the scope of article 194. In Bihar, an English Daily *Searchlight* published the speech of a member of the Bihar Assembly Under the caption *Bitterest attack on Chief Minister*,

though some portion of it had been expunged by the Speaker. The matter was raised in the Assembly alleging that breach of the privileges had been committed by the Editor of the *Searchlight* by publishing a perverted and unfaithful report and the matter was referred to the Committee of Privileges. The Editor was asked to appear before the Privileges Committee. At this stage, the Editor moved the Patna High Court under article 226 for an appropriate writ, order or direction restraining and prohibiting the Privileges Committee from proceeding further with the enquiry. Subsequently, the Editor withdrew the petition with a view to availing the Fundamental Rights granted to him under article 32. He filed a petition before the Supreme Court under article 32 contending that the proposed action by the Privileges Committee was in violation of his Fundamental Right to freedom of speech and expression under article 19(1)(a) and to the protection of his personal liberty under article 21.

The Secretary of the Bihar Legislative Assembly, in his affidavit, maintained that the report contained in the offending publications was not in accordance with the authorised report of the proceedings of the House because it contained even those remarks which, having been, by order of the Speaker, directed to be expunged did not form part of the proceedings. It was claimed that generally speaking, proceedings in the House are not in the ordinary course of business meant to be published at all and that under no circumstances it is permissible to publish the parts of speeches which had been directed to be expunged and consequently were not contained in the official report. Such publication is said to be clear breach of the privilege of the Legislative Assembly which is entitled to protect itself by calling the Editor of the newspaper and if necessary by meting out suitable punishment to him.

The Editor relied on article 19(1)(a) and contended that he, as a citizen of India, has the right to freedom of speech and expression and that as an Editor of a newspaper he is entitled to all benefits of freedom of the Press.

The Supreme Court held that the House of Commons had at the commencement of the Constitution, the power or privilege of prohibiting the publication of even a true and faithful report of

the debates or proceedings that took place within the House. *A fortiori* the House had at the relevant time the power or privilege of prohibiting the publication of an inaccurate or garbled version of such debates or proceedings. The latter part of article 194(3) confers all these powers, privileges and immunities on the House of the Legislature.

It was argued that article 194 was subject to article 19. But the Court was of the view that provisions of articles 105 (3) and 194(3) are constitutional laws and are as supreme as Fundamental Rights. Clause (1) of article 194 is subject to the provisions of the Constitution but Clause (2) to (4) are not subject to the provisions of the Constitution. Freedom of speech in the Legislature is subject to the provisions of the Constitution regulating the proceedings of the Legislature in Part II, including articles 208 and 211. The right conferred on a citizen under article 19 (1) (a) can be restricted by law under clause (2) of article 19 and he may be made liable in a court of law for breach of such law but Clause (2) of article 194 categorically lays down that no member of the Legislature is to be made liable to any proceedings in any court in respect of anything said, etc. The provisions of clause (2) of article 194 indicate that the freedom of speech under article 194(1) is different from the freedom of speech and expression guaranteed under article 19 (1) (a) and cannot be cut down in any way by law contemplated by article 19(2).

Further the freedom of speech in Legislature is not an abridgement of the freedom of speech available to a member as a citizen. If that was so the construction of the article would have been different.

Articles 19 (1) (a) and 194 (3) have to be reconciled and the only way of reconciling the same is to read article 19 (1) (a) as subject to the latter part of article 194 (3). The Court held that the principle of harmonious construction must be adopted and so construed that the provisions of article 19 (1) (a) which are general must yield to article 194 (1) and the latter part of its Clause (3) which are special.

The Court then dismissed the petition.

In March, 1964 the Legislative Assembly of Uttar Pradesh

referred to its Committee of Privileges the complaint made by a member that Shri Keshav Singh and two others who had committed contempt of the House and a breach of privilege of a member by having printed and distributed a leaflet containing false and defamatory allegations against a member in the discharge of his duties in the House. The Committee of Privileges held that a breach of privilege of the member and a contempt of the House had been committed by these persons and recommended that they be reprimanded by the Speaker. The House agreed with the report and the contemners were ordered to present themselves before the House to receive the reprimand. Two of them appeared before the House and they were reprimanded. Keshav Singh did not appear before the House. A warrant for his arrest and production was issued. Shri Singh sent a letter to the Speaker which was worded in a language derogatory to the dignity of the House and the Speaker. When he was arrested and produced before the House, he stood with his back towards the Speaker showing disrespect to the House and did not care to give any answer to the questions put to him by the Speaker. The Speaker reprimanded him.

On account of the disrespectful behaviour to the House and also regarding his derogatory letter a motion was moved that Keshav Singh be sentenced to imprisonment for seven days and motion was adopted and he was sent to jail to serve the sentence.

On the sixth day, Keshav Singh represented by an advocate presented a petition to the Lucknow Bench of the Allahabad High Court under section 491 of Criminal Procedure Code and article 226 of the Constitution against the Speaker, the Chief Minister and the Jail Superintendent praying that he be set at liberty on the ground *inter alia* that his detention, after the reprimand had been administered to him, was illegal and without any authority and further praying that pending the disposal of the petition, he be ordered to be released on bail.

The petition was admitted by the High Court and Keshav Singh was released on bail pending the disposal of the writ petition.

On 21 March, 1964, the Legislative Assembly adopted a resolution to the effect that the two judges of the Allahabad High

Court, who had entertained the petition of Keshav Singh and ordered him to be released on bail and the advocate who had represented him had by their actions committed contempt of the House. The Assembly ordered that Keshav Singh be taken into custody to serve the remaining part of his sentence and that the two Judges and the advocate be taken into custody and brought before the House. Further when the period of imprisonment of Keshav Singh was completed he was ordered to be brought before the House for having committed a contempt of the House by causing petition to be presented to the High Court against his committal.

The Judges of the High Court thereupon presented petitions to the Allahabad High Court under article 226 on 23 March praying for a writ of *mandamus* restraining the Speaker, the Marshal and the Superintendent of the Jail from implementing the resolution of the House and from securing execution of the warrant in pursuance of the resolution. The advocate also presented a petition to the High Court under article 226 for a similar writ of *mandamus* and further for taking action against the Speaker and the House for contempt of Court.

A full Bench of the Allahabad High Court consisting of 28 Judges admitted the petitions of the two Judges on the same day and directed the issue of notices to the respondents and restraining the Speaker from issuing the warrant in pursuance of the resolution of the House and from securing execution of the warrant if already issued and restraining the Government of Uttar Pradesh and the Marshal of the House from executing the said warrant if issued.

Similar orders were made by the High Court on 25 March on the petition of the advocate for a writ of *mandamus.*

The order passed by the High Court was served on the Speaker on the morning of 24 March. But in the meanwhile, on the evening of 23 March, the Speaker had issued the warrants of arrest pursuant to the resolution passed by the Assembly on 21 March and they had been handed over to the Marshal for executing the same. The Marshal was also served with the Order of the Court but before the service of the Order, he had handed over the warrants to the Commissioner of Lucknow for doing the needful.

On 25 March the Assembly passed another resolution declaring that by its resolution dated 21 March, it had not intended to deprive the two Judges of the Lucknow Bench of Allahabad High Court, the advocate and Keshav Singh of an opportunity of giving their explanations before a final decision about the commission of contempt by them was taken by the House and directing that such an opportunity should be given to them.

The warrants of arrest of the two Judges and the advocate were accordingly withdrawn by the Speaker and the resolution passed by the House on 25 March was referred by him to the Committee of Privileges for necessary action. The Committee of Privileges decided on 26 March to issue notice to the said two Judges and the advocate to appear before it on 6 April for submitting their explanations.

The two Judges, thereupon, moved fresh petitions before the High Court on 27 March for staying the implementation of the resolution passed by the Assembly on 26 March. A full Bench consisting of 28 Judges passed an interim order restricting the Speaker, the House and the Chairman of the Committee of Privileges from implementing the aforesaid resolution of the House and also the operation of the aforesaid notices issued to the two Judges by the Committee of Privileges.

As things were assuming alarming proportions the President of India made a Special Reference to the Supreme Court under article 143 (1) for consideration and report in regard to the serious conflict between the High Court and State Legislature regarding their powers and jurisdiction.

A Constitution Bench of the Supreme Court, consisting of seven Judges presided over by the then Chief Justice P.B. Gajendragadkar considered the matter and gave their opinion on 30 September, 1964.

The Supreme Court came to the conclusion that (i) the Legislature has the power to commit a person who has been found guilty of contempt of the House; (ii) the court was equally competent to enquire whether a person has been validly committed to prison and for that purpose to issue notice on the custodian of the prison to make a return; (iii) if there is a valid return showing that the person has been committed by a warrant duly

signed by the Speaker and the warrant is not a speaking warrant, the Court will not furtherenquireinto the matter; and (iv) if there is speaking warrant, the Court will be entitled to examine the reasons stated and to judge whether the reasons are sufficient for committal or not.

The Court also held that neither the Judge, nor the advocate nor the party was guilty of contempt and therefore, it was competent for the High Court of Allahabad to entertain the petition filed before it by the two judges and by the advocate and it was within its jurisidiction to pass the interim orders, restraining the operation of impugned orders passed by the House.

Disagreeing with the majority, Justice Sarkar held that the right to commit for contempt by a general warrant was in deprivation of jurisdiction of the Courts of law to enquire into the committal and was a privilege of the House of Commons. That privilege was possessed by the U.P.Assembly by reason of article 194 (3) which took precedence over the Fundamental Rights, that is to say article 194 (3) was not subject to any Fundamental Right guaranteed under Part III of the Constitution.

The Supreme Court based its decision on the view that articles 32 and 226 give an overriding power to the Courts to examine the validity of any detention whether the detention is under the order of the Legislature or not.

The opinion of the Supreme Court was discussed by the Conference of Presiding Officers of Legislative Bodies in India held at Bombay in 1965. Speaking at that Conference, the Chairman Speaker Hukam Singh said that the intention of the Constituent Assembly was to oust the jurisdiction of Courts in contempt cases. He observed:

> If you go to the history of the provisions contained in articles105 and 194 of the Constitution, you will find that the intention has all along been that the Legislatures in India should have the same powers and privileges as are enjoyed by the British House of Commons, more particularly the privilege of committing for contempt by a general warrant without the scrutiny of the Courts.

In his speech on these provisions in the Constituent Assembly, Dr. Ambedkar stated:

> Under the House of Commons' Powers and Privileges, it is open to Parliament to convict any citizen for contempt of Parliament and when such privilege is exercised, the jurisdiction of the Court is ousted. That is an important privilege...But there is not the slightest doubt in my mind and I am sure, also in the mind of the Drafting Committee, that Parliament must have certain privileges, when that Parliament would be so much exposed to calumny, to unjustified criticism that the parliamentary institution in this country might be brought down to utter contempt and may lose all the respect which parliamentary institutions should have from the citizens for whose benefit they operate.

The Presiding Officers' Conference adopted the following resolution unanimously:

(a) whereas it is not possible for Legislatures to function successfully without their having the powers to adjudge in case of their own contempt, whether committed by a member or a stranger, whether inside the chamber, or outside it, and to punish that contempt without interference by Courts under any article of the Constitution or otherwise;

(b) whereas such ouster of jurisdiction of Courts was intended by the Constitution makers as is clear from the statements of Dr. Ambedkar and Shri Alladi Krishnaswamy Iyer made in the Constituent Assembly when articles 105 and 194 were adopted;

(c) whereas the language of these articles is so clear that according to Justice Sarkar the language can only have one meaning and that is that it was intended to confer on the Legislatures the powers, privileges and immunities which the House of Commons in England had at the commencement of the Constitution; and

(d) whereas the opinion of the Supreme Court has reduced Legislatures to the status of inferior Courts and has

implications that would deter the Legislatures from discharging their functions efficiently, honestly and with dignity;

Now therefore, the Conference considers that suitable amendments to articles 105 and 194 should be made in order to make the intention of the Constitution makers clear beyond doubt so that the powers, privileges and immunities of Legislatures, their members and Committees could not, in any case, be construed as being subject or subordinate to any other articles of the Constitution.

This Conference further authorises the Chairman of the Conference to take all steps necessary to give effect to this resolution.

On 10 March, 1965, the Allahabad High Court delivered its judgement on the writ petition of Keshav Singh which was pending before it since 19 March, 1964. The High Court dismissed the writ petition of Keshav Singh and ordered him to surrender to his bail and serve out the remaining portion of the sentence of imprisonment imposed upon him by the Legislative Assembly of Uttar Pradesh.

In its judgement, the Allahabad High Court stated *inter alia* :

(1) In our opinion, both upon authority and upon a consideration of the relevant provisions of the Constitution, it must be held that the Legislative Assembly has, by virtue of article 194 (3), the same power to commit for its contempt as the House of Commons has.

(2) In our opinion, the provisions of article 22 (2) of the Constitution cannot apply to a detention in pursuance of a conviction and imposition of a sentence of imprisonment by a competent authority....... Article 22 (2) is applicable only at a stage when a person has been arrested and is accused of some offence or other act and it can have no application after such person has been adjudged guilty of the offence and is detained in pursuance of such adjudication...... Article 22 (2) was not intended to apply to a case of detention following conviction and sentence by the Legislative Assembly.

(3) So far as the question of violation of article 21 is concerned, the matter is concluded by the decision of the Supreme Court in Sharma's case......

Since we have already held that the Legislative Assembly has the power to commit the petitioner for its contempt and since the Legislative Assembly has framed rules for the procedure and conduct of its business under article 208 (1), the commitment and deprivation of the personal liberty of the petitioner cannot but be held to be according to the procedure laid down by law within the meaning of article 21 of the Constitution.

(4) Once we come to the conclusion that the Legislative Assembly has the power and jurisdiction to commit for its contempt and to impose the sentence passed on the petitioner, we cannot go into the question of the correctness, propriety or legality of the commitment. This Court cannot, in a petition under article 226 of the Constitution, sit in an appeal over the decision of the Legislative Assembly committing the petitioner for its contempt. The Legislative Assembly is the master of its own procedure and is the sole judge of the question whether its contempt has been committed or not.

(5) Since the House of Commons has the power to commit any one for its contempt and to confine him in one of Her Majesty's prisons, the Legislative Assembly also has a similar power to confine any person, whom it commits for breach of its privilege, in any prison. Since the Legislative Assembly has, under article 194 (3), the constitutional right to direct that the petitioner, who has been committed for its contempt, be detained in the District Jail, Lucknow, the Superintendent of that Jail was bound to receive the petitioner and to detain him in accordance with the warrant issued by the Speaker.

(6) In our opinion, no question of violation of article 14 can at all arise in such a case. Every person, who commits contempt of the Legislative Assembly, is subject to the same procedure and to the same punishments.

