

CHAPTER - 1

Rajya Sabha: Evolution, Powers and Position

One of the issues which the Constituent Assembly had to consider was about having a second chamber for the Indian Parliament. The Assembly had before it not only various models of second chambers in the major Parliaments of the world, but also the working of the then existing Central Legislature set up under the Government of India Act, 1919. That Legislature consisted of two chambers, namely the Council of State with a membership of 60 and the Legislative Assembly with a membership of 145. The Council was presided over by a President appointed by the Governor-General and could continue for five years, unless earlier dissolved. As observed by the Indian Statutory Commission:

The electorate for the Council of State has been so framed as to give the Upper House a character distinct from that of the Legislative Assembly, and indeed the franchise is extremely restricted. Property qualifications have been pitched so high as to secure the representation of wealthy landowners and merchants; previous experience in a Central or Provincial Legislature, service in the chair of a Municipal Council, membership of a university Senate, and similar tests of personal standing and experience in affairs qualify for a vote. Electors are for the most part grouped in communal constituencies...Women are not entitled to vote at elections to the Council of State, or to offer themselves for election, though it is in the power of the Council of State to pass a resolution which would remove both these barriers.¹

The Government of India Act, 1935, envisaged a bicameral federal legislature, the two Houses to be known as the Council of State and the House of Assembly (or the Federal Assembly). The Council of State was to have 260 members—156 representatives of the British India and 104 representatives of the Indian States. The Federal Assembly was to consist of 375 members—250 representatives of the British India and 125 representatives of the Indian States. The Council of State was to be a permanent body not subject to dissolution, but as nearly as may be one-third of its members were to retire in every third year. The life of the Assembly was for five years.² The federal scheme envisaged under the Government of India Act, 1935, however, never came into operation. Nonetheless, the scheme or machinery of Government provided in the two enactments could not furnish a satisfactory basis for devising independent India's legislature under the new Constitution.³

The Union Constitution Committee, set up by the Constituent Assembly under the chairmanship of Shri Jawaharlal Nehru, in its report presented to the

Assembly on 21 July 1947, made the following proposals in respect of the second chamber at the Centre:

- (i) The two Chambers should be named the Council of States and the House of the People; these names were indicative of the manner in which each Chamber would be constituted; Parliament of the Union would be designated "National Assembly".
- (ii) The Council of States should have 250 members.
- (iii) The units should have representation in the Council of States on the basis of one member for every whole million population upto five million, plus one member for every two additional million, subject to a maximum of twenty for a unit. This formula was recommended by a sub-committee consisting of Dr. B.R. Ambedkar, Shri Gopaldaswamy Ayyangar, Shri K.M. Munshi and Sardar K.M. Panikkar.
- (iv) The representatives should be elected by the lower Houses of the legislatures of the units except for ten members to be nominated by the President in consultation with universities and scientific bodies.
- (v) The Vice-President of India would be *ex officio* Chairman of the Council; if a member was elected Vice-President he would vacate his seat.
- (vi) The two Chambers would have equal powers, except in respect of Money Bills, and deadlocks would be resolved by joint meetings.
- (vii) Money Bills would originate in the House of the People and the power of the Council of States in respect thereof would be limited to making suggestions for amendment which the House of the People could accept or reject.
- (viii) The Council of States would not be liable to dissolution, one-third of its members retiring every two years.⁴

The Report of the Committee was discussed in the Constituent Assembly on 28 July 1947. During the discussion, divergent views were expressed in regard to having a second chamber. For instance, a member was of the opinion that a second chamber was not essential.⁵ Another member was of the view that experience in the last so many years had been that the Upper House acted as a "clog in the wheel of progress" and so it was not wise to continue the same thing in the Constitution.⁶ On the other hand a member felt that a second chamber would not only be an advantage but an absolute necessity. It would, in his opinion, introduce an element of sobriety and second thought and without a second chamber it would be difficult to fit in the representatives of the States in the scheme of things.⁷ Shri Gopaldaswamy Ayyangar replying to the debate observed:

The need for a second chamber has been felt practically all over the world wherever there are federations of any importance. After all, the question for us to consider is whether it performs any useful function. The most that we expect the second chamber to do is perhaps to hold dignified debates on important issues and to delay legislation which might be the outcome of passions of the moment until the passions have subsided and calm consideration could be bestowed on the measures which will be before the Legislature; and we shall take care to provide in the Constitution that whenever on any important matter, particularly matters relating to finance, there is conflict between the House of the People and the Council of States, it is the view of the House of the People that shall prevail. Therefore, what we really achieve by the existence of this second chamber is only an instrument by which we delay action which might be hastily conceived, and we also give an opportunity, perhaps, to seasoned people who may not be in the thickest of the political fray, but who might be willing to participate in the debate with an amount of learning and importance which we do not ordinarily associate with a House of the People. That is all that is proposed in regard to this second chamber. I think, on the whole, the balance of consideration is in favour of having such a chamber and taking care to see that it does not prove a clog either to legislation or administration.⁸

The Assembly adopted the Report with a few changes. One change proposed was to omit the name "National Assembly" as, it was felt, it was not necessary to have too many names.⁹ Another change was proposed by Shri Gopalaswamy Ayyangar in the form of a somewhat lengthy amendment by which it was provided that the membership of the Council of States should not exceed one-half of the membership of the House of the People. Of this, twenty-five members were to be elected by functional constituencies or panels on the lines of the Irish Constitution of 1937, as the original proposal of nomination from universities and scientific bodies (recommended by the Union Constitution Committee) appeared to him too narrow in scope. It was desirable, he felt, that persons not belonging to these bodies deserved, on account of their connection with important aspects of the nation's activities, to be in the Council of States. The essential character of the Council of States as originally planned (as an instrument for the effective expression at the parliamentary level from the point of view of the units) would nevertheless continue to remain and an overwhelming majority of its members would be returned by units more or less on territorial basis, by the elected members of the legislature of the unit and, where such a legislature consisted of two Houses, by the elected members of the Lower House. The Union Constitution Committee was, however, authorised to further consider these matters and directed to submit its recommendations to the President of the Assembly.¹⁰ That Committee accordingly reconsidered these details. Among other things, the Committee while sticking to its original population formula for representation of units, fixed the ceiling at twenty-five for a unit instead of twenty as originally recommended.

