

CHAPTER 12

THE UNION LEGISLATURE

AS has been explained at the outset, *our* Constitution has adopted the Parliamentary system of Government which effects a harmonious blending of the legislative and executive organs of the State inasmuch as the executive power is wielded by a group of members of the Legislature who command a majority in the popular Chamber of the Legislature and remain in power so long as they retain that majority. The functions of Parliament as the legislative organ follow from the above feature of the Parliamentary system:

I. *Providing the Cabinet.* It follows from the above that the first function of Parliament is that of providing the Cabinet and holding them responsible. Though the responsibility of the Cabinet is to the popular Chamber the membership of the Cabinet is not necessarily restricted to that Chamber and some of the members are usually taken from the upper Chamber.

II. *Control of the Cabinet.* It is a necessary corollary from the theory of ministerial responsibility that it is a business of the popular Chamber to see that the Cabinet remains in power so long as it retains the confidence of the majority in that House. This is expressly secured by Art. 75(3) of *our* Constitution.

III. *Criticism of the Cabinet and of individual Ministers.* In modern times both the executive and the legislative policies are initiated by the Cabinet, and the importance of the legislative function of Parliament has, to that extent, diminished from the historical point of view. But the critical function of Parliament has increased in importance and is bound to increase if Cabinet Government is to remain a 'responsible' form of Government instead of being an autocratic one. In this function, both the Houses participate and are capable of participating, though the power of bringing about a downfall of the Ministry belongs only to the popular Chamber (*i.e.*, the House of the People) [Art. 75(3)].

While the Cabinet is left to formulate the policy, the function of Parliament is to bring about a discussion and criticism of that policy on the floor of the House, so that not only the Cabinet can get the advice of the deliberative body and learn about its own errors and deficiencies, but the nation as a whole can be appraised of an alternative point of view, on the evaluation of which representative democracy rests in theory.

IV. *An organ of information.* As an organ of information, Parliament is more powerful than the Press or any other private agency, for Parliament secures the information *authoritatively*, from those in the know of things. The

information is collected and disseminated not only through the debates but through the specific medium of 'Questions' to Ministers.

Spread/disperse (information) through an organ

V. Legislation. The next function of the Legislature is that of making laws [Arts. 107-108; 245] which belongs to the Legislature equally under the Presidential and Parliamentary forms of government. In India, since the inauguration of the Constitution the volume of legislation is steadily rising in order to carry out the manifold development and other measures necessary to establish a welfare State.

VI. Financial control. Parliament has the sole power not only to authorise expenditure for the public services and to specify the purposes to which that money shall be appropriated, but also to provide the ways and means to raise the revenue required, by means of taxes and other impositions and also to ensure that the money that was granted has been spent for the authorised purposes. As under the English system, the lower House possesses the dominant power in this respect, under our Constitution [Art. 109].

Constitution of Parliament. The Parliament of India consists of the President and two Houses. The lower House is called the House of the People while the upper House is known as the Council of States¹ [Art. 79].

(The Hindi names '*Lok Sabha*' and '*Rajya Sabha*' have been adopted by the House of the People and the Council of States respectively.)

The President is a part of the Legislature, like the English Crown, for, even though he does not sit in Parliament, except for the purpose of delivering his opening address [Art. 87], a Bill passed by the Houses of Parliament cannot become law without the President's assent. The other legislative functions of the President, such as the making of Ordinances while both Houses are not in sitting, have already been explained. *Line*

Composition of the Council of States. The Council of States shall be composed of not more than 250 members, of whom (a) 12 shall be nominated by the President; and (b) the remainder (i.e., 238) shall be representatives of the States and the Union Territories elected by the method of indirect election² [Art. 80].

(a) **Nomination.** The 12 nominated members shall be chosen by the President from amongst persons having 'special knowledge or practical experience in literature, science, art, and social service'. The Constitution thus adopts the principle of nomination for giving distinguished persons a place in the upper Chamber.

(b) **Representation of States.** The representatives of each State shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.

(c) **Representation of Union Territories.** The representatives of the Union Territories shall be chosen in such manner as Parliament may prescribe [Art. 80(5)]. Under this power Parliament has prescribed² that the repre-

representatives of Union Territories to the Council of States shall be indirectly elected by members of an electoral college for that Territory, in accordance with the system of proportional representation by means of the single transferable vote.

The Council of States thus reflects a federal character by representing the Units of the federation. But it does not follow the American principle of equality of State representation in the Second Chamber. In India, the number of representatives of the States to the Council of States varies from 1 (Nagaland) to 31 (Uttar Pradesh).

The House of the People has a variegated composition. The Constitution prescribes a maximum number as follows:

Composition of the House of the People. (a) Not more³ than 530⁴ [Art. 81(1)(a)] representatives of the States;

(b) Not more than 20 representatives of Union Territories [Art. 81(1)(b)].

(c) Not more than 2 members of the Anglo-Indian community, nominated by the President, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People [Art. 331].

(i) The representatives of the States shall be directly elected by the people of the State on the basis of adult suffrage. Every citizen who is not less than 18⁵ years of age and is not otherwise disqualified, *e.g.*, by reason of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to vote at such election [Art. 326].

There will be no reservation of seats for any minority community other than the Scheduled Castes and the Scheduled Tribes [Arts. 330, 341, 342].

The bulk of the members of the House are thus directly elected by the people.

(ii) The members from the Union Territories are to be chosen in such manner as Parliament may by law provide.

Under this power, Parliament has enacted⁶ that representatives of all the Union Territories shall be chosen by direct election.

(iii) Two members may be nominated from the Anglo-Indian community by the President to the House of the People if he is of opinion that the Anglo-Indian community has not been adequately represented in the House of the People [Art. 331]. (see Table VIII, *post.*)

The election to the House of the People being direct, requires that the territory of India should be divided into suitable territorial constituencies, for the purpose of holding such elections. Article 81(2), as it stands after the Constitution (7th Amendment) Act, 1956, has provided for uniformity of representation in two respects—(a) as between the different States, and (b) as between the different constituencies in the same State, thus:

Territorial constituencies for election to the House of the People.

(a) there shall be allotted to each State a number of seats in the House of the People in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States; and

(b) each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State.

While the system of separate electorates was abandoned by the Constitution, the system of proportional representation was partially adopted for the second Chamber in the Union and State Legislatures.

(a) As regards the Council of States, proportional representation by single transferable vote has been adopted for the indirect election by the elected members of the Legislative Assembly of each State, in order to give some representation to minority communities and parties [Art. 80(4)].

(b) Similarly, proportional representation is prescribed for election to the Legislative Council of a State by electorates consisting of municipalities, district boards and other local authorities and of graduates and teachers of three years standing resident in the State [Art. 171(4)].