Keshav Singh was, accordingly, taken into custody subsequently and he served out the remaining portion of the sentence of imprisonment which had been imposed upon him earlier by the U.P. Legislative Assembly.

There are cases where courts or tribunals require documents in possession of Legislature Secretariats. A definite procedure has been settled by the Lok Sabha Secretariat regarding production of documents. Whenever a request for production of a document is received by Lok Sabha Secretariat the matter is referred to the Committee of Privileges. The report of the Committee is considered by the House and action is taken accordingly. In all cases where requests have been made, the Lok Sabha has agreed for the production of records. Requests are generally related to letter referred to in a speech by a member and passed on to the Speaker, dates of session and the dates on which a particular member attended the session, certified copy of answer to unstarred questions, file containing the correspondence with a firm regarding installing automatic vote recording system, letters written by a member for allotment of accommodation, attendance register of members, register and records showing payment of daily allowance to a member on certain dates, records of Public Undertakings Committee, writing of a member, etc.

In one case, Madras State Magistrate's Court in Tiruchirapalli wanted the production of the notice of a question given by a member of the Madras Legislative Assembly as he was being tried for violatiion of Official Secrets Act and the Assistant Secretary of the Legislature was deputed to produce the document in the Court.

In 1981, the Speaker of Lok Sabha while disallowing notices of Privileges against the Chief Justice and another Judge of the Supreme Court observed:

> The Constitution has allotted specific duties and responsibilities to Parliament as well as to the Supreme Court and High Courts and we have to have mutual respect for each other. It would be in the best interests if democratic norms and traditions set down in the Constitution are meticulously observed and those connected with these institutions do not overstep their limits, so that the ideal concepts enshrined in the

> Constitution remains a living reality and does not become an intrusion. I have no manner of doubt that with the strong tradition democracy laid down in our country, these institutions would supplement and complement each other and become a source of strength to the nation as a whole.

The observations of Justice M. Hidayatullah, former Chief Justice of India and also a distinguished Vice-President and Chairman of Rajya Sabha are noteworthy. He observed :

> If there is mutual trust and respect between Parliament and Courts, there is hardly any need to codify the law on the subject of privileges. With a codified law more advantages will flow to persons bent on vilifying Parliament, its members and Committees and the Courts will be called upon more and more to intervene. At the moment, given a proper understanding on both sides, parliamentary right to punish for breach of its privileges and contempt would rather receive the support of Courts than otherwise. A written law will make it difficult for Parliament as well as Courts to maintain that dignity which rightly belongs to Parliament and which the Courts will always uphold as zealously as they uphold their own. This understanding is the only solution to the great dualism which need not have but had unfortunately crept in our polity.

In the eighties there were two more privilege cases which attracted considerable attention-one from Kerala and another from Andhra Pradesh. In the Kerala case, the question of refusal of a Press pass to a particular Reporter was challenged. The Kerala High Court held: "The rules framed under article 208 of the Constitution for regulating the procedure of a House of Legislature and the conduct of its business are liable to judicial review if there is a case of infringement of the Fundamental Rights." About article 212, the Court stated : "The immunity envisaged in article 212 (i) of the Constitution is restricted to a case where the complaint is no more than that the procedure was irregular. If the impugned proceedings are challenged as illegal or unconstitu-

tional, such proceedings would be open to scrutiny in a court of law." The Court further stated: "We are only mentioning the arguments placed before us by both sides. We do not propose to resolve this question here."

In Andhra Pradesh, the Legislative Council referred to the Privileges Committee, objectionable matter in the *Eenadu* paper. When the notice of privilege was sent to the Editor, he wrote a letter to the Chairman not only imputing motives but also challenging the very authority of the member who moved the motion and the authority of the Privileges Committee and the House. The Privileges Committee presented its report to the House, the House considered the report and adopted a resolution that the Editor be brought before the bar of the House and admonished. Then the matter was taken to the Supreme Court.

Both the Kerala and the Andhra Pradesh cases were discussed at the Emergent Conference of Presiding Officers in New Delhi in April, 1984 and the following resolution was unanimously passed;

> The Presiding Officers of Legislative Bodies in India assembled in their Emergent Conference in New Delhi on 25 April, 1984 while reiterating the supremacy of the legislature under the Constitution and faith in the independence of the judiciary and the freedom of the Press, hereby unanimously resolves:
>
> (a) that under article 105/194 of the Constitution, the Legislatures in India had and were intended by the founders of the Constitution to have exclusive jurisdiction to decide all matters relating to the privileges of the House, their members and Committees without any interference from the Courts of law or any other authority;
>
> (b) that rules framed under article 118/208 are not subject to scrutiny by any Courts of law and the provisions regarding their being subject to constitutional provisions refers to only the provisions regarding rules of procedure enshrined in the Constitution and not to all other provisions;
>
> (c) that mutual trust and respect must exist between

the Legislatures and Courts, each recognizing the independence, dignity and jurisdiction of the other inasmuch as their roles are complementary to each other;

(d) that, if necessary, an amendment might be made in Constitution so as to place the position beyond all shadow of doubt; and

(e) that the Committee of the Presiding Officers appointed at their Conference in Bombay in January, 1984 may continuously monitor further progress in the matter and from time to time make suitable recommendations to the Chairman of the Conference and finally to the Conference itself at its Calcutta meeting in October, 1984.

This Conference authorises the Chairman to take such other steps as he dems fit to achieve the above objectives.

The Legislatures also have power to expel their members and there are instances when some members have been expelled and matter has been taken to the courts.

In August, 1964, membership of Shri J.D.Dhote was terminated by the Maharashtra Legislative Assembly for having obstructed the proceedings of the House and for undignified and insulting behaviour towards the Speaker. In this case, matter was not taken to the Court.

In March, 1966, two members of Madhya Pradesh Assembly were expelled for their violent behaviour with the Deputy Speaker. This case was also not taken to the court.

In 1976, the membership of a member of Haryana Assembly was terminated by a resolution passed by the House. A writ was filed before the Punjab and Haryana High Court and the High Court allowed the writ. In 1986, ten DMK members of Tamil Nadu Assembly had burnt some pages of the Constitution. The Tamil Nadu Assembly passed a resolution terminating the membership of those ten members considering them to be incompetent as members of the House. On passing of the resolution, their seats were declared vacant. A writ petition was filed by these ten members against their termination order which was dismissed by Madras High Court.

The British House of Commons has the power to terminate the membership of its members. In October 1947, and again in December, 1954, the House of Commons had terminated the membership of some of its members on account of breach of privilege of the House. The object of termination was reformative and not disciplinary

A member of the Delhi Metropolitan Council resigned his membership and the same was notified. After ten months the member approached the Delhi High Court which granted a stay. But he was not allowed to attend the meetings of the Council. Contempt proceedings were started against the Chairman of the Metropolitan Council and the matter was taken to the Supreme Court. The Supreme Court quashed the contempt proceedings and opined that it was not the Metropolitan Council that committed contempt against the High Court but it is the High Court that had committed contempt against the elected representatives of the Metropolitan Council.

In February, 1992 a Tamil newspaper had published that a member of the Tamil Nadu Assembly had hit another member of the Assembly. The matter was raised in the House and it was referred to the Privileges Committee. The Committee submitted its report. The House accepted the report and the Editor of the newspaper was asked to appear before the bar of the House. As the Editor did not appear before the House, warrant of arrest was issued. But the Editor filed a writ in the Supreme Court and obtained a stay of the arrest warrant.

This matter was discussed in the Presiding Officers Conference held in May, 1992 in Gandhinagar. The Chairman in his concluding remarks said that members had expressed their views on a subject which may or may not be explosive but certainly it was delicate. Such a subject should be dealt with restraint, caution, prudence and wisdom.

Legislature, Executive and Judiciary are the basic features of the Constitution. In England, Parliament is sovereign but in India the Legislatures are sovereign in the areas which are prescribed by the Constitution and not beyond that. It is absolutely necessary for the Presiding Officers to have the power and authority to control the proceedings and maintain the discipline in the

House without which it would be very difficult to transact business. But at the same time it is necessary to remember that those who are elected to the House are representing the aspirations and the views of the people. If the people feel agitated outside the House, the same view is expressed or at least demonstrated in the House. These matters should be looked at with more understanding.

The House of Commons have erred on the side of forgiving rather than punishing. They have said that this is below our dignity to take cognizance what the people have been saying outside the House and this has helped to maintain dignity. Though very harsh expressions have been used against the House of Commons yet they have been neglected.

A distinction is made between irregularity in procedure and illegality. If a mistake is committed in following the procedure or if irregular procedure is followed,Courts cannot take cognizance of it. But if powers which are not there are exercised the Courts say that they have a jurisdiction.

Presiding Officers have behaved in a very responsible manner and if one or two occasions have arisen they can be exceptions. Members of the judiciary are also trying to apply their jurisdiction in the same fashion. If mistakes are committed they are exceptions and not the rule.

The Judiciary, the Legislature and the Executive are trying to create harmonious situations. The Presiding Officers have acted in a restrained and responsible manner and should continue to act like that. The judiciary should also take into consideration the difficulties involved and intricacies involved and act in the same fashion.

The Committee of Presiding Officers may consider this matter with a view to protecting the dignity and prestige of the Legislature. At the same time the dignity and prestige of the judiciary should also be protected which would help the responsible functioning of democracy.

54

SPEAKER AND COURT'S SUBPOENA

Jugal Kishore Prasad

In recent times, a legal issúe of prime importance has cropped up in our country-whether the Speaker of a Legislature is subject of Subpoena issued by the High Court and the Supreme Court ? The question necessitates, in the first instance, the examination of the powers and the functions of the Speaker of a Legislature.

The powers and functions of the Speaker can be broadly classified into three heads (i) as the Presiding Officer of the House (ii) as the Tribunal under the Constitution; and (iii) as the administrative head of the Secretariat of the House.

The powers and functions of the Presiding Officer are derived from our Constitution, from the Rules of Procedure framed under article 118 (1) of the Constitution and under article 208 by House of the State Legislature. These rules are framed for regulating the procedure and the conduct of the business of the house under the constitutional provisions. Now, in this background it is to be examined as to how far the Speaker as the Presiding Officer of the Lower House is immune from the Subpoena of the Court of law in India ?

Article 122 (1) lays down that, "the validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure". Similar provision is laid down in respect of the State Legislatures also. Another relevant provision in this regard is article 118 (1) which provides that, "Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business". *Mutatis mutandis*, similar provision is found in respect of State Legislatures in article 208 (1) of the Constitution. Thus, what is excluded from the jurisdiction of court of law is any cause of action to the aggrieved party arising out of "alleged irregularity of procedure". Irregularity in fact is quite distinct from' illegality' and is *ultra-vires* of the constitution. If any party files a writ petition before the High Court or Supreme Court alleging that the procedure adapted by the House in regard to a particular matter was *ultra-vires* of the Constitution or even illegal under any Act passed by the Legislature, the petitioner has to implead some person and authority as the opposite party. It is significant that the House itself is not a legal person and no writ can lie in the name of the House.

Article 300 of the Constitution states about the suits and proceedings and lays down that the Government of India may sue or be sued by the name of the Union of India, and the Government of a State may sue or be sued by the name of the State. In other words, the Union as well as the State Governments are 'juristic personalities' and as such they can sue or be sued in their own names. But there is no similar provision in relation to Parliament or State Legislature, and therefore, it is an established law that the legislative body, *i.e.* the House is not a 'juristic personality' and cannot sue or be sued in its own name.

Again, under article 77 the Union of India, and under article 166, the State Government can frame rules for the transaction of the business of the Government. For example, notification no. A-933 dated 25 January 1952 of Government of Bihar, reads as :

"In exercise of the powers conferred by clause (2) of article 166 of the Constitution of India and in supersession of all previous rules made in this behalf, the Governor of Bihar is pleased to make

the following rules:

> (i) All orders or instruments, made or executed by or on behalf of the Government of Bihar shall be expressed to be made or executed by or under order of the Governor of Bihar.
>
> (ii) Save in the cases where an officer has been specially employed to sign an order or instrument of the Government of Bihar, all such orders or instrumentsshall be signed by either the Secretary, Joint Secretary, the Deputy Secretary, an Under Secretary, an Assistant Secretary, a Budget Officer to the Government of Bihar or the Estate Officer of the P.W.D., and such signature shall be deemed to be a proper authentication of such order or instrument.

Thus, there is substantial compliance of clause (2) of article 166 when a notification is signed by the Secretary of a Ministry 'by order of the Governor'. But there is no similar provision in our Constitution with respect to the conduct of the business in Parliament or State Legislature in its Executive side.

Section 79 of the Civil Procedure Code specifically lays down that in a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be (a) in the case of a suit by or against the Central Government, the Union of India; (b) in the case of suit by or against a State Government, the State. Further, section 80 (1) Provides that except as otherwise provided in sub-section (2), no suit shall be instituted against the Government (including the State of Jammu & Kashmir) or against a public officer in respect of any act purporting to be done by public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of :

> (a) in the case of a suit against the Central Government except where it relates to a Railway, a Secretary to that Government;

(b) In the case of a suit against any other State Government, a Secretary to that Government or the Collector of the district...

In other words Civil Procedure Code also does not provide for the authority regarding service of notice in case of any suit against the Legislative House.

In a Presidential Reference to the Supreme Court under article 143, it has been held that in respect of State legislatures article 194 (1) is subject to the provisions of article 208 and 211. But the immunity prescribed under clause (2) of article 194 is free from this restrictive clause. It means that while the freedom of speech within the House is subject to the restrictions imposed by articles 19 & 121 or by the relevant rules of the House, no action in a court of law lies for violation of any of the foregoing provisions of article 194 (2). The remedy against such utterances is in the hands of the Speaker to prevent or to take action against the violation of these provisions. It is also significant that except for the Fundamental Right available to a citizen under article 19(1)(a), other Fundamental Rights available to a citizen or any person in Part III of the Constitution are not restricted by the provisions of article 194.

Under our Constitution, the High Court and the Supreme Court have been vested with the power of judical review. Citizens of India and in some cases even non-citizens have been vested with Fundamental Rights under Part III of our Constitution. Articles 32 and 226 give power to the Supreme Court and the High Court, respectively, to entertain writ petitions on alleged violations of any of the Fundamental Right. Since this is the law of the land, there can be no gainsaying that no appropriate writ may lie before the Supreme Court and the High Court, as the case may be, agaist the order or resolutions passed by the House on alleged ground of non-observance of the principle of natural justice or *ultra-virus* of the Constitution.

Article 122(2) lays down : "No officer or member of Parliament in whom, powers are vested be or under this Constitution for regulating procedure or the conduct of business or for maintaining order in Parliament shall be subject to the jurisdiction of any court, in respect of the exercise by him of those powers".