Accordingly, the First Draft of the Constitution (October 1947) provided for a Council of States with not more than half the membership of the House of the People. Twenty-five members were to be chosen from five functional panels to be drawn before first general election and thereafter, before each biennial election. These panels would contain the names of persons with knowledge or practical experience in (a) national language and culture, literature, art, education and such professional interests as might be defined by an Act of the Federal Parliament; (b) agriculture and allied interests; (c) labour; (d) industry and commerce including banking, finance, accountancy, engineering and architecture; and (e) public administration and social services. The Fourth Schedule to the Draft Constitution set out detailed provisions as to drawing up of the panels. The actual election to the Council of States from these panels was to be made by the members of the House of the People in accordance with the system of proportional representation by means of the single transferable vote. The rest of the members of the Council were to be chosen by the members of the Lower House of the units. Allocation of seats to various provinces was provided for in the Fourth Schedule.

Other provisions contained in the Draft Constitution so far as the Council of States was concerned were: the Council of States would be a permanent body not subject to dissolution with one-third of its members retiring every two years, the President was given power to summon each House at least once every year, the Vice-President of India was to be the Chairman of the Council of States, the Deputy Chairman was to be elected to perform the duties of the Chairman when the latter was absent or was performing the duties of the President, prohibition of simultaneous membership of both Houses; disqualifications for membership, privileges and immunities and salaries and allowances of members. As regards legislative and financial procedure, etc. the Draft, *inter alia*, provided that no Bill could be submitted for the President's assent unless it had been passed in identical form by both Houses. Except in the case of Money Bills, both Houses enjoyed equal powers; and differences between them were to be settled by a majority vote in a joint sitting of the two Houses convened by the President. Money Bills were defined in the Draft and could originate only in the House of the People. The powers of the Council of States in respect of Money Bills were restricted to making suggestions for amendment. If these suggestions were not accepted by the House of the People, or if the Council of States did not return a Bill within thirty days with its suggestions for amendment, the Bill would be "deemed to have been passed by both Houses in the form in which it was passed by the House of the People" and submitted to the President for assent. The Council of States had no powers of voting of supplies or control over the expenditure from the Federal revenues.¹¹

The Drafting Committee considered these provisions in the Draft Constitution in detail and made some changes therein. Consequent on its decision that India was to be described as a Union of States (not a Federation) the name of the Legislature of the Union was changed from "Parliament of the Federation"

to "Parliament of the Union" and in other articles it was simply referred to as "Parliament". In so far as the Council of States was concerned, while the Committee retained the Council's strength at 250, it deleted the provision regarding functional panels in the light of Irish experience and instead included a provision empowering the President to nominate to the Council of States fifteen members with experience or knowledge of (a) literature, art, science and education; (b) agriculture, fisheries and allied subjects; (c) engineering and architecture; and (d) public administration and social services.

The elected members of the Council of States were described as representatives of the States and were to be elected by the elected members of each Legislature, or where the State had a bicameral Legislature, by the elected members of the Lower House. Each House of Parliament should meet at least once every six months instead of once every year as earlier provided in the Draft. Comprehensive provision was made for disqualification of Members of Parliament. The Fourth Schedule was omitted and election matters were left to be regulated by Parliamentary enactments.¹²

The Constituent Assembly discussed these provisions at its sittings held on 3 and 4 January, 18-20 and 23 May and 8-9 June 1949. A number of amendments were tabled at the discussion stage. A member moved an amendment to delete the words 'Council of States' as he was of the view that there was no need to have a second chamber nor would it serve any useful purpose. He wanted the manner of constitution of the Council of States to be changed, as the creation of the Upper House by itself would have no influence on the House of the People.¹³ Opposing the amendment, Shri Ananthasayanam Ayyangar observed that another House was necessary where the genius of the people could have full play; whatever hasty legislation was passed by the Lower House, would be checkmated by the go-slow movement of the Upper House.¹⁴ Another amendment sought to do away with the provision relating to nominated members. It was contended by the mover of the amendment that the element of nomination, however, small, militated against "the symmetry of the constitution of our legislative bodies and it fundamentally marred the principle of election."¹⁵ Yet another amendment suggested that the States should be represented equally in the Council of States, *i.e.*, by the same number of delegates and each constituent State should elect five members by votes of adult citizens.¹⁶

