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PRINCIPLES OF INDIAN CONSTITUTIONAL LAW AND LEGISLATIVE FUNCTIONING

A Brief Overview

Compiled & Edited by

Dr. ANANT KALSE

Principal Secretary
Maharashtra Legislature Secretariat &
Secretary, Commonwealth Parliamentary Association
Maharashtra Branch



MAHARASHTRA LEGISLATURE SECRETARIAT

Vidhan Bhavan, Mumbai/Nagpur

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FOREWORD

An attempt is being made by this brief overview to provide a glimpse of the principles of Indian Constitutional law and legislative functioning. I hope this will help to understand the niceties of Constitutional provisions and Legislative functioning to the participants in a better way. I am also very much indebted to Hon. Shri Shivajirao Deshmukh, Chairman, Maharashtra Legislative Council and Hon. Shri Dilip Walse-Patil, Speaker, Maharashtra Legislative Assembly for their continuous support and motivation in accomplishing this task.

I am also thankful to officials of Maharashtra Legislature Secretariat Shri N.G. Kale, Deputy Secretary (Law), Shri B.B. Waghmare, Librarian, Research and Information Officer, Shri Nilesh Madane, Public Relations Officer, Shri Sunil Zore, Section Officer for their help and assistance.

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7th March 2014.

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INDEX

Sr. No.	Subject	Page No.
1.	Fundamentals of Indian Constitution – with special reference to Parliamentary and Presidential form of Government.	1
2.	Executive responsibility to Legislature <i>vis-a-vis</i> Legislative control over Executive	7
3.	Control through Deliberation and Discussion	8
4.	Control through various Parliamentary devices	9
5.	Financial accountability or Control on Public Finance by Legislature.	17
6.	Legislature Committee system	24
7.	Law making process	31
8.	Parliamentary privileges	51
9.	Conclusion	67
	<i>Bibliography</i>	68

1. FUNDAMENTALS OF INDIAN CONSTITUTION – WITH SPECIAL REFERENCE TO PARLIAMENTARY AND PRESIDENTIAL FORM OF GOVERNMENT

With the Independence and adoption of the Constitution of India the political revolution was complete but it was the beginning of a new socio-economic revolution for creating a new nation based on new values of liberty, equality, fraternity and justice to all-social, economic and political.

Despite all such odds, the Indian Constitution has successfully sowed the seeds of socio-economic revolution. Indian Constitution is a document vibrant with a socio-economic ideology geared to the goal of socio-economic justice. It is simply not the document of governance but of a structural change in the Indian society. It is charter for the socio-economic transformation in India. As a consequence, the doctrine of Rule of Law, Part III and IV of the Constitution, that is, Fundamental Rights and Directive Principles of State Policy, an independent Judiciary as an arm of social revolution, the charter of equality, liberty and justice: social; economic and political to all, along with some constitutional safeguards to the marginalized groups, (Scheduled Castes, Scheduled Tribes, Other Backward Classes, Minorities and Women) form the core of this social revolution.

President Dr. Rajendra Prasad, assured the nation that the Assembly and the government's aim was to end poverty and squalor and its companions, hunger and disease; to abolish distinction and exploitation and to ensure decent conditions of living. On 14th August, 1947 Pandit Nehru in one of his famous speeches declared that, "Long years ago we made a tryst with destiny and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially." Such strong views were held by many members of the Constituent Assembly.

Obviously, Dr. B. R. Ambedkar, being the Chairman of the Drafting Committee, made all possible efforts to embody the philosophy of a constitutional law, role of modern State, Dr. Ambedkar strongly pleaded to the Constituent Assembly that, all countries like India which are late comers in the field of Constitution-making should not copy the faults of other countries.

The Constitution of India which was adopted in the year 1950 has many remarkable and outstanding features. **The Parliamentary form of**

Government and Federal nature are two dominating features of the Indian Constitution, rather it can be said that, it is a beautiful combination of both. Of course, there are various outstanding features of the **Indian Constitution which includes Parliamentary Democracy, Rule of Law, Independence of Judiciary, Doctrine of Separation of Powers, Socialistic pattern of society, Economic and Social Justice, Liberty, Equality, Fraternity, Judicial Review, Secularism etc.**

The Constitution of India is prepared after ransacking all the known Constitutions of the world e.g. **parliamentary form of Government is a gift from British Westminster model, Federalism is incorporated from American and Canadian Constitution, Directive principles of State policy has its source to Irish Constitution. The Government of India Act, 1935 provides structural basis for this document and famous fundamental rights are a gift from American Bill of Rights.**

Despite all odds, **this unique document has stood the test of time and immensely helped in the progress of the Country.** In the backdrop of neighbouring countries, their development, the success of our Constitution, its philosophy, its working is worth noticing. The Indian Constitution has successfully sowed the seeds of socio-economic revolution in this country. **This document can be described as a vibrant document with a social and economic ideology geared to the goal of socio-economic justice.**

Since the Constitution of India is a fine blending of two important features of the dominating political systems **i.e. Parliamentary form of Government and Federal nature supported by novel principle of Rule of Law and doctrine of Separation of Powers.** Of course American Presidential form of Government and British Parliamentary form are two different governmental systems in the world. We have to understand the basic functional difference between these two biggest democracies in the world.

There are various forms of Government in the world i.e. monarchy, aristocracy, democracy, military, one party government, unitary and federal forms. In democratic system, normally two types of Governmental system exist in the world i.e. Parliamentary and Presidential Government.

I. PARLIAMENTARY GOVERNMENT

The relation between the executive and legislature is the only way to know whether a government is Parliamentary or Presidential if real executive is responsible to the legislature or the parliament, the form of government is Parliamentary. A Parliamentary government is also called responsible or cabinet form of government, because the Cabinet enjoys the real powers of the government and it is under the control of Parliament. On the other hand of the President, who is not responsible to the legislature.

1) **Head of the State exercises nominal powers:** In a Parliamentary government, there is a Head of the State. He may be the President, the Governor-General the King or the Queen. Presidents are the Heads of the State in India, France, Austria, the West Germany, Italy etc. There are Governor-Generals in Canada, Australia and New Zealand. The Kings or Queens are in Japan, the Great Britain, Denmark, Holland, Belgium, Sweden and Norway. The main feature of a Parliamentary Government is that constitutionally the Head of the State enjoys many powers but in practice he does not utilize these powers. In practice the powers ministers use the Head of the State, and the Head of the State enjoys only nominal powers.

2) **Clear and stable majority:** In a parliamentary government the administration is run by the majority party. The head of the State invites the leader of the majority party becomes the Prime Minister and he submits a list of his colleagues to the Head of the State. The Head of the State appoints them as ministers. In this way a cabinet is formed. The ministers remain in office so long as they have the majority support in the Lower House. In the event of losing the majority support they tender their resignation.

3) **Collective Responsibility:** Another feature of the Parliamentary Government is that the Cabinet is collectively responsible to the Parliament. It means that once a decision is taken by the Cabinet, it becomes the responsibility of each minister to support it in and outside the Parliament, despite the fact that he did not agree to it in the Cabinet meeting. For the administration and policies every department of the government, the ministers are collectively responsible to the Parliament, even if that policy is related to the department of a single minister. If a motion of no-confidence is passed by the Parliament against one minister, it is considered to have been passed against the entire Cabinet. The Prime Minister and the entire Cabinet then tenders its resignation. The Members of Parliament can ask questions and supplementary questions from the ministers; they can move adjournment motions and censure motions against the ministers. They can appoint an Investigating Committee to investigate the charges of corruption against the administration. The Parliament has a full control over the budget and also over the home and external policies of the government.

4) **Individual Responsibility:** Whereas the ministers are collectively responsible to the Parliament, they are also responsible individually for their respective departments. The Members of the Parliament can put questions to minister and also criticize his department. The minister can tender this resignation, if he so desires.

5) **Membership of the Parliament:** It is essential for the ministers to be the Members of the Parliament. If anyone, who is not the Member of the Parliament, is appointed as a Minister by the Head of the State on the recommendations of the Prime Minister, he or she has to seek the membership of the Parliament within a fixed period. In India, this period is six months. If a minister fails to get a seat in the Parliament, he has to leave the Cabinet.

6) **Leadership of the Prime Minister:** The main characteristic of Parliamentary government is the leadership of the Prime Minister over the Cabinet. He being the leader of the majority party in the Lower House, is also called the leader of the House. The Head of the State appoints ministers on his advice. He presides over the meetings of the Cabinet.

The Prime Minister is the Chief Spokesman to the Head of the State (President, King or Governor-General) and he informs him about the decisions of the Cabinet and seeks his advice in vital matters. Though the Prime Minister is not bound to accept the advice of the Head of the State yet he thinks over it seriously and accepts its good points. No Minister can see the Head of the State without his permission. It has already been stated that the Prime Minister along with his Ministers is responsible to the Parliament for administration and policies. This responsibility is a collective responsibility.

7) **Political Homogeneity:** It means all the ministers act like a team in the Cabinet and they do not disclose their differences in the public. Generally, the ministers are from one party, but in case of a coalition Government they are related to more than one party. In such a situation ministers from all parties in coalition decide the policy line to which they have to work.

8) **Secrecy:** At the time of their appointment, the ministers take the oath of allegiance to the constitution and secrecy of the office. The Ministers are given severe punishment under the law of the land for disclosing any secrets to the enemy.

9) **Right of the Executive to dissolve the legislature:** In a parliamentary government, sometimes there is a deadlock between the executive and the legislature. In such a situation the Chief Executive or the Head of the State should have the right to dissolve the legislature so as to enable him to arrange fresh elections and seek a fresh mandate from the voters. In this way, fresh elections will remove the deadlock. A new legislature and a new executive will be informed, which will have mutual co-operation.

II. PRESIDENTIAL GOVERNMENT

Meaning of Presidential Government: According to Dr. Garner, “Presidential Government is that system in which the executive (including both the Head of the State and his ministers) is constitutionally independent of the legislature in respect to the duration of his or their tenure and irresponsible to it for his or their political policies. In such a system the Chief of the State is not merely the titular executive but he is real executive and actually exercises the powers which the constitution and laws confer upon him. In this system the President enjoys real powers of the government. He is not responsible to the legislature for his administration and policies.

Features or characteristics of Presidential type of government and its distinction from the parliamentary government.

(1) There is a separation of powers in the Presidential government. In this system the executive and legislature are separate from each other and they have equal status. But in a Parliamentary Government, there is no separation of powers. In this system the executive is under the legislature.

(2) In a Presidential government, the President is the Head of the State as well as of the government while in a Parliamentary government, the Head of the State is President, King or Governor-General and the Prime Minister is the Head of the government.

(3) In a Presidential government, the President enjoys real powers of the administration and he exercises all those powers, which are given to him under the constitution and the law. In a Presidential government there is no Prime Minister. The secretaries help the president in the administration and they are appointed by him on the basis of ability. It depends upon the will of the president to accept or reject their advice. In a parliamentary government, though constitutionally the Head of the State (President, King or Governor-General) has many powers, yet in practice these powers are enjoyed by his ministers. Thus, in practice the President has only nominal powers and real powers lie with the Prime Minister or his ministers.

(4) In a Presidential government the President and his secretaries are not responsible to the legislature. The legislature cannot remove them through a vote of no-confidence. Moreover, an adjournment motion or a censure motion cannot be brought against them. The President and his secretaries are not the members of legislature and they do not attend its sessions. Thus, they cannot be asked questions and supplementary questions. As has already been discussed, in a Parliamentary government the Prime Minister and other ministers are the members of either House of the

Parliament and any one who is not the member of the Parliament, he or she has to seek the membership within a specified period of time. They attend the sessions of the Parliament and answer the questions and supplementary questions. They place bills before the Parliament and make statements relating to policies. A vote of no confidence, adjournment motion and censure motion can be brought against them. In a Parliamentary government only the President, King or Governor-General make a speech at the time of the inauguration of the Parliament. They are neither members of the House nor do they take part in its deliberation. The Head of the State is not responsible to the Parliament.

(5) In a Presidential government, the President is elected for a fixed tenure and except impeachment for the violation of the Constitution; he cannot be removed from his office before the expiry of his term.

In a parliamentary government, though similar is the position of the President, yet the Prime Minister can be removed only through a vote of no-confidence by the Parliament.

At present Presidential government is seen in the United States of America, Brazil and in the some other countries of South America.

The crux of Parliamentary form of Government is that Council of Ministers is collectively responsible to the House of People or Legislative Assembly of State. Which means that Council of Ministers can remain in power so long as it commands majority in these popularly elected Houses. The moment, it lost majority Ministry has to resign. It clearly indicates that, in this form of Government **Legislature keeps control over the Executive and these two wings of the Government are inseparable one because Legislature and Executive are part of the same coin.** Executive or Council of Ministers has to be part and parcel of Legislature. Ministers must be members of the Legislature,

if they are not, they have to become members of the House within six months, otherwise they are liable to lose the post of Minister. This very system mandates the Legislative control over Executive. (Article 164 of Constitution of India).