Mutatis mutandis, similar provision has been laid down in article 212(2) in respect of the State Legislatures. Significantly, clauses (2) of articles 122 and 212 are not controlled by sub-clause (1) of their respective articles. In my opinion, no officer or member of House who is constitutionally required to regulate the procedure or the conduct of the business or maintain order in the House can be subjected to the jurisdiction of the Court in respect of the exercise of those functions by them.

This leaves us to the piquant situation as to who is to be arrayed as the opposite party in any writ petition which may be filed against the order and notification of the House on alleged ground of *ultra-vires* of the Constitution or even illegality for want of natural justice. The House itslef, not being a 'juristic person' cannot be legally arrayed as an opposite party as no order of the court of law can be enforced against a person or body which is not a 'juristic person'. Again, according to article 122(2) and 212(2), the Chairman, Vice-Chairman, Speaker or Deputy Speaker are im-mune from the subpoena of the court.

The Rules of Procedure and Conduct of Business in the Bihar Vidhan Sabba was adopted by the Assembly on the 21 December 1965 under article 208(1) of the Constitution and was enforced on 1 January 1966. Rule 298 empowers the Speaker to regulate the conduct of business in matters not provided for in the constitution or rules. Rule 298(2) provides that the Speaker may, by order not inconsistent with these rules, provide for matters for which no provision is made, and may give directions as may be necessary for giving effect to these rules and such orders." In other words, Rule 298 prescribes the inherent powers of the speaker. Since the Constitution as well as the rules framed under article 208(1) of the Constitution are conspicuously silent about the mode and method of authentication of the order and resolution passed by the Assembly, the Speaker is constitutionally competent to issue directions under Rule 298(2) which may be read as:" In exercise of the powers conferred by clause(2) of rule 298 of Rules of Procedure and Conduct of Business in the Bihar Vidhan Sabha, as adopted by this Assembly on 21 December 1965 under article 208(1) of the Constitution of India, the Speaker, Bihar Vidhan Sabha is pleased to make following directions:

(i) All resolutions passed and the orders made by this Assembly or its Committee shall be expressed to be made by or by order of the Bihar Vidhansabha,

(ii) Save in cases where an officer has been specially empowered to sign a resolution and order of this Assembly and its Committee, every such order and resolution shall be signed by the Secretary, Joint Secretary or a Deputy Secretatry of the Assembly Secretariat".

Alternatively, similar provision can be included in the Rules of Procedure and Conduct of Business by amending Rule 305. If this procedure is adopted, the House shall become a 'juristic personality' and the Secretary of that House concerned need be made the necessary party and that the notice or process need be served only upon the Secreatary and the Speaker as the Presiding Officer of the House will be immune from the Subpoena of the Court of law.

Another important function of the Speaker is under the Anti-Defection Law. Para 6(1) of the Tenth Schedule of the Constitution lays down that if any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman, or, as the case may be, the Speaker of such House and his decision shall be final. Further, para 6(2) provides that as all proceedings under sub-para (1) of Paragraph 6 in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of article 212.

As already discussed above, it means : (1) that the finality of the decision of the Speaker / Chairman under para 6 (1) cannot be challanged in a court of law on ground of alleged irregularity of proceedings; (ii) that, it can be challenged on ground of *ultra vires* and want of natural justice and malafide; and (iii) that, being an Officer of a House, they cannot be subjected to the jurisdiction of the court for their function as the Chairman/Speaker-cum-tribunal. Hence, there is no legal difficulty as to who need be

made the Opposite party to the writ petition against such order of the Speaker/Chairman. It is clear from para 6(1) that the queston of disqualification only on the question having been referred to him for such decision. The word 'referred' is very significant and gives a clue to the question of necessary party to such writ petition. The words 'party, person or authority' used in paras 2 and 3 of the Tenth Sechedule means the party whose whip was disobeyed and who has referred the question of disqualification to the Speaker/Chairman for decision, is the only necessary Opposite party to such writ petition. After all, the court of law which passes any judgement or order is not made a party to any appeal or revision or in writ petition; it is only the litigating parties who are the necessary parties in any suit or proceeding filed in a cout of law. Thus any writ petition or any other suit or proceedings would suffer from misjoinder of party if the Speaker is impleaded as one of the Opposite parties.

Article 309 or the rules framed thereunder are not applicable in case of the secretarial staff of the Legislature. There are, however, separate provisions in our Constitution for secretarial staff of the Parliament and of the State Legislatures. For instance, Bihar Vidhan Sabha Secretariat (Recruitment and Condition of Service) Rules, 1964 has been framed under article 187(3) of the Constitution of India by the Governor of Bihar after consultation with the Speaker of the Bihar Vidhan Sabha. Rule 6(b) of this rule prescribes that appointment to all the posts, except that of the Secretary and Joint Secrtary, in the Secretariat of Bihar Vidhan Sabha shall be made by the Speakers provided that the Speaker may, by general or special order, delegate to the Secretary or any other officer of the Secretariat his power to make appointment to any post or class of posts in class III or class IV, as may be specified in such order. But in the absence of such delegation of powers, the Speaker is the appointing authority. Further, rule 14 prescribes that subject to the provisions of article 311 of the Constitution, the Speaker shall have the power to impose any of the penalities, specified in rule 13, on any officer in respect of whom the Speaker may, by general or special order, delegate to the Secretary or any otherclass I or class II officer the power to impose any penality on any officer of class III or class IV. In the absence of delegation of power unde rule 6(b), there could also be

no delegation of power under provision of rule 14. The result is that in any writ proceeding arising on the cause of action of service matter, the Speaker as the appointing authority becomes the necessary Opposite party.

Rule 18 prescribes that, any order passed by the Speaker under the provisions of these rules and executed in the name of the Speaker shall be authenticated in such manner as the Speaker may, by general or special order, from time to time, specify. In my opinion, this authorisation may be made *mutatis*, in the case of authorisation of order passed by the House also.Coupled with this order of authentication amendment of Section 79 and 80 of the Civil Procedure Code is also necessary. Amended Section 79 may provide that in a suit by or against the Government and Legislature, the authority to be named as Plaintiff or Defendant as the case may be, shall be:

(1) in case of a suit by or against the Central Government, *either House of Parliament*, the Union of India and (ii) in case of a suit against a State Government or *either House of State Legislature*, the State. Amended Section 80 will enable to serve notice to the Secretary of the Legislature, in case any suit is instituted against the Legislature.

If such amendments are incorporated, the Chairman/Speaker may be completely immune from the court's Subpoena, which is very essential in keeping with the dignity of this high office and constitutional post.

55

Committees Of the Maharashtra Legislature

Bhaskar Shetye

The growth and development of Indian Legislatures is on the pattern of the British Parliament. In the Maharashtra Legislature, there are Committees and Committees. Erskine May has observed:

> In both the Houses of Parliament, the practice of delegating to small bodies of Members regarded as representing the House itsclf the consideration of questions which as involving points of detail of questions of a technical nature, are unsuited to the House, as a whole, is as old as any part of the settled procedure.

The system also serves to have a division of labour. Besides these objects, the Committees have also come to exercise functions in furtherance or the Parliament's primary role of control and supervision over the Executive. In other words, the Committees are also, so to say, a further instrument in the hands of Parliament to make the Government behave.

In countries where a parliamentary form of Government based on the British model is adoptcd, the powers and functions of the Committees are very much restricted in scope and they do not embark upon the kind of investigation and consideration of matters as in America or in other European countrics. The Committees are

subordinate to the House in every way and dwell upon the matters and make reports thereon exactly as the House has directed them specifically or under its Standing Orders.

The earliest example of Committees, so far as the Bombay Legislative Council is concerned, is of Select Committees on Bills. It should be noted that the Legislative Council which was first established for making laws and regulations dealt with only Bills and invariably it was their practice to refer Bills to a Select Committee before further considering and passing them. These Commitees functioned quite efficiently and made very valuable contribution to the consideration of the Bills committed to their care. The next example of a Legislative Committee is of the Finance Committee under the Indian Councils Act, 1909. The Committee consisted of twelve members of whom 6 were non-officials and the remaining six officials. But the Governor assured the Council that out of the quota of six nominated officials, he would appoint only three officials and the remaining three would also be non-officials. The Budget used to be considered in depth by this Committee and it had even powers to increase the Budget provisions. The Budget proposals, as recommended by the Committee and approved by the Government, would then be considered by the Legislative Council. Subsequently, in the reformed Council under the 1919 Act, the Finance Committee not only considered and advised on budget estimates while framing the budget, but also served as an advisory body on all matters of finance.

In 1921 when the Government of India Act, 1919 was in operation, the Committee on Public Accounts came to be established. The nature, scope and functions of this Committee continued in the same manner upto 1953 or so. The secretarial functions of this Committee used to be performed by the Finance Department of the Government. Later on, a Committee on Estimates was set up to consider the current Budget proposals and to suggest measures of economy and efficiency. The secretariat services to the Public Accounts Committee were transferred for the first time to the Legislature Secretariat in or about 1953. The secretarial functions for the Estimates Committee were with the Legislature Secretariat right from its inception. However, both these Committees had the

Finance Minister of Government as their Chairman. The scope of the Estimates Committee then was extremely limited in practice inasmuch as it never did anything more than consider the staff position and suggest economies. It was only after the reorganisation of the States on a linguistic basis when a bigger bilingual State of Bombay was formed that the Rules of Procedure were amended and several new Committees came to be established. The Committee established thus were: Committee on Subordinate Legislation, Committee on Government Assuranes, Business Adivisory Committee, Committee on Private Members' Bills and Resolutions, Committee on Absence of Members and the Committee on Rules. Subsequently, several other Committees, *viz.* Committee on Public Undertakings, Committee on Panchayat Raj, Committee on Employment Guarantee Scheme, Committee on the Welfare of Scheduled Castes and Scheduled Tribes, Committee on Members' Salaries and Allowances and a host of other minor Committees came to be set up. A complete list of the existing Committees with their membership (both Legislative Assembly and Legislative Council) is given below.

Joint Committees

Sr.No.	NAME OF COMMITTEES	TOTAL MEMBERS	ASSEMBLY	COUNCII
1.	Estimates Committee	29	23	6
2.	Public Accounts Committee	25	20	5
3.	Public Undertakings Committee	25	20	5
4.	Panchayat Raj Committee	25	20	5
5.	Employment Guarantee Scheme Committee	25	20	5
6.	Subordinate Legislation Committee	19	15	4
7.	Accommodation Committee	17	12	5
8.	Committee on Welfare of Scheduled Cast	15	11	4
9.	Committee on Welfare of Scheduled Tribes.	15	11	4
10.	Members' Salary and Allowances Committee	15	10	5
11.	Ex-Members Pension's Rules Committee	15	11	4
12.	Catering Committee	13	9	4
13.	Committee on Welfare of Vimukta Jatis & Nomadic Tribes.	7	5	2

14.	Library Committee	19	15	4
Assembly Committees				
15.	Assembly Assurance Committee	19	19	-
16.	Business Advisory Committee	12	12	-
17.	Rules Committee	11	11	-
18.	Petitions Committee	11	11	-
19.	Privileges Committee	11	11	-
20.	Non-Official Bills & Resolutions Committee.	11	11	-
21.	Members' Absence Committee	11	11	-
Council Committees				
22.	Business Advisory Committee	9	-	9
23.	Rules Committee	9	-	9
24.	Assurance Committee	9	-	9
25.	Privileges Committee	9	-	9
26.	Non-Official Bills & Resolutions Committee	7	-	7
27.	Members' Absence Committee	7	-	7
28.	Petitions Committee	5	-	5

The Committees on Public Accounts and Estimates did not come into their own until the Finance Minister who headed them was changed and a non-official Chairman was appointed in his place. The Estimates Committee's functions as mentioned earlier, as mentioned earlier, were extremely limited in scope, not because of any lacuna in the rules but because of its nature of working in practice Its reports were therefore short and sketchy, hardly containing any major recommendations. In the case of the Public Accounts Committee also, the reports only highlighted minor irregularities. The report of the Comptroller and Auditor-General of India pertaining to the State-accounts was not allowed to be placed before the Legislature as specifically required under the provisions of article 151 of the Constitution, until it was considered and reported on, by the Public Accounts Committee (which was headed by the Finance Minister). The result was that audit reports were thus ignored and the recommendations of the public Accounts Committee, which only

dealt with minor matters, came to be highlighted. All this was changed when a non-official Chairman, particularly one of the Leaders of Opposition Came to be appointed as Chairman of the Committee. The Committee on Estimates also embarked upon a wider field of examination comprising all the matters contained in the Budget proposals.

The Committee on Subordinate Legislation made very valuable recommendations particularly on the form of the rule making section in an enactment. Earlier forms of the rule-making sections varied very widely and somtimes they gave powers to Government even to over-ride or to annul express provisions of the Act. For the first time, the Committee suggested two model clauses to be adopted in the enactments for the purpose of making rules. It was provided that all rules and regulations were to be necessarily placed before the Legislature for a certain period of time when the Legislature would have the opportunity to amend or annul as the case may be. Another important recommendation was with regard to the line of demarcation made between legislation and subordinate legislation, for, it was found, the line of demarcation being not very clear, Government very often transgressed this line and encroached upon the field of legislation. Both these recommendations were accepted by Government. They took steps to insert such clauses in all their enactments whenever there was an opportunity to amend them. The Committee has been making important recommendations on the various rules and regulations framed by Government under the various enactments.

The Public Accounts Committee has done and is doing very important work and is having a great impact on the Government administration. For example, consider the cases which prominently came to its notice, *i.e.* those pertaining to the the Civil Supplies Department in the matter of feodgrains and textiles. Sub-Committees were appointed to go deeper into these matters and further reports were made. Government had to take note of these recommendations. Similarly, in the case of the Aviation department, the matter was referred to a Sub-Committee for detailed examination, whose report was endorsed by the whole Committee, subsequently. The Aviation department was not functioning properly and the same person was acting in a dual capacity as a Chairman of his own private company and as an Advisor to the Aviation department of the

Government. As a result of its recommendations, the necessary changes were made by the Government .

The Estimates Committee has also been functioning efficiently and has made some very important recommendations. Some of the recommendations pertain to the Aarey milk colony and its working, distribution of food grains and rationing, the improvement of the position of draftsmen in the legal department of the Government and so on.

The other Committees are also active in thir work and they are ably assisted by the secretarial services provided by the legislature Secretariat. The Committees have got powers to call for persons and papers and they have got the same powers, privileges and immunities and the House itself. There are also the Consultative Committees attached to each department of Government which provide a convenient forum for exchange of information regarding Government's programmes and policies between the Government and the members and so help the discussions in the house later, based on authentic knowledge and information.