As regards the House of the People [Art. 81] and the Legislative Assembly of a State, however, the system of proportional representation has been abandoned and, instead, the Constitution has adopted the single member constituency with reservation of seats (at the general election) for some backward communities, namely, the Scheduled Castes and Tribes [Arts. 330, 332].

The reasons for not adopting proportional representation for the House of the People were thus explained in the Constituent Assembly—

(i) Proportional representation presupposes literacy on a large scale. It presupposes that every voter should be a literate, at least to the extent of being in a position to know the numerals and mark them on the ballot paper. Having regard to the position of literacy in this country at present, such a presumption would be extravagant.

(ii) Proportional representation is ill-suited to the Parliamentary system of government laid down by the Constitution. One of the disadvantages of the system of proportional representation is the fragmentation of the Legislature into a number of small groups. Although the British Parliament appointed a Royal Commission in 1910 to consider the advisability of introducing proportional representation and the Commission recommended it, Parliament did not eventually accept the recommendations of the Commission on the ground that the proportional representation would not permit a stable Government. Parliament would be so divided into small groups that every time anything happened which displeased certain groups in Parliament, they would on those occasions withdraw support to the Government with the result that the Government, losing the support of certain groups, would fall to pieces.

What India needed, at least in view of the existing circumstances, was a stable Government, and, therefore, proportional representation in the lower House to which the Government would be responsible could not be accepted. In this connection, Dr. Ambedkar said in the Constituent Assembly,—

"I have not the least doubt in my mind, whether the future Government provides relief to the people or not, our future Government must do one thing—they must maintain a stable Government and maintain law and order."⁷

(a) The Council of States is not subject to dissolution. It is a permanent body, but (as nearly as possible) 1/3 of its members retire on the expiration of every second year, in accordance with provisions made by Parliament in this behalf. It follows that there will be an election of 1/3 of the membership of the Council of States at the beginning of every third year [Art. 83(1)]. The order of retirement of the members is governed by the Council of States (Term of Office of Members) Order, 1952, made by the President in exercise of powers conferred upon him by the Representation of the People Act, 1951.

(b) The normal life of the House of the People is 5 years,⁸ but it may be dissolved earlier by the President.

On the other hand, the normal term may be extended by an Act passed by Parliament itself⁹ during the period when a 'Proclamation of Emergency' (made by the President under Art. 352) remains in operation. The Constitution, however, sets a limit to the power of Parliament thus to extend its own life during a period of Emergency: the extension cannot be made for a period exceeding one year at a time (*i.e.*, by the same Act of Parliament), and, in any case, such extension cannot continue beyond a period of six months after the Proclamation of Emergency ceases to operate [Proviso to Art. 83].

The President's power—(a) to summon either House, (b) to prorogue either House, and (c) to dissolve the House of the People has already been noted (in the Chapter—'The Union Executive', *ante*).

As regards summoning, the Constitution imposes a duty upon the President, namely, that he must summon each House at such intervals that six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session [Art. 85(1)]. The net result of this provision is that Parliament must meet at least twice a year and not more than six months shall elapse between the date on which a House is prorogued and the commencement of its next session.

It would, in this context, be useful to distinguish prorogation and dissolution from adjournment. A 'session' is the period of time between the first meeting of a Parliament, and its prorogation or dissolution. The period between the prorogation of Parliament and its re-assembly in a new session is termed 'recess'.

Adjournment, prorogation and dissolution.

Within a session, there are a number of daily 'sittings' separated by adjournments, which postpone the further consideration of business for a specified time—hours, days or weeks.

The sitting of a House may be terminated by (a) dissolution, (b) prorogation, or (c) adjournment:

(i) As stated already, only the House of the People is subject to dissolution. Dissolution may take place in either of two ways—(a) By efflux of time, i.e., on the expiry of its term of five years, or the terms as extended during a Proclamation of Emergency. (b) By an exercise of the President's power under Art. 85(2).

(ii) While the powers of dissolution and prorogation are exercised by the President on the advice of his Council of Ministers, the power to adjourn the daily sittings of the House of the People and the Council of States belongs to the Speaker and the Chairman, respectively.

A *dissolution* brings the House of the People to an end (so that there must be a fresh election), while *prorogation* merely terminates a session. *Adjournment* does not put an end to the existence of a session of Parliament but merely postpones the further transaction of business for a specified time, hours, days or weeks.

(iii) A *dissolution* ends the very life of the existing House of the People so that all matters pending before the House lapse with the dissolution. If these matters have to be pursued, they must be re-introduced in the next House after fresh election. Such pending business includes not only notices, motions, etc., but Bills, including Bills which originated in the Council and were sent to the House, as well as Bills originating in the House and transmitted to the Council which were pending in the Council on the date of dissolution. But a Bill pending in the Council which has not yet been passed by the House shall not lapse on dissolution. A dissolution would not, however, affect a joint sitting of the two Houses summoned by the President to resolve a disagreement between the Houses if the President has notified his intention to hold a joint sitting before the dissolution [Art. 108(5)].

Though in *England* prorogation also wipes all business pending at the date of prorogation, in *India*, all Bills pending in Parliament are expressly saved by Art. 107(3). In the result, the only effect of a *prorogation* is that pending notices, motions and resolutions lapse, but Bills remain unaffected.

Adjournment has no such effect on pending business.

In order to be chosen a member of Parliament, a person (a) must be a citizen of India; (b) must be not less than 30 years of age in the case of the Council of States and not less than 25 years of age in the case of the House of the People.

Qualifications for membership of Parliament.

Additional qualifications may be prescribed by Parliament by law [Art. 84]. A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

Disqualifications for membership.

(a) if he holds any office of profit under the Government of India or the Government of any State (other than an office exempted by Parliament by law) but not a Minister for the Union or for a State; or

(b) if he is of unsound mind and stands so declared by a competent Court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India or has voluntarily acquired citizenship of a foreign State or is under acknowledgment of allegiance or adherence to a foreign power;

(e) if he is so disqualified by or under any law made by Parliament [Art. 102].

It may be noted that sex is no disqualification for membership of Parliament and that in the Thirteenth General Election, as many as 32 women secured election to the House of the People.

If any question arises as to whether a member of either House of Parliament has become subject to any of the above disqualifications, the President's decision, in accordance with the opinion of the Election Commission, shall be final [Art. 103].

A penalty of Rs. 500 per day may be imposed upon a person who sits or votes in either House of Parliament knowing that he is not qualified or that he is disqualified for membership thereof [Art. 104].

Vacation of seats by members.

A member of Parliament shall vacate his seat in the following cases [Art. 101]:

(i) *Dual membership.* (a) If a person be chosen to membership of both Houses of Parliament he must vacate his seat in one of the two Houses, as may be prescribed by Parliament by law. (b) Similarly, if a person is elected to the Union Parliament and a State Legislature then he must resign his seat in the State Legislature; otherwise his seat in Parliament shall fall vacant at the expiration of the period specified in the rules made by the President.