Dr. Ambedkar moved some amendments. The number of nominated members, he proposed, should be reduced to twelve.¹⁷ His intention was that, while a total of fifteen members would be nominated by the President, twelve of these would be, in a simpler terminology, persons with knowledge or experience in letters, art, science, or the social services; as regards the other three, he moved another amendment on 18 May 1949 that the President could from time to time nominate not more than three persons to assist in connection with any particular Bill introduced or to be introduced in either House of Parliament. Such persons were to have a right to speak in either House or in committees or in

joint sessions but not to vote. On further consideration, however, he withdrew this amendment, leaving the number of nominated members at twelve¹⁸ [At the revision stage of the Constitution, the word 'letters' was substituted by the word 'literature']. Dr. Ambedkar also moved amendments proposing that the number 250 should be the maximum membership of the Council of States and not necessarily its actual strength, as proposed in the Draft Constitution; that the allocation of seats (other than nominated seats) among States should be incorporated in the Constitution itself in a separate Schedule (Schedule 3A which was presented to the Assembly on 17 October 1949 and was accepted without debate).¹⁹

To these provisions, a number of other amendments were moved. A member moved an amendment to fix the strength of the Council of States at 150. His view was that a large number of people did not serve any very useful purpose and the reduced number would not only serve the purpose but save money and time.²⁰ Yet another amendment sought to delete the nomination provision altogether; in its place functional representation was suggested. The concerned member observed, "If we authorise the President to nominate twelve persons, bitter allegations of favouritism and nepotism will be levelled against him and that would not be desirable."²¹ By his amendment another member wanted that the number of nominated members should bear a proportion to the actual number of members of the House, and so he suggested six per cent.²² Instead of saying that twelve members should be nominated by the President in the manner provided, an amendment suggested that it should be said that they be nominated from amongst categories of persons illustrated.²³ Another amendment suggested that such persons should have real knowledge of or actual devotion to history of ancient Indian philosophy and culture, art and science and social services towards reconstruction of 'introspective India.'²⁴ Another member sought to add philosophy, religion, law, journalism, commerce, industries as further categories of persons to choose nominations from, instead of restricting the choice of the President to only four categories and excluding the others.²⁵ A member moved an amendment to clarify that there should not be any distinction between the elected members and nominated members so far as the election of the representatives in the Council was concerned.²⁶

As regards the allocation of seats amongst States in accordance with a Schedule, a member suggested population as the basis while another member sought to incorporate a formula with population as its basis.²⁷ An amendment suggested equal representation for every unit with a maximum of three per unit,²⁸ and another wanted that steps should be taken to see that, as far as possible, every unit was represented in the Council.²⁹

A member suggested that where the legislature of the State had two Houses, the representatives of the States should be elected by the elected members of both the Houses; and the election should be in accordance with the system of proportional representation by means of the single transferable vote.³⁰ The Assembly approved the latter suggestion.³¹

Dr. Ambedkar moved a new article to provide that in order to be qualified for being chosen as a Member of Parliament, a person should be a citizen of India, not less than 25 years old in the case of the House of the People and 35 for the Council of States. In the latter case, however, the age requirement was reduced to 30 years on an amendment moved by Shrimati Durgabai. The article further provided that Parliament could prescribe by law other qualifications. The Assembly accepted the amendment.³² In the course of discussion on Draft article regarding summoning of Parliament an amendment was moved by a member that Parliament should be in continuous session. Another member moved an amendment providing for a minimum of three sessions every year instead of two.³³ Dr. Ambedkar was of the view that sessions of Parliament would be more frequent, since the Government was responsible to the people. In fact, he apprehended that sessions of Parliament would be so frequent and so lengthy that probably the members would themselves get tired of them. The reason was that the Government would be responsible not only for good administration but also for giving effect to legislative measures necessary for implementing the party programme. He, therefore, felt that the two sessions every year proposed by him were sufficient as the minimum. There was also an amendment that if the President defaulted in convening a session of either House for a period of three months, the Speaker or the Chairman, as the case may be, should have the power to do so. Dr. Ambedkar pointed out that this was impracticable. The business of the House was to be provided by the executive, and it would, therefore, serve no purpose merely to give to the presiding officer power to summon a meeting of the House without making proper provision for the business to be transacted.³⁴

Shri T.T. Krishnamachari moved a new article (now article 92) to provide that when the Council of States was discussing any resolution for the removal of the Vice-President (who was *ex officio* Chairman) or its Deputy Chairman, the functionary to whom the motion related would not be competent to preside over the sitting. This was accepted.³⁵ At the revision stage the Drafting Committee added another clause giving the right to speak (but not to vote) to the person against whom such a resolution was directed.

The period within which the Council of States should return a Money Bill to the House of the People which was thirty days originally proposed in the Draft Constitution was, on an amendment of Shri T.T. Krishnamachari, reduced to twenty-one days and on further amendment moved by him as well as Dr. Ambedkar, it was reduced to fourteen days.³⁶

Dr. Ambedkar moved a new article providing for a separate secretarial staff for each House of Parliament. He recalled that it was the practice in India for the executive Government to furnish secretarial help to the legislatures; and that a conflict in this matter arose in the late twenties between the President of the

Central Legislative Assembly, Shri Vithalbai Patel, and the Government of the day. As a result, a separate Secretariat under the control of the Presiding Officer was set up for that Assembly. But this practice was not adopted by the Provinces. Dr. Ambedkar thought that it was necessary to provide for this in the Constitution itself. The article got a general support and was adopted by the Assembly.³⁷

As a result of his discussions with eminent jurists and constitutional experts abroad, Shri B.N. Rau, the Constitutional Adviser, came to the conclusion that it was necessary to have a provision in the Constitution enabling the Centre to undertake legislation on matters falling in the exclusively provincial sphere, whenever such a course was called for in the national interest. Accordingly, he proposed that the Federal Parliament should have power to make laws for the whole or any part of the territories of the Federation with respect to any matter enumerated in the Provincial Legislative List, if the Council of States declared, by a resolution supported by not less than two-thirds of the members present and voting, that it was necessary or expedient in the national interest that the Federal Parliament should legislate with respect to that matter. It was further provided that a resolution so adopted might be revoked by a subsequent resolution passed by a similar majority by the Council of States. The object of the amendment, Shri B.N. Rau explained, was to remove a defect similar to the one which had been disclosed in the Canadian Constitution. The requirement of a special majority of the Council of States in the proposed provision was intended as a safeguard against unwarranted encroachment on the provincial sphere. Shri B.N. Rau's suggestion was accepted by the Drafting Committee in Draft article 226 with the omission of requirement of a two-thirds majority for the revocation of the earlier resolution.