In order to have a uniform practice in India of the working of the Legislature Committees, the Lok Sabha Speaker started the practice of convening the Conference of the Chairmen of different Committees. Thus, several such Conferences have been held, common problems studied and common procedures and practices evolved, after full and frank discussion of the matters involved. The proceedings of these Conferences are regularly printed and circulated for confidential use and provide a very valuable guide for chairmen of the Committees to deal effectively with the problems confronting them.

56

LEGISLATIVE RELATIONS BETWEEN CENTRE AND STATES

Sumit Kumar

The founding fathers of our Constitution declared their intention at the very outset that the 'Constitution would be federal with a strong Centre' and in their epoch-making work followed this principle with firm consistency. In view of the past history of India and the situation prevailing at the time of framing of the Constitution, the idea that persisted through the proceedings of the Constituent Assembly was that the unity and integrity of the country must be secured at all costs. Thus the Constitution provides for a powerful Centre.

The scheme of distribution of powers in all spheres—legislative, adminstrative and financial—has been such that it is heavily weighed in favour of the Centre. In determining legislative Centre-State relationship, however, it is not enough to examine merely the constitutional provisions but it is essential to examine the manner in which these provisions have worked and how politics has played a part in it.

In the legislative sphere, the overall scheme of distribution of powers is not only to provide a strong Centre but also to give Parliamentary laws, supremacy over State legislation. While introducing the Union Powers Committee's Report, Shri N.G. Ayyangar Said:

"We should make the Centre in this country as strong as possible consistent with leaving a fairly wide range of subjects to the provinces in which they would have the utmost freedom to order things as they liked."

The legislative powers have been distributed between Parliament and State Legislature under article 245 & 246 read with the three Legislative Lists. Apart from these Lists there are various other articles in the Constitution empowering Parliament to make laws. Besides, there are provisions for reconciling conflict between Centre and the States in the legislative sphere. The effect of all these provisions taken together is not only to give Parliamentary laws supremacy over the States in the legislative sphere but also to give some control of the Union Executive over State legislation.

The distribution of legislative powers between the Union and the States is an essential pre-requisite of a federal Constitution. In India, the Constitution empowers Parliament to legislate for the whole or part of the country and the State Legislatures to legislate for the whole or part of the individual States. The scheme of distribution of legislative powers is more elaborate as compared to the schemes followed in the U.S.A., Canada and Australia. The legislative powers of Parliament and State Legislatures have been divided into three Lists in the Seventh Schedule of the Constitution. List I called the 'Union List' contains 97 entries with respect to which the centre has exclusive power to make laws. List II known as 'state List' enumerates 66 entries for exclusive legislation by State Legislatures. List III known as 'Concurrent List' contains 47 entries for concurrent law-making by both, the Centre and the States. For centrally administered territories, Parliament has power to make laws with respect to any matter, including those enumerated in the State List.

Parliament has not only been given a wide range of authority under these lists but it has also been empowered to make Laws even on those subjects under the jurisdiction of the States under Articles 2 to 4, 249, 252, 253 and 368. These provisions which enable Central intervention even in the limited sphere allotted to the States are unusual provisions and are not incorporated

in any other federal Constitution

Parliament has been given wide powers of legislation and Parliamentary laws have been given *supremacy* over State laws in case of any repugnancy. Article 251 specifically provides that in respect of any matter when Parliament makes any law under article 249 or a law during emergency under article 250, the States are not debarred from making a law on the same subject, but in case of repugnancy between the Central law and State laws the State law shall, to the extent of the repugnancy, remain inoperative. A State law becomes repugnant when it is incompatible with a Union law or when both the laws cannot stand together.

There are special provisions in the Constitution which enable the Union Executive to exercise control over State legislation. Some of these provisions are mandatory while others are permissive. Thus, though article 304 (b) empowers a State to impose reasonable restriction on the freedom of trade and commerce with or within that State but no such Bill or amendment can be introduced or moved without the previous sanction of the President; so also, a State Bill referred to in article 254 (2) or 288 (2) which requires the assent of the President to become an effective law. Again, when a proclamation of financial emergency is in operation under article 360, the Union may give direction to a State requiring all Money Bills or financial Bills to be reserved for the consideration of the President.

Apart from these mandatory provisions, there are certain permissive provisions also.Article 200 permits the Governor to reserve any Bill for the consideration of the President. Once a Bill is so reserved, the President may, under article 201, either give his assent to the Bill or withhold it or in the case of non-Money Bills, direct the Governor to return the Bill to the State legislature for re-consideration.

The States have been sending Bills for the consideration of the President both under the mandatory as well as permissive provisions of the Constitution. A study reveals that in most of the Bills, the Centre has often tended to dictate its policies to the States and there have been a number of cases where the President has withheld his assent. Thus, in theory as well as in practice, the operation of the State legislative process is subordinate

to the supremacy of the Union Executive. Not only this, when an Emergency is declared under article 352, the complexion of our Constitution undergoes a complete change and Parliament has power under article 250 to legislate on any State subject. Moreover, when a Proclamation is issued under article 356 that there has been a failure of the Constitutional machinery in a State, the President may declare that the powers of the Legislature of the State shall be exercised by the Parliament.

Article 253 empowers the Parliament to make laws for the whole or any part of the territory of India for implementing treaties and international agreements. In other words, the normal distribution of powers will not stand in the way of Parliament to pass a law for giving effect to an international obligation even though such law related to any of the subjects in the State List.

There were several compelling circumstances which necessitated the Constitution framers to give broad and more Powers to the Union. According to Dr. Ambedkar one reason was to impart flexibility to our federation. Another reason had been the pressure of the then existing social, political and economic conditions.

The scheme of distribution of legislative powers cannot be better mentioned than in the words of Shri Gopala Swami Ayyangar who was candid and forthright and the vocal spokesman of the intention of the Constitution-makers. After observing that the Drafting Committee was for a strong Centre, he opined :

> ....a decision was taken that we should make three exhaustive Lists-one of the federal subjects, another of the provincial subjects and the third of the concurrent subject and at all if in future any subject cropped up which could not be accommodated in one of the three Lists, then that subject should be deemed to remain with the Centre....... .

Broadly speaking, the Centre has power over all subjects except those mentioned in the State List. The distribution of legislative powers can be made as under :

(i) Article 246 (1) lays down that notwithstanding anything in clauses (2) and (3) Parliament has exclusive power to make law with respect to any matter of Union

List. (ii) Article 246 (3) lays down that subject to clauses (1) and (2) the Legislature of any State has exclusive power to make laws with respect to any matter of State List. (iii) Article 246 (2) lays down that Parliament as well as Legislature of any State may legislate on any subject of Concurrent List, though law made by Parliament will have overriding effect. (iv) Article 248 lays down that residuary powers vests in the Union.

According to article 245 (1) and (2) while the State laws can be made for the territorial area of the State or any part thereof, Parliament has power to make extra territorial laws also. It is also relevant to point out that not more than two entries in Concurrent List relate to fiscal matters. The taxing areas have been clearly specified for the Union and States seprately and there is no over-lapping anywhere. The distribution of legislative powers can be divided in two heads. Non-fiscal matter and fiscal matter.

In Union List non-fiscal matters can be categorised as Defence, Foreign Affairs, Communication, Economic and Social matters, and miscellaneous metters.

Similarly, the regional matters given to the State List may be grouped as Law, Order and Justice, Public Health and Allied matters, Social and Economic matter, Transport, Land and Agriculture, etc.; miscellaneous.

Other non-fiscal matters have been provided in the Concurrent List namely Civil law, land courts, Social and Economic matters and miscellaneous.

The framers of the Constitution intended to make the Centre as strong as possible and our analysis of the operation of legislative process at the Union level as well as the State level clearly establishes the supremacy of the Union in the legislative field even in normal times and more so, during the emergency. The legislative authority of the States has been further reduced by several Constitutional amendments. The effect of these amendments was to vest in the Parliament jurisdiction over certain subjects which were within the exclusive competence of the States.

The above analysis of division of legislative powers between the Centre and the States clearly reveals that there is a conscious

constitutional tilt in favour of the Centre in the legislative sphere. However, the Courts have upheld State legislation on matters in the Concurrent List until the Parliament excercised its supervening power. As regards State legislation with respect to certain entries in the State List which overlap the entries in the Union List, the question of determining inter-relationship among them has often arisen. The courts have from time to time evolved several doctrines of interpretation to harmonize exercise of legislative powers by the States and Union. This interpretative principle has enabled the States to exercise their legislative powers.

The scheme of distribution of powers lays more stress on powers sharing and to bring about a larger amount of interaction and inter-dependence between the Centre and the States. However, there have been repeated demands by the States to enlarge their legislative field. The distribution of legislative powers is a sensitive subject involving an in depth study of the Constitutional provisions and practices. While considering this question, we should be clear in our minds about the goals which we seek to achieve and whether national interest would be better served by transferring powers in any particular area to the States and whether such transfer will stand the tests of efficiency, economy and adminstrative convenience. There should be no doctrinaire approach to the problem. I do not consider it objectionable that a wide range of subjects have been allotted to the Centre. But there are certain unusual provisions regarding Central intervention in the limited sphere allotted to the States even without any amendment of the Constitution. It deserves consideration. Our Constitution is flexible and it has functioned reasonably well in legislative relations. There should be minimum amendments to the Constitution. The autonomy of a State depends not only on Constitutional provisions but more so on Constitutional conventions and practices.

But this is perhaps also the appropriate time for us to wonder as why today Centre-State relations have become the focal point of debate, whereas in the post-independence period to the late sixties, this was almost an insignificant issue. A careful observation of the functioning of our federal polity reveals that in the initial 17 years of independence, the Centre as well as all the States were ruled by Governments formed by the Congress Party. Therefore, any dispute between the Centre and the States invari-

ably used to be settled across the table at the party level and these issues never came in the form of Central-State problems.

The emergence of various regional political parties on the political scene of the country as also non-Congress Governments in the States opened up new areas of differing perceptions. Besides the assertion of regional autonomy, there began an emergence of regional elites who tried to avail opportunities to strengthen their position to bargain in the newly created political atmosphere. With the result, the Centre-State relations seen to have acquired new dimensions.

A Commission was appointed by the Government of India under the Chairmanship of Jutstice Sarkaria on the Centre-State relationship which submitted its report in 1989. Its report was discussed at various fora in the midst of the many questions raised by the Opposition-ruled States in the sphere of the Centre-State relations.

The Sarkaria Commission has undoubtedly performed a rigorous task by going into the details of the problems of Centre-State relàtions by consulting various State Governments and the political parties. The Commission has given many suggestions for improvement in the working of our Centre-State relations. There is no doubt that some of its recommendations are very useful, whereas on scme other there can be differences of opinion. Our Parliamentarians must look into this with utmost vigilance.

The Sarkaria Commission has not recommended any drastic changes in the existing Centre-State relations. It says :

> The working of the Constitution in the last 37 years has demonstrated that its fundamental scheme and provisions have withstood reasonably well the inevitable stress and strains of the movement of a heterogeneous society towards its development goal. The Constitution has been amended number of times to adjust its working to the changes in the environment. In our view it is neither advisable nor necessary to make any drastic change in the basic character of the Constitution.

There is no doubt that Centre-State relations have come into sharper focus in recent years due to the change in the political

situation in the country. Though one cannot deny the need for a strong Centre in a developing country like India, we have to make sure that the Centre and the States work together and grow together if we have to achieve the noble goals set for the nation by the founding fathers of our Republic.

57

Parliament Library—Marching Towards The 21st Century

G. C. Malhotra

Introduction

Parliament is the single most important representative institution in any country which has opted for a parliamentary democratic polity. Apart from their conventional law-making funciton, today's Legislatures, particularly those at the national level, have to grapple with newer problems and changing situations. In such a scenario, the importance of information to members of Parliament has come to acquire added significance. If a member has to to play an active role in parliamentary proceedings, he has to be well-versed with the latest developments on a wide variety of subjects.

Keeping this in mind, Legislatures in many democratic countries have developed their own library, reference and research services, popularly known as the Library Reference Service or LRS. An efficient LRS postales a well-stocked and well-equipped Library manned by highly experienced and trained staff fully geared to meet the multifarious information demands from legislators.

The seeds of Parliament Library in India were sown as early as in 1921 during the Central Legislative Assembly days. Over the years, particularly since independence, the Library as well as the research and reference services for members, have gradually developed into what is now known as the integrated Parliament Library and Reference, Research, Documentation and Information Service, more familiar by its acronym, LARRDIS.

Parliamentary Library presently has holdings of about one million volumes of books, debates of Indian Parliament, State Legislatures of India and foreign Parliaments, reports of Central and State Governmets and United Nations and its agencies, Gazettes of Central and State Governments and other documents, including periodicals and publications brought out by the Lok Sabha Secretariat. It is one of the finest and richest repositories in the country. Presently, it receives regularly 195 newspapers and 842 periodicals from different parts of the country and the world.

Advancements in Information Technology

The spectacular advancements in information and cummunication techniques have radically changed the conventional functions of a Library. A modern day Library is verily a respository of the intellectual technology of a nation. The question with us in the parliamentary context is not of the non-availability of information but its proper organisation and management followed by selective dissemination to parliamentarians who are hard-pressed for time.

If we look at the evolution of knowledge, we will see that initially knowledge was imparted through spoken words and then inscriptions on stone and tree leaves. Then came paper, writing, printing, electronic media, reprographing, multigraphing, micrographics, computerisation and the latest state-of-the-art, the electronic imaging using optical disks. The society today is on its march towards paper-less education system or paper-less Library. Information handling has essentially three aspects : collection, storing and retrieval. As the quantum of knowledge grows, the number of information records also correspondingly increases. Handling of this vast magnitude of information with conventional manual methods, naturally, has proved problematic. In modern

times, information scientists have embarked upon the development of a new information technology. Today, all around the world, computers are being used in Library housekeeping functions like acquisition, cataloguing, circulation control, serials control, information storage, retrieval, content analysis and dissemination.

Paper, both as an archival medium and a reference medium, has inherent shortcomings - its brittleness, chances of being damaged by termites, floods, fire, storage problems posed by its bulk and the like. These shortcomings naturally lead to restriction in the quantum of information which can be preserved for longer periods. It was in the wake of these developments that libraries started making use of the computers. While computers ushered in an era of information revolution, it also contributed to a certain aggravation of the problem by adding to the already large quantum of paper in use, leading to a paper explosion. Further research in this area revolved around micrographics and the result was the extensive use of microforms. Today, electronic imaging using optical disks has also revolutionised information technology. This technology converts paper-based information by digitising it, using laser scanners to transfer information on to an optical disk. The images are then indexed on user-defined parameters which facilitate smooth retrieval.