2. EXECUTIVE RESPONSIBILITY TO LEGISLATURE VIS-A-VIS LEGISLATIVE CONTROL OVER EXECUTIVE

In parliamentary System of Government as we have already seen executive is responsible to the Legislature. Thus the existence of Council of Ministers i.e. Executive is totally depends on the will of the Legislature. Executive has to command majority in the popularly elected House i.e. Lok Sabha or Legislative Assembly. At no moment of time it affords to loose majority. Moment it lost majority the Council of Ministers i.e. Executive is under constitutional obligation to resign. This very principle of Executive responsibility to the Legislature has given rise to the concept of Legislature control over the Executive. In Parliamentary democracy Legislature expresses popular will of the people and in that sense it gets direct authority from the people. That's why Legislature has to perform a function of controlling the Executive and for that purpose devised various ways to ensure this responsibility.

Main aim of the Parliamentary/Legislative control is to ensure good governance in furtherance of Constitutional obligation. To enquire and examine whether administration has acted in conformity with socio-economic objectives which have been approved or endorsed by Legislature/Parliament. It is also responsibility of Legislature while ensuring control that to tone up administration and to recommend policies for the welfare of the people and to ensure that executive authorities should not mis-use or abuse of power. The novel principle of rule of Law should be safeguarded at any cost so that no injustice, unfair, arbitrary, unreasonable treatment is meted out to common man and their socio-economic welfare and various principles laid down in the preamble of the Constitution should be zealously safeguarded. It is also motive of the Legislative surveillance to curb the evil of corruption, malpractices, maladministration in the functioning of the Government.

The Legislature controls executive through following mechanism.

3. CONTROL THROUGH DELIBERATION AND DISCUSSION

Legislature is basically a deliberating House and decision through deliberation is fundamental feature so far as working of Legislature is concerned. Freedom of Speech and Debate are the two important wheels on which legislative functions depends. Through deliberations with the help of various Parliamentary devices, the Legislature keeps effective control over the administration of the State because in this process complete administration of Government is thrown open before Legislature.

Former Speaker of Maharashtra Legislative Assembly and great thinker, Statesman and Parliamentarian, Shri Bala Saheb Bharade once observed.....

“This Houses of Legislature are temples of this Democratic process and the deity in this temple is none other but the people of the State. The priests of this temple are all Members of Legislature and they worship this deity, with all these Parliamentary devices like questions, motion, calling attention etc. The aim of this process is to ensure the welfare and wellbeing of the common people. This is ultimately the goal of all this Parliamentary devices. Nobody has ever described this beautiful concept of Parliamentary democracy.

In the words of Pandit Jawaharlal Nehru,—

The service of India means the service of the millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and suffering, so long our work will not be over.

Jawaharlal Nehru

Thus through Resolutions, Motions and various types of discussion, Legislature keeps effective control over Executive. Many a times Ministers are asked to make statements on various important public issues and their Statements are laid on the table of the House. In this way the Legislature keeps effective control over the Executive.

4. CONTROL THROUGH VARIOUS PARLIAMENTARY DEVICES

(i) Question Hour

Legislative question is a technique of Legislative surveillance over the administration practiced in all the countries having representative parliamentary democracy. In this Legislature system, the government is answerable for all its acts of omission and commission to the Legislature and through the Legislature to the people. This answerability or accountability of the administration is exercised at two levels. The House exercises this power collectively by itself and through its Committees. Individually the members of the House exercise this power inter-alia through the instrument of Legislative questions. Members of Legislature are free to ask questions to elicit information on matters of public concern from ministers of the government. Seeking information is an inherent and unfettered Legislative right available to private member who are not minister. A Member of Legislature needs information regarding activities of the government to carry out his primary responsibilities as the people's representative. The basic purpose of asking questions, therefore, is to seek information and elicit facts on a matter of public importance.

They relate to the whole range of diverse subjects and almost all aspects of administration, therefore, come under their scrutiny.

The first hour of every sitting in both Houses is devoted to asking and answering of questions. It is known as the 'Question Hour'. During this hour, matters concerning the Government are raised and problems are brought to the notice of the government to seek their intervention to meet any situation, to redress public grievances or to expose some administrative abuse or excess. The government is thus put on trial during this hour. Besides, the minister's grasp of working of his department is also tested by asking searching, albeit sometimes inconvenient, questions and supplementaries thereon, to expose his weaknesses or inept handling of situations.

Question Hour forms the most interesting part of Legislative proceedings. No other business evokes as much interest among the public, the Press and the members themselves as the Question Hour. During this hour, the atmosphere in the House is so unpredictable that it may reel from sudden suspense to roars of laughter. The heat generated at times by bitter arguments on a question is completely dispelled by flashes of wit and humour coming either from the members or from the ministers. Several members enliven the Question Hour by their sense of humour from time to time. If the questions relate to important matters of topical interest and are short succinct and witty, the Question hour becomes useful, interesting and not

infrequently, exciting. This is the reason that not only the chamber but also the public and Press Galleries are always nearly packed to capacity during Question Hour.

Categories of Questions

Questions asked in both Houses of Legislature are normally addressed to the minister (government members) and can be categorised as:-

- 1) Starred Questions
- 2) Unstarred Questions
- 3) Short Notice Questions.

Questions may sometimes be addressed to private members also.

Some important examples of Questions raised in the Legislature.

1. Adarsh Housing Society Scam
2. Agro-Industrial Policy of Maharashtra
3. Nutritional Food to children's suffering from Malnutrition in State of Maharashtra.
4. Beautification of vacant spaces under fly-over in the city of Mumbai.
5. Establishment of Law University in Mumbai.
6. Waiving of Education fees of backward class students.
7. Effective implementation of women welfare schemes including prohibition of pre-natal examination in the state of Maharashtra.
8. Establishment of Sports University in the State of Maharashtra.
9. Establishment of separate Corporation for the development of roads and bridges through private participation in the State of Maharashtra.
10. Protection and Regularizing of slums prior to 1995.
11. Implementation of Rajiv Gandhi Students Accident contributory grant scheme in the State of Maharashtra.
12. Regarding implementation of scheme for prevention of Farmers suicide in the State of Maharashtra.
13. Implementation of Drought Relief Scheme in the State of Maharashtra.
14. Providing grants to Scheduled Caste peoples for construction of house.
15. Implementation of Water supply scheme on solar energy in Tal. Bhamragad, Dist. Gadchiroli.

16. Revision of pay scales of teachers of Social Welfare College as per UGC Scheme (6th Pay commission) Universities. Affiliated Colleges, etc.

(ii) Motions

The working of the house is three-tier: legislative, economic and general censure (motion or resolution). It is the primary duty of the house to deliberate on these three aspects. Debates and discussions in the house are of utmost importance. A motion is brought before the house to learn of its sense and decision by way of its consideration. If the motion is adopted after it is discussed, it is regarded as the opinion or wish of the house. A subject can be brought before the house only through a motion. There is a clear provision in the rules that matters of public interest can be discussed in the house through a motion only when it has the permission of the Speaker.

1. Adjournment Motion

It is one of the important motion which means suspension of business or of a meeting to another stated time or place or for an indefinite period. In Parliamentary Practice and Procedure when session or meeting of the Assembly is postpone it is normally called the meeting is adjourned. Adjournment Motion is a very potent procedural device at the disposal of Members of Legislature which enables them to raise a discussion in the House on a definite matter of urgent public importance of recent occurrence which has arisen suddenly and has serious consequences for the State. It depicts omission or dereliction of statutory duties on the part of the Government. The opposition has every right to criticise the Government on the floor of the House for the omission and commission of the Government and normally this motion is put to the vote of the House. And if Government is defeated on this motion, serious consequences arise including the resignation of the Government also.

The subject matter of Adjournment Motion must have a direct or indirect relation to the conduct of the Union or State Government and must involve default or failure of the Government in the performance of his duties in accordance with the provisions of the Constitution. Following are the few examples of the Adjournment Motion on which discussion was held.

1. Riots in Chembur – 3 deaths in police firing – 16th October, 1989
2. Death of 600 people due to Heavy rains and floods in Movad Dist. Nagpur – 2nd August, 1991.
3. Death of 68 people due to falling of a State Transport Bus from a Bridge near Awankhed - 15th March, 1994

4. Bomb Explosion in Mulund Railway Station- 19th March, 2003
5. Killing of 4 family Member of Bhotmange Family from Khairlangi Dist. Bhandara – 4th December, 2006
6. Suicide by thousands of farmers in Vidharbha and Marathwada region due to indebtedness and infertility.
7. Terrorist attack at various places in Mumbai- 16th December, 2008.

2. No Confidence Motion

The Council of Ministers is collectively responsible to the popularly elected House i.e. Lok Sabha or Legislative Assembly which means the Council of Ministers remains in office as long as it does not lose the confidence of Lok Sabha or Vidhan Sabha. The moment Lok Sabha or Vidhan Sabha expresses a lack of confidence in the Council of Ministers the Government is constitutionally bound to resign. In order to ascertain this confidence the rules provide for moving a motion of no-confidence in the Council of Ministers. As the responsibility is collective such a motion can be moved against the Council of Ministers as a whole not against individual Minister. Any motion expressing lack of confidence in an individual Minister is out of order. Such a Motion cannot be moved in Rajya Sabha or Legislative Council as the Government is collectively responsible only to the directly elected House. Following are the few examples of No-confidence Motion.

1. On 4th August, 1989 No confidence Motion was moved by Leader of Opposition against the Hon'ble Shri Sharad Pawar's Government which was discussed on 10th August, 1989 and defeated.
2. On 28th November, 1994 No confidence Motion was moved against Shri Sharad Pawar's Government which was defeated.
3. On 28th July, 2006 No confidence motion was moved against Shri Vilasrao Deshmukh Government by then Leader of Opposition Shri Ramdas Kadam but before that Chief Minister had moved confidence Motion on Government which was passed by 153 to 0 votes so No confidence Motion was lapsed.

(iii) Calling Attention

A provision governing Calling Attention Notices was introduced in 1958 in the rules. Till then, the device of adjournment motions was available for raising an important or urgent matter in the house. However, since this device is in the form of a censure motion, it was felt necessary to create a device which would fulfill the need.

In modern legislative procedures, calling attention is a purely Indian innovation.

The objective of placing the lapses in administration before the house, understanding the response of the government and the knowing about the urgent action being taken through a statement by the government is fulfilled. It also serves a check on the administration.

While tabling a calling attention notices, it is needed to record the date of the incident in question since a vague reference is not admitted. Such motions can be submitted three working days before the commencement of a session. Following are the few examples of calling attention motions:-

- 1) Acute shortage of chemical fertilizers in the State of Maharashtra.
- 2) Communal Riots
- 3) Scarcity conditions prevailing in certain areas and the necessity of immediately starting relief works.
- 4) Rise in prices of foodgrains.
- 5) Removal all difficulties in the matter of free transport of sugar and the government of India's policy to reduce the price of sugarcane.
- 6) Regarding irrigation water distribution to sugar factories in the State of Maharashtra.
- 7) Implementation of Jawaharlal Nehru National Urban Renewal mission and Abolition of Urban Land Ceiling Act in the State of Maharashtra.
- 8) Effective implementation of various tribal welfare schemes announced by Central and State Government in the State of Maharashtra.
- 9) Reservation of beds in Charitable Hospitals for below poverty line peoples in the State of Maharashtra.
- 10) Formulation of new Youth and Sports Development Policy in the State of Maharashtra.

(iv) Half-an-Hour Discussion

One of the important parliamentary devices is the Half-an-Hour Discussion which is resorted to in Parliament and state Legislature.

Provisions have been made in rules in regard to the important matters arising out of replies to questions or other public issues. While giving notice for half hour discussions, members should note the following:-

- (1) If the matter has arisen out of the reply to a question, it should be of recent origin.

- (2) The matter should be of public importance.
- (3) The state government should be responsible for the matter.
- (4) The points on which the notice rests should be recorded clearly. Besides, it is essential to append an explanatory note on how the points arise. At least two members must second the notice.

The scope of half-an-hour discussions is limited and the time allocated is 30 minutes for two matters. Therefore, it is advisable to raise matters of limited scope through this medium.

Following are the few examples of Half an Hour discussion:-

- 1) Recruitment of Handicapped persons in the State Government.
- 2) Lift Irrigation schemes on co-operative basis.
- 3) Development Schemes for Small and Micro level industries.
- 4) Imposition of Local Body Tax instead of Octroi in the Local Self Government.
- 5) Implementation of Welfare Scheme for the Maid Servants in the State of Maharashtra.

(v) Short Notice Discussion

This is an effective device available to members to raise urgent public matters. A provision to make this device available was introduced in 1958 in the rules. Till then, only the device of adjournment motions was available for raising an important or urgent matter in the house. However, since this device is in the form of a censure motion and since such motions are admitted in very rare instances, the need of a suitable device was felt to fulfill the need.

Short notice discussions are extremely important from the point of view of raising urgent public matters. Since the maximum time allotted to them is two and a half hours, opposition members obtain an additional opportunity to air their grievances. Since there is no formal motion, there is no voting at the end of the discussion. Hence, the government, too, does not find replying to such discussions inconvenient. In view of this, the device of Short Notice Discussion has proved to be quite useful and satisfactory for members. Following are the few examples of Short Notice Discussion:—

- 1) Effective implementation of Crop Loan waiving scheme in Vidarbha region.

- 2) Rising in numbers of Educated employed peoples in Vidarbha region.
- 3) Common Food Zone in the State of Maharashtra.
- 4) Grave situation arising out of heavy rains.
- 5) Unemployment of Bidi Workers.
- 6) Need to reorient Civil Defence and Homeguards organisations.
- 7) Inadequate and irregular supply of whole and toned milk in Greater Mumbai.
- 8) Violence against women in the State of Maharashtra.