The Special Committee (a body mostly consisting of certain members of the Union Constitution Committee, Union Powers Committee and Provincial Constitution Committee), however, recommended that such a resolution should not be moved in the Council of States "without prior consultation with the Governments of the States concerned", and that the period during which Parliament was to have this power should not exceed three years and further extensions for not more than three years at a time could be made by fresh resolutions passed by the Council of States in a like manner.

The Draft article was the most criticised provision in the Chapter on Legislative Relations. Some suggested omission of the article describing it as "anti-federal" in character and out of place in a federal system. It was also contended that if the article was retained, the provision of the Constitution relating to its amendment would lose all its significance. Shri B.N. Rau pointed out that the power conferred by the article could be exercised by the Centre only when the Council of States, which represented the units of the Union, had passed the requisite resolution by a two-thirds majority. Moreover, in view of the proposed amendment by the Drafting Committee, the Centre's power might be limited in

duration. Hence, the effect of the resolution would not necessarily be as far-reaching as an amendment of the Constitution. The Drafting Committee which reconsidered the Draft article felt that it was not necessary to dilute the provision by requirement of previous consultation with the States, as recommended by the Special Committee. The Drafting Committee, therefore, dispensed with that condition.³⁸

The Constituent Assembly considered articles relating to Legislative Relations in the Draft Constitution, on 13 June 1949. Dr. Ambedkar moved an amendment restricting the scope of the power under the Draft article to one year, the resolution could be extended for a further period of one year at a time by a subsequent resolution passed by the Council of States, in the same manner as the original resolution and the law made by Parliament pursuant to such a resolution would cease to have effect after the expiry of six months after the resolution ceased to be in force.³⁹ Although these amendments took away much of the sting of the originally proposed article,⁴⁰ nevertheless criticism of the provision persisted. Some members felt that the amendments considerably detracted from the usefulness of the provision for the purpose for which it was intended, and the process of authorising the Parliament to enact legislation on a State matter was sought to be made unduly cumbersome. Moreover, it was also contended that no major scheme could be undertaken by the Centre on the remote chance of securing a two-thirds majority vote in the Council of States every year. On the other hand some members continued to regard the article as objectionable and inconsistent with the concept of a federal distribution of powers. According to them the provision was unnecessary in view of two other proposed provisions of the Draft Constitution, namely, the one under which State Legislatures could always authorise Parliament to make laws on a State subject (Draft article 229) and the second, Parliament's own independent and unfettered power to legislate with respect to any matter in the State List if a Proclamation of Emergency was in operation (Draft article 227). Again, the proposed provision enabling Parliament to invade the State List in normal times without reference to the wishes of the State Legislatures, the members felt, was certainly a "mischievous" one.

Shri T.T. Krishnamachari dealt at length with the criticism against the article. He maintained that the article as proposed to be amended by Dr. Ambedkar, was a different article from the original one and would not be capable of abuse. The mischief, he said, if at all there was any, would be limited to a short period of one year; and this limitation would itself offer no temptation to the Centre to use the article to 'augment' its power; and, if it was used at all, it would be used for a valid and definitely useful purpose. He referred to the checks which the units could exercise through their representatives in the Council of States; there was enough scope for the States to tell them that such Central powers should not be renewed. Differentiating the provision of this article from the provision of Draft article 229 under which States could authorise Parliament to make laws on the State subject, he said that the latter article was intended

primarily to provide for coordinate action in matters in which Provinces themselves were interested; more often than not it would happen that only two Provinces would be interested, and so it was an enabling provision for coordinating legislation by the Centre. That apart, action under that article would necessarily involve much time while the object of the draft article (226) under consideration was to provide for situations where the Centre wanted urgent action to be taken on a State matter in circumstances when the emergency provisions need not and could not be invoked. At the end of the debate, the article, as amended, was voted to stand as part of the Constitution.⁴¹

Draft article 282-C related to the creation of All-India Services by Parliament by law if the Council of States passed the requisite resolution for the purpose by a two-thirds majority. The only criticism of this provision was that the decision to establish such services should be left with Parliament as a whole rather than the Council of States. Dr. Ambedkar, however, pointed out that the article was to some extent an invasion of the autonomy given to States to recruit their own services; obviously the only method of providing for authority to the Centre to take away the autonomy of the States was to secure the consent of two-thirds of the members of the Council of States which was set up as a body primarily to voice the opinion of the States and be the custodian of States' interests. The Council *exhypothesi* represented the States and its resolution would be tantamount to an authority given by the States. The Assembly adopted the article.⁴²