PARLIS

In our Parliament Library too, we have embarked on several modernisation programmes. For the purposes of introducing automation in the Parliament Library, the Computer based information retrieval system named PARLIS (Parliament Library Information System) was started in December, 1985 with the help of the National Informatics Centre (NIC). Presently, the Computer Centre has 17 computers installed in the Parliament House and Parliament House Annexe (six 486, four PC 386, five PC 286 and two PC-XT) with a number of terminals and printers being used for storage and retrieval of data. Two PCs located in the Computer Centre are connected with the main Super Computer NEC S-1000 located at the premises of the NIC in Lodhi Complex, about six kms away from Parliament House.

PARLIS was designed within the Library for the benefit of Members of Parliament. It is a database of subject indexed refer-

ences to parliamentary information created by the Library's Computer Centre. The data so far stored for on-line retrieval relates to subject index references of select questions and answers and various other kinds of business, including Government and Private Members' Bills in Lok Sabha and Rajya Sabha from 1985 onwards; discussions in the Constitutent Assembly on different articles and schedules of the Constitution of India; decisions and observations from the Chair from 1952; reports of Parliamentary Committees such as the Public Accounts Committee, Estimates Committee and Committee on Public Undertakings; profiles of members of the Eighth, Ninth and Tenth Lok Sabhas and of Rajya Sabha from 1986 onwards; socio-economic background of Members,the First to the Tenth Lok Sabhas; details of Presidential and Vice-Presidential elections from 1952 onwards; discussions on Five-Year Plans in Lok Sabha and Rajya Sabha from 1951; Council of Ministers, Ministry-wise and name-wise from 1947; President's Rule in the States and Union territores since 1951; time taken on various kinds of business in Lok Sabha since 1977, etc. Also available for on-line retrieval are some of the statistical data on different areas of economy, such as the country's growth rate, its foreign trade, plan outlays for public sector, per capita net domestic product, per capita plan outlay, fertiliser production, imports and consumption, number of job seekers registered with Employment Exchanges, power generation, performance of Railways, etc. New databases in respect of research and reference notes and lists of addresses of important dignitaries, etc., have also been created recently.

Over the years, considerable quantum of work has been undertaken by the Computer Centre. Thus, year-wise, the number of records of parliamentary questions fed into the computer and available for on-line retrieval was 8,633 in 1987; 12,758 in 1988; 7,587 in 1989; 7,416 in 1990; 10,687 in 1991 and 11,610 in 1992. In the case of records of parliamentary debates other than questions, the figures were 282, 758, 670, 1,372, 1,705 and 2,659 for the years 1987, 1988, 1990, 1991 and 1992, respectively. The record of the number of Pariamentary Bills for the years 1987, 1988, 1989, 1990, 1991 and 1992 were 249, 289, 160, 220, 427 and 276, respectively.

During the 37th Commonwealth Parliamentary Conference held in New Delhi in September, 1991, PARLIS in collaboration with the NIC had set up a full-fledged Computer Centre at the Conference venue in Hotel Ashok to provide a variety of on-line information to Delegates. The Computer Centre, making use of state-of-the-art Computer and communication technology for storage and retrieval of information, was linked to the Indira Gandhi International Airport, Parliament Library and the Satellite-based NICNET. The main computer stored information on the countries represented, bio-data of delegates, their arrival and departure details, tour programmes, Conference schedules, spouses' programmes and information about Indian economy, census, tourist information and air and railway timetables. All these facilities are being extended by the Computer Centre during the 89th Inter-Parliamentary Conference to be held in New Delhi in April 1993, also.

Further expansion of the computerisation activities of PARLIS is envisaged to cover parliamentary activities like Papers Laid on the Table, Subject Committee Reports, rare collections of Parliamentary Museum and Archives and telecast of parliamentary proceedings, etc.

Our modernisation efforts have recently got a real thrust under the dynamic leadership of the present Speaker, Shri Shivraj V. Patil. He has been taking a keen personal interest in all aspects of the modernisation programme. In line with his vision to further streamline computerisation of various services of Lok Sabha Secretariat, an Experts Committee headed by Shri C.K. Jain, Secretary-General, Lok Sabha was set up. A report prepared by its Sub-Committee identifying the relevant areas for computerisation and suggesting an intergrated scheme for implementation was adopted by the Experts Committee. After considering the report, the Lok Sabha Speaker has directed that the activities of the Question Branch, LARRDIS, Administration, Reporters' Branch, Parliamentary Committees and Security Service may be computerised in the first phase. While the work of the Reporters' Service and Parliamentary Committees is entrusted to the Computer Maintaken by the NIC. Work is in progress for computerising Library taken by the NIC. Work is in progress for computertion Library management functions. Augmentation of computerisation of

LARRDIS activities is also going ahead at a very fast pace.

The NIC has already provided facilities of NICMAIL available on NICNET for efficient exchange of information. A protected mail box with address LOKMAIL has been given to the Computer Centre. Our Secretariat can now exchange messages between all the District Headquaters and sites operative under NICNET. The Computer Centre has been linked with the Madhya Pradesh Vidhan Sabha, Bhopal, and the Karnataka Legislature through NICNET. The State Legislatures of Andhra Pradesh, Maharashtra and Uttar Pradesh have requested NIC for developing computer and communication facilities in their Secretariats. The State Legislatures of Bihar, Gujarat, Himachal Pradesh, Jammu and Kashmir, Kerala and Meghalaya have also initiated action in this regard.

The Parliament Library is at present in a position to have a direct access to international databases like DIALOG through NICNET. We are also in the process of establishing linkages with the Parliaments of other countries having access to international net works like UUNET and INTERNET, Satellite-based foreign networks. This will facilitate exchange of information and resource-sharing with Parliament Libraries the world over. In response to our request, the US Congressional Research Service have already sent their INTERNET Electronic Mail Address for exchange of messages. The National Assembly Library of Korea, the Library and Information Service of Yuan (Taiwan), the Consultative Council of Oman and the National Assembly of Quebec have expressed their interest in exploring the possibilities of exchanging information with our Library through international networks.

There are also proposals to develop our own national online network for inter-linkage of databases of PARLIS with databases of State Legislatures under the National Legislatures Information System(NATLIS) and a multiple function/service international network named as the International Parliamentary Information Network (IPINET) inter-connecting databases of Parliament Libraries of other countries and databases the world over.

Microfilming

On another front, considering the size of the holdings and

the inevitable storage requirement, a Microfilm Unit was set up in 1987. It undertakes preparation of microfilms of selected Library holdings for preservation and retrieval. The Unit is at present equipped with most modern microfilming cameras, processors, duplicators and microfilming reader-cum-printers. There are four Cameras (three for micro-filming documents of smaller size on 16 mm rolls and one for micro-filming documents of bigger size on 35 mm rolls), 1 Processor; 1 Duplicator; and 2 Reader-cum-Printers. There is also a Computerised Assisted Retrieval (CAR) system for retrieving of microfilmed documents. Over six lakh pages have already been microfilmed by the Unit since its inception.

The records of historical importance microfilmed so far include parliamentary debates, *viz.* of Central Legislative Assembly, Council of States, Constituent Assembly, Lok Sabha and Rajya Sabha beginning from February, 1921 to May, 1990; all the Reports of the Indian Parliamentary Group; and all issues of the quarterly publication of Lok Sabha Secretariat, *the Journal of Parliamentary Information* from its first issue in 1955 onwards. The indexed data entries pertaining to all the above debates have been fed into the Computer for facilitating quick retrieval. The Unit has begun microfilming of Papers laid on the Table of the House since 1980. About 800 'rare books' are also proposed to be microfilmed soon. Duplicate copies of the microfilm rolls of all parliamentary debates are now kept in Library for being viewed by the members on the microfilm reader.

Audio Visual Unit

Computers, films, videos, etc., are increasingly becoming normal elements of our Library culture. Taking into consideration the information value of such audio-visual magazines, Parliament Library has set up, during the beginning of this year, an Audio-Visual Unit for use and reference by members. News Magazines covering important national and international events are brought out regularly by various organisations and agencies. Language learning courses also form the integral part of the audio-visual collection.

Telecasting of parliamentary proceedings has also become a reality now in our country with the *Doordarshan* bringing vari-

ous parliamentary activities to the millions of households through the small screen. Televising of select parliamentary proceedings in India commenced with the live telecast of the Address by the President to the members of both Houses of Parliament on 20 December, 1989. After that, there has been a regular video coverage of the Question Hour (since December 1991), Railway and General Budgets (since February, 1992) and debates/discussions on Motion of Thanks on the President's Address, Demands for Grants and Motion of no-confidence in the Council of Ministers (during 1992). Keeping in view the archival value of these recordings, we are keeping a video copy of each of these proceedings in our Audio-Visual Unit. Important parliamentary functions and events like Conferences, Seminars, Lectures, Workshops and Telefilms on different aspects of Parliamentary Practice and Procedure are also being captured on video-cassettes. Video-cassettes of all the above-mentioned proceedings and parliamentary events, etc. are available in the Audio-Visual Library holdings. Various video magazines brought out by major agencies have also been procured.

Among the audio hardware, this Unit has one two-in-one radio-cum-cassette player/recorder and one stereo double cassette deck with facility of high speed dubbing. The video hardware include one colour television with remote control along with a trolley-cum-cabinet and two VHS VCRs with remote control.

In view of the importance and utility of the electronic version of the official record of parliamentary proceedings and other parliamentary events, their current and archival reference and research values, a draft plan for a self-contained compact parliamentary Audio-Video Division is on the anvil. The proposed project would have three Units within it : (i) Archival and Viewing Unit; (ii) Production Unit; and (iii) Post-Production Unit.

New Parliament Library Building

Thus, from its humble beginning in 1921, the Parliament Library has grown into one of the best Libraries in Asia. The single most important problem that we are facing today is that of shortage of space. We have all been feeling for the past several years that the present accommodation allotted to Parliament Li-

brary is too limited to cope with the growing volume of literature received by it. Adequate space will be required for the proper stacking of about 3 million publicatons, wihch the Library is expected to have in the next forty years or so. The progress on a number of activities such as installation of Mainframe Computer, setting up of an enlarged video and audio Library, Microfilm Reading Room, Conservation Laboratory, etc., has not been to our satisfaction for want of adequate space. This being the case, we have been working on the proposal for a new Parliament Library building in the Parliament estate itself which could accommodate not only the multi-dimesional expansion of the collection but also several other future modernisation programmes.

The proposed Parliament Library building will have provision for all the facilities of a modern Library. It is expected to accommodate the needs of growth-oriented collections; adequate space for reception and reference desks; self-contained conservation laboratory; computerisation of Library facilities and linkage of Parliament Library with the Libraries of State Legislatures and those of Parliaments of Commonwealth and other countries of the world and other international databases. A closed circuit Television network is being planned for viewing the proceedings of the House. There would be sufficient number of cubicles fully equipped with audio and video facilities and computer terminals. Conveyor belts would be provided for horizontal and vertical transporation of books and other materials.

The proposed building would also house an auditorium with the capacity of about 1100 seats with a permanent screen and well-equipped projection room; one Press briefing room; a Media Centre with facilities of STD telephone, FAX and Telex for the use of Accredited Press Correspondents on payment basis: Library Committee/Conference room; and Archival room having temperature below freezing point to preserve audio-visual materials, computers, microfilms, etc. In short, it would be a functionally viable building which would not only take care of the Library's expansion but also provide for more advanced and sophisticated information storage and retrieval systems. Various Divisions and Wings of LARRDIS will also then function from the new building to provide more efficient and better co-ordinated services to members.

Thus, we are on the threshold of a new era in information technology. We in Parliament Library are gearing up ourselves to face the challenges and opportunities posed by information explosion with a sense of purposefulness and commitment, in the larger cause of serving the Parliament and its members and through them the millions who make up this country. And under the benign guidance, blessings and inspiration given to us by our Speaker, Shri Shivraj V. Patil, the whole-hearted support of the Deputy Speaker, Lok Sabha, Shri S. Mallikarjunaiah who is also the Chairman of the Library Committee, and the co-operation of all members of Parliament and others, we are confident that we would usher in a new era in the service of our members of Parliament.

58

SHOULD THE CONSTITUTION BE AMENDED ?

J.P. Chaturvedi

In a country where the Constitution has been amended 72 times during the period of 42 years of its existence, it may perhaps be naive to say that the Constitution cannot be amended. When the Constituent Assembly was discussing the amendment of the Constitution which came in the form of Article 368, it clearly recognised that there was the need to provide a proper procedure for such amendment whenever the situation required it. Only it was imperative that the amendments were not made in a hurry in a moment of excitement, by a bare majority of members present and voting as is possible and had been attempted in many of the legislations passed by the Parliaments and Legislatures all over the world. Therefore, it provided a provision of two-thirds majority of those present and at least more than half of the total members of each of the Houses of Parliament. It also required that on five specific issues the amendment had to be ratified by the Legislatures of not less than one half of the States by Resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

When the clause was being discussed in the Constituent

Assembly, an amendment was proposed that the power of amendment in the Constitution should be limited to ten years only. The contention was opposed by the then Prime Minister, Pandit Jawaharlal Nehru who was of the opinion that the Constitution should be flexible enough to be amended by people who came later and whose perceptions and problems may be different from the present. The amendment was dropped and since then there was never a question about the amendment of the Constitution. Actually the first Constitutional Amendment was enacted in 1951, when the Provisional Parliament which carried this amendment consisted of members who had been members of the Constituent Assembly. When the matter was brought before the Supreme Court challenging amendment to the Constitution, the Supreme Court unanimously decided in the *Shankari Prasad Dev v. Union of India* case, that any change in the Fundamental Rights enshrined in the Constitution was fully within the jurisdiction of the Parliament. It was reiterated in 1965 in the case known as *Sajjan Singh v. Rajasthan Government.*

Apart from what was happening in the Parliament, there was already a move in the political circles to make further amendments in the Constitution. The Congress Working Committee in its meeting on 4 and 5 April, 1954, appointed a Constitution Amending Committee to suggest amendments in the Constitution and the People's Representation Act, which affected the election process for the Parliament and State Legislatures. This Committee consisted of eminent members from all parts of India belonging to the Congress Party, *viz.* Pandit Jawaharlal Nehru, Shri Govind Ballabh Pant, Shri Khandu Bhai Desai, Shri Naba Krishan Choudhary, Shri Tekhtmal Jain, Shri Devki Nandan Narain, Shri Balwant Rai Mehta, Shri U.S. Mallaya and Shri Shriman Narain Aggarwal, who was the General Secretary of the AICC at that time. This Committee suggested amendments in 16 articles of the Constitution which incidentally also included amendment in articles 15 as well as article 19. The Committee also suggested that there should be reduction of the powers of the High Courts under articles 226 and 227, as well as article 311 dealing with the dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. The Committee was also of the opinion that there was need to revise the powers of the Union and the States relating to finance, natural resources, trade

and industry, health and education. Besides, it suggested an extension of powers given to the States to regulate article 31 relating to property which was later omitted from the Constitution by the 44th Amendment Act passed in 1978.