(ii) *Disqualification.* If a person incurs any of the disqualifications mentioned in Art. 102 (e.g., becoming of unsound mind), his seat will thereupon become vacant immediately.

(iii) *Resignation.* A member may resign his seat by writing addressed to the Chairman of the Council of States or the Speaker of the House of the People, as the case may be, and thereupon his seat shall be vacant.

(iv) *Absence without permission.* The House may declare a seat vacant if the member in question absents himself from all meetings of the House for a period of 60 days without permission of the House.

Under the Salaries, Allowances and Pension of Members of Parliament Act, 1954, as amended by Act 40 of 2006, a member of Parliament is

Salaries and Allowances of Members of Parliament.

entitled to a salary at the rate of Rs. 16,000 per mensem during the whole term of his office plus an allowance at the rate of Rs. 1000 for each day during any period of residence on duty at the place where

Parliament or any Committee thereof is sitting or where any other business connected with his duties as Member of Parliament is transacted. Together with this, he is entitled to travelling allowance, free transit by railways, steamer and other facilities as prescribed by rules framed under the Act. He shall also be entitled to a pension, since a 1976 amendment, on a graduated scale for each 5 year term as member of either House.

Officers of Parliament.

Each House of Parliament has its own presiding officer and secretarial staff.

There shall be a *Speaker* to preside over the House of the People. In general, his position is similar to that of the Speaker of the English House of Commons.

Speaker.

The House of the People will, as soon as may be after its first sitting, choose two members of the House to be, respectively, Speaker and Deputy Speaker [Art. 93]. The Speaker or the Deputy Speaker will normally hold office during the life of the House, but his office may terminate earlier in any of the following ways (i) By his ceasing to be a member of the House. (ii) By resignation in writing, addressed to the Deputy Speaker, and *vice versa*. (iii) By removal from office by a resolution, passed by a majority of all the then members of the House [Art. 94]. Such a resolution shall not be moved unless at least 14 days' notice has been given of the intention to move the resolution. While a resolution for his removal is under consideration, the Speaker shall not preside but he shall have the right to speak in, and to take part in the proceedings of, the House, and shall have a right of vote except in the case of equality of votes [Art. 96].

At other meetings of the House the Speaker shall preside. The Speaker will not vote in the first instance, but shall have and exercise a casting vote in the case of equality of votes. *imp.*
Powers of the Speaker. The absence of vote in the first instance will make the position of the Speaker as impartial as in England, and the casting vote is given to him only to resolve a deadlock.

The Speaker will have the final power to maintain order within the House of the People and to interpret its Rules of Procedure. In the absence of a quorum, it will be the duty of the Speaker to adjourn the House or to suspend the meeting until there is a quorum.

The Speaker's conduct in regulating the procedure or maintaining order in the House will not be subject to the jurisdiction of any Court [Art. 122].

Besides presiding over his own House, the Speaker possesses certain powers not belonging to the Chairman of the Council of States—

(a) The Speaker shall preside over a joint sitting of the two Houses of Parliament [Art. 118(4)].

(b) When a Money Bill is transmitted from the Lower House to the Upper House, the Speaker shall endorse on the Bill his certificate that it is a Money Bill [Art. 110(4)]. The decision of the Speaker as to whether a Bill is Money Bill is final and once the certificate is endorsed by the Speaker on a

Bill, the subsequent procedure in the passage of the Bill must be governed by the provisions relating to Money Bills.

While the office of Speaker is vacant or the Speaker is absent from a sitting of the House, the Deputy Speaker presides, except when a resolution for his *own* removal is under consideration.

While the House of the People has a Speaker elected by its members from among themselves, the Chairman of the Council of States (who presides over that House) performs that function *ex-officio*. It is the Vice-President of India who shall *ex-officio* be the Chairman of the Council of States and shall preside over that House and shall function as the Presiding Officer of that House so long as he does not officiate as the President of India during a casual vacancy in that office. When the Chairman acts as the President of India, the Office of the Chairman of the Council of States falls vacant and the duties of the office of the Chairman shall be performed by the Deputy Chairman. The Chairman may be removed from his office only if he is removed from the office of the Vice-President, the procedure for which has already been stated.

Under the Salaries and Allowances of Officers of Parliament Act, 1953, as amended, the salary of the Chairman is the same as that of the Speaker, *viz.*, Rs. 40,000 plus a sumptuary allowance of Rs. 1,000 per mensem, but when the Vice-President acts as the President he shall be entitled to the emoluments and allowances of the President [Art. 65(3)] and during that period he shall cease to earn the salary of the Chairman of the Council of States. The functions of the Chairman in the Council of States are similar to those of the Speaker in the House of the People except that the Speaker has certain special powers according to the Constitution, for instance, of certifying a Money Bill, or presiding over a joint sitting of the two Houses, which have been already mentioned.

Privileges are certain rights belonging to each House of Parliament collectively and some others belonging to the members individually, without which it would be impossible for either House to maintain its independence of action or the dignity of its position.

Powers, Privileges and Immunities of Parliament and its Members.

Both the Houses of Parliament as well as of a State Legislature have similar privileges under our Constitution.

Clauses (1)-(2) of Arts. 105 and 194 of our Constitution deal only with two matters, *viz.*, freedom of speech and right of publication.

As regard privileges relating to *other* matters, the position, as it stands after the 44th Amendment, 1978, is as follows—The privileges of members of our Parliament were to be the same as those of members of the House of Commons (as they existed at the commencement of the Constitution), until our Parliament itself takes up legislation relating to privileges in whole or in part. In other words, if Parliament enacts any provision relating to any particular privilege at any time, the English precedents will to that extent be superseded in its application to our Parliament. No such legislation having been made by our Parliament, the privileges were the same as in the House

of the Commons, subject to such exceptions as necessarily follow from the difference in the constitutional set-up in India. Reference to House of Commons was omitted in 1978.

In an earlier case,¹⁰ the Supreme Court held that if there was any conflict between the existing privileges of Parliament and the fundamental rights of a citizen, the former shall prevail, for, the provisions in Arts. 105(3) and 194(3) of the Constitution, which confer upon the Houses of our Legislatures the same British privileges as those of the House of Commons, are independent provisions and are not to be construed as subject to Part III of the Constitution, guaranteeing the Fundamental Rights. For instance, if the House of a Legislature expunges a portion of its debates from its proceedings, or otherwise prohibits its publication, anybody who publishes such prohibited debate will be guilty of contempt of Parliament and punishable by the House and the Fundamental Right of freedom of expression [Art. 19(1)(a)] will be no defence. But in a later case,¹¹ the Supreme Court has held that though the existing privileges would not be fettered by Art. 19(1)(a), they must be read subject to Arts. 20-22 and 32.