Thus emerged the basic provisions of the Constitution relating to the Council of States. At the revision stage of the Constitution, some changes were made in the Fourth Schedule which itself was amended from time to time as a consequence of the formation of new States and Union territories. The Constitution (Seventh Amendment) Act, 1956, made some amendments in article 80 consequent on the description of the units comprising the Indian Union as "States" and "Union territories". A separate chapter will describe how the composition of the Rajya Sabha has undergone changes from time to time taking the elected strength of the Rajya Sabha from 205 in 1949 when the Constitution was adopted to the present strength of 233 members. A notable change was made by announcements of the Presiding Officers of the two Houses in 1954. The nomenclatures of the Council of States and the House of the People were changed into their Indian equivalents, namely Rajya Sabha and Lok Sabha, respectively.⁴³

On 23 June 1971 an interesting point of order was raised in respect of the Indian nomenclatures of the Houses. The Bill regarding the Maintenance of Internal Security "as passed by the Lok Sabha" was listed for consideration. A member raised a point of order with reference to article 79 which spoke of the Council of States and the House of the People and not of the Rajya Sabha and the Lok Sabha and, therefore, according to the member, the term Lok Sabha used in the List of Business for that day was unconstitutional. The Deputy Chairman ruled out the point of order observing, *inter alia*, that from the very inception these two

terms—Lok Sabha and Rajya Sabha—had been in use and in all the documents these two terms appeared.⁴⁴

Bicameralism has always been a vexed problem evoking a sustaining and animated discussion amongst political philosophers and constitutional pundits. We have, on the one hand, the famous constitutionalist Abbe Sieyes, totally rejecting the concept of the second chamber observing that "if a second chamber dissents from the first it is mischievous; if it agrees, it's superfluous", on the other, we have Sir Henry Maine pleading that almost any kind of second chamber is better than none. As has been pointed out above, the Council of States was also no exception to this controversy during the discussion in the Constituent Assembly. Some members regarded the second chamber for Indian Parliament as unnecessary, while others viewed it as essential especially in the context of a federal structure. Eventually, however, the two chamber system at the union level became an integral part of our Constitution. Nonetheless, subsequently sporadic but unsuccessful attempts did take place in the Lok Sabha to seek abolition of the Rajya Sabha, which may be mentioned in this context.

Within almost two years of the constitution of the Houses of Parliament under the Constitution, a resolution was discussed in the Lok Sabha declaring that "the existence of the second chamber at the Centre is quite unnecessary" and, therefore, the Constitution should be amended for the purpose. The resolution was rejected.⁴⁵ Later, another resolution was moved in that House directing the Government to bring forward a Constitution Amendment Bill "to provide for the abolition of Rajya Sabha." The resolution was withdrawn.⁴⁶

In 1971, 1972 and 1975, three Constitution Amendment Bills were sought to be introduced by private members in the Lok Sabha, seeking to do away with the Council of States. The Lok Sabha Committee on Private Members' Bills and Resolutions did not recommend introduction of those Bills. The Committee felt that those Bills "affected a fundamental principle set out in clause (1) of article 1 of the Constitution on which the structure of the Constitution itself rested." The Committee noted the observations of the Supreme Court in the *Keshavanand Bharati* case,⁴⁷ that "article 368 of the Constitution does not enable Parliament to alter the basic structure or framework of the Constitution."⁴⁸

In 1981, one more Constitution Amendment Bill was sought to be introduced by a private member in the Lok Sabha for abolition of the Council of States and the Legislative Councils in the States. That Bill was also not recommended initially for introduction by the Committee.⁴⁹ When the concerned Report of the Committee came up for adoption in the Lok Sabha, on an amendment adopted to the motion, the Bill was referred back to the Committee for reconsideration.⁵⁰ The Committee accordingly re-examined the Bill, obtained the opinion of the Ministry of Law thereon,⁵¹ heard the member concerned and postponed further consideration of the Bill.⁵² Eventually, however, the Bill was not introduced.

In contrast with this, there was an attempt in the Rajya Sabha to widen its powers in money and financial matters when the Lok Sabha was under dissolution. It also, like the ones towards its abolition, did not succeed.

On 30 August 1991, a private member introduced a Constitution Amendment Bill in the Rajya Sabha to insert a new article 117A in the Constitution "with a view to overcoming temporary financial difficulties which may occur as a result of the dissolution of the Lok Sabha or non-functioning of a Government." The Bill, *inter alia*, sought to confer all the financial powers of the Lok Sabha on the Rajya Sabha when the Lok Sabha was dissolved or the dissolution of the Lok Sabha took place or in any other contingency when the financial business required to be completed under the Constitution could not be timely completed by that House. The Bill was in the context of a situation which arose in 1991, when the regular budget could not be presented and only a Vote on Account had to be taken. The Bill was discussed on 21 December 1991 and 13 March 1992 but was withdrawn on the latter date.

Be that as it may, within a couple of days after the first sitting of the Rajya Sabha, on 13 May 1952, an occasion arose to spell out the task which was expected of the Rajya Sabha. Replying to felicitations offered to him on his election as the first Vice-President of India and the first Chairman of the Rajya Sabha, Dr. S. Radhakrishnan observed:

There is a general impression that this House cannot make or unmake governments and, therefore, it is a superfluous body. But there are functions, which a revising chamber can fulfil fruitfully. Parliament is not only a legislative but a deliberative body. So far as its deliberative functions are concerned, it will be open to us to make very valuable contributions, and it will depend on our work whether we justify this two chamber system, which is now an integral part of our Constitution. So, it is a test to which we are submitted. We are for the first time starting under the Parliamentary system, with a second chamber in the Centre and we should try to do everything in our power to justify to the public of this country that a second chamber is essential to prevent hasty legislation.⁵³

From the observations (*supra*) of the Founding Fathers, Shri N. Gopalaswamy Ayyangar, Dr. B.R. Ambedkar, both of whom became members of the Rajya Sabha, and Dr. S. Radhakrishnan, who became the first Chairman of the Rajya Sabha, it is evident that they envisaged the Rajya Sabha to play an important role as a legislative chamber (revising or delaying legislation without proving a clog), federal chamber (representative of interests of States) and a deliberative chamber (holding dignified debates on important issues). The Constitution-makers conferred equal powers on both the Houses (Lok Sabha and Rajya Sabha) except in certain money/financial matters, voting of supplies (Demands for Grants), and power to "make or unmake governments."