Till 1967, there was no doubt in anybody's mind about the powers of the Parliament to amend any article of the Constitution within the parameters provided under article 368. But the situation suddenly changed with the majority decision given in the Golakh Nath Case in 1967. In the case of *Golakh Nath v. Government of Punjab* decided in 1967, seven judges of the Supreme Court held that the Parliament did not possess the power to amend the Fundamental Rights. The majority decision was "that though there is no express exception from the ambit of article 368, the Fundamental Rights included in Part III of the Constitution cannot, by their very nature, be subject to the process of amendment provided for article 368, and that if any of such Rights is to be amended, a new Constituent Assembly must be convened for making a new Constitution or radically changing it."

When this decision was delivered, there was a stalemate in the amendment process, and in the Bank Nationalization case, the Supreme Court reconfirmed its decision. The Government accepted the decision as it was, but Shri Nath Pai, a leading member of the Opposition, belonging to the Praja Socialist Party, started a movement for reaffirming the supremacy of the Parliament in matters relating to Constitution Amendments. He introduced a Constitutional Amendment Bill which was passed by the Parliament as the Constitution (24th Amendment) Act, 1971, and it provided what is today clause (i) of Article 368, which reads.

> Not withstanding anything in this Constitution Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.

After this amendment became effective, the Supreme Court invalidated article 31 (C) which was introduced by the Constitution (25th Amendment) Act on the ground that it sought to take away the principle of Judicial Review which was one of the basic fea-

tures of the Constitution and they laid down the theory that the basic features of the Constitution could not be amended by resorting to procedure laid down in article 368 by the Parliament. In this decision, known as *Keshvanand Bharti v. State of Kerala*, the Supreme Court, by a majority of 7 to 6, upheld that Fundamental Rights did not constitute any of such basic features as to fetter the amending power conferred by article 368. Subsequently, the Supreme Court in 1975 in the *Indira Gandhi v. Raj Narain* Case annulled article 329(a) inserted by the 39th Amendment Act and again in 1980, in the Minerva Mills case, reversed certain clauses of article 368 on the ground that it affected the basic features of the Constitution that is supposed to be the law of land. Although it has not been so far enunciated as to what constitutes the basic structure, the judgements of the Supreme Court have singled out certain issues which are basic to the structure of the constitution. In 1975, in the *Indira Gandhi v. Raj Narain* case, it held that the 39th Amendment Act, 1975, affected the basic features of the Constitution, *i.e.*, free and fair elections and rule of law or judicial determination of an election dispute. The Keshvanand Bharati case has already decided that all Constitutional Amendment Acts shall be open to review by the Supreme Court, as it held that Judicial Review was one of the basic features of the Constitution.

The question will arise if it is proposed that the parliamentary system should be replaced by presidential system. Although both the systems are held to be democratic, yet Indian Constitution is mostly patterned on the basis of parliamentary system. Can it now be changed to presidential system or semi-presidential system as prevails in France and some other countries? Similarly, if an amendment is made in the law of elections providing for proportional representation in the elections to the Lok Sabha and State Assembly, will it be held valid? This principle has been recognised by the Constitution for the purpose of electing the President of India and members of Rajya Sabha by the State Assemblies. Logically there should be no difficulty in extending this practice to Lok Sabha and State Assembly elections also. It is a very effective safeguard for representation of the views of minorities whether ideological, linguistic, regional, or social. If this system is introduced there could be no fear that by abuse of

political power or economic power or muscle power, the electorate may be bamboozled into voting for a particular party even if they are not in favour of it. This proposal was advocated even when the framing of the Constitution was under consideration. But the political wisdom of those days ruled it out on the ground that the bulk of the electorate would be illiterate and would find it difficult to express themselves in favour of the candidates they really desire.

In constitutional thinking, proportional representation is supposed to be the very best method of representing the views of any sizeable section of the society. In view of numerous differences in our outlook that have surfaced during these decades, will it not be worthwhile to provide for what is the best in political thinking? When we are thinking of acquiring the latest technology in every field of activity and are moving from self-reliance to globalization of economy, what is the harm in adopting the latest in our political philosophy? That will automatically assure minorities—caste, regional, linguistic or otherwise—a fair representation in the political spectrum and they may not be a part of a vote bank for any political party. The Constitution prescribes a parliamentary form of Government, both at the Union and in the States. It is well known that the parliamentary form of Government depends on the effective functioning of political parties. The Indian political system recognises it in the People's Representation Act, which provides for party symbols to candidates for election. The Election Commission, constituted according to the Constitution and an independent authority, has been deciding upon the claims of various groups to be recognized as a political party. Where there has been a split, the anti-defection law has legitimitised the role of the parties and their power to take action against members who defect. Actually in practice the power is such that a leader of the political party, by expelling a member from the party, can cause vacation of his seat in Parliament or State Legislatures and yet the main body of the Constitution does not provide any criteria for recognition of a party, its functioning, its funding and its public accountability. In the absence of these, there have been charges of misuse of public funds for the provision of party interest and of corruption in high places for collection of party funds. While technically there are limitations on the expenditure to be

incurred in fighting elections, they are rendered totally ineffective because the funds and services provided by the party to the candidates are not included in the list of expenditures. If we really want that there should be no use of money power in obtaining political power, it is essential to have an independent and impartial constitutional authority to enforce strict discipline on political parties.

It is ironic that while we have accepted the nomenclature and the powers of the highest court of U.S.A. for our own highest court, *i.e.*, the Supreme Court of India unlike in the case of the former, there has been no deliberation in the appointment of the judges of our Supreme Court. While the Union and State Governments, if combined, can appoint any advocate of any High Court of ten years' standing as a Judge of the High Court, the appointment to the Supreme Court is limited to the people who are serving judges of any of the High Courts. The Constitution does provide for the appointment of an eminent jurist on the bench of the Supreme Court but it seems that either there has been no jurist eminent enough to merit promotion to the Supreme Court, or the Governments of the day in agreement with then the Chief Justices of India had thought it more practicable or less controversial to appoint a Supreme Court Judge out of the existing High Court Judges. And unfortunately, a convention has developed that only the seniormost judge of the Supreme Court should be elevated to the post of Chief Justice. It also seems, there is no ban or nor public disapproval of members of the judiciary, for aspiring to climb the political ladder.

While there have been instances of members of the judiciary entering the political arena, there has been no case of any politician being raised to judiciary at least in the Supreme Court, as usually happens in the United States. When President Rosevelt of U.S.A. found the Supreme Court opposed to his policies, he found an opportunity to pack the Supreme Court with his supporters, who upheld his New Deal policies and nobody in the country questioned the President's authority to do so it. Very recently, Governor Warren who was a politically elected Governor, was appointed Chief Justice of U.S.A. and no legal controversy arose. Even if there was one, its murmurs were not heard. Are we prepared to adopt the same practice in India? If we do not resort

to this, there never will be a question of amending the Constitution in the way the people of India want because few people sitting on the bench of the Supreme Court will have the authority to decide for or against.

Some of the judgments of the High Court and the Supreme Courts have created a situation, where the court acts as a judiciary, decides what should be the law, *i.e.* takes upon itself the form of a Legislature, and also orders how and in what manner it should be executed and thus takes upon itself the powers of the Executive without corresponding responsibilities. It seems to give an impression as if the supreme powers lie in the hands of the Supreme Court and not in the hands of the people, or their elected representatives. This impression needs to be removed because our Directive Principles have laid down the principle of separation of Judiciary from the Executive, but will it be possible without changing the composition of the Supreme Court? Without doing it, the exercise of amending the Constitution in a worthwhile way may be futile.

THE JOURNAL OF PARLIAMENTARY INFORMATION

Index to Vol. XXXIX (1993)

ADDRESSES — Page

By Mr. Boris N. Yeltsin, President of the Russian Federation to members of Parliament — 393

By Dr. J. Jayalalitha, Chief Minister of Tamil Nadu, at the Symposium on "How to raise the level of Debate in the House", Madras, 27 June 1993 — 645

By Shri K. R. Narayanan, Vice-President of India and Chairman, Rajya Sabha at the unveiling of the Portrait of Shri Rajiv Gandhi in the Central Hall, Parliament House, 20 August 1993 — 803

By Shri K. R. Narayanan, Vice-President of India and Chairman, Rajya Sabha at the inauguration of the new Standing Committees of Parliament, Central Hall, Parliament House, 31 March 1993 — (XXXIII)

By the President of India, Dr. Shanker Dayal Sharma to Members of Parliament assembled together in the Central Hall at the commencement of the first Session of the parliament in 1993, 22 February 1993 — 379

By the President of India, Dr. Shanker Dayal Sharma at the unveiling of the portrait of Shri Rajiv Gandhi, Central Hall, Parliament House — 810

By Shri P.V. Narasimha Rao, Prime Minister, at the inauguration of the new Standing Committees of Parliament, 31 March 1993 — (XXXV)

By Shri Shivraj V. Patil, Speaker, Lok Sabha at the unveiling of the portrait of Shri Rajiv Gandhi, Central Hall, Parliament House — 803

By Shri Shivraj V. Patil, Speaker, Lok Sabha at the conclusion of the 50th Anniversary Celebrations of the Quit India Movement, Central Hall, Parliament House, 9 August 1993 — 794

By Shri Shivraj V. Patil, Speaker, Lok Sabha at the 58th Conference of Presiding Officers of Legislative Bodies in India, Madras, 25 June 1993 — 636

By Shri Shivraj V. Patil, Speaker, Lok Sabha at the inauguration of the new Standing Committees of Parliament on 31 March 1993 — (XLi)

By Shri Shivraj V. Patil, Speaker, Lok Sabha at the Symposium on "How to raise the level of Debate in the House" Madras, 27 June 1993 — 641

By Shri Shivraj V. Patil, Speaker, Lok Sabha on the visit of Mr. Boris N. Yeltsin, President of the Russian Federation to the Central Hall, Parliament House on 29 January 1993 — 390

By Shri Vidyacharan Shukla, Union Minister of Parliamentary Affairs and Water Resources at the inauguration of the new Standing Committees of Parliament on 31 March 1993 — (XLV)

By Mr. Boris N. Yeltsin President of the Russian Federation to Members of Parliament assembled in the Central Hall on 20 January 1993 — 390

By Dr. Karan Singh, President of the India International Centre on the visit of Mr. Boris N. yeltsin, President of the Russian Federation to the Central Hall, Parliament House — 400

AFGHANISTAN

Death of Vice-President — 500

Political Developments — 500

New PM — 703

AHLUWALIA, S.S.,

Article, "Constitutional Amendments" — 147

AJNALA, HARCHARAN SINGH

Article, "Role of Members of Parliament as intermediaries between the citizen and Government" — 72

	Page
ALGERIA	
Assassination of former PM	857
New PM	857
ANGOLA	
New PM	501
ANDHRA PRADESH	
By-election results	658
Cabinet re-shuffle	853
Death of MLA	853
Death of Minister	699
Ministers of Cabinet rank	490
Ministers of State	491
New Chief Minister	490
Resignation of Minister	491
APPENDICES	580, 760, 933
ARTICLES	
"Anti-Defection Law : Split in Parties", by D. Sripada Rao	99
"Anti-Defection Law : Problems and Prospects", by Ghulam Sarwar	107
"Anti-Defection Law", by Keshari Nath Tripathi	129
"Committees of the Maharashtra Legislature", by Bhaskar Shetye	343
"Constitutional Amendments", by S. S. Ahluwalia	147
"Constitution of India in Precept and Practice", by Satya Prakash Malaviya	169
"Constitution of India as an Instrument of Economic Growth and Social Justice", by Ishwar Singh	113
"Constitution of India : An Appraisal", by Sumitra Mahajan	223
"Discipline and Decorum in Parliament and State Legislatures", by Atal Bihari Vajpayee	654
"Ecology and Environment : Role of Parliaments, Executive and the People", by Har Swarup Singh	258
"Effectiveness of Parliamentary Committees in influencing Government Policies", by H. S. Bhabhra	77
"Elections and Electoral Reforms in India", by Lal Thanhawla	37
"Elections and Electoral Reforms", by Viswanatham Kanithi	221
"Electoral Reforms", by J. Chokka Rao	132
"Electoral Process and Reforms", by S. Beant Singh	27
"Environment and the Law", by Shaikh Hassan Haroon	92
"Indian Parliament and Social Change", by Chimanbhai Patel	43
"Indian Political Process in Perspective", by Surendranath Dwivedy	7
"Informational Needs of Members", by J. M. James	309
"Inter-Parliamentary Symposium on "Parliament : Guardian of Human Rights", by Sharad Dighe	814
"Legislative Relations between the Union and the States", by B. Satyanarayan Reddy	15
"Legislative Relations between Centre and States", by Sumit Kumar	349
"Material and Spiritual Needs : Concerted Action for Survival", by Sushila Nayar	292
"North-South Relations : New Dimensions", by Shivraj V. Patil	1
"Our Budding Parliamentarians", by Sushil Kumar Shinde	451
"Our Budding Parliamentarians", by Shravan Kumar Patel	675
"Our Budding Parliamentarians", by Laxmi Narain Mani Tripathi	835
"Our Constituency and Constituents", by Mohan lal Jhikram	833
"Our Constituency and Constituents", by P. A. Sangma	271
"Our Constituency and Constituents", by Ram Tahal Choudhary	448
"Parliament and the Communication Media", by Chintamani Panigrahi	274
"Parliament and the Executive", by Yagya Dutt Sharma	277
"Parliament, Executive and Judiciary", by P. G. Narayanan	138