The privileges of each House may be divided into two groups—
Privileges classified. (a) those which are enjoyed by the members individually, and (b) those which belong to each House of Parliament, as a collective body.

(A) The privileges enjoyed by the members individually are (i) Freedom from arrest; (ii) Exemption from attendance as jurors and witnesses; (iii) Freedom of speech.

(i) *Freedom from Arrest.* Section 135A of the C.P. Code, as amended by Act 104 of 1976, exempts a member from arrest during the continuance of a meeting of the Chamber or Committee thereof of which he is a member or of a joint sitting of the Chambers or Committees, and during a period of 40 days before and after such meeting or sitting. This immunity is, however, confined to arrest in civil cases and does not extend to arrest in criminal case or under the law of Preventive Detention.

(ii) *Freedom of Attendance as Witness.* According to the English practice, a member cannot be summoned, without the leave of the House, to give evidence as a witness while Parliament is in session.

(iii) *Freedom of Speech.* As in England, there will be freedom of speech within the walls of each House in the sense of immunity of action for anything said therein. While an ordinary citizen's right of speech is subject to the restrictions specified in Art. 19(2), such as the law relating to defamation, a Member of Parliament cannot be made liable in any court of law in respect of anything said in Parliament or any Committee thereof. But this does not mean unrestricted licence to speak anything that a member may like, regardless of the dignity of the House. The freedom of speech is therefore 'subject to the rules' framed by the House under its powers to regulate its internal procedure.

The Constitution itself imposes another limitation upon the freedom of speech in Parliament, namely, that no discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court

or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge [Art. 121].

(B) The privileges of the House *collectively* are—(i) The right to publish debates and proceedings and the right to restrain publication by others; (ii) The right to exclude others; (iii) The right to regulate the internal affairs of the House, and to decide matters arising within its walls; (iv) The right to publish Parliamentary misbehaviour; (v) The right to punish members and outsiders for breach of its privileges.

Thus, each House of Parliament shall have the power—

(i) To exclude strangers from the galleries at any time. Under the Rules of Procedure, the Speaker and the Chairman have the right to order the 'withdrawal of strangers from any part of the House'.

(ii) To regulate its internal affairs. Each House of Parliament has the right to control and regulate its proceedings and also to decide any matter arising within its walls, without interference from the Courts. What is said or done within the walls of Parliament cannot be inquired into in a Court of Law.

(iii) To punish members and outsiders for breach of its privileges. Each House can punish for contempt or breach of its privileges, and the punishment may take the form of admonition, reprimand or imprisonment. Thus, in the famous *Blitz case*, the Editor of the newspaper was called to the Bar of the House of the People and reprimanded for having published an article derogatory to the dignity of a member in his capacity as member of the House. In 1990, Sri K.K. Tewari, a former Minister was reprimanded by the Rajya Sabha. What constitutes breach of privileges or contempt of Parliament has been fairly settled by a number of precedents in England and India. Broadly speaking—

"Any 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 as may be treated as a contempt, even though there is no precedent of the offence."¹²

The different stages in the legislative procedure in Parliament relating to Bills *other than Money Bills* are as follows:

1. *Introduction.* A Bill other than Money or financial Bills may be introduced in either House of Parliament [Art. 107(1)] and requires passage in both Houses before it can be presented for the President's assent. A Bill may be introduced either by a Minister or by a private Member. The difference in the two cases is that any Member other than a Minister desiring to introduce a Bill has to give notice of his intention and to ask for leave of the House to introduce which is, however, rarely opposed. If a Bill has been published in the official gazette before its introduction, no motion for leave to introduce the Bill is necessary. Unless published earlier, the Bill is published in the official gazette as soon as may be after it has been introduced.

Legislative

Procedure:

I. Ordinary Bills.

2. *Motions after introduction.* After a Bill has been introduced or on some subsequent occasion, the Member in charge of the Bill may make one of the following motions in regards to the Bill, *viz.*—

- (a) That it be taken into consideration.
- (b) That it be referred to a Select Committee.
- (c) That it be referred to a Joint Committee of the House with the concurrence of the other House.
- (d) That it be circulated for the purpose of eliciting public opinion thereon.

On the day on which any of the aforesaid motions is made or on any subsequent date to which the discussion is postponed, the principles of the Bill and its general provisions may be discussed. Amendments to the Bill and clause by clause consideration of the provisions of the Bill take place when the motion that the Bill be taken into consideration is carried.

3. *Report by Select Committee.* It has already been stated that after introduction of the Bill the Member in charge or any other Member by way of an amendment may move that the Bill be referred to a Select Committee. When such a motion is carried, a Select Committee of the House considers the provisions of the Bill (but not the principles underlying the Bill which had, in fact, been accepted by the House when the Bill was referred to the Select Committee). After the Select Committee has considered the Bill, it submits its report to the House and after the report is received, a motion that the Bill as returned by the Select Committee be taken into consideration lies. When such a motion is carried, the clauses of the Bill are open to consideration and amendments are admissible.

4. *Passing of the Bill in the House where it was introduced.* When a motion that the Bill be taken into consideration has been carried and no amendment of the Bill has been made or after the amendments are over, the Member in charge may move that the Bill be passed. This stage may be compared to the third reading of a Bill in the House of Commons. After the motion that the Bill may be passed is carried,¹³ the Bill is taken as passed so far as that House is concerned.

5. *Passage in the other House.* When a Bill is passed in one House, it is transmitted to the other House. When the Bill is received in the other House it undergoes all the stages as in the originating House subsequent to its introduction. The House which receives the Bill from another House can, therefore, take either of the following courses:

(i) It may reject the Bill altogether. In such a case the provisions of Art. 108(1)(a) as to joint sitting may be applied by the President.

(ii) It may pass the Bill with amendments. In this case, the Bill will be returned to the originating House. If the House which originated the Bill accepts the Bill as amended by the other House, it will be presented to the President for his assent [Art. 111]. If however the originating House does not agree to the amendments made by the other House and there is final

disagreement as to the amendments between the two Houses, the President may summon a joint sitting to resolve the deadlock [Art. 108(1)(b)].

(iii) It may take no action on the Bill, *i.e.*, keep it lying on its Table. In such a case if more than six months elapse from the date of the reception of the Bill, the President may summon a joint sitting [Art. 108(1)(c)].

6. *President's Assent.* When a Bill has been passed by both Houses of Parliament either singly or at a joint sitting as provided in Art. 108, the Bill is presented to the President for his assent. If the President withholds his assent, there is an end to the Bill. If the President gives his assent, the Bill becomes an Act from the date of his assent. Instead of either refusing assent or giving assent, the President may return the Bill for reconsideration of the Houses with a message requesting them to reconsider it. If, however, the Houses pass the Bill again with or without amendments and the Bill is presented to the President for his assent after such reconsideration, the President shall have no power to withhold his assent from the Bill.