As a legislative body there are no restrictions on the powers of the Rajya Sabha under the Constitution to initiate Bills except Money and certain Financial

Bills, in respect of which the final voice rests with the Lok Sabha. In the case of ordinary legislation, a mechanism of a joint sitting of the two Houses has been provided to resolve a legislative deadlock between them. Over the years, a number of important measures of legislation in various spheres have originated in the Rajya Sabha. Deadlocks between the two Houses have been resolved in joint sittings in 1961, in respect of disagreement on amendments to be made in the Dowry Prohibition Bill, 1959, in 1978 when the Rajya Sabha rejected the Banking Service Commission (Repeal) Bill, 1977 and again in 2002, when the Rajya Sabha rejected the Prevention of Terrorism Bill, 2002, as passed by the Lok Sabha. As a revising chamber also the Rajya Sabha has recommended changes in a number of Bills passed by the Lok Sabha which have been accepted by it.

In the matter of exercise of constituent power of Parliament, *i.e.*, power to amend the Constitution, the Rajya Sabha shares it with the Lok Sabha. A Constitution Amendment Bill can be introduced in either House of Parliament and has to be passed by each House by a special majority. In case there is any disagreement between the Lok Sabha and the Rajya Sabha, the Bill falls through; in other words there is no provision of a joint sitting to resolve a deadlock on a constitutional amendment. In 1970, the Constitution (Twenty-fourth Amendment) Bill regarding abolition of privy purses to erstwhile rulers, as passed by the Lok Sabha, could not be passed in the Rajya Sabha for want of the requisite support and, therefore, fell through. Again in 1989, the Constituion (Sixty-fourth and Sixty-fifth Amendment) Bills which had earlier been passed by the Lok Sabha, could not be passed in the Rajya Sabha by the requisite majority. In 1978, the Rajya Sabha introduced important amendments in the Constitution (Forty-fifth Amendment) Bill and they were accepted by the Lok Sabha to stand as part of the Constitution.

When the Government of the day was not having majority in Rajya Sabha it treaded cautiously. On 12 February 1999, a Proclamation was issued by the President under article 356 of the Constitution in relation to the State of Bihar.⁵⁴ The Statutory Resolution seeking approval of the Proclamation, as required under clause (3) of article 356 of the Constitution, despite being adopted by Lok Sabha,⁵⁵ was not brought before Rajya Sabha. Rather the Government decided to revoke the Proclamation issued by the President and a copy of the Proclamation issued by the President under clause (2) of article 356 of the Constitution on 8 March 1999, revoking the Proclamation made by the President on 12 February 1999 in relation to the State of Bihar, was laid on the Table of Rajya Sabha,⁵⁶ as required under clause (3) of article 356 of the Constitution.

In regard to Money and certain Financial Bills, there are restrictions on the powers of the Rajya Sabha in the matter of initiation, amendability or delaying of such Bills. They cannot be introduced in the Rajya Sabha; cannot be amended directly and cannot be delayed by more than fourteen days. However, in respect of Financial Bills without money clauses, there are no such limitations. The

Rajya Sabha can play a useful role within the limited time available, by recommending amendments to the Lok Sabha in Money Bills, though it is left to the Lok Sabha to accept or not to accept those recommendations. A typical example is that of the Income-tax (Amendment) Bill, 1961, which was a Money Bill to which the Rajya Sabha recommended some amendments and they were accepted by the Lok Sabha. But the amendments recommended by the Rajya Sabha in the Finance Bills of 1977 and 1978 were not accepted by the Lok Sabha. The Constitution also provides that the Annual Budget of the Union is to be laid before both Houses of Parliament. The Budget can be discussed in the Rajya Sabha as well, although Demands for Grants should be made only to the Lok Sabha. The reports of the Comptroller and Auditor General of India relating to the accounts of the Union are also required to be laid before both the Houses. As observed by Dr. Ambedkar in the Constituent Assembly:

In the British Parliament, the House of Lords merely concurs in the financial provisions passed by the House of Commons; it has completely abrogated itself so far as finance is concerned. We are here making a departure from that position and are allowing the upper chamber to have some voice in the formulation of the taxation and financial proposals which have been initiated by the Lower House. We are conferring a privilege which ordinarily the upper chamber does not possess.⁵⁷

The Constitution-makers have favoured a partly elected and a partly nominated second chamber at the Centre as being best suited to the needs of the country. The number of nominated members has been limited to 12, out of the total strength of 250 members. The rest of the members are the representatives of the constituent units. At present their number is 233. To give the second chamber a federal character, provision has been made for the election of these representatives by the elected members of the Legislative Assemblies of the respective States and the members of the electoral colleges in the respective Union territories. As these electing bodies are constituted by direct election held on the basis of adult suffrage, the democratic character of the Rajya Sabha has been fully maintained. The election of representatives is held in accordance with the system of proportional representation by means of the single transferable vote. This method of election enables the Rajya Sabha to reflect in its composition, a broad spectrum of almost the entire political opinion in the country. The Constitution has not provided for equal representation of constituent units of the Indian Union in the Rajya Sabha. The allocation of seats amongst the different States and the Union territories has been made on the basis of their population and is provided in the Fourth Schedule to the Constitution.