	Page
"Parliament : The Fountain head of Social Change", by Sushil Kumar Shinde	213
"Parliament and Foreign Policy", by Samarendra Kundu	289
"Parliament and Human Rights", by Krishna Sahi	51
"Parliament as an Instrument of National Integration", by Thenucho	124
"Parliament and Judiciary", by Mohd. Shafi Qureshi	11
"Parliament and Judiciary", by N. H. Muttalageri	318
"Parliament Library : Marching Towards the 21st Century", by G. C. Malhotra	357
"Parliament as a Multi-functional Institution", by Hashim Abdul Halim	90
"Parliament and National Integration", by Renuka Ray	284
"Parliament and Political Culture", by Yudhisthir Das	87
"Parliamentary and Presidential System : A Comparative Study", by Naunihal Singh	182
"Parliamentary Reforms", by Bhogendra Jha	218
"Parliamentary Legislation and Social Change", by Hannan Mollah	226
"Parliamentary Democracy : An Assessment", by Vasant Pawar	240
"Parliamentarians and the International Co-operative Movement", by Sudhir Sawant	245
"Parliamentarians : Link between the People, Parliament and Government", by C. K. Jain	251
"Parliamentary Protests : Need for Changes in Forms", by Virendra Verma	279
"Parliamentary and Presidental Systems", by T. S. Negi	97
"Parliamentary System versus Presidential System", by Bhanu Prakash Singh	23
"Parliamentary Institutions and People's Aspirations", by Hiteswar Saikia	47
"Parliamentary Democracy in India", by J. S. Tilak	54
"Parliamentary Democracy In India : Then and Now", by Umeshwar Prasad Varma	63
"Reforming the Government : The Presidential Alternative?", by J. K. Jain	162
"Role of Individual and Independent Members", by Ghulam Rasool Matto	175
"Role of Women in Parliamentary Democracy", by Chandraprabha Urs	249
"Role and Experience of Members of Legislatures in the Committees", by C. S. Janakiraman	314
"Role of Members of Parliament as Intermediaries between the Citizen and Government", by Harcharan Singh Ajnala	72
"Should the Constitution be Amended", by J. P. Chaturvedi	367
"Socio-Economic Background of Legislators", by Moreshwar Save	243
"Some Issues of Electoral Reforms in India", by Chaturanan Mishra	179
"Speaker's Decision in the Janata Dal Case", by C. K. Jain	441
"Speaker and Court's Subpoena", by Jugal Kishore Prasad	335
"Speaker in the Lok Sabha and the House of Commons", by B. N. Pandey	201
"Televising of Parliamentary Proceedings in Australia", by R. C. Bhardwaj	659
"Telecasting of Parliamentary Proceedings", by R. C. Bhardwaj	300
"The 89th Inter-Parliamentary Conference : An Overview", by C. K. Jain	403
"The Justice Ramaswami Case", by C. K. Jain	427
"The New Delhi IPU Conference : Visit to Agra and Fatehpur Sikri", by Shankar Dayal Singh	425
ARUNACHAL PRADESH	
Resignation of Governor	699, 853

Page

ASSAM
- Cabinet re-shuffle 491
- Expulsion of MLA's from CLP (I) 699
- Ministers inducted 491
- Ministers of State 491
- New Speaker 491

AUSTRALIA
- PM re-elected 501

AZERBAIJAN
- New PM 501
- Political developments 704

BELGIUM
- Death of King 857

BHABHRA, H. S.,
- Article, "Effectiveness of Parliamentary Committees in influencing Government Policies" 77

BHARDWAJ, R. C.,
- Article, "Telecasting of Parliamentary Proceedings" 300
- Article, "Televising of Parliamentary Proceedings in Australia" 659

BIHAR
- By-election results 699
- Cabinet expanded 853
- Death of MLA 491
- MLA's election held null and void 491
- New Governor 853
- Split in IPF 699
- Split in SJP 699

BOLIVIA
- Presidential elections 704

BRAZIL
- Developments 461
- Political developments 501

BULGARIA
- Defeat of no-confidence Motion 858
- Developments 680
- Resignation of Vice-President 858

BURUNDI
- Election results 858
- Presidential elections 704

Page

BUREAU OF PARLIAMENTARY STUDIES AND TRAINING (BPST)
- Courses conducted 463, 680, 840

CAMBODIA
- Political developments 704, 858

CANADA
- Developments 462
- New PM 704

CHATURVEDI, J. P.,
- Article, "Should the Constitution be Amended" 367

CHINA
- Death of Vice-President 501
- Developments 462
- New President 501
- Prime Minister 501

CONFERENCES AND SYMPOSIA
- Birth Anniversary of Shri Dadabhai Naoroji 840
- Birth Anniversary of Dr. Syama Prasad Mookerjee 839
- Birth Anniversary of Lokmanya Bal Gangadhar Tilak 840
- Birth Anniversary of Dr. B. R. Ambedkar 678
- Birth Anniversary of Pandit Motilal Nehru 768
- Birth Anniversary of Rabindranath Tagore 678
- Birth Anniversary of Shri M. N. Kaul 460
- Birth Anniversary of Netaji Subhas Chandra Bose 460
- Birth Anniversary of Lala Lajpat Rai 460
- Birth Anniversary of Smt. Sarojini Naidu 460
- Birth Anniversary of Dr. Rammanohar Lohia 461
- Birth Anniversary of Shri C. Rajagopalachari 459
- Birth Anniversary of Pandit Madan Mohan Malviya 459
- Birth Anniversary of Smt. Indira Gandhi 458
- Birth Anniversary of Dr. Rajendra Prasad 458

	Page
Birth Anniversary of Deshbandhu Chittaranjan Das	457
Birth Anniversary of Maulana Abul Kalam Azad	457
Birth Anniversary of Pandit Jawaharlal Nehru	457
Birth Anniversary of Mahatma Gandhi	456
Birth Anniversary of Sardar Vallabhbhai Patel	794
Conclusion of the 50th Anniversary Celebrations of the Quit India Movement	454
38th Commonwealth Parliamentary Conference	838
39th Commonwealth Parliamentary Conference	677
89th Inter-Parliamentary Conference	677
58th Conference of Presiding Officers of Legislative Bodies in India	455
Constitution Day Celebrations	680
Inter-Parliamentary Symposium, Hungary	
Unveiling of the Portrait of Shri Rajiv Gandhi	803
CONGO	
Emergency declared	858
CUBA	
President re-elected	501
CYPRUS	
New President	501
CZECHOSLOVAKIA	
New Constitution	502
DAS, YUDHISTHIR,	
Article, "Parliament and Political Culture"	87
DIGHE, SHARAD,	
Article, "Inter-Parliamentary Symposium on Parliament : Guardian of Human Rights"	814
DOCUMENTS OF CONSTITUTIONAL AND PARLIAMENTARY INTEREST	
The Citizenship (Amendment) Act, 1992	507
The Code of Criminal Procedure (Amendment) Act, 1993	719
The Constitution (Seventy-fourth Amendment) Act, 1992	518
The Constitution (Seventy-third Amendment) Act, 1992	510
The Constitution (Seventy-second Amendment) Act, 1992	508
The Delhi Municipal Corporation (Amendment) Act, 1993	865
The Extradition (Amendment) Act, 1993	902
The National Commission For Backward Classes Act, 1993	711
The Parliament (Prevention of Disqualification) Amendment Act, 1993	901
The Representation of the People (Amendment) Act, 1992	508
The Salary, Allowances and Pension of Members of Parliament (Amendment) Act, 1992	527
The Salary, Allowances and Pension of Members of Parliament (Amendment) Act, 1993	724
The Terrorist and Disruptive Activities (Prevention) Amendment Act, 1993	777
DWIVEDY, SURENDRANATH,	
Article, "Indian Political Process in Perspective"	7
EDITORIAL NOTE	(Xii), 375, 633, 791
ERITREA	
Eritrea secedes from Ethopia	704
ESTONIA	
New President	502
EUROPEAN PARLIAMENT	
Visit of Parliamentary Delegation	68
Delegation going abroad	68
FRANCE	
Change of Government	502
GAUTEMALA	
Political developments	704
GEORGIA	
New President	502
Political developments	858

	Page
GHANA	
President elected	502
GOA	
Political developments	699
Merger of GPP with Congress	700
GREECE	
Elections in October	859
GUJARAT	
By-election results	700
Death of Minister	491, 700
New Deputy Speaker	854
GUYANA	
New Government	502
HALIM, HASHIM ABDUL,	
Article, "Parliament as a Multi-functional Institution"	90
HAROON, SHAIKH HASSAN,	
Article, "Environment and the Law"	92
HARYANA	
By-election results	700
Death of MLA	492
Expulsion of MLA from Party	492
HVP faction MLAs join Congress (I)	854
Merger of Parties	854
New Minister	492
Removal of Ministers	492
HAITI	
New PM	859
HIMACHAL PRADESH	
Government's Dismissal	492
New Governor	700
Resignation of Governor	492
INDIA	
By-elections to Lok Sabha	698
Cabinet re-shuffle	488
Death of sitting Members	490
Defeat of No-confidence motion	482
Deputy Minister	490
Developments involving the Election Commission	852
Election to Rajya Sabha	698, 851
HVP Member joins Congress (I)	852
Ministers of State	489
Ministers of State (Independent Charge)	489
New Leader of Opposition in Lok Sabha	852
Nominated Members of Rajya Sabha	851
Re-induction of Minister	851
Resignation of Member	852
Sessions of Parliament	488
INDONESIA	
President re-elected	502
IRAN	
President re-elected	705
IRAQ	
PM replaced	859
IRELAND	
Resignation of Government	502
ISRAEL	
New President	503, 705
ITALY	
Political developments	705
JAINM C. K.,	
Article, "Parliamentarians : Link between the People, the Parliament and the Government"	251
Article, "The 89th Inter-Parliamentary Conference : An Overview"	403
Article, "The Justice Ramaswamy Case"	407
Article, "Speaker's Decision in the Janata Dal Case"	441
JAIN, J. K.,	
Article, "Reforming the Government : The Presidential Alternative"	162
JAMAICA	
General elections	503
JAMES, J. M.,	
Article, "Informational Needs of Members"	309
JAMMU AND KASHMIR	
New Governor	492

	Page
JANAKIRAMAN, C. S.,	
Article, "Role and Experience of Members of Legislatures in the Committees"	314
JAPAN	
New Deputy Prime Minister	705
Political developments	705
JHA, BHOGENDRA,	
Article, "Parliamentary Reforms"	218
KANITHI, VISHWANATHAM,	
Article, "Elections and Electoral Reforms"	221
KARNATAKA	
By-election result	701
Cabinet Ministers	492
Death of MLC	494
Defeat of no-confidence motion	854
Merger of parties	854
Ministers of State	493
New Chairman of Legislative Council	495
Political developments	492
Resignation of Ministers	494
KENYA	
Presidential elections	503
KUMAR, SUMIT,	
Article, "Legislative Relations between Centre and States"	349
KUNDU, SAMARENDRA,	
Article, "Parliament and Foreign Policy"	289
KUWAIT	
Government formed	503
LAOS	
Death of President	503
LATVIA	
President elected	859
LEBANON	
New PM	503
LIBERIA	
Peace pact signed	859
LITHUANIA	
Constitution approved	503

	Page
LOK SABHA	
Party position in,	625, 781, 958
Sessional Review	529, 726, 902
Statement showing the work transacted	593, 769, 933
MADAGASCAR	
New President	503
MADHYA RRADESH	
Death of MLA	495
Government dismissed	495
New Governor	854
Resignation of Governor	701
MAHAJAN, SUMITRA,	
Article, "Constitution of India : An Appraisal"	223
MAHARASHTRA	
By-election results	701
Cabinet Ministers	495
Death of MLA	701
Death of MLC	701
Election of MLA held void	701
Ministers of State	496
New Governor	496
Political developments	495
MALAVIYA, SATYA PRAKASH,	
Article, "Constitution of India in Precept and Practice"	169
MALDIVES	
President re-elected	860
MALHOTRA, G. C.,	
Article, "Parliament Library : Marching Towards the 21st Century"	357
MALI	
Political developments	705
MANIPUR	
New Governor	854
Resignation of Governor	497
SC order on Speaker	497
MATTO, GHULAM RASOOL,	
Article, "Role of Individual and Independent Members"	175

	Page
MEGHALAYA	
Cabinet Ministers	497
Elections to the State Legislative Assembly	497
Expansion of Cabinet	701
Minister of State with Independent Charge	498
Political developments	855
Reshuffle of Portfolios	497
Resignation of Speaker	701
MEXICO	
Parliamentary Delegation visiting India	679
MISHRA, CHATURANAN,	
Article, "Some Issues of Electoral Reforms in India	179
MIZORAM	
New Speaker	498
Resignation of Governor	498
Resignation of Ministers	498
Vote of Confidence passed	498
MOLLAH, HANNAN,	
Article, "Parliamentary Legislation and Social Change"	226
MOZAMBIQUE	
Peace pact signed	504
MUTTALAGERI, N. H.,	
Article, "Parliament and Judiciary"	318
NAGALAND	
Cabinet Ministers	498
Election of Deputy Speaker	855
Elections to the State Legislative Assembly	498
Ministers of State	498
NARAYANAN, P. G.,	
Article, "Parliament, Executive and Judiciary"	143
NAYAR, SUSHILA,	
Article, "Material and Spiritual Needs : Concerted Action for Survival"	292
NEGI, T. S.,	
Article, "Parliamentary and Presidential Systems"	97

	Page
NEPAL	
Delegations going abroad	463
Delegations visiting India	679
NIGERIA	
Political developments	706
ORISSA	
By-election results	702
Cabinet re-shuffled	499
Death of Ministers	499
New Governor	499
Resignation of Governor	499
OUR BUDDING PARLIAMENTARIANS	451, 674, 835
OUR CONSTITUENCY AND CONSTITUENTS	448, 671, 833
PAKISTAN	
Political development	706
PANDE, B. N.,	
Article, "Speaker in the Lok Sabha and the House of Commons"	201
PANIGARHI, CHINTAMANI,	
Article, "Parliament and the Communication Media"	274
PARAGUAY	
Election results	707
New President	860
PARLIAMENTARY AND CONSTITUTIONAL DEVELOPMENTS	
Developments abroad	500, 703
Developments around the States	490, 698, 853
Developments at the Union	488, 698, 851
PARLIAMENTARY DELEGATIONS	
Foreign	463, 679
Indian	461, 680, 840
PARLIAMENTARY EVENTS AND ACTIVITIES	
Feature on	454, 677, 838
PATEL, CHIMANBHAI,	
Article, "Indian Parliament and Social Change"	43
PATIL, SHIVRAJ V.,	
Article, "North-South Relations : New Dimensions"	1

Page

PAWAR, VASANT,

Article, "Parliamentary Democracy : an Assessment" 240

POLAND

Political developments 707

Delegation going abroad 462

PRASAD, JUGAL KISHORE,

Article, "Speaker and Court's Subpoena" 335

PRIVILEGS ISSUES

FOREIGN LEGISLATURES

HOUSE OF COMMONS

(CANADA)

Contempt of the House allegedly committed by the publication of a Government sponsored advertisement in newspaper Presupposing that a particular legislation will be passed by Parliament on a particular day 478

LOK SABHA

Alleged misleading of the House by a member 842

Notice to the Secretary-General, Lok Sabha from the High Court of Delhi in connection with a writ petition 466

Notice to the Chairman, Standing Committee on External Affairs from the High Court of Madhya Pradesh in connenction with a Miscellaneous Petition 682

RAJYA SABHA

Alleged assault on a member by Police 466, 469

Alleged arrest of a member and non-intimation thereof to the Chairman Rajya Sabha 470