(vi) Last Week Motion

A provision regarding Last Week Motion was made in the rules in 1971. Such motions give an extra opportunity to members to discuss matters of public importance. The main objective of such motions is to highlight the issues and developments in the house before its session adjourns.

The issues raised as Last Week Motion are of wider public interest and are in regard to law and order, price rise, shortage of drinking water or drought in the state.

While the members who have given the motion speak first, other members can participate with the permission of the Speaker. This is followed by a minister's reply. There is no voting on such a motion. Following are the few examples of Last Week Motion:—

- 1) Pending Irrigation Projects, illegal constructions in urban areas, worst condition of roads, and excess recovery of tolls in the State of Maharashtra.
- 2) Effective implementation of various welfare schemes of social justice and minority affairs departments in Golden Jubilee Year of Maharashtra State.
- 3) Law and Order situation in the State of Maharashtra.
- 4) Delay in Mono Rail and Metro Rail Projects in Mumbai, irregularities in functioning of MMRDA, problems in deemed conveyance to societies, delay in providing homes to Mill workers, necessity to start water transportation projects in Mumbai.
- 5) Various problems in Mumbai Metropolitan Region.
- 6) Prevention of Juvenile Crimes in the State of Maharashtra.

(vii) Resolution

This is an effective parliamentary device available to members for raising matters of public interest. Members can assess the sense of the house or make a recommendation by way of a resolution in connection with a government policy or action or attract its attention to an important matter. A resolution can aim at discussing a matter of public importance, or to recommend a course of action; it can be moved with the intention of either approving or disapproving an act of policy of the government or for attracting the government's attention to some development or situation. It can also be in a manner, other than a statutory motion, which the Speaker deems appropriate.

A Resolution can be categorized as :—

- (1) Non-Official Resolution
- (2) Government Resolution
- (3) Statutory Resolution.

Following are the few examples of some Resolutions :—

1. Establishment of Statutory Boards in the State of Maharashtra.
2. Special packages for naxal affected areas
3. Influx in Mumbai City from outside states thereby causing hardship to the citizens of Mumbai.
4. Use of Marathi language in Central Government offices
5. Scarcity of water in the city of Mumbai due to rise in slums, commercial complex, malls, sky scrapers etc.
6. Giving freeship and scholarship to the children of the farmers having small holdings in the State of Maharashtra.
7. Drinking water problem in the State of Maharashtra and various ways to tackle this alarming situation.
8. Policy decision regarding Marathi medium schools and its future
9. Educated unemployment in the State of Maharashtra problems and solutions
10. Establishment of one more cancer hospital like J. J. Memorial Cancer Hospital.

5. FINANCIAL ACCOUNTABILITY OR CONTROL ON PUBLIC FINANCE BY LEGISLATURE

Introduction

Parliamentary control over public purse is the central point in public Financial Administration and key to the public accountability system. Democratic Governance and Accountability have been the fundamental principles of the Indian Parliamentary System.

The Accountability of the Executive to the Legislature / Parliament stems from the basic principle that the Legislature embodies the will of the people and it must therefore, be able to supervise the manner in which public policy laid down by the Legislature is carried out.

In India, besides budgetary control the system of Public Financial Accountability revolves around two key agencies namely, the Comptroller and Auditor General of India (CAG) and Legislative oversight committees such as Public Accounts Committee, Estimates Committee and the Committee on Public Undertakings (COPU). These financial committees are the principle instruments of enforcing financial accountability of the Executive to the Legislature.

Parliament sets goal of Public Financial Management and watches performance of Government in this areas.

A Government cannot exist without raising and spending money. Parliament / Legislature controls public finance which includes granting of money to the administration for expenses on public services. Imposition of taxes and authorisation of loans. Through this means Parliament exercises control over the Executive because whenever Parliament discusses financial matters, Government broad policies invariably brought into focus.

The Indian Constitution devices and elaborate machinery for securing Parliamentary control over finances which is based on the following four principles. In relation to financial control, the Westminster system and principles are the fundamental one which is as follows:-

- 1) The Sovereign been the Executive power, is charged with the management of all the revenues of the State, and with all payments for the public service. The Crown therefore acting with the advice of its responsible Ministers, makes known the Commons the financial requirement of the Government.

2) The Commons, in return, grant such aids or supplies as a require to satisfy these demands and they provide by taxes and by the appropriation of other sources of the public income, the ways and means to meet the supplies which they have granted.

3) Thus the Crown demands money, the Commons grant it, and the Lords assent to the grant; but the Commons do not vote money unless it is required by the Crown; nor do they impose or augment taxes, unless such taxation is necessary for the public service, as declared by the Crown through its constitutional advisers.

4) The financial control of the House of Commons is exercised at two different levels. As an agent in the formation of policy, it authorizes the several objects of expenditure and the sums to be spent on each; it also authorizes the levying of taxes.

5) On the level of administration, it satisfies itself that its expenditure decisions are duly carried out in other words, that the sums it has granted, and no more, are spent for the purposes for which they were granted, and for no other purposes.

6) For both sets of functions the House of Commons has, partly through its own procedure, and partly through legislation and administrative practice, secured appropriate machinery.

7) The procedure and machinery for the control of financial policy – the presentation of estimates, the budget, the voting of estimates, the business of Ways and Means, and Consolidated Fund, Appropriation and Finance Bills – form the subjects of the chapters that follow.

On the basis of Westminster model, the Indian Constitution devised and elaborates machinery for securing Parliamentary control over finances which is based on four principles:-

1) The Executive cannot raise money by taxation, borrowing or otherwise spent money without the authority of Parliament.

2) The Second principle regulates the relation between the two Houses of Parliament in financial matters. The power of raising money by tax or loan and authorizing expenditure belongs exclusively to the popular House i.e. Lok Sabha or Legislative Assemblies. The Rajya Sabha merely assents to it. It cannot revise, alter or initiate a grant.

3) In Financial matters, Rajya Sabha or Legislative Councils does not have co-ordinate authority with Lok Sabha which has the real control in this area.

4) Thus financial powers have been concentrated in the Lok Sabha / Legislative Assemblies and the Rajya Sabha plays only a subsidiary role in this respect.

5) The third principle imposes a restriction on the power of Parliament to authorize expenditure. Parliament cannot vote money for any purpose whatsoever except on demand by Ministers.

6) The fourth principle imposes a similar restriction on the power of Parliament to impose taxation. Parliament cannot impose any tax except upon the recommendation of the Executive. These principles are discussed below.

Each of these principles may be discussed in detail—

- 1) **No tax without authority of law (Article 265)**
- 2) **Money Bill, Financial Bill and Ordinary Bill involving expenditure (Article 110, 109, 199)**
- 3) **Parliamentary Procedure in Money Bill**
- 4) **President / Governor's Assent**
- 5) **Executives responsibilities in financial matters**
- 6) **Parliamentary controls on appropriation**
 - (i) **Consolidated Fund A. 266**

No Expenditure can be incurred by the Government without the sanction of the Parliament.

- 7) **Public Account**
- 8) **Expenditure charged on the Consolidated Fund.**
 - (i) **Public expenditure is divided into two distinct categories:**
 - (b) **Expenditure *charged* on the Consolidated Fund.**
 - (c) **Charges granted by Parliament on an annual basis. A. 112**
- 9) **Annual appropriations –**

An important mechanism for securing Parliamentary control over appropriations is the principle of “*Annuality*”. Most of the appropriations made by the Parliament or on an annual basis. The Executive / Government thus comes before Parliament every year to ask for grants for the ensuing year so that, Parliament gets an opportunity over viewing / criticizing and discussing the activities and policies pursued by the Government during the preceding year.

BUDGET

The term 'Budget' refers broadly to the financial proposals which the Minister for Finance puts before the Houses of Parliament or the State Legislature as the case may be. In the Constitution of India, reference is made to the 'Laying of Annual Financial Statement before the Houses of Parliament or the Legislatures of the States' (Article 202). This document is a statement of estimated receipts and expenditure of the Government for the coming financial year and is generally known as the 'Budget'. It also contains actuals for the preceding year and revised estimates of the current year.

Budget is the means by which the Government explains how it intends to raise and spend money for the coming financial year and obtains approval from Parliament for the same. The Budget document provides a comprehensive statement of the nation's / state's preferences and priorities. Parliament/Legislature, being the supreme representative body of the people, is to ensure that the Budget matches the nation's/State's needs with the available resources. As the Budget covers all aspects of the Government's administration, it provides a unique opportunity to members to debate and discuss all areas of Government's performance.

Keeping in view the needs of a newly independent society, the framers of the India Constitution preferred the Westminster model of Parliamentary Democracy. The Constitution gives the Parliament the authority to make the Executive accountable to it for all acts and omissions. In matters relating to money and finance, the Parliament exercises total control over the executive. This parliamentary control over the public purse is exercised through certain Constitutional provisions (Articles 107-110, 112-117 and 202 to 207 in particular) and through various devices provided for in the Rules of Procedure and Conduct of Business in Lok Sabha. While the Executive is empowered to bring forward proposals for taxation and expenditure, Parliament has the right to discuss, approve or reject these proposals. Besides, the Parliament also has the power to ascertain that the money granted by it has been spent by the Executive in accordance with the prescribed constitutional provisions.

In a developing society like India, budgeting essentially provides a set of economic tools for national development. Parliament / Legislature, here, guides for an optimal use of the scarce public resources. To achieve this goal, the Budget primarily emphasizes on rapid economic growth-agricultural and industrial development, export promotion, increasing employment opportunities, poverty alleviation, optimum income distribution and above all, economic stability of the country / State.

The Union / State Finance Minister, who is entrusted with the preparation and presentation of the Budget, present it to the Lok Sabha / Legislative Assembly on such day as the President / Governor directs.

By convention, the General Budget is presented on the last working day of February each year and the Railway Budget is presented some time in the fourth week of February prior to the presentation of General Budget. Simultaneously, a copy of the respective Budgets is also laid on the Table of the Rajya Sabha/Legislative Council.

The Constitution of India provides three cardinal principles in order to ensure accountability and transparency in the budgetary process. Firstly, article 265 provides that no tax shall be levied or collected except by authority of law. Secondly under article 266, there is a provision that no expenditure can be incurred from public funds except in the manner provided in the Constitution and in accordance with law. Thirdly, the Executive is bound to spend money in the manner prescribed by Parliament. In implementing these principles, the Government is accountable to the people through Parliament.

It is the duty of the Government to reveal, explain and justify its policies, programmes and financial proposals to Parliament. In turn, Parliament asks questions, clarifications and may disapprove the financial proposals through various parliamentary devices. The Executive constantly faces parliamentary scrutiny. There is normally a four stage review and approval of financial proposals in Parliament, namely, general discussion on the Budget after it is presented; discussion and voting on Demands for Grants; consideration of the Appropriation and Finance Bills and passing of the Appropriation and Finance Bills.

After the Budget is presented, the Lok Sabha gets the opportunity to discuss the financial proposals at several stages till the passage of the Appropriation Bill and the Finance Bill. The first stage is the general discussion on the Budget. At this stage, the Lok Sabha discusses the Budget as a whole or any question of principle involved therein, but neither a motion can be moved nor the Budget is submitted for voting in the House at this stage. The Finance Minister replies at the end of the general discussion. The scope of discussion at this stage is confined to the examination of the scheme and the structure of the Budget in general. The Finance Minister seeks the approval of a Vote on Account of Lok Sabha for a period of generally two months to facilitate the discussion on the Budget proposals in detail even after the expiry of the financial year. Article 116 of the Constitution of India deals with the provision for Vote on Account. After the approval of Vote on Account,

Demands for Grants in respect of various Ministries and Departments are taken up for consideration and approval of the House. Demands for Grants can be discussed and voted only in the Lok Sabha which is directly-elected Chamber.

In the Budget, the Parliament is free to suggest as to what should be the level of expenditure besides specifying the purposes for which various amounts may be required. Parliament has the full freedom to suggest as to how revenue should be raised to meet the expenditure. It also examines the estimates and has the power to reduce any Demand for Grants, but it cannot increase the estimates.

Role of Financial Committees

The Financial Committees have assumed a position of great importance in implementing the principle of accountability. The three Financial Committees- Public Accounts Committee (PAC), Committee on Estimates (EC) and Committee on Public Undertakings (CoPU) play an important role in enforcing parliamentary control over public finance and thereby making the executive accountable to the legislature.

Public Accounts Committee

The Committee examines accounts showing the appropriation of sums granted by Parliament for the expenditure of the Government of India, the annual finance accounts of the Government, and such other accounts laid before the House together with their respective Audit Reports as the Committee may think fit. As an instrument of legislative surveillance over the executive, the PAC has been performing its role very effectively.

Estimates Committee

The Committee examines such estimates which may seem fit for examination to the Committee or are specifically referred to it by the House or the Speaker. The purpose is to report what economies, improvements in the organization, efficiency or administrative reforms, consistent with the policy underlying the estimates, may be affected.

Committee on Public Undertakings

The task of exercising parliamentary scrutiny over the accounts of public corporations is undertaken by the Committee. Examination of Public Undertakings by the Committee is generally in the nature of an evaluation of the performance of an Undertaking covering all aspects like implementation of policies, programmes, management, financial working, etc.