II. Money Bills.

A Bill is deemed to be a 'Money Bill' if it contains only provisions dealing with all or any of the following matters:

(a) the imposition, abolition, remission, alteration or regulation of any tax; (b) the regulation of the borrowing of money by the Government; (c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such fund; (d) the appropriation of moneys out of the Consolidated Fund of India; (e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure; (f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or (g) any matter incidental to any of the matters specified in sub-clauses (a) to (f) [Art. 110].

But a Bill shall not be deemed to be a Money Bill by reason only that it provides for imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final. This means that the nature of a Bill which is certified by the Speaker as a Money Bill shall not be open to question either in a Court of law or in the either House or even by the President.

When a Bill is transmitted to the Council of States or is presented for the assent of the President, it shall bear the endorsement of the Speaker that it is a Money Bill. As pointed out earlier, this is one of the special powers of the Speaker.

The following is the procedure for the passing of Money Bills in Parliament:

A Money Bill shall not be introduced in the Council of States.

After a Money Bill has been passed by the House of the People, it shall be transmitted (with the Speaker's certificate that it is a Money Bill) to the Council of States for its recommendations. The Council of States cannot reject a Money Bill nor amend it by virtue of its own powers. It must, within a period of fourteen days from the date of receipt of the Bill, return the Bill to the House of the People which may thereupon either accept or reject all or any of the recommendations of the Council of States.

If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People.

If the House of the People does not accept any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it is passed by the House of the People without any of the amendments recommended by the Council of States.

If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People [Art. 109].

Generally speaking, a Financial Bill may be said to be any Bill which relates to revenue or expenditure. But it is in a technical sense that the expression is used in the Constitution.

Money Bill and Financial Bill.

I. The definition of a 'Money Bill' is given in Art. 110 and no Bill is a Money Bill unless it satisfies the requirements of this Article. It lays down that a Bill is a Money Bill if it contains *only* provisions dealing with all or any of the six matters specified in that Article or matters incidental thereto. These six specified matters have already been stated [See under 'Money Bills', *ante*].

On the question whether any Bill comes under any of the sub-clauses of Art. 110, the decision of the Speaker of the House of the People is final and his certificate that a particular Bill is a Money Bill is not liable to be questioned. Shortly speaking, thus, only those Financial Bills are Money Bills which bear the certificate of the Speaker as such.

II. Financial Bills which do not receive the Speaker's certificate are of two classes. These are dealt with in Art. 117 of the Constitution—

(i) To the first class belongs a Bill which contains any of the matters specified in Art. 110 but does not consist *solely* of those matters, for example, a Bill which contains a taxation clause, but does not deal solely with taxation [Art. 117(1)].

(ii) Any ordinary Bill which contains provisions involving expenditure from the Consolidated Fund is a Financial Bill of the second class [Art. 117(3)].

III. The incidents of these three different classes of Bills are as follows—

(i) A Money Bill cannot be introduced in the Council of States nor can it be introduced except on the recommendation of the President. Again, the Council of States has no power to amend or reject such a Bill. It can only recommend amendments to the House of the People.

(ii) A Financial Bill of the first class, that is to say, a Bill which contains any of the matters specified in Art. 110 but does not exclusively deal with such matters, has two features in common with a Money Bill, *viz.*, that it cannot be introduced in the Council of States and also cannot be introduced except on the recommendation of the President. But not being a Money Bill, the Council of States has the same power to reject or amend such a Financial Bill as it has in the case of non-Financial Bills subject to the limitation that an amendment other than for reduction or abolition of a tax cannot be moved in either House without the President's recommendation. Such a Bill has to be passed in the Council of States through three readings like ordinary Bills and in case of a final disagreement between the two Houses over such a Bill, the provision for joint sitting in Art. 108 is attracted. Only Money Bills are excepted out of the provisions relating to a joint sitting [Art. 108(1)].

(iii) A Bill which merely involves expenditure and does not include any of the matters specified in Art. 110, is an ordinary Bill and may be initiated in either House and the Council of States has full power to reject or amend it. But it has only *one special incident* in view of the financial provision (*i.e.*, provision involving expenditure contained in it) *viz.*, that it must not be *passed* in either House unless the President has recommended the consideration of the Bill. In other words, the President's recommendation is not a condition precedent to its introduction as in the case of Money Bills and other Financial Bills of the first class but in this case it will be sufficient if the President's recommendation is received before the Bill is *considered*. Without such recommendation, however, the consideration of such Bill cannot take place [Art. 117(3)].

But for this special incident, a Bill which merely involves expenditure is governed by the same procedure as an ordinary Bill, including the provision of a joint sitting in case of disagreement between the two Houses.

It has already been made clear that any Bill, *other than a Money Bill*, can become a law only if it is agreed to by both the Houses, with or without amendments. A machinery should then exist, for resolving a deadlock between the two Houses if they fail to agree either as to the provisions of the Bill as introduced or as to the amendments that may have been proposed by either House.

(A) As regards Money Bills, the question does *not* arise, since the House of the People has the final power of passing it, the other House having the power only to make recommendation for the acceptance of the House of the People. In case of disagreement over a Money Bill, thus, the

lower House has the plenary power to override the wishes of the upper Houses, *i.e.*, the Council of States.

(B) As regards all other Bills (including 'Financial Bills'), the machinery provided by the Constitution for resolving a disagreement between the two Houses of Parliament is a joint sitting of the two Houses [Art. 108].

The President may notify to the Houses his intention to summon them for a joint sitting in case of disagreement arising between the two Houses in any of the following ways:—

If, after a Bill has been passed by one House and transmitted to the other Houses—

- (a) the Bill is rejected by the other House; or
- (b) the Houses have finally disagreed as to the amendments to be made in the Bill; or
- (c) more than six months have elapsed from the date of the reception of the Bill by the other House without the Bill being passed by it.

No such notification can be made by the President if the Bill has already lapsed by the dissolution of the House of the People; but once the President has notified his intention to hold a joint sitting, the subsequent dissolution of the House of the People cannot stand in the way of the joint sitting being held.

As stated earlier, the Speaker will preside at the joint sitting; in the absence of the Speaker, such person as is determined by the Rules of Procedure made by the President (in consultation with the Chairman of Council of States and the Speaker of the House of People) shall preside [Art. 118(4)]. The Rules, so made, provide that

Procedure at Joint sitting. "During the absence of the Speaker from any joint sitting, the Deputy Speaker of the House or, if he is also absent, the Deputy Chairman of the Council or, if he is also absent, such other person as may be determined by the Members present at the sitting, shall preside."

There are restrictions on the amendments to the Bill which may be proposed at the joint sitting:

(a) If, after its passage in one House, the Bill has been rejected or has not been returned by the other House, only such amendments may be proposed at the joint sitting as are made necessary by the delay in the passage of the Bill.