Alleged misbehaviour with members by Policemen 467

Alleged misbehaviour with a member by a Government Officer 472

Attempt to influence members of a Joint Parliamentary Committee by a Minister and a Government official 471

STATE LEGISLATURES

BIHAR LEGISLATIVE ASSEMBLY

Alleged casting of aspersions on the House and the Members by a Government official 474

Page

GOA LEGISLATIVE ASSEMBLY

Alleged misleading of the House by the Chief Minister 683

HIMACHAL PRADESH LEGISLATIVE ASSEMBLY

Alleged casting of aspersions on the Speaker by an outsider 474

Alleged casting of aspersion on another member 476

Alleged obstruction caused to a member by some Government servants from attending sitting of a Legislature Committee 685

Alleged obstructions caused to members by police Officer 843

ORISSA LEGISLATIVE ASSEMBLY

Alleged casting of aspersions on a member by a newspaper 687

Alleged casting of reflections on a member by an official of a voluntary organisation in connivance with a newspaper 688

Alleged assault on a member by some miscreants 845

WEST BENGAL LEGISLATIVE ASSEMBLY

Alleged casting of reflections on the House by a Government Organisation 846

PROCEDURAL MATTERS

LOK SABHA

Allegation or refrence against any person not present in the House 484

Expunction of remarks against Chief Minister 484, 697

Expunction of derogatory remarks and Speaker's powers to direct a Member to withdraw from the House 850

Every Adjournment Motion is not necessarily a censure motion against the Government 692

Initiating and concluding proceedings with National Anthem and National Song 484

Page

Instance when Opposition stayed away from President's Address to both Houses of Parliament assesmbled together 485

Instance when adjournment motion was not allowed during the Budget Session but matters discussed under Rule 193 495

Instance of the House being presided over by a member who was not on the Panel of Chairman 486

Matters relating to an MLA to be raised in State Assembly and matters to be decided by the Court should not be discussed in the House 849

Members permitted may ask clarificatory question after a statement made by a Minister 697, 849

Members not to talk with officers sitting in the Official Gallery 849

Members not to bring Video Cassettes to the House 850

Members should not rely merely on Press reports for making allegations unless these are substantiated; it is not desirable to make allegations agianst a person who is not in a position to defend himself in the House 693

Presiding Officer cannot preclude a member appointed as Chief Minister in a State from attending the House 692

Reference to Proceedings of the other House 484

Reference to Conduct of Speaker of State Legislative Assembly on the floor of the House 486

Reference to conduct of Chief Election Commissioner on the floor of the House 691

Reference to Speaker of Legislative Assembly and its Proceedings 696

Reference to the President of India 850

Speaker can give consent for adjournment of debate 848

House does not take decision on specific question of vires of Bill 692

Page

RAJYA SABHA

Initiating and concluding of Proceedings with National Anthem and National Song 486

STATE LEGISLATURES

GUJARAT LEGISLATIVE ASSEMBLY

Initiating and closing of Proceedings with National Song 486

UTTAR PRADESH LEGISLATIVE ASSEMBLY

Initiating and closing of Proceedings with National Song and National Anthem, respectively 487

PUNJAB

Move to revive Legislative Council 702

Death of Speaker 702

Developments in BJP Legislature Party 855

Election of Speaker 856

Resignation of Minister 856

Reshuffle of portfolios 856

QURESHI, MOHD. SHAFI,

Article, "Parliament and Judiciary" 11

RAJASTHAN

Developments in Janata Dal 499

Government dismissed 499

Resignation of Minister 499

Gubernatorial changes 702

Merger of Parties 856

RAO, D. SRIPADA,

Article, "Anti-Defection Law : Split in Parties" 99

RAO, J. CHOKKA,

Article, "Electoral Reforms" 138

RAY, RENUKA,

Articel, "Parliament and National Integration" 284

RECENT LITERATURE OF PARLIAMENTARY INTEREST

Feature on 571, 755, 928

REDDY, B. SATYANARAYAN,

Articel, "Legislative Relations between the Union and the States" 15

	page
ROMANIA	
President re-elected	504
RUSSIA	
Political developments	504, 707
RWANDA	
New Prime Minister	861
RAJYA SABHA	
Party position in	961
Statement showing work transacted	938
SAIKIA, HITESWAR,	
Articel, "Parliamentary Institutions and People's Aspirations"	47
SARWAR, GHULAM,	
Article, "Anti-Defection Law : Problems and Prospects"	107
SAVE, MORESWAR,	
Article, "Socio-economic Background of Legislators"	243
SAWANT, SUDHIR,	
Article, "Parliamentarians and the International Cooperative Movement"	245
SAHI, KRISHNA,	
Article, "Parliament and Human Rights"	51
SESSIONAL REVIEW	
LOK SABHA	
Ban on political rallies at Boat Club	541
Bomb Blasts in Bombay and Calcutta	547, 708
Communal violence in Manipur	732
Constitution (Seventy-second) Amendment Bill, 1991 and the Constitution (Seventy-third Amendment Bill), 1991 (discussed together)	536
Current situation in Jammu and Kashmir	735
Dismissal of the Nawaz Sharief Government in Pakistan	727
Drought conditions prevailing in different parts of the country	912
Elections in Tripura	547
Finance Bill, 1993	735

	Page
Flood and drought situation in the country	536
General Budget 1993-94	726
Motion of No-Confidence in the Council of Ministers	532
Motion regarding Implications of the Dunkel Draft Text on Trade Negotiations with special reference to its effects on India's interest	535
Motion of Thanks on the President's Address	539
Motion of No-Confidence in the Council of Ministers	908
National Commission for Backward Classes Bill, 1993	549
Obituary references	539, 738, 918
Opinion of Attorney-General regarding the Authority of the Election Commission	908
Railway Budget, 1993-94	542
Resolution on Ayodhya	532
Review of Drug Policy, 1986	910
SAARC Convention (Suppression of Terrorism) Bill, 1992	549
Salary, Allowances and Pension of Members of Parliament (Amendment) Bill, 1993	736
Serious situation arising out of recent floods in various parts of the country	912
Setting up of the Rashtriya Mahila Kosh	731
Situation affecting agricultures and farmer's interests	529
Statement by Minister on the situation at Ayodhya in the context of the proposed Kar Seva	531
Statutory Resolution regarding Approval of the Continuance in force of the Proclamations in respect of Uttar Pradesh, Madhya Pradesh, Himachal Pradesh and Rajasthan	734
Statutory Resolution Regarding Approval of Presidential proclamations in relation to the State of Uttar Pradesh, Himachal Pradesh and Rajasthan	535

	Page
Statutory Resolution regarding continuance in force of Presidential Proclamation in respect of Jammu and Kashmir	546
Terrorists and Disruptive Activities (Prevention) (Amendment0 Bill, 1993	736
The Acquisition of Certain Area Bill, 1993	550
The Code of Criminal Procedure (Amendment) Bill, 1993	737
The Citizenship (Amendment) Bill, 1992	536
The Constitution (Seventy-fifth Amendment) Bill, 1991	537
The Question Hour	539, 737
The Representation of People (Amendment) Bill, 1992	538
Verma Commission of Inquiry	730
Visit of Bangladesh Minister to the Chakma refuges' camps	732

RAJYA SABHA

	Page
Bomb explosions in Bombay	561
Current situation in Jammu and Kashmir	741
Gold Bonds (Immunities and Exemptions) Bill, 1993	564
Impact of recent floods and cyclonic storms, particularly in Kerala, Tamil Nadu, Karnataka and Pondicherry	581
Motion of Thanks on the President's Address	560
Need for Government to undertake measures for revival of sick public sector undertakings	924
Obituary references	559, 565, 745, 926
Population explosion in the country	562
Pre-budget hike in prices of coal, sugar	559
Prevailing drought conditions in different parts of the country	919
Problems being faced by the mills under the National Textiles Corporation (NTC)	740
Question Hour	558, 565, 745
Reservation in Promotion to Scheduled Castes, Scheduled Tribes in the wake of Supreme Court Judgement	555
Revamping of procedure for recovery of income tax	740
Situation arising out to the demolition of Ram Janam Bhoomi Babri Masjid Structure	553 563
Situation arising out of the large scale disinvestment in public sector undertakings	922
The Acquisition of Certain Area at Ayodhya Bill, 1993	564
The Budget (General) 1993-94	738
The Budget (Railways), 1992-93	562
The Code of Criminal Procedure (Amendment) Bill, 1993	743
The Citizenship (Amendment) Bill, 1992	556
The Constitution (Seventy-fifth Amendment) Bill, 1991	556
The Constitution (Seventy-second Amendment) Bill, 1991	557
The Constitution (Seventy-third Amendment) Bill, 1991	557
The Constitution (Seventy-seventh Amendment) Bill, 1992	925
The Criminal Law (Amendment) Bill, 1993	744
The Extradition (Amendment) Bill, 1993	925
The Foreign Exchange Regulation (Amendment) Bill, 1993	564
The havoc caused by recent floods in various parts of the country	918
The Parliament (Prevention of Disqualification) Amendment Bill, 1993	924
The Report of Justice J. S. Verma Commission of Inquiry into Shri Rajiv Gandhi's Assassination	742
The SAARC Convention (Suppression of Terrorism) Bill, 1992	555
The Salary, allowances and Pension of Members of Parliament (Amendment) Bill, 1992	558
The Salary, allowances and Pension of Members of Parliament (Amendment) Bill, 1993	744

	Page
The Terrorists and Disruptive Activities (Prevention) Amendment Bill, 1993	743
The Uttar Pradesh State Legislature (Delegation of Powers) Bill, 1993; The Madhya Pradesh State Legislature (Delegation of Powers) Bill, 1993; and the Himachal Pradesh State Legislature (Delegation of Powers) Bill, 1993	563
Verdict of the Swiss Supreme Court relating to Bofors	920
STATE LEGISLATURES	
ARUNACHAL PRADESH LEGISLATIVE ASSEMBLY	
Financial Business	745
Governor's Address	745
Legislative Business	566, 745
Obituary References	566
ASSAM LEGISLATIVE ASSEMBLY	
Election of Deputy Speaker	746
Financial Business	746
Governor's Address	746
Obituary references	747
GUJARAT LEGISLATIVE ASSEMBLY	
Financial Business	566
Governor's Address	566
Legislative Business	566, 747
Obituary references	567, 747
KARNATAKA LEGISLATIVE ASSEMBLY	
Financial Business	567
Legislative Business	567
Obituary references	567
MANIPUR LEGISLATIVE ASSEMBLY	
Financial Business	748
Governor's Address	748
Legislative Business	748, 927
MIZORAM LEGISLATIVE ASSEMBLY	
Legislative Business	927
Obituary references	927
ORISSA LEGISLATIVE ASSEMBLY	
Financial Business	568
Governor's Address	568
Legislative Business	568, 749
TRIPURA LEGISLATIVE ASSEMBLY	
Election of Speaker/Deputy Speaker	749
Financial Business	569
Governor's Address	569, 749
Legislative Business	569
Obituary references	569, 749
UTTAR PRADESH LEGISLATIVE ASSEMBLY	
Financial Business	569
Legislative Business	569
Obituary references	569
WEST BENGAL LEGISLATIVE ASSEMBLY	
Financial Business	750
Governor's Address	750
Legislative Business	750
Obituary references	750
SEYCHELLES	
Election results	861
SHARMA, YAGYA DUTT,	
Article, "Parliament and the Executive"	277
SHETYE, BHASKAR,	
Article, "Committees of the Maharashtra Legislatures"	343
SHINDE, SUSHIL KUMAR,	
Article, "Parliament : the Fountain head of Social Change"	213
Feature, "Our Budding Parliamentarians"	451
SINGAPORE	
New President	861
SINGH, BEANT S.,	
Article, "Electoral Process and Reforms"	27
SINGH, BHANU PRAKASH,	
Article, "Parliamentary System Versus Presidential System"	23

	Page
SINGH, BHANU PRAKASH,	
Article, "Parliamenary System Versus Presidential System"	23
SINGH, HAR SWARUP,	
Article, "Ecology and Environment : Role of Parliaments, Executive and the People".	258
SINGH, ISHWAR,	
Article, "Constitution of India as an Instrument of Economic Growth and Social Justice"	113
SINGH, NAUNIHAL,	
Article, "Parliamentary and Presidential System : A Comparative Study"	182
SINGH, SHANKAR DAYAL,	
Article, "The New Delhi IPU Conference : Visit to Agra and Fatehpur Sikri"	425
SOUTH AFRICA	
Bill on power sharing passed	862
SOUTH KOREA	
New President	504
SPAIN	
Election results	707
SRI LANKA	
Opposition leader assassinated	707
President assassinated	707
STATE LEGISLATURES	
Bills passed	605, 776, 950
Ordinances Issued	616, 778, 952
Party position In	620, 786, 963
Statement showing activities	593, 769, 942
SUMMERIES OF BOOKS	751
SURINAME	
Parliamentary Delegation visiting India	679
SWITZERLAND	
New President	504
SYRIA	
Indian Parliamentary Delegation abroad	462
TAMIL NADU	
By-election result	856
Cabinet reshuffle	702
Death of MLA	856
Developments in Janata Dal	500
New Governor	702
THANHAWLA, LAL,	
Article, "Elections and Electoral Reforms in India"	37
THENUCHO,	
Article, "Parliament as an Instrument of National Integration"	124
TILAK, J. S.,	
Article, "Parliamentary Democracy in India"	54
TOGO	
Election results	862
TRIPATHI, KESHARI NATH,	
Article, "Anti-Defection Law"	129
TRIPURA	
Cabinet Ministers	703
Election results	703
Ministers of State (Independent Charge)	703
New Governor	857
TURKEY	
New President	708
UKRAINE	
New Prime Minister	504
Resigrantion of PM	708
UNION GOVERNMENT	
Oridinance Issued	616, 778, 952
UNITED KINGDOM	
Cabinet reshuffle	708
Trust vote passed	862
URS, CHANDRAPRABHA,	
Article, "Role of Women in Parliamentary Democracy"	249
USA	
President elected	504
UTTAR PRADESH	
Death of MLC	500
Government dismissed	500
New Governor	703
New Party	500
Political developments	500

	Page
Six MLAs join Samajwadi Party	857
VAJPAYEE, ATAL BIHARI,	
Article, "Discipline and Decorum in Parliament and State Legislatures"	654
VARMA, UMESHWAR PRASAD,	
Article, "Parliamentary Democracy in India : Then and Now"	63
VENEZUELA	
Interim President	708
VERMA, VIRENDRA,	
Article, "Parliamentary Protest : Need for Change in Forms"	279
WEST BENGAL	
By-election results	857
Death of Governor	857
Defeat of no-confidence motion	500, 703
Resignation of Minister	857
ZAIRE	
New PM	504