Comptroller and Auditor-General (C&AG)

The Comptroller and Auditor-General of India (C&AG) audits and reports on Appropriation Accounts and provides comprehensive reports on the financial and fiscal management of the Government and performance of development programmes. These reports are examined by the PAC to assess the performance of the Government. This is a very detailed accountability exercise through examination of the officers of the Departments and agencies and verification of their written representations. The PAC submits its recommendations to Parliament and also reports on the action taken on these recommendations.

Conclusion

The parliamentary system of governance has provided adequate instrumentalities to keep its vigil on the Executive with regard to financial matters. In fact, the strong committee system that has been evolved over the years has been acting as a watchdog of Parliament on how the Government is raising resources and spending them. A strong committee system has effectively restrained the profligacy of the Executive in money matters. Moreover, the office of the Comptroller and Auditor General - a unique institution enjoying constitutional protection- helps Parliaments in detecting financial irregularities and compelling the Executive to take corrective measures. The Indian Parliament has quite effectively been able to ensure that the public funds are not wasted and are spent only on the services approved by the chosen representatives. In this way the Legislature is keeping effective control over public finance.

6. LEGISLATURE COMMITTEE SYSTEM

In a parliamentary system, the Legislature has to lay down governmental policies, make laws and oversee administration. But the enormous range and complexity of legislation and administrative functions of a modern State make it almost impossible for the Legislature to adequately scrutinise legislative proposals and oversee administrative action. While the government has vast and highly sophisticated administrative machinery and organisation manned by experts, specialists and seasoned civil servants at its disposal to undertake its complex tasks, the Legislature finds itself severely handicapped in this regard. Through the parliamentary devices like questions and debates it is not able to exercise more than a sporadic supervision of administration. In order to make parliamentary surveillance more effective and meaningful, the Parliament / Legislature needs an agency of its own in which the whole House has confidence. This, among other things, the Parliament / Legislature seeks to achieve through Parliamentary Committees composed of a small number of their members. This is specially so in India.

The review of administrative action and the examination of numerous and complicated legislative proposals and subordinate Legislation require expertise and close scrutiny at are not possible in the Legislature being large body. *Second*, the work load is enormous. It does not have the time to undertake detailed investigations or even to discuss every matter at length. The Committees while ensuring a fuller and more comprehensive examination of technical and other matters result in saving the time of the House for discussion of important matters and prevent the Parliament / Legislature from getting lost in details and thereby losing hold on matters of policy and broad principles. *Third*, matters dealt with by Committees are often such as need to be considered in greater depth, with care and expedition, away from the glare of publicity, in a calmer and, so far as possible, non-partisan atmosphere. Accommodating different views and effecting compromises through give-and-take are accomplished more easily in committee atmosphere than in the House itself where, by and large, members operate on the basis of party loyalties and are naturally concerned with building a public image. In a party system like that in the Indian Parliamentary System with one very large party and several small groups, some of the Committees perform functions that would otherwise belong to the Opposition in that they keep the Executive on its toes and prevent its becoming arbitrary. The Opposition Members also, despite their actual

strength, find it easier to make their impact felt much more in the Committees than on the floor of the House. Moreover, in Committees the government may willingly concede a point or two and accept constructive suggestions from Opposition members. While all sections of the House are generally represented in the Committees, the proceedings in the latter are less formal and the procedure is more flexible than in the former. This also leads to a more comprehensive and judicious consideration of the issues entrusted to the Committees. Last, Committees provide useful forums for the utilisation of experience and ability that may otherwise remain untapped. They also constitute a valuable training ground for future ministers and presiding officers. They train a large number of members not only in the ways in which administration is carried on, but also make them aware of the problems that the administrators have a face in their day-to-day functioning.

An important aspect of our committee system is that the Committees act as a liaison between the Legislature and the people on the one hand and between the government and the people on the other. They enable the general public, institutions and in some cases even individual citizens to participate more directly and effectively in the consideration by the Parliament of issues directly affecting the people. This kind of public participation in the work of Parliament / Legislature is made possible by the committees inviting written memoranda and representations from experts and bodies, organisations or interests affected by the measures under consideration of the Committees, hearing oral evidence from the representatives of the parties concerned and undertakings study tours for on-the-spot study of the issue under their consideration. This procedure helps in educating the public in the functioning of the Parliamentary System and focusing their attention on important public issues.

The three institutional components of the parliamentary form of democracy adopted by our country through the Constitution are:-

1. Legislature
2. Executive
3. Judiciary.

In a democracy, the will of the people is supreme. This will and public opinion are reflected in the Legislature elected by the people. This is the reason the Legislature is entrusted with the responsibility of making legislations that articulate the aspirations of the people and of running the administration with public interest as the objective. While the executive implements the legislations, the judiciary interprets them. Of the three

pillars of the government, the work of the Legislature is of utmost importance.

In a parliamentary form of government, the Council of Ministers (the administration) is responsible to the Legislature. The Council of Ministers operates on the principle of collective responsibility. The Legislature, hence, has to keep an eye on the working of the administration. This control is conducted through Legislative, Financial and Critical means. Members of the Legislature are required to employ various parliamentary devices to make this control effective.

India has adopted the Responsible Cabinet System as provided in our Constitution. Thus, provisions have been made in the Constitution whereby important matters in the government can be discussed in the House. Business of the House is conducted in accordance with a set of rules of procedure. One of the major responsibilities of the administration is to present the annual statement of accounts (the budget) to the house. The administration is not authorized to impose any tax nor can it spend any money without the sanction of the Legislature. Working of various departments of the administration can be criticized while discussing the budget. Moreover, devices like adjournment motions, no-confidence motions, calling attention motions and question-answers are used for regulating the administration by the Legislature. In addition, Legislative Committees are appointed to monitor the administration. These committees are described as two eyes and a bridle of the Legislature.

Parliament manifests aspirations of the people. Therefore, it must be empowered to monitor if the public policies are implemented in keeping with these aspirations. Given the increasing and complex working sphere of the administration, it does not become possible for parliament or the Legislature to effectively monitor various activities of the administration neither can it devote adequate time for dealing with various problems which are created owing to administrative, legislative and official nature of such problems. The time at the disposal of the Legislature is limited and most of which is utilized for disposing routine business or considering legislative motions. Since many activities of the administration are financial and investigative in nature, it becomes difficult for the entire House to discuss them in a meaningful and effective manner. This constraint of time is also experienced while taking up discussion on important sectors like public health, education or social welfare. In view of this, it was felt that a Committee System will be a useful option.

The objective of the Committee System is that the responsibility of considering the administrative matters which are complex and technical in nature can be entrusted to a nucleus of members in the House. This way, the Committee can be used as a parliamentary device. Although all democratic countries have a committee system, there are variations in its formation and functioning as per the requirements of the respective nations. Nonetheless, the universal feature of such committees is that as they are a creature of the Legislature, they are subordinate to the House. They derive their mandate from the House and are called a 'mini Legislature' by many. The Committees work under the Presiding Officer and submit their reports to the Legislature.

Some of the factors which became instrumental in the formation of the Committee System in the parliamentary democracy form of government are:-

1. As the number of members of a House is quite large, it is difficult for the members to examine any matter in detail and minutely.
2. Discussions in the House are, by and large; show the impact of party politics. On the other hand, it becomes possible to work in a non-partisan manner in a Committee.
3. Conclusions of a Committee are drawn, generally, on merit and this way the purpose of forming a Committee is achieved better.
4. While a Committee can enlist the assistance of various experts in discussing different matters entrusted to it, this does not become possible in case of the House.
5. An opportunity becomes available for a Committee to study the vast material which is placed before it. Its members can learn firsthand the working of the administration and the problems faced by it. After perusing relevant documents and examining representatives of the administration, members find it easier to identify ways and means to resolve the problems before the public by reforming the existing systems and procedures of the administration.
6. A Committee can find more time than a House can to devote for studying a subject thoroughly. Therefore, its evaluation of the pros and cons of an issue is done with ample time at its disposal.
7. Since members are in daily contact with the general public, they are aware of the difficulties and grievances of the people very well. Thus, it becomes possible for them to present such problems before the administration for effective solutions.

As Committees work on a non-party basis, the matters coming before them are taken into consideration without any political affiliation attached. This is the reason that no dissenting note is allowed to be appended to the Committee's report. All Committees work under the supervision and control of the Presiding Officer. They are authorized to summon witnesses, call for information or documents from the administration. Working of the Committees is confidential. Therefore, its proceedings can't be released for publication. Similarly, the documents brought before the Committee or its Sub-Committee, the evidence produced before it or the discussion during the proceedings can't be released for publication. The Committee is always headed by a non-official member, who is nominated by the Speaker. As per tradition, Chairman of the Public Accounts Committee belongs to the opposition. By and large, Ministers are not members of Legislative Committees.

There are various types of Committees. For instance, the Speaker nominates, from time to time, such Committees as the Standing Committee, the Statutory Committee, Joint Committees or Ad-Hoc Committees. The financial committees are: the Public Accounts Committee, the Estimates Committee and the Public Undertakings Committee. The committees related with the working of the house are the Business Advisory Committee, the Rules Committee, the Privileges Committee, the Amenities (accommodation and salaries & allowances) Committee, the Vigilance Committee and the Assurance Committee. Also, there are committees for specific purposes like the Women's Rights and Welfare Committee.

The Committees are provided office assistance by the Legislature Secretariat. While certain Committees are formed on a proportional representation basis, the others are nominated by the Presiding Officer.

Sir Stafford Cripps has observed that the efficiency of a Committee System depends upon –

1. Inducting an adequate number of members on an all-party basis provided that they have a sincere interest in the subject matter and are prepared to work.
2. Verifying consistency of presence of members from the point of view of obtaining deep and wider knowledge of the subject matter.
3. Creating an atmosphere conducive for inculcating the spirit of collective efforts with the objective of establishing a good administration.

Members of the Legislature enjoy certain privileges and similar rights are bestowed on the officials of the Legislature, too, while discharging their

duties. Therefore, Committee members ought not to obstruct the discharging of such duties by the officials and employees of the Legislature. Members also ought not to create any unpleasantness while working with the officials and employees of the Legislature. In accordance with Rules of Procedure, Committees are permitted to undertake study tours within the state and occasionally outside, too. Whenever the Committee feels it necessary to undertake a study tour for obtaining some information, arrangements should be made for planning the study tour. Afterwards, points should be finalized to examine a witness once the material before the Committee is studied. A Committee can express its thoughts and can make recommendations in the form of a report. However, the Committee can't direct any official of the administration to initiate or not to initiate any specific action or to take an action in a particular manner. Committees must observe this norm carefully while on a tour.

Various Committees of Maharashtra Legislature

(A) Joint Committees of Both Houses

1. Estimates Committee
2. Public Accounts Committee
3. Public Undertakings Committee
4. Panchayati Raj Committee
5. Employment Guarantee Scheme Committee
6. Sub-ordinate Legislation Committee
7. Backward Castes Welfare Committee
8. Backward Tribes Welfare Committee
9. Vimukta Jati & Nomadic Tribes Committee
10. Women Rights and Child Welfare Committee
11. Other Backward Classes Welfare Committee
12. Minority Welfare Committee
13. Marathi Language Committee

(B) Committees of Legislative Council

12. Business Advisory Committee
13. Committee on Privileges
14. Committee on Petitions

15. Committee on Government Assurances
16. Committee on Rules
17. Committee on Absence of Members' from the sittings of the House
18. Committee on Private Members Bills & Resolutions

(C) Committees of Legislative Assembly

19. Business Advisory Committee
20. Committee on Privileges
21. Committee on Petitions
22. Committee on Government Assurances
23. Committee on Rules
24. Committee on Absence of Members' from the sittings of the House
25. Committee on Private Members Bills & Resolutions

(D) Statutory Joint Committees

26. Joint Committee on Salaries and Allowances of Members'
27. Joint Committee on Maharashtra Legislature Ex-Members Pension

(F) Ad-hoc Joint Committees

28. Committee on Library
29. Committee on MLA's Hostels Accommodation
30. Committee on Catering Management
31. Committee on Inspection of Private Charity Hospitals.
32. Committee on Papers laid on the table.
33. Committee on the work of PWD to be allotted to the Labour
Co-operative Societies.

Members on all these Committees are nominated by the Presiding Officers in proportion of the strength of various parties in the House and by consulting the Leader of the House, the Leader of Opposition or the Group Leader. Tenure of the members on the Committees is generally of one year or till the new Committee comes into existence.

7. LAW MAKING PROCESS

Law-making is still deemed to be the predominant function of the Parliament / Legislature even though today it is not the only function it performs nor is the Parliament the only actor in the drama of law-making. Now-a-days only a small portion of the time of the Legislature is devoted to the business of law-making and initiative in law-making lies mostly with the Executive. In actual practice, the government makes legislative proposals and the Parliament, after discussion and debate, puts its seal of approval. It performs this function through a series of processes.

The Indian Constitution provides specific provisions for the distribution of Legislative powers between Union and States **as per Article 245 to 254 of the Constitution**. In the seventh Schedule of the Constitution three lists namely Union List, State List and Concurrent List are incorporated. The Union Legislature is empowered to make laws so far as subjects those are enumerated in the Union List like defence, currency, atomic Energy, Banking, Foreign Affairs etc., (Total 97 subjects), so far as State List is concerned, the State Legislature is authorised to make laws on the subjects like Local Self Government, Police, Prison etc. (Total 66 subjects). However, in case of concurrent list the Union Legislature as well as State Legislatures are empowered to make laws (Total 47 Subjects). Provided when there is a conflict between Union and State Laws always Union Law prevails.