(b) If the deadlock has been caused because the other House has proposed amendments to which the originating House cannot agree, then (i) amendments necessary owing to the delay in the passage of the Bill, as well as (ii) other amendments as are relevant to the matters with respect to which the House have disagreed, may be proposed at the joint sitting.

If at the joint sitting of the two Houses the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the *total number* of members of both Houses *present and voting*, it shall be deemed for the purposes of this Constitution to have been passed by both the Houses.

It is to be carefully noted that the procedure for joint sitting, as prescribed by Art. 108, is confined to Bills for ordinary legislation and does *not* extend to a Bill for amendment of the Constitution, which is governed by Art. 368(2), and must, therefore, be passed by each House, separately, by the special majority laid down. That is why the 43rd Amendment Bill, introduced in the *Lok Sabha* in April 1977, could not overcome the apprehended resistance in the *Rajya Sabha*, by resorting to a joint sitting, as carelessly suggested in some newspaper articles. The 45th Amendment Bill suffered mutilation in the *Rajya Sabha*, for the same reason.

Joint sitting cannot be resorted to, for passing Constitution Amending Bill.

At the beginning of every financial year, the President shall, in respect of the financial year, cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year. This is known as the "annual financial statement" (*i.e.*, the 'Budget') [Art. 112]. It also states the ways and means of meeting the estimated expenditure.

Financial legislation in Parliament.

In conformity with the usual Parliamentary practice in the United Kingdom, the Budget not only gives the estimates for the ensuing year but offers an opportunity to the Government to review and explain its financial and economic policy and programme to the Legislature to discuss and criticise it. The Annual Financial Statement in *our* Parliament thus contains, apart from the estimates of expenditure, the ways and means to raise the revenue,—

Policy Statement in the Budget.

(a) An analysis of the actual receipts and expenditures of the closing year, and the causes of any surplus or deficit in relation to such year;

(b) An explanation of the economic policy and spending programme of the Government in the coming year and the prospects of revenue.

The estimates of expenditure embodied in the annual financial statement shall show separately—(a) the sums required to meet expenditure described by this Constitution as expenditure *charged upon* the Consolidated Fund of India; and (b) the sums required to meet other expenditure proposed to be made from the Consolidated Fund of India.

Votable and non-votable Expenditure.

(a) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of India shall *not* be submitted to the vote of Parliament but each House is competent to discuss any of these estimates.

(b) So much of the estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People, and that House shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein. No demand for a grant shall however be made except on the recommendation of the President [Art. 113].

In practice, the presentation of the Annual Financial Statement is followed by a general discussion in both the Houses of Parliament. The estimates of expenditure, *other than those which are charged*, are then placed before the House of the People in the form of 'demands for grants'.

No money can be withdrawn from the Consolidated Fund except under an Appropriation Act, passed as follows:

As soon as may be after the demands for grants have been voted by the House of the People, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of India of all moneys required to meet—

(a) the grants so made by the House of the People; and (b) the expenditure charged on the Consolidated Fund of India.

This Bill will then be passed as a Money Bill, subject to this condition that no amendment shall be proposed to any such Bill in either House of Parliament which will have the effect of varying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund [Art. 114].

The following expenditure shall be expenditure charged on the Consolidated Fund of India [Art. 112(3)]—

(a) the emoluments and allowances of the President and other expenditure relating to his office; (b) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People; (c) debt charges for which the Government of India is liable; (d) (i) the salaries, allowances and pensions payable to or in respect of Judges of the Supreme Court; (ii) the pensions payable to or in respect of Judges of the Federal Court; (iii) the pensions payable to or in respect of Judges of any High Court; (e) the salary, allowances and pension payable to or in respect of the Comptroller and Auditor-General of India; (f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal; (g) any other expenditure declared by this Constitution or by Parliament by law to be so charged.

As has been already explained, financial business in Parliament starts with the presenting of the Annual Financial Statement. This Statement is caused to be laid by the President before *both* Houses of Parliament [Art. 112]. After the Annual Financial Statement is presented, there is a general discussion of the Statement as a whole in *either* House. This discussion is to be a general discussion relating to a policy involving a review and criticism of the administration and a valuation of the grievances of the people. No motion is moved at this stage nor is the Budget submitted to vote.

(b) The Council of States shall have *no further business* with the Annual Financial Statement beyond the above general discussion. The voting of the grants, that is, of the demands for expenditure made by Government, is an

Expenditure charged on the Consolidated Fund of India.

Relative parts played by the two Houses in financial legislation.

exclusive business of the House of the People. In the House of the People, after the general discussion is over, estimates are submitted in the form of demands for grants on the particular heads and it is followed by a vote of the House on each of the heads [Art. 113(2)].

(c) After the grants are voted by the House of the People, the grants so made by the House of the People as well as the expenditure charged on the Consolidated Fund of India are incorporated in an Appropriation Bill. It provides the legal authority for the withdrawal of these sums from the Consolidated Fund of India.

Similarly, the taxing proposals of the budget are embodied in another Bill known as the Annual Finance Bill.

Both these Bills being Money Bills, the special procedure relating to Money Bills shall have to be followed. It means that they can be introduced *only in the House of the People* and after each Bill is passed by the House of the People, it shall be transmitted to the Council of States which shall have the power only to make *recommendations* to the House of the People within a period of 14 days but no power of amending or rejecting the Bill. It shall lie at the hands of the House of the People to accept or reject the recommendations of the Council of States. In either case, the Bill will be deemed to be passed as soon as the House of the People decides whether it would accept or reject any of the recommendations of the Council of States and thereafter the Bill becomes law on receiving the assent of the President.

The financial system consists of two branches—revenue and expenditure.

(i) As regards revenue, it is expressly laid down by our Constitution [Art. 265] that no tax shall be levied or collected except by authority of law. The result is that the Executive cannot impose any tax without legislative sanction. If any tax is imposed without legislative authority, the aggrieved person can obtain his relief from the courts of law.

**Parliament's
control over the
Financial System.**

(ii) As regards expenditure, the pivot of parliamentary control is the Consolidated Fund of India. This is the reservoir into which all the revenues received by the Government of India as well as all loans raised by it are paid and the Constitution provides that no moneys shall be appropriated out of the Consolidated Fund of India except in accordance with law [Art. 266(3)]. This law means an Act of Appropriation passed in conformity with Art. 114. Whether the expenditure is charged on the Consolidated Fund of India or it is an amount voted by the House of the People, no money can be issued out of the Consolidated Fund of India unless the expenditure is authorised by an Appropriation Act [Art. 114(3)]. It follows, accordingly, that the executive cannot spend the public revenue without parliamentary sanction.