Unlike the Lok Sabha, the Rajya Sabha is not subject to dissolution but one-third of its members retire after every second year. This ensures continuity as well as change so far as the House is concerned and retirement as well as replenishment so far as the composition is concerned. As Chairman M. Hidayatullah put it, "Like the slough which certain creatures shed", the Rajya Sabha too... "casts off a part of itself"⁵⁸ The election to the Rajya Sabha take place biennially on the retirement of about one-third members. Such a

cycle of retirement and election enable the States/Union territories to renew or replace their representation in the Rajya Sabha with a two-year frequency and incidentally, also bring about a fusion of new and old in the House which is customarily described as a House of Elders. This type of arrangement is designed to secure the representation of past as well as current opinion and help in maintaining continuity in public policy.⁵⁹

As a House representing the States, the Rajya Sabha has been assigned a special role whenever it is considered necessary or expedient in the national interest that the Centre should intervene in the legislative sphere of the States. Article 249 confers power on Parliament to legislate with respect to a matter enumerated in the State List upon the Rajya Sabha passing a resolution by two-thirds majority. In 1952 and 1986, the Rajya Sabha passed such resolutions with respect to matters mentioned in the State List in Entries 26 and 27,⁶⁰ and Entries 1, 2, 4, 64, 65 and 66,⁶¹ respectively. Again under article 312, Parliament is empowered to create by law one or more All India Services common to the Union and the States, if the Rajya Sabha passes the requisite resolution. The Rajya Sabha passed such resolutions in 1961 and 1965, for the creation of the Indian Engineering Service, Indian Forest Service, Indian Medical and Health Service, Indian Agricultural Service and the Indian Educational Service.⁶² The adoption by the Rajya Sabha of the resolution with two-thirds majority, it is felt, is tantamount to the giving of consent by the States for Central intervention in their legislative sphere.

There is yet another power vested in the Rajya Sabha in respect of Proclamations of Emergency (article 352), of failure of constitutional machinery in States (article 356) and of Financial Emergency (article 360). These Proclamations are required to be approved by resolutions of both Houses of Parliament within the prescribed period. But if any such Proclamation is issued at a time when the Lok Sabha has been dissolved or dissolution of the Lok Sabha takes place during the prescribed period for approval of the Proclamation, the Rajya Sabha has been given power to pass such a resolution and the Lok Sabha can pass it later after it is reconstituted. In 1977, the Rajya Sabha had to be specially convened for a brief session to extend the President's Rule in Tamil Nadu and Nagaland⁶³ and again in 1991, for approval of the President's Rule in Haryana.⁶⁴ On both these occasions the Lok Sabha was under dissolution.

So far as the deliberative functions of the Rajya Sabha are concerned, the Rules of Procedure and Conduct of Business in the Rajya Sabha provide various devices and opportunities for the purpose. Through questions, interpellations, calling attention, special mention, etc. the Rajya Sabha assesses the performance of the Government. Important discussions take place by means of motions and resolutions and discussions without vote (Budgetary discussions, short duration discussions, discussions on working of Ministries, etc.). As has been observed by the Bryce Conference, it is more useful if discussions of this nature are carried on in a House where the results of such discussions would not involve the fate of the executive Government. The rules also provide for a

number of Committees through which the House discharges its functions of scrutiny of the executive actions and redressal of people's grievances.

In every bicameral legislature each House should function in the sphere allotted to it under the Constitution. It needs hardly any emphasis to say that for the successful working of the legislative machine there should be the closest co-operation between the two Houses, and their relationship should be harmonious. Chapter 5 will discuss in more details about the relations between the Rajya Sabha and the Lok Sabha. Although occasional frictions or sour feelings have occurred in the early years, by and large, the relationship between the two Houses has been marked by mutual forbearance, cordiality and co-operation. As observed by Shri Jawaharlal Nehru in the context of an early instance of conflict, the two Houses "are in fact part of the same structure and any lack of that spirit of co-operation and accommodation would lead to difficulties and come in the way of the proper functioning of our Constitution." This authoritative exposition of the relations between the two Houses by the first Prime Minister has served as a guide to the Houses of Parliament in their relations with each other. They are clearly laid down in the Constitution, Rules of Procedure and Conduct of Business of each House and the rules relating to the joint sittings of the Houses and communications between them. In addition, conventions and practices have grown in respect of a host of other matters of major and minor details. Hence their roles have been complementary and supplementary to each other.

A second chamber is generally associated with such negative attributes as undemocratic, conservative, delaying or obstructionist and secondary. None of these are, however, applicable to the Rajya Sabha. Mention has already been made as to how the democratic character of the Rajya Sabha is ensured. As already noted, the Constitution Amendment Bill relating to abolition of privy purses fell in the Rajya Sabha. However, it needs to be pointed out that it was the Rajya Sabha which had earlier unanimously passed a private member's resolution recommending this measure. Many measures in social and economic fields have been initiated in the Rajya Sabha thus disapproving the presumption that a second chamber is always conservative. So far as the role of Rajya Sabha as a delaying chamber is concerned, the observations of Bryce Conference may be recalled that the true function of a second chamber is "to interpose so much delay (and no more) in the passing of a Bill into law as may be needed to enable the opinion of the nation to be adequately expressed upon it." As a matter of fact there have been many instances in the Rajya Sabha when the Bills were passed expeditiously, as circumstances and situations warranted. For instance on 25 August 1984, the Rajya Sabha passed five Constitution Amendment Bills one after another in one sitting. The growing involvement of the Rajya Sabha in legislative functions and as a debating chamber influencing Government policies amply testifies that the Rajya Sabha despite being called a second chamber, does not play a secondary role nor is it an embellishment. From all points of view, therefore, the Rajya Sabha has emerged as a vital

functioning part of our constitutional and parliamentary apparatus. The chapters that follow attempt to bring out the various facets of the Rajya Sabha at Work.