All legislative proposals are initiated in the Parliament, Legislature in the form of Bills. A Bill is the draft of a legislative proposal. It can be initiated either by the government or by any private member in either House of Parliament. Bills, thus, broadly fall into two categories (a) Government Bills and (b) the Private Members' Bills. However, as things stand, most laws that find their way to the Statute Book are through the government Bills. Although the Private Members' Bills that become law are few and far between, they also serve a good purpose in as much as they bring to the attention of the government and the public the need to amend an existing law in the light of the changing conditions or to enact a needed piece of legislation.

Besides, the Bills can broadly be categorised as :—

- (i) Ordinary Bills
- (ii) Money Bills based on their provisions regarding financial matters; and;
- (iii) Constitution Amendment Bills.

Ordinary Bills

All Bills which are not Constitution Amendment Bills and Money Bills, are Ordinary Bills, i.e. draft proposals for ordinary legislation.

Legislative Procedure Regarding Ordinary Bills

Drafting of Bills: As soon as a legislative proposal is conceived, the Ministry concerned works out its political, administrative, financial and other implications. If other ministries or the State governments are also involved, their advice is obtained. The Ministry of Law and the Attorney General of India are consulted in respect of legal and constitutional aspects. Professionals and various interest groups such as business, labour, agriculture and industry, if considered necessary, are also consulted. After the proposal has been thoroughly examined from all points of view, it is submitted to the Cabinet for approval, when the Cabinet has approved the proposal, the government draftsman, assisted by departmental experts and officials, gives it the shape of a Bill. The Bill is, then, examined in detail by the administrative machinery in consultation with all other authorities concerned and given a final shape.

When this has been done, the Bill is ready to be brought before the House. It can be introduced in either of the two Houses by the Minister concerned. For this, a Minister is required to give seven days notice, to move for leave to introduce the Bill. Simultaneously, two duly corrected copies of the Bill are sent to the Secretary-General of the House in which it is sought to be introduced. After the Bill has been found complete in all respects by the Secretariat, it is included in the List of Business on a date selected by the Speaker or the Chairman as the case may be. Normally, copies of the Bill are made available to the members at least two days before the date on which it is proposed to be introduced.

The Three Readings : A Bill has to pass through different stages in the Parliament before it becomes an Act. Each Bill undergoes three readings in each House, i.e. First Reading, Second Reading and Third Reading.

(i) First Reading : It is necessary to ask for leave of the House to introduce a Bill. After the Question Hour on the appointed day, the Minister in charge of the Bill on being called upon by the Speaker, rises in his seat and says "Sir, I beg to move for leave to introduce the Bill...". Generally, the leave is granted by a voice vote and is opposed rarely. The Minister rises again to say "Sir, I introduce the Bill...".

Usually, the 'introduction' which is the 'first reading' of a Bill is only a formality and by convention there is no discussion at this stage. But, if

introduction of Bill is opposed on the ground that the proposed legislation is outside the legislative competence of the Parliament, the Chair may permit a full discussion in which the Attorney-General also may participate. The question is put to vote of the House thereafter. There being no restriction on the number of Bills to be introduced on a particular day, a minister may introduce as many Bills as he wants.

After a Bill has been 'introduced' in the House, it is published in the *Gazette of India*. Even before introduction, a Bill can be published in the *Gazette* with the permission of the Speaker / Chairman. In such a case, leave of the House to introduce the Bill is not necessary. In other words, the Bill does not have to go through the introduction stage.

(ii) Second Reading : Second Reading forms the most elaborate and vital stage in the life of a Bill because it is at this stage that it receives detailed and minute examination. The second reading or the consideration stage consists of two steps which may be called as the First Stage and the Second Stage.

The First Stage : The first stage involves the general discussion on the Bill as a whole where only the principle underlying the Bill is discussed and not the details of the Bill. At this stage, it is open to the House to refer the Bill either to a Select Committee of the House or to the Joint Committee of the two Houses or to circulate it to elicit opinion thereon or straightaway takes it into consideration.

Reference to Committee : A Bill may be referred to a Select Committee or a Joint Committee. The members of the Select Committee are drawn from among the members of the House where the Bill has originated. In the case of a Joint Committee, members from Lok Sabha and Rajya Sabha, in such a case, will be 2:1. The Chairman of the Joint Committee is appointed by the Presiding Officer of the House in which the Bill was introduced. These are *ad hoc* Committees which are appointed to consider particular Bills referred to them.

Bills may also now be referred by either House or its Presiding Officer to the new departmentally related Joint Standing Committees of the two Houses in accordance with the subject matter of each Bill.

The Committee considers the Bill clause by clause just as the House does. Amendments can be moved to various clauses by members of the Committee. The Committee can also take evidence of experts, associations or public bodies who are interested in the measure. Procedure for consideration of a Bill is the same as it is in the House. After clauses, Schedules, etc. have been

individually considered and adopted by the Committee, the Lok Sabha Secretariat prepares a report for presentation to the House(s) which, in its turn, considers the Bill as reported by the Committee.

Eliciting Opinion: If a motion for circulation of the Bill for the purpose of eliciting opinion thereon is adopted, the Secretariat of the House circulates letters to all the State governments and Union territories asking them to publish the Bill in their Gazettes for inviting opinions of local bodies, associations, individuals or institutions concerned with the Bill. The period for eliciting opinion is generally specified in the motion for circulation of the Bill, but where no date has been specified, the State governments are asked to send opinions within three months of the adoption of the motion. After the opinions have been received, these are laid on the Table of the House followed by a motion for reference of the Bill to a Select / Joint Committee. It is not ordinarily permissible at this stage to move a motion for consideration of the Bill. The Bill again passes through the Committee stage and the Bill as reported, is presented to the House.

After the report of the Select or Joint Committee on a Bill has been presented to the House, the minister may make any one of these motions—that the Bill as reported, be taken into consideration or that the Bill, as reported, be committed to the same Committee or to a new Committee or that the Bill be circulated or re-circulated, as the case may be, for the purpose of eliciting opinion or further opinion thereon.

In case the minister prefers to move the motion that the Bill, as reported, be taken into consideration, a debate is allowed. The scope of the debate is confined to the Bill as reported by the Committee and the principle of the Bill is not open to discussion again, because the house, in effect, commits itself to the principle of the Bill when a motion to refer the Bill to a Committee is adopted.

The Second Stage : After the motion that the Bill or the Bill as reported by the Select / Joint Committee be taken into consideration has been adopted, the Bill is taken up for consideration clause by clause. Each clause is placed before the House separately for discussion. Immediately after a clause is placed before the House, amendments thereto can be moved subject to the conditions of admissibility. The clause by clause consideration is often long and laborious as each clause is normally discussed separately and each amendment (except those withdrawn by the mover) is also be discussed, adopted or rejected by the House. Amendments, if accepted, become a part of the Bill.

(iii) Third Reading: When all the clauses and schedules, if any, of the Bill have been considered and voted upon by the House, the Minister can move that the Bill be passed. At this stage, discussion is confined to arguments either in support of the Bill or for its rejection without referring the details thereto further than is absolutely necessary. Only verbal, formal and consequential amendments are allowed to be moved at this stage. Since the general principles of the Bill have already been agreed to and its details have also been examined, the third reading is seldom the occasion for a lengthy debate.

In passing an ordinary Bill, a simple majority of members present and voting is required. In a parliamentary system with the government enjoying majority support in the Lok Sabha, a government Bill, therefore, has got nearly full guarantee of easy passage.

Bill in the Other House : After the Bill has been passed by the originating House, it is transmitted to the other House for its concurrence with a message to that effect. Here, again, it goes through all the three stages. The House which receives the Bill can take either of the following courses:

(a) It may reject it altogether giving rise to a deadlock between the two Houses.

(b) It may pass the Bill as it is or with amendments. If it passes it as transmitted by the originating House, it goes to the President for his assent. If, on the contrary, it is passed with amendments, the Bill is returned to the first House. There the amended Bill is laid on the Table of the House. After two days, the minister concerned may move that the amendment(s) as proposed by the other House, be taken into consideration. If the House agrees to the amendment(s) proposed by the other House, the Bill is deemed to have been passed, as amended, by both the House. If, however, the originating House does not agree to the amendments proposed by the other House, the Bill is sent again to the latter to get its concurrence. If this House continues to insist on its amendments, the result is a deadlock.

(c) 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 it receives the Bill, a deadlock is deemed to have taken place.

Joint-sitting of the Two Houses : In case of a deadlock due to disagreement between the two Houses on a Bill, an extraordinary situation arises which is resolved by both the Houses sitting together. The Constitution empowers the President to summon a 'Joint-sitting' of both the Houses for the purpose of deliberation and voting on the Bill; unless the Bill has already

lapsed due to the dissolution of the Lok Sabha. Such a joint-sitting is presided over by the Speaker who is assisted by the Secretary-General, the Lok Sabha. The joint-sitting is governed by the Rules of Procedure of the Lok Sabha. At the joint-sitting, only such amendments can be proposed which become necessary due to the delay in the passage of the Bill. The decisions at such sittings are taken by the majority of the total number of members of both the Houses present and voting. Thus, Lok Sabha, due to its numerical superiority may have a decisive advantage. So far only three bills, the Dowry Prohibition Bill, 1961, the Banking Service Commission (Repeal) Bill, 1978, and the Prevention of Terrorism Bill, 2002 have been passed at joint-sittings.

Assent to Bills : When a Bill has been passed by both the Houses either singly or at a joint-sitting, the Bill is presented to the President for his assent. If the President withholds his assent, there is an end to the Bill. But since the President is a constitutional head who must act on the advice of the Council of Ministers, he would normally not withhold assent against the advice of his ministers but he may seek information, clarification or even reconsideration of the advice and for this purpose send the Bill back to the government [Arts 74(2) and 78(b)]. This is presumably what President Zail Singh did in case of the Postal Bill and President Venkataraman in case of a Bill *inter alia* seeking to give pension to members of Parliament after just one year's service.

If the President gives his assent, the Bill becomes an Act from the date of his assent. Instead of refusing or giving his assent he may return the Bill with a message for reconsideration by the two Houses. If, however, the Houses pass the Bill a second time, with or without amendments, and the Bill is presented again to the President for his assent, he shall have no power to withhold his assent to the Bill.

Money Bills

The Constitution provides an elaborate definition of a Money Bill in Art. 110. According to this article, a Bill is deemed to be Money Bill if it contains only provisions dealing with all or any of the matters relating to :

- (a) the imposition, abolition, remission, alteration of any tax ;
- (b) the regulation or borrowing of money by the government ;
- (c) the payment of moneys into or withdrawal of moneys from the Consolidated or the Contingency Funds of India;
- (d) declaring a new item to be expenditure, charged on the Consolidated Fund; and

- (e) Any matter incidental to any of the matters specified in sub-clauses (a) to (f) of Art. 110 (1).

But a Bill shall not be deemed to be a Money Bill by reason only if it provides for the demand or the payment of fees for licence or fees for service rendered or by reason that it provides for imposition, abolition and regulation, etc. of any tax by a local authority or body for local purposes.

It may be remembered that in case any question arises whether a Bill is a Money Bill or not, the decision of the Speaker will be final.

A Money Bill cannot be introduced in the Rajya Sabha. It can be introduced in the Lok Sabha only on the recommendation of the President. After a Money Bill has been passed by the Lok Sabha, it is passed on to the Rajya Sabha for its recommendations with a certificate by the Speaker that it is a Money Bill. The Rajya Sabha cannot reject a Money Bill nor can it amend it by virtue of its own powers. It must, within a period of 14 days from the date of receipt of the Bill, return the Bill to the Lok Sabha with its recommendations. The Lok Sabha may thereupon either accept or reject all or any of the recommendations of the Rajya Sabha. If the Lok Sabha accepts any of the recommendations of the Rajya Sabha, the Money Bill shall be deemed to have been passed by both the Houses with the amendments recommended by the Rajya Sabha and accepted by the Lok Sabha. If the Lok Sabha does not accept any of the recommendations of the Rajya Sabha, the Bill shall be deemed to have been passed by both the Houses in the form in which it was passed by the Lok Sabha (before the amendments recommended by the Rajya Sabha). Further, if a Money Bill passed and transmitted to the Rajya Sabha for its recommendation is not returned to the Lok Sabha within the said period of 14 days, it shall be deemed to have been passed by both the Houses at the expiration of 14 days. There is no chance of any disagreement between the two Houses in regard to Money Bills as in the case of an ordinary Bill, where the Rajya Sabha enjoys a co-equal power with the Lok Sabha. Hence, there is no provision of a joint-sitting in the case of a Money Bill. The approval of a Money Bill by the Rajya Sabha is, in effect, only formal and routine.

Financial Bills

The Constitution distinguishes Money Bills from the Financial Bills. Generally speaking, a Financial Bills may be any Bill which relates to revenue or expenditure. These, besides providing for any of the matters specified in the Constitution for a Money Bill, also provide for other matters. Let us, for the sake of convenience, divide the Financial Bills into two categories:

Category A : Those Bills which make provisions for any of the matters specified in Art. 110 for the Money Bill but do not contain solely those matters, e.g. a Bill which contains a taxation clause, but does not deal solely with taxation.