While an Act of Appropriation ensures that there cannot be any expenditure of the public revenues without the sanction of Parliament, Parliament's control over the expenditure cannot be complete unless it is able to ensure economy in the volume of expenditure. On this point, however, a reconciliation has to be made between two conflicting principles,

namely, the need for parliamentary control and the responsibility of the Government in power for the administration and its policies.

The Government has the sole initiative in formulating its policies and in presenting its demands for carrying out those policies. Parliament can hardly refuse such demands or make drastic cuts in such demands without reflecting on the policy and responsibility of the Government in power. Nor is it expedient to suggest economies in different items of the expenditure proposed by the Government when the demands are presented to the House for its vote, in view of the shortage of time at its disposal. The scrutiny of the expenditure proposed by the Government is, therefore, made by the House in the informal atmosphere of a Committee, known as the Committee on Estimates. After the Annual Financial Statement is presented before the House of the People, this Committee of the House, annually constituted, examines the estimates, in order to:

(a) report to the House what economies, improvements, in organisation, efficiency or administrative reform, consistent with the policy underlying the estimates, may be effected;

(b) suggest alternative policies in order to bring efficiency and economy in administration;

(c) examine whether the money is well laid out within the limits of the policy implied in the estimates;

(d) suggest the form in which estimates are to be presented to Parliament.

Though the report of the Estimates Committee is not debated in the House, the fact that it carries on its examination throughout the year and places its views before the members of the House as a whole exerts a salutary influence in checking Governmental extravagance in making demands in the coming year, and in moulding its policies without friction in the House.

The third factor to be considered is the system of parliamentary control to ensure that the expenditure sanctioned by Parliament has actually been spent in terms of the law of Parliament, that is, the Appropriation Act or Acts. The office of the Comptroller and Auditor-General is the fundamental agency which helps Parliament in this work. The Comptroller and Auditor-General is the guardian of the public purse and it is his function to see that not a paisa is spent without the authority of Parliament. It is the business of the Comptroller and Auditor-General to audit the accounts of the Union and to satisfy himself that the expenditure incurred has been sanctioned by Parliament and that it has taken place in conformity with the rules sanctioned by Parliament. The Comptroller and Auditor-General then submits his report of audit relating to the accounts of the Union to the President who has to lay it before each House of Parliament.

After the report of the Comptroller and Auditor-General is laid before the Parliament, it is examined by the Public Accounts Committee. Though this is a Committee of the House of the People (having 15 members from that House),

**Committee on
Public Accounts.**

by an agreement between the two Houses, seven members of the Council of States are also associated with this Committee, in order to strengthen it. The Chairman of the Committee is generally a member of the Lok Sabha who is not a member of the ruling party.

In scrutinising the Appropriation Accounts of the Government of India and the report of the Comptroller and Auditor-General thereon it shall be the duty of the Committee on Public Accounts to satisfy itself—

(a) that the moneys shown in the accounts as having been disbursed were legally available for and applicable to the service or purpose to which they have applied or charged;

(b) that the expenditure conforms to the authority which governs it; and

(c) that every re-appropriation has been made in accordance with the provisions made in this behalf under rules framed by competent authority.

This Committee, in short, scrutinises the report of the Comptroller and Auditor-General in details and then submits its report to the House of the People so that the irregularities noticed by it may be discussed by Parliament and effective steps taken.

All moneys received by or on behalf of the Government of India will be credited to either of two funds—the Consolidated Fund of India, or the 'public account' of India. Thus,

(a) Subject to the assignment of certain taxes to the States, all *revenues* received by the Government of India, all *loans* raised by the Government and all moneys received by that Government in *repayment of loans* shall form one consolidated fund to be called "the Consolidated Fund of India" [Art. 266(1)].

(b) All other public moneys received by or on behalf of the Government of India shall be credited to the Public Account of India [Art. 266(2)], e.g., moneys received by an officer or Court in connection with affairs of the Union [Art. 284].

No money out of the Consolidated Fund of India (or of a State) shall be appropriated except in accordance with a law of Appropriation. The procedure for the passing of an Appropriation Act has been already noted.

(c) Art. 267 of the Constitution empowers Parliament and the Legislature of a State to create a 'Contingency Fund' for India or for a State, as the case may be. The 'Contingency Fund' for India has been constituted by the Contingency Fund of India Act, 1950. The Fund will be at the disposal of the executive to enable advances to be made, from time to time, for the purpose of meeting *unforeseen expenditure*, pending authorisation of such expenditure by the Legislature by supplementary, additional or excess grants. The amount of the Fund is subject to be regulated by the appropriate Legislature.

The custody of the Consolidated Fund of India and the Contingency Fund of India, the payment of moneys into such Funds, withdrawal of moneys therefrom, custody of public moneys other than those credited to such Funds, their payment into the public accounts of India and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law by Parliament, and, until provision in that behalf is so made shall be regulated by rules made by the President [Art. 283].

Though *our* Council of States does not occupy as important a place in the constitutional system as the American Senate, its position is not so inferior as that of the House of Lords as it stands to-day. *Barring the specific provisions with respect to which the lower House has special functions, e.g., with respect to money Bills (see below), the Constitution proceeds on a theory of equality of status of the two Houses.*

This equality of status was explained by the Prime Minister Pandit Nehru himself,¹⁴ in these words—

"Under our Constitution Parliament consists of two Houses, each functioning in the allotted sphere laid down in the Constitution. We derive authority from that Constitution. Sometimes we refer back to the practice and conventions prevailing in the Houses of Parliament of the United Kingdom and even refer erroneously to an Upper House and a Lower House. I do not think that is correct. Nor is it helpful always to refer back to the procedure of the British Parliament which has grown up in the course of several hundred years and as a result of conflicts originally with the authority of the King and later between the Commons and the Lords. We have no such history behind us, though in making our Constitution we have profited by the experience of others.

Our guide must, therefore, be our own Constitution which has clearly specified the functions of the Council of States and the House of the People. To call either of these Houses an Upper House or a Lower House is not correct. Each House has full authority to regulate its own procedure within the limits of the Constitution. Neither House by itself, constitutes Parliament. It is the two Houses together that are the Parliament of India. That Constitution treats the two Houses equally, except in certain financial matters which are to be the sole purview of the House of the People. In regard to what these are, the Speaker is the final authority."

The Constitution also makes no distinction between the two Houses in the matter of selection of Ministers. In fact, during all these years, there have been several Cabinet Ministers from amongst the members of the Council of States, such as the Ministers for Home Affairs, Law, Railway and Transport, Production, Works, Housing and Supply, etc. But the responsibility of such member, as Minister, is to the House of the People [Art. 75(3)].

The exceptional provisions which impose limitations upon the powers of the Council of States, as compared with the House of the People are:

(1) A Money Bill shall not be introduced in the Council. Even a Bill having like financial provisions cannot be introduced in the Council.