NOTES AND REFERENCES

1. Gwyer and Appadorai, *Speeches and Documents on the Indian Constitution*, Vol. I, p. 32-33.
2. Government of India Act, 1935, s. 18.
3. B. Shiva Rao, *Framing of India's Constitution—A Study*, p. 418-20.
4. *Ibid.*, p. 422-23; C.A. Deb., Vol. IV, 21.7.1947, Appendix A, p. 716-36.
5. C.A. Deb., Vol. IV, 28.7.1947, p. 873-74.
6. *Ibid.*, p. 875.
7. *Ibid.*, p. 876.
8. *Ibid.*
9. *Ibid.*, p. 872 and 877.
10. *Ibid.*, p. 969-72.
11. B. Shiva Rao, *Framing of India's Constitution —A Study*, p. 424-28.
12. *Ibid.*, p. 428-31.
13. C.A. Deb., Vol. VII, 3.1.1949, p. 1195-96.
14. *Ibid.*, p. 1198.
15. *Ibid.*, p. 1200.
16. *Ibid.*, p. 1214-15.
17. *Ibid.*, p. 1202.
18. *Ibid.*, Vol. VIII, 18.5.1949, p. 82-83; and 23.5.1949, p. 197.
19. *Ibid.*, Vol. VIII, 3.1.1949, p. 1202 and 1205.
20. *Ibid.*, p. 1202-03.
21. *Ibid.*, p. 1203-04.
22. *Ibid.*, p. 1204.
23. *Ibid.*, p. 1205.
24. *Ibid.*, p. 1211-12.
25. *Ibid.*, p. 1212-14.
26. *Ibid.*, p. 1215.
27. *Ibid.*, p. 1206-08.
28. *Ibid.*, p. 1208.
29. *Ibid.*, p., 1209.
30. *Ibid.*, p. 1216-18.
31. *Ibid.*, p. 1231.
32. *Ibid.*, Vol. VIII, 18.5.1949, p. 89-94.
33. *Ibid.*, p. 95-98.
34. *Ibid.*, p. 105-07.
35. *Ibid.*, 19.5.1949, p. 120-21.
36. *Ibid.*, 20.5.1949, p. 184-85.
37. *Ibid.*, Vol. IX, 30.7.1949, p. 2-3.
38. B. Shiva Rao, *Framing of India's Constitution —A Study*, p. 615-26.
39. C.A. Deb., Vol. VIII, 13.6.1949, p. 799-800.
40. *Ibid.*, p. 800 and 805.
41. *Ibid.*, p. 800-09.
42. *Ibid.*, Vol. IX, 8.9.1949, p. 1116-19.
43. H.P. Deb., 14.5.1954, c. 7388-89, R.S. Deb., 23.8.1954, c. 36-37. The Constitution, continues to use the nomenclatures the Council of States and the House of the People, so also the Parliamentary enactments. However, the Delhi (Control of Building Operations) Act, 1955 (since repealed) and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 use the nomenclatures Lok Sabha and Rajya Sabha.

44. R.S. Deb., 23.6.1971, c. 77-79.
45. H.P. Deb., 18.3.1954, c. 2640-52; and 2.4.1954, c. 3974-4025.
46. L.S. Deb., 30.3.1973, c. 291-327; and 27.4.1973, c. 352-76.
47. AIR 1973 SC 1461.
48. 14 Rpt., Committee on Private Members' Bills and Resolutions (Seventh Lok Sabha) presented on 19.2.1981.
49. *Ibid.*
50. L.S. Bn. (I), 20.2.1981.
51. 15 Rpt., Committee on Private Members' Bills and Resolutions (Seventh Lok Sabha) presented on 25.2.1981.
52. 19 Rpt., Committee on Private Members' Bills and Resolutions (Seventh Lok Sabha) presented on 25.3.1981.
53. C.S. Deb., 16.5.1952, c. 43.
54. Bn. (I), 22.2.1999.
55. L.S. Deb., 25.2.1999, c. 383-476; and 26.2.1999, c. 457-65 and c. 469-626.
56. R.S. Deb., 10.3.1999, c. 218-20.
57. C.A. Deb., Vol. VIII, 20.5.1949, p. 185.
58. R.S. Deb., 23.3.1984, c. 193.
59. B. Shiva Rao, *Framing of India's Constitution —A Study*, Vol. II, p. 442.
60. C.S. Deb., 18.7.1952, c. 1481-92; and 22.7.1952, c. 1628-86.
61. R.S. Deb., 12.8.1986, c. 395 onwards and 13.8.1996, c.183-227.
62. *Ibid.*, 6.12.1961, c. 1280-1305 and 30.3.1965, c. 5010-91.
63. *Ibid.*, 1.3.1977, c. 41-154.
64. *Ibid.*, 3.6.1991, c. 1-24; and 4.6.1991, c. 164-77.