Category B : Bill containing provisions involving expenditure from the Consolidated Fund.

Difference between Money Bill and Financial Bill

The difference between a Money Bill and Finance Bill, as provided in the Constitution, is merely technical. Accordingly, all Finance Bills are not Money Bills. Only those Finance Bills may be Money Bills which contain solely the matters specified under Art. 110 and which are, above all, certified by the Speaker to be Money Bills.

Besides, there is a slight procedural difference as far as the passage of Money Bills and Financial Bills through both the Houses is concerned. A Money Bill can be introduced only in the Lok Sabha on the recommendation of the President and the Rajya Sabha has no power to withhold its concurrence. A Financial Bill of category A, that is to say, any Bill which contains any of the matters specified for a Money Bill but does not exclusively deal with such matters, has two features in common with a Money Bill, *viz.*, (a) that it cannot be introduced in the Rajya Sabha and also, (b) that it cannot be introduced except on the recommendation of the President. But, if not being a Money Bill, the Rajya Sabha is fully empowered to reject or amend it as it does in the case of an ordinary Bill. Subject to the limitation that an amendment other than for reduction and abolition of tax cannot be moved in either House without the President's recommendations, such a Bill has to go through all the stages in the Rajya Sabha as an ordinary Bill and in case of a disagreement between the two Houses, the provision of joint-sitting is resorted to for resolving the deadlock. It may be repeated that the provision for joint-sitting is not applicable in the case of a Money Bill.

Further, a Financial Bill of Category B containing, *inter alia*, a proposal or proposal which involves expenditure from the Consolidated Fund of India and also does not include any matter specified in Art. 110, is treated as an ordinary Bill and hence can be introduced in either House and the Rajya Sabha has full power either to reject or amend it. It does not require the recommendation of the President for its introduction. However, the recommendation of the President is essential for its consideration by either House. In other words, the President's recommendation is not a condition precedent to its introduction as in the case of the Money Bill and the Financial Bill of Category A, but in this case unless such recommendation

has been received; neither House can pass the Bill. In all other respects, such a Bill 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.

Subordinate Legislation

The complexities of modern civilization and rapid industrialization of necessity made the State to shift its emphasis from the concept of *laissez-faire* to that of social welfare. As a result, the State has become more and more an instrument of social and economic change. The legislation that a government has to undertake is so vast and varied that it must touch every aspect of human endeavour. Moreover, law-making is becoming increasingly complicated and technical; it is no longer a simple affair. In this situation, the Legislature has neither enough time to deliberate upon, discuss and approve all the necessary laws nor the requisite expertise to work them out in procedural and technical details. Though the Parliament normally meets for six to seven months in a year, a large volume of legislation always remains in arrears. It is, therefore, provided that the Legislature may delegate some of its power of legislation to subordinate agency. Consequently, the Legislature frames laws in general terms and leaves it to the government to make detailed rules and regulations within the limitations specified, and to carry out the objects of the legislation and to meet new situations not foreseen by the Legislature while enacting laws. Such rules and regulations made by a subordinate agency within the purview of the authority delegated by the Legislature, is called 'subordinate legislation'. It is sometimes described as 'delegated legislation' also.

In India, this power of delegation is a constituent element of the legislative power as a whole. The Legislature is not competent to delegate to the Executive or any other body its essential legislative functions namely, the determination of legislative policy and its formulation as a rule of conduct. It is permissible only when legislative policy and principle are adequately laid down and the delegate is only empowered to carry out the subsidiary policy within the guidelines laid down by the Legislature. In other words, it can only utilise the other bodies or authorities to work out details within the essential principles laid down by it.

Subordinate legislation is sometimes denounced vehemently on the ground that it enables the administration to usurp the legislative powers of the Parliament and this leads to a 'new despotism' of civil servants who are not responsible to the Parliament or to the people directly. Such a blanket authority could obviously enable the bureaucracy to do anything it liked.

On the other hand, today it is impossible to completely avoid subordinate legislation. What is most essential, therefore, is continuous parliamentary surveillance and control over the exercise of the power of subordinate legislation.

Certain safeguards have been provided against the possible abuse of this power. For example, it is laid down that a "Bill involving proposals for the delegation of legislative power shall further be accompanied by a memorandum explaining such proposals and drawing attention to their scope and stating also whether they are of normal or exceptional character. It has been further provided that regulations, rules and bye-laws framed in pursuance of the legislative functions delegated by the Parliament to a subordinate agency, is laid before the House where amendments may also be moved. Thus Parliament exercises scrutiny and control by asserting itself at these stages. Besides, all such rules and regulations are subject to examination by Courts on the plea of ultra-vires to the provisions of the Constitution. Above all, there is a 'Committee on Subordinate Legislation' in each House of the Parliament consisting of its members to see and report to either House whether powers delegated by Parliament have been properly exercised within the statute delegating such powers. It is the Committee on Subordinate Legislation which, in fact, appropriately guards against the possible assumption of arbitrary powers by the administration. It has all along endeavoured to see that all rules and regulations so framed, are not only laid before the Parliament without delay but Parliament has also the statutory right of annulling and modifying them.

**SOME LANDMARK LEGISLATIONS ENACTED BY
MAHARASHTRA LEGISLATURE**

1. Bombay Industrial Relations Act, 1946.
2. Agriculture Debtors Relief Act, 1947.
3. The Bombay Rents, Hotels and Lodging Houses Rates Control Act, 1947.
4. Bombay Tenancy & Agricultural Land Act, 1948.
5. Children Act, 1948.
6. Public Trust Act, 1950.
7. The Bombay Pargana and Kulkarni Watan Abolition Act, 1950.
8. Bombay Police Act, 1951.
9. Maharashtra Land Revenue Code.
10. Village Panchayat Act, 1959.
11. Prevention of Begging Act, 1960.
12. The Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.
13. The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961.
14. The Maharashtra Co-operative Societies Act, 1961.
15. The Secondary and Higher Secondary Board Act, 1965.
16. Maharashtra Regional & Town Planning Act, 1966.
17. Maharashtra Public Libraries Act, 1967.
18. State Legislature Proceedings (Protection & Publication Act), 1969.
19. Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.
20. The Maharashtra Slum Areas Improvement Act, 1971.
21. The Maharashtra Employment Guarantee Act, 1975.
22. The Maharashtra Irrigation Act, 1975.
23. The Maharashtra Housing Act, 1976.
24. The Bombay Prevention of Begging and Bombay Police (Amendment) Act, 1976.
25. The Maharashtra Urban Land (Ceiling and Regulation) Act, 1976.
26. The Maharashtra Khar Lands Development Act, 1979.
27. The Maharashtra Marine Fishing Regulation Act, 1981.
28. The Maharashtra Prevention of Commercial, Anti-Social and Other Dangerous Activities Act, 1981.
29. The Maharashtra Prevention of Water Pollution Act, 1981.

30. The Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981.
31. The Maharashtra Agricultural Universities (Krishi Vidyapeeths) Act, 1983.
32. Agricultural Universities Act, 1983.
33. The Maharashtra Prevention of Dangerous Activities of Slum Lords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1988.
34. The Maharashtra Educational Institutions (Prohibition of Capitation Fee) Act, 1988.
35. The Maharashtra State Commission for Women Act, 1993.
36. The Maharashtra Universities Act, 1994.
37. The Maharashtra Rent Control Act, 1994.
38. The Maharashtra Dr. Babasaheb Ambedkar Marathwada University Act, 1994.
39. Maharashtra Universities Act, 1994.
40. The Maharashtra Employees of Privates Schools (Conditions of Service) Regulation (Amendment) Act, 1995.
41. The Maharashtra Krishna-Valley Development Corporation Act, 1996.
42. The Maharashtra Restoration of name "Mumbai" for "Bombay" Act, 1996.
43. The Maharashtra Marine Board Act, 1996.
44. The Maharashtra State Technical Education Board Act, 1997.
45. The Maharashtra Kavi Kulguru Kalidas Sanskrit Visvavidyalaya (University) Act, 1997.
46. The Vidarbha Irrigation Development Corporation Act, 1997.
47. The Maharashtra Rehabilitation of Project Affected Persons Act, 1998.
48. The Maharashtra Animals and Fisheries Science University Act, 1998.
49. The Maharashtra Health Science University Act, 1998.
50. The Maharashtra Godavari Marathwada Irrigation Development Corporation Act, 1998.
51. The Maharashtra Regulation of Marriage Bureaus and Registration of Marriages Act, 1998.
52. The Maharashtra Prohibition of Ragging Act, 1999.
53. The Maharashtra Essential Services Maintenance Act, 1999.
54. Shree Sai Baba Sansthan Trust (Shirdi) Act, 2004.

55. Rajiv Gandhi Science and Technology Commission Act, 2004.
56. The Maharashtra State Minorities Commission Act, 2004.
57. The Maharashtra *Devdasi* System (Abolition) Act, 2005.
58. The Maharashtra Management Irrigation System by Farmers Act, 2005.
59. The Maharashtra Fiscal Responsibility and Budgetary Management Act, 2005.
60. The Maharashtra Water Resources Regulatory Authority Act, 2005.
61. The Maharashtra State Backward Class Commission Act, 2006.
62. The Maharashtra Taxes on Lotteries Act, 2006.
63. The Maharashtra Fire Prevention and Life Safety Measures Act, 2006.
64. The Maharashtra Non-Biodegradable Garbage (Control) Act, 2006.
65. The Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties (Amendment) Act, 2006.
66. The Maharashtra Local Authority Members Disqualification (Amendment) Act, 2006.
67. The Criminal Procedure Code (Maharashtra Amendment) Act, 2007.
68. The Maharashtra Value Added Tax (Amendment) Act, 2007.
69. The Maharashtra Agricultural Produce Marketing (Development and Regulation) (Amendment) Act, 2007.
70. The Pandharpur Development Authority Act, 2008.
71. The Tuljapur Development Authority Act, 2008.
72. The Mumbai Police (Amendment) Act, 2008.
73. The Maharashtra Domestic Workers Protection Act, 2008.
74. The Maharashtra Agriculture Marketing (Development and Regulation) (Amendment) Act, 2008.
75. The Maharashtra State Security Corporation Act, 2010.
76. The Bombay Primary Education and the Maharashtra Employees of Private Schools (Conditions of Service) Regulation (Amendment) Act, 2011 (Mah. IX of 2012).

77. The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) (Amendment) Act, 2011 (Mah. XI of 2012).
78. The Maharashtra Essential Services Maintenance Act, 2011 (Mah. XII of 2012).
79. The Maharashtra (Change of Short Titles of certain Bombay Acts) Act, 2011 (Mah. XXIV of 2012).
80. The Maharashtra Self Financed School (Establishment and Regulation) Act, 2012.
81. The Maharashtra Self-financed Schools (Establishment and Regulation) Act, 2012 (Mah. I of 2013).
82. The Maharashtra Self-financed Schools (Establishment and Regulation) (Amendment) Act, 2013 (Mah. V of 2013).
83. The Maharashtra Project Affected Persons Rehabilitation (Amendment) Act, 2013 (Mah. X of 2013).
84. The Maharashtra Unauthorized Institutions and Unauthorized Courses of Study in Agriculture, Animal and Fishery Sciences, Health Sciences, Higher, Technical and Vocational Education (Prohibition) Act, 2013 (Mah. XX of 2013).
85. The Maharashtra Groundwater (Development and Management) Act, 2009 (Mah. XXVI of 2013).
86. The Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013 (Mah. XXX of 2013).
87. The Maharashtra Co-operative Societies (Second Amendment) Act, 2013 (Mah. XXXI of 2013).
88. The Maharashtra Regulation of Sugarcane Price (Supplied to Factories) Act, 2013 (Mah. XXXIII of 2013).
89. The Bombay Tenancy and Agricultural Lands, the Hyderabad Tenancy and Agricultural Lands and the Bombay Tenancy and Agricultural Lands (Vidarbha Region) (Amendment) Act, 2012 (Mah. I of 2014).
90. The Maharashtra Housing (Regulation and Development) Act, 2012 (Mah. of 2014).

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अ.क्र.	विधेयकाचे नाव	विधेयक संयुक्त समितीकडे पाठविचा दिनांक
(१)	(२)	(३)
१	सन १९७५ वि.स.वि. क्रमांक २० - महाराष्ट्र नागरी क्षेत्रातील रिकाम्या जमीनीबाबत (अन्य संक्रमणास प्रतिबंध) विधेयक, १९७५. L.A. Bill No. XX of 1975 - The Maharashtra Vacant Lands in Urban Areas (Prohibition of Alienation) Bill, 1975.	२६ एप्रिल १९७५ 26 April 1975
२	सन १९७५ चे वि.स.वि. क्रमांक ४६ - महाराष्ट्र प्रकल्पामुळे विस्थापित झालेल्या व्यक्तींचे पुनर्वसन विधेयक, १९७५. L.A. Bill No. XLVI of 1975 - The Maharashtra Rehabilitation of Project Affected Persons Bill, 1975.	२६ एप्रिल १९७५ 26 April 1975
३	सन १९७७ चे वि.स.वि. क्रमांक २८ - महाराष्ट्र रोजगार हमी विधेयक, १९७७. L.A. Bill No. XXVIII of 1977 - The Maharashtra Employment Guarantee Bill, 1977.	१४ जुलै, १९७७ 14 July 1977
४	सन १९७८ चे वि.स.वि. क्रमांक ४७ - महाराष्ट्र विक्रीकर विधेयक, १९७८. L.A. Bill No. XLVII of 1978 - The Maharashtra Sales Tax Bill, 1978.	८ डिसेंबर १९७८ 8 December 1978
५	सन १९८१ चे वि.स.वि. क्रमांक १०१ - महाराष्ट्र कृषी विद्यापीठ विधेयक, १९८१. L.A. Bill No. CI of 1981 - The Maharashtra Agriculture Universities Bill, 1981.	१८ डिसेंबर १९८१ 18 December 1981
६	सन १९८३ चे वि.स.वि. क्रमांक ५२ - महाराष्ट्र विद्यापीठे (दुसरी सुधारणा) विधेयक, १९८३. L.A. Bill No. LII of 1983 - The Maharashtra Universities (Second Amendment) Bill, 1983.	१४ डिसेंबर १९८३ 14 December 1983
७	सन १९८४ चे वि.स.वि. क्रमांक ३२ - महाराष्ट्र विद्यापीठे विधेयक, १९८४. L.A. Bill No. XXXII of 1984 - The Maharashtra Universities Bill, 1984.	२७ जुलै १९८४ 27 July 1984
८	सन १९८५ चे वि.स.वि. क्रमांक ६ - महाराष्ट्र नागरी क्षेत्र विकास प्राधिकरण विधेयक, १९८५. L.A. Bill No. VI of 1985 - The Maharashtra Urban Area Improvement Authority Bill, 1985.	२ जुलै १९८५ 2 July 1985

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११	सन १९९२ चे वि.स.वि. क्रमांक ३६ - महाराष्ट्र जिल्हापरिषदा व पंचायत समित्या (तिसरी सुधारणा) विधेयक, १९९२. L.A. Bill No. XXXVI of 1992 - The Maharashtra Zilla Parishads and Panchayat Samitis (Third Amendment) Bill, 1992.	१४ जुलै १९९२ 4 July 1992
१२	सन १९९२ चे वि.स.वि. क्रमांक ४८ - महाराष्ट्र विद्यापीठ विधेयक, १९९२. L.A. Bill No. XLVIII of 1992 - The Maharashtra Universities Bill, 1992.	७ डिसेंबर १९९२ 7 December 1992.
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१४	सन १९९४ चे वि.स.वि. क्रमांक २५ - महाराष्ट्र महानगरपालिका व नगरपरिषदा (सुधारणा) विधेयक, १९९४. L.A. Bill No. XXV of 1994 -The Maharashtra Municipal Corporations and Nagar Parishads (Amendment) Bill, 1994.	३० जुलै १९९४ 30 July 1994
१५	सन १९९६ चे वि.स.वि. क्रमांक ५० - महाराष्ट्र जिल्हा नियोजन समिती (रचना व कामे) विधेयक, १९९६. L.A. Bill No. L of 1996 - The Maharashtra District Planning Committees (Constitution and Functions) Bill, 1996.	२३ एप्रिल १९९७ 23 April 1997
१६	सन १९९७ चे वि.स.वि. क्रमांक ८ - महाराष्ट्र औद्योगिक संबंध विधेयक, १९९७. L.A. Bill No. VIII of 1997 -The Maharashtra Industrial Relations Bill, 1997.	२७ एप्रिल १९९७ 27 April 1997

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१७	सन २००० चे वि.स.वि. क्रमांक ४७ - महाराष्ट्र नगरपरिषदा, नगरपंचायती व औद्योगिक नगरी (सुधारणा) विधेयक, २०००.	२४ जुलै २०००
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१८	सन २००० चे वि.स.वि. क्रमांक २० - महाराष्ट्र महानगरपालिका आणि नगरपरिषदा नगरपंचायती व औद्योगिक नगरी (सुधारणा) विधेयक, २०००.	२३ जुलै २००१
	L.A. Bill No. XX of 2000 - The Maharashtra Municipal Corporations and Nagar Parishads, Nagar Panchayats and Industrial Townships (Amendment) Bill, 2000.	23 July 2001
१९	सन २००० चे वि.स.वि. क्रमांक ८३ - महाराष्ट्र राज्य सार्वजनिक उपक्रम (पुनर्रचना व इतर विशेष तरतुदी) विधेयक, २०००.	१२ डिसेंबर २००१
	L.A. Bill No. LXXXIII of 2000 - The Maharashtra State Enterprises (Restructuring and Other Special Provisions) Bill, 2000.	12 December 2001.
२०	सन २००२ चे वि.स.वि. क्रमांक ३१ - मुंबई ग्रामपंचायत (सुधारणा) विधेयक, २००२.	३० एप्रिल २००२
	L.A. Bill No. XXXI of २००२ - The Bombay Village Panchayat (Amendment) Bill, २००२.	३० April २००२
२१	सन २००४ चे वि.स.वि. क्रमांक ४३ - महाराष्ट्र कुळवहिवाट व शेत जमीन कायदे (सुधारणा) विधेयक, २००४.	६ डिसेंबर २००४
	L.A. Bill No. XLIII of 2004 - The Maharashtra Tenancy and Agricultural Land Laws (Amendment) Bill, 2004.	6 December 2004.
२२	सन २००४ चे वि.स.वि. क्रमांक ४६ - महाराष्ट्र जमीन महसूल संहिता (सुधारणा) विधेयक, २००४.	७ डिसेंबर २००४
	L.A. Bill No. XLVI of 2004 -The Maharashtra Land Revenue Code (Amendment) Bill, 2004.	7 December 2004.
२३	सन २००४ चे वि.स.वि. क्रमांक ५४ - महाराष्ट्र सिंचन पध्दतीचे शेतकऱ्यांकडून व्यवस्थापन विधेयक, २००४.	१७ डिसेंबर २००४
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२४ सन २००५ चे वि.स.वि. क्रमांक ६८ - महाराष्ट्र कृषि उत्पन्न पणन (विनियमन) (सुधारणा) विधेयक, २००५.		२३ जुलै २००५
	L.A. Bill No. LXVIII of 2005 - The Maharashtra Agriculture Produce Marketing (Regulation) (Amendment) Bill, 2005.	23 July 2005
२५ सन २००५ चे वि.स.वि. क्रमांक ७८ - महाराष्ट्र कामगार संघांना मान्यता देण्याबाबत आणि अनुचित कामगार प्रथांना प्रतिबंध करण्याबाबत (सुधारणा) विधेयक, २००५.		१६ डिसेंबर २००५
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२६ सन २००७ चे वि.स.वि. क्रमांक ५४ - महाराष्ट्र सहकारी संस्था (सुधारणा) विधेयक, २००७.		२९ नोव्हेंबर २००७
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२७ सन २००९ चे वि.स.वि. क्रमांक ४२ - महाराष्ट्र भूजल (विकास व व्यवस्थापन) विधेयक, २००९.		२१ एप्रिल २००९
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२९ सन २०११ चे वि.स.वि. क्रमांक २४ - महाराष्ट्र शैक्षणिक संस्था (फी वसूलीचे विनियमन) विधेयक, २०११.		२१ एप्रिल २०११
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Maharashtra Legislative Council
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२	सन १९८६ चे वि.प.वि. क्रमांक ३१ - मुंबई प्रांतिक महानगरपालिका (सुधारणा आणि विधीग्राहणीकरण)विधेयक, १९८६. L.C. Bill No. XXXI of 1986 - The Bombay Provincial Municipal Corporations (Amendment and Validation) Bill, 1986.	२४ जुलै १९८७ 24 July 1987
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8. PARLIAMENTARY PRIVILEGES

Erskine May in his classic treatise propounded the law of privileges in British Commonwealth as follows :—

General view of the privilege of Parliament

What constitutes privilege?

Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by Members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent and exemption from the ordinary law.

“The privileges of individual members of the House of Lords may be distinguished from the privileges of individual members of the House of Commons; both again have common privileges as members of the Parliament; and the Lords have special privileges as peers, distinct from those which they have as members of a House co-ordinate with the House of Commons.” [Stubbs Const. Hist., iii (4th edn.) p. 504.]

The particular privileges of the Commons have been defined as: ‘The sum of the fundamental rights of the House and of its individual Members as against the, prerogatives of the Crown, the authority of the ordinary courts of law and the special rights of the House of Lords.’

Breach of privilege and ‘contempt’ - When any of these rights and immunities, both of the Members, individually, and of the assembly in its collective capacity, which are known by the general name of Privileges, are disregarded or attacked by any individual or authority, the offence is called a breach of privilege, and its punishable under the law of Parliament. Each House also claims the right to punish actions, which, while not breaches of any specific privilege, are offences against its authority or dignity, such as disobedience to its legitimate commands or libels upon ‘breaches of privilege’ are more properly distinguished as contempts.

‘The privileges of a legislative assembly would be entirely ineffectual to enable, it to discharge its functions, if it had no power to punish offenders, to impose disciplinary regulations upon its members, or to enforce obedience to its commands.’ (Cushing, Legislative Assemblies, paras 532-3)

Except in one respect, the surviving privileges of the House of Lords and the House of Commons are justifiable on the same grounds of necessity as the privileges enjoyed by legislative assemblies of the independent members

of the Commonwealth and certain British colonies, under the common law as a legal incident of their legislative authority. This exception is the power to punish for contempt. Since the decision of the Privy Council in *Kielley v Carson* it has been held that this power is inherent in each House of Parliament not as a body with legislative functions, but as a descendant of the High Court of Parliament and by virtue of the *lex et consuetudo parliamenti*.

Such powers are essential to the authority of every legislature. The functions, privileges and disciplinary powers of a legislative body are thus closely connected. The privileges are the necessary complement of the functions, and the disciplinary powers of the privileges.

Collective and individual privileges of each House and of Members of each House

Certain rights and immunities, such as freedom from arrest or freedom of speech, belong primarily to the individual members of each House and only secondarily and indirectly to the House itself; but there are other rights and immunities, such as the power to punish for contempt and the power to regulate its own constitution, which, being rather directed to the maintenance of its own collective authority than to the security of the individual members, may be said to belong primarily to each House as a collective body. This is a useful distinction, but fundamentally it is only as a means to the effective discharge of the functions of the House that individual privileges are enjoyed by its Members. The Commons, in their reasons offered at a conference with the Lords in the controversy arising from the case of *Shirley v. Fagg*, in asserting that privilege of Parliament belongs to every Member of the House of Commons, declared 'that the reason of that Privilege is, that the Members of the House of Commons may freely attend the public affairs of that House, without disturbance or interruption'. The earliest occasion on which this reason was given was in the Commons Petition to Henry IV in 1404.

Origin of privilege

Privilege of members of the High Court of Parliament, like that of members of other royal courts, was originally part of the King's peace enjoyed by all the King's subjects, but in special measure by his servants.

Blackstone held that something akin to the privilege of freedom from arrest existed in the reign of Edward the Confessor, among whose laws is this precept, 'ad synodos venientibus, sive summoniti sint, sive per se quid agen-dum habuerint, sit summa pax'; and so, too, in the old Gothic

constitutions, 'Extenditur haec pax et securitas ad quatuordecim dies, convocato regni senatu' [1 BI Com 132; Stiernhook, de Jure Sveonum et Gothorum (1672)].

As originally the weaker body, the Commons had a fiercer and more prolonged struggle for the assertion of their own privileges, not only against the Crown and the courts, but also against the Lords. What originated in the 'special protection of the King began to be claimed by the Commons as customary rights, and some of these claims in the course of repeated efforts to assert them hardened into legally recognized 'privileges', which could be used by the Commons against threats to their independence from any direction.

Privileges enjoyed by custom and by statute

Some privileges rest solely upon the law and custom of Parliament, while others have been defined by statute. Upon these grounds alone all privileges whatever are founded. The Lords have ever enjoyed them, simply because 'they have place and voice in Parliament': but a practice has obtained with the Commons which would appear to submit their privileges to the royal favour.

Privilege of freedom of speech

Scope of chapter

It will be convenient in this chapter to deal with the privilege of freedom of speech as comprising the right, confirmed to each House by the Bill of Rights, of exclusive control over its own proceedings. This right includes the power to initiate, and consider in such order as it pleases, matters of legislation or discussion, as well as the 'privilege of freedom in debate proper. Other rights, equally derived from the power of each House, to control its own proceedings, such as the power to discipline its own members, the power to regulate its own procedure, the right to exclude the jurisdiction of the courts, will be adverted to here, but will be dealt with more fully in other chapters or sections.

Necessity of freedom of speech

Freedom of speech is a privilege essential to every free council or legislature. Its principle was well stated by the Commons, at a conference on 11th December 1667, the conference which resulted in the reversal of the conviction in 1629 of Sir John Eliot and others:

'No man can doubt', they said, 'but whatever is once enacted is lawful, but nothing can come into an Act of Parliament, but it must first be affirmed or

propounded by somebody: so that if the Act can wrong nobody, no more can the first propounding. The members must be as free as the houses; an Act of Parliament cannot disturb the state: therefore the debate that tends to it cannot; for it must be propounded and debated before it can be enacted’.

Statutory recognition of the privilege

This recognition by law of the privilege of freedom of speech received final statutory confirmation after the Revolution of 1688. By the 9th Article of the Bill of Rights it was declared ‘That the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament’.

The 9th Article of the Bill of Rights reinforced the statute of 4th Henry VIII (see p. 78), by giving its sanction to the Commons’ claim to exclusive jurisdiction over words spoken in their own House. Its terms apply equally to the jurisdiction of the Lords in their House. Furthermore, this article comprised within such exclusive jurisdiction ‘proceedings in Parliament’-a term which connotes more than speeches and debates. The interpretation of ‘proceedings in Parliament’ has raised difficulties, and been the subject of decisions both by the Courts and in Parliament (see p. 92). Recognition of the right of each House itself to adjudicate upon the conduct of its Members in their parliamentary capacity may also be found in this Article.

Duty of Members to maintain the privilege

The Speaker having claimed and statutory recognition having been granted to the privilege of freedom of speech, it becomes the duty of each Member to refrain from any course of action prejudicial to the privilege which he enjoys.

On 15th July, 1947 the House of Commons by resolution declared that ‘it is inconsistent with the dignity of the House, with the duty of Members to his constituents, and with the maintenance of the privilege of freedom of speech, for any Member of this House to enter into any contractual agreement with an outside body, controlling or limiting the Members’ complete independence and freedom of action in Parliament or stipulating that he shall act in any way as the representative of such outside body in regard to any matters to be transacted in Parliament; the duty of a Member being to his constituents and to the country as a whole, rather than to any particular section thereof.’

In the same resolution the House agreed to the report from the Committee of Privileges on the case of Mr. Brown and the Civil Service Clerical Association (HC 118 (1946-47)). This case arose from certain actions by the

executive committee of a Trade Union which had a formal contractual relationship with a Member of the House, under which he received a salary. The complaint made to the Committee of Privileges submitted that actions by the Trade Union were calculated improperly to influence the Member in the exercise of his parliamentary duties. Although in this particular case the Committee found that no breach of privilege had occurred, in their general conclusions the Committee stated that 'the relationship between a Member and an outside body with which he is in contractual relationship and from which he receives financial payments is, however, one of great difficulty and delicacy, in which there must often be a danger that the Rules of privilege may be infringe' [HC 118, p. xii (1946-47)]. See also *Robinson's Case* (HC 85 (1943-44)); *National Union of Mine workers* [HC 634 (1974-75)]; *National Union of Public Employees* (HC 512 (1976-77)).

Speeches in Parliament not actionable

The absolute privilege of statements made in debate is no longer contested, but it may be observed that the privilege which formerly protected Members against action by the Crown now serves largely as protection against prosecution by individuals or corporate bodies. Subject to the Rules of Order in debate (See Chapter 19), a Member may State whatever he thinks fit in debate, however offensive it may be to the feelings, or injurious to the character, of individuals; he is protected by his privilege from any action for libel as well as from any other question or molestation.

Right to exclude strangers.

The House of Commons has always claimed and enjoyed the right to exclude strangers and to debate with closed doors (see p. 224).

The first reason was the inconvenience caused in former times by strangers pressing into the body of the House or attempting from the galleries to influence debate. The other, and principal, reason was the possible intimidation which the Crown might exercise if reports were made of the speech and action of Members in days when freedom of debate did not in practice afford complete protection. Later, in the eighteenth century, the motive was probably reluctance to be held accountable to public opinion.

Right to control publication of debates and proceedings.

Closely connected with the power to exclude strangers, so as to obtain, when necessary, such privacy as may secure freedom of debate, is the right of either House to prohibit the publication of debates or proceedings.

Right to exclusive cognizance of proceedings in Parliament

Article 9 of the Bill of Rights, confirming the long-standing claims of each House of Parliament to exclude all outside interference within its own walls—claims which had only been seriously challenged in the case of the House of Commons—lays down that ‘freedom of speech an debate or proceedings in Parliament ought not to be impeached or questioned in any court or place outside Parliament’.

Thus, although Article 9 was no doubt intended to be comprehensive, it is well to be reminded that it is only declaratory of the law of Parliament, and that, if future research establishes the validity of claims as to freedom of speech or the jurisdiction of Parliament which are not covered by this Article, they are not to be regarded on that account as excluded. It may prove to be the case that the law is wider than Article 9.

There are three principal matters involved in the statement of the law contained in this Article:

1. The right of each House to be the sole judge of the lawfulness of its own proceedings;
2. The right implied to punish its own Members for their conduct in Parliament.

Further, there is the question,

3. What is the precise meaning of the term ‘proceedings in Parliament’?

1. The right of each House to be the sole judge of the lawfulness of its own proceedings.

The collective privilege of each House to decide what it will discuss and in what order was hardly ever disputed in the case of the House of Lords. But it was frequently a subject of dispute between the Crown and the Commons that the latter intruded into matters of high policy beyond their competence, and the House had continually to insist on its right to consider and obtain redress of ‘grievances’ before granting supply.

Another collective right of the House is to settle its own code of procedure. This is such an obvious right—it has never been directly disputed that it is unnecessary to enlarge upon it except to say that the House is not responsible to any external authority for following the rules it lays down for itself, but may depart from them at its own discretion. This is equally the case whether a House is dealing with a matter which is finally decided by its sole authority, such as an order or resolution, or whether, like a bill, it is the joint concern of both Houses. This holds good even where the procedure of a House or the

right of its members or officers to take part in its proceedings is dependent on statute.

For such purposes the House can ‘practically change or practically supersede the law’. This privilege is not confined to the chamber in which the House sits. For instance, it has been held to extend to the ‘sale, within the precincts of the House, of intoxicating liquor without a licence through its employees in the Refreshment Department of the House (*R v Graham Campbell, ex parte Herbert* [1935] 1 KB 594).

Bradlaugh’s Case. One of the results of the confused dispute between Bradlaugh and the House of Commons, which was prolonged throughout the Parliament of 1880-85 was the unqualified recognition by the courts of their incompetence to inquire into the internal proceedings of House of Parliament. Bradlaugh, at the beginning of the new parliament in May 1880, claimed to make affirmation under the Evidence Amendment Acts 1869 and 1870, instead of taking the oath. He was eventually permitted to make the affirmation ‘subject to any liability by statute,’ and took his seat. Upon an action for penalties it was decided, finally by the House of Lords, that Bradlaugh had not qualified himself to sit by making the affirmation. On re-election, he attempted to take the oath, but was prevented by order of the House which eventually directed the Serjeant to exclude him from the House until he undertook to create no further disturbance. Bradlaugh then brought an action against the Serjeant in order to obtain a ‘declaration that the order of the House was beyond the power and jurisdiction of the House and void, and secondly an order restraining the Serjeant at Arms from preventing Bradlaugh by force from entering the House’.

2. The right implied to punish its own Members for their conduct in Parliament.

It seems that the Speaker, in his petition, also sought for the Commons the right to punish any Member who, by his conduct, might offend the House.

Describing the Speaker’s petition at the opening of Parliament, Sir Thomas Smith, in *De Republica Anglorum* (circa 1565) said that the Speaker asked, among the other privileges ‘that if any should chance of that lower House to offend or not to do or say as should become him, or if any should offend any of them being called to that his highness court: That they themselves might (according to the ancient custome) have the punishment of them. (Op. cit., p. 52.)

This privilege is now partly embodied in SOs Nos 23, 24 and 25, which prescribe a summary procedure for enforcing discipline but is not dependent upon them for its existence.

Evidence before the courts as to proceedings in Parliament

The practice of the Commons regarding evidence sought for outside the walls of Parliament touching proceedings which have occurred therein also conforms to Article 9 of the Bill of Rights. This fact is well recognized by the courts, which have held that Members cannot be compelled to give evidence regarding proceedings in the House of Commons without the permission of the House. The meaning of the term 'proceedings in Parliament' has not been expressly defined by the courts, although they have decided that various specific matters connected with Parliament do or do not fall within the ambit of its 'proceedings'.

Criminal acts in Parliament.

There is more doubt as to whether criminal acts committed in Parliament remain within the exclusive cognizance of the House in which they are committed. In the judgment of the House of Lords in *Eliot's case* (referred to above), it was deliberately left an open question whether the assault on the Speaker might have been properly heard and determined in the King's Bench. The possibility that it might legally have been so determined was admitted by one of the managers for the Commons in the conference with the Lords which preceded the writ of error.

In *Bradlaugh v Gossett*, Mr. Justice Stephen said that he 'knew of no authority for the proposition that an ordinary crime committed in the House of Commons would be withdrawn from the ordinary course of criminal justice'

(1884) 12 QBD p. 284). Since he went on immediately to refer to *Eliot's case* and accepted the proposition 'that nothing said in Parliament by a Member, as such, can be treated as an offence by the ordinary courts', it must be supposed that what the learned judge had in mind was a criminal act as distinguished from criminal speech.

INDIAN LAW: HISTORICAL BACKGROUND

It is no doubt true that the existing law relating to parliamentary privileges in India is essentially of English origin. But the concept of parliamentary privileges was not unknown to ancient India. Prititosh Roy in his work 'Parliamentary Privilege in India' (1991) states that even during Vedic times there were two Assemblies; Sabha and Samiti which were keeping check on all actions of the King. Reference of Sabha and Samiti is found in all Vedas. In Buddhist India, we find developed Parliamentary system. Members were not allowed to disobey directions of Assemblies. Offenders were answerable to assemblies and after affording an opportunity to them, appropriate actions used to be taken against erring officers. It has thus 'rudimentary features' of parliamentary privilege of today.

In 1600, East India Company came to India primarily as 'trader'. The British Parliament effectively intervened into the affairs of the Company by passing the East India Company Act, 1773 (popularly known as 'the Regulating Act, 1773'), which was followed by the Act of 1784. The roots of modern Parliamentary system were laid in various Charter Acts of 1833, 1853, 1854, 1861, 1892, 1909, etc.

During 1915-50, there was remarkable growth and development of Parliamentary privileges in India. For the first time, a limited right of freedom of speech was conferred on the Members of Legislature by the Government of India Act, 1919 (Section 67). By the Legislative Members Exemption Act, 1925, two parliamentary privileges were allowed to Members; (i) exemption from jury service; and (ii) freedom from arrest.

The Government of India Act, 1935 extended the privileges conferred and immunities granted. The Indian Independence Act, 1947 accorded sovereign legislative power on the Indian Dominion. After Constitution came into force in the year 1950, privileges was accorded constitutional status. A. 105 and A. 194 deals with privileges of Parliament and Legislatures and their committees and members.

Article 105. Powers, Privileges, etc. of the Houses of Parliament and of the members and committee's thereof- 1) Subject to the provisions of this constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

2) No Member of Parliament shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in Parliament or any Committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined [shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.]

4) The provisions of clauses (1), (2) and (3) shall apply in relation to person who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

Article 194. – Powers, Privileges, etc., of the House of the Legislatures and of the members and committees thereof.- (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

2) No member of the Legislature of a State shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, [shall be those of that House and its members and committees immediately before the coming into force of the section 26 of the Constitution Forty-fourth Amendment) Act, 1978].

4) The provisions of clauses 1), (2) and (3) shall apply in relation to person who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of, the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.

Powers, Privileges and Immunities of Houses, their Committees and Members in India

In parliamentary language the term privilege applies to certain rights and immunities enjoyed by each House of Parliament and committees of each House collectively, and by members of each House individually. The object of Parliamentary privileges is to safeguard the freedom, the authority and the dignity of Parliament. Privileges are necessary for the proper exercise of the functions entrusted to Parliament by the Constitution. They are enjoyed by individual members, because the House cannot perform its functions without unimpeded use of the services of its members; and by each House collectively for the protection of its members and vindication of its own authority and dignity.

In modern times, parliamentary privilege has to be viewed from a different angle than in the earlier days of the struggle of Parliament against the executive authority. Privilege at that time was regarded as a protection Members of Parliament against an executive authority not responsible to Parliament. The entire background in which privileges of Parliament are

now viewed has changed because the Executive is now responsible to Parliament. The foundation upon which they rest is the maintenance of the dignity and independence of the House and of its members.

In interpreting these privileges, therefore, regard must be had to the general principle that the privileges of Parliament are granted to members in order that “they may be able to perform their duties in Parliament without let or hindrance”. They apply to individual members “only insofar as they are necessary in order that the House may freely perform its functions. They do not discharge the Member from the obligations to society which apply to him as much and perhaps more closely in that capacity, as they apply to other subjects”. Privileges of Parliament do not place a Member of Parliament on a footing different from that of an ordinary citizen in the matter of the application of laws unless there are good and sufficient reasons in the interest of Parliament itself to do so.

The fundamental principle is that all citizens, including Members of Parliament, have to be treated equally in the eye of the law. Unless so specified in the Constitution or in or in any law, a Member of Parliament cannot claim any privileges higher than those enjoyed by any ordinary citizen in the matter of the application of law.

When any individual or authority disregards or attacks any of the Privileges, rights and immunities, either of the members individually or of the House in its collective capacity or of its committees, the offence is termed a breach of privilege, and is punishable by the House. Besides, actions in the nature of offences against the authority or dignity of the House, such as disobedience to its legitimate orders or libels upon itself, its members or officers are also punishable, although these actions are not breaches of any specific privilege. Such actions, though often called ‘breaches of privilege’, are more properly distinguished as ‘contempts’.

Each House is the guardian of its own privileges: it is not only the sole judge of any matter that may arise which in any way infringes upon those privileges but can, if it deems it advisable, punish, either by imprisonment or reprimand