(2) The Council has no power to reject or amend a Money Bill. The only power it has with respect to Money Bills is to suggest 'recommendations' which may or may not be accepted by the House of the People, and

the Bill shall be deemed to have been passed by both Houses of Parliament, without the concurrence of the Council, if the Council does not return the Bill within 14 days of its receipt or makes recommendations which are not accepted by the House.

(3) The Speaker of the House has got the sole and final power deciding whether a Bill is a Money Bill.

(4) Though the Council has the power to discuss, it has no power to vote money for the public expenditure and demands for grants are not submitted for the vote of the Council.

(5) The Council of Ministers is responsible to the House of the People and not to the Council [Art. 75(3)].

(6) Apart from this, the Council suffers, by reason of its numerical minority, in case a joint session is summoned by the President to resolve a deadlock between the two Houses [Art. 108(4)].

On the other hand, the Council of States has certain special powers which the other House does not possess and this certainly adds to the prestige of the Council:

(a) Art. 249 provides for temporary Union legislation with respect to a matter in the State List, if it is necessary in the national interest, but in this matter a special role has been assigned by the Constitution to the Council. Parliament can assume such legislative power with respect to a State subject only if the Council of States declares, by a resolution supported by not less than two-thirds of its members present and voting, that it is necessary or expedient in the national interest that Parliament should make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

(b) Similarly, under Art. 312 of the Constitution, Parliament is empowered to make laws providing for the creation of one or more All-India Services common to the Union and the States, if the Council of States has declared by a resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do.

In both the above matters, the Constitution assigns a special position to the Council because of its federal character and of the fact that a resolution passed by two-thirds of its members would virtually signify the consent of the States.

Notwithstanding these special functions and the theory of equality propounded by Pandit Nehru, it is not possible for the Council of States, by reason of its very composition, to attain a status of equality with the House of the People. Even though there is no provision in the Constitution, corresponding to Art. 169 relating to the upper Chamber in the States, for the abolition of the upper Chamber in Parliament, there has been, since the inauguration of the Constitution, a feeling in the House of the People that the Council serves no useful purpose and is nothing but a 'device to flout the voice of the People',¹⁴ which led even to the motion of a Private Member's Resolution for the abolition of the Council. It was stayed for the

time being only at the intervention of the then Prime Minister Pandit Nehru on the ground that the working of the Council was yet too short to adjudge its usefulness.¹⁴

(c) The most extreme instance of its importance, during its career, has recently been shown by the Council of States in the matter of constitutional amendment. Under Art. 368(2), a Bill for the amendment of the Constitution, in order to be law, must be passed in *each* House of Parliament by the specified special majority, and the device of joint sitting under Art. 108 is *not* available to remove the opposition by the *Rajya Sabha* in respect of a Bill for amendment of the Constitution. While the Janata Party had an overwhelming majority in the *Lok Sabha*, the Congress [(O) and (I) together] had an imposing majority in the *Rajya Sabha* so that there was no chance of the 43rd Amendment Bill, 1977, being passed by a two-thirds majority in the *Rajya Sabha*, as its composition existed in April, 1977. The progress of the 43rd Amendment Bill had, therefore, to be halted after its introduction in the *Lok Sabha*, since the Congress Party declared its intention to oppose the consideration of this Bill. The opposition of the two Congress Parties also truncated the 45th Constitution Amendment Bill, while in the *Rajya Sabha*.

The Constitution (64th Amendment) Bill, 1989 and the Constitution (65th Amendment) Bill, 1989 could not secure the requisite majority in the *Rajya Sabha* and hence could not be passed (13-10-1989), even though they had earlier been duly passed by the *Lok Sabha*.

REFERENCES

1. The first general election under the Constitution took place in the winter of 1951-52. The first Lok Sabha, which held its first sitting on 13-5-1952 was dissolved by the President on 4-4-1957.

The second general election was held in the winter of 1956-57, and the second Lok Sabha held its first sitting on 10-5-1957.

The third general election was held in February, 1962, and the third Lok Sabha had its first sitting on 16-4-1962.

The fourth general election was held in February, 1967, and the fourth Lok Sabha had its first sitting on 16-3-1967 and was prematurely dissolved on 27-12-1970.

The fifth general election, which was thus a mid-term election, was held in March, 1971, and the fifth Lok Sabha had its first sitting on March 19, 1971.

The sixth general election was held in March 1977, after the dissolution of the Lok Sabha on 18th January, 1977, during its second extended term. Excepting in Kerala, there was no simultaneous election to the Legislative Assemblies of the States. The sixth Lok Sabha had its first sitting on 25-3-1977.

The seventh general election was held in January, 1980 and the first sitting was on 21-1-1980.

The eighth general election was held in December, 1984 and the first sitting was on 15-1-1985.

The ninth general election was held in November, 1989 and the ninth Lok Sabha had its first sitting on 18th December 1989.

The tenth general election was held on 20th May, 12th and 15th June, 1991 and the tenth Lok Sabha had its first sitting on 20-6-1991.

The eleventh general election was held in May 1996 and the Eleventh Lok Sabha had its first sitting on 22-5-1996.

The twelfth general election was held in February, 1998 and the twelfth Lok Sabha had its first sitting on 23-3-1998.

The thirteenth general election was held in September and October, 1999 and the thirteenth Lok Sabha had its first sitting on 20-10-1999.

The fourteenth general election was held in April and May, 2004 and the fourteenth Lok Sabha had its first sitting on 02-06-2004.

The Rajya Sabha was first constituted on 3-4-1952 and it held its first sitting on 13-5-1952, and the retirement of the first batch of the members of the Rajya Sabha took place on 2-4-1954.

2. Sections 27A, 27H of Representation of the People Act, 1950.
3. The actual number of members of the two Houses now is given in Table VIII.
4. As amended by the Constitution (31st Amendment) Act, 1973, and by the Goa, Daman and Diu Reorganisation Act, 1987 w.e.f. 30-5-1987.
5. As amended by the Constitution (61st Amendment) Act, 1988.
6. The Union Territories (Direct Election to the House of the People) Act, 1965.
7. VII C.A.D. 1262.
8. By the 42nd Amendment Act, 1976, the Indira Government, extended this term to 6 years but it has been restored to 5 years, by the 44th Amendment Act, 1978.
9. This power was used during the Emergency on the ground of internal disturbance (1975-77).
10. *Sharma v. Shri Krishna*, AIR 1959 S.C. 395.
11. Ref. under Art. 143, AIR 1965 S.C. 745 (764, 767).
12. May, *Parliamentary Practice*, 15th Ed., p. 109.
13. Except in the case of Bills for the amendment of the Constitution (Art. 368), all Bills and other questions before each House are passed or carried by a simple majority [Art. 100(1)].
14. Statement in the Rajya Sabha, dated 6-5-1953. Similar views were reiterated in the other House (H.P. Deb, 12-5-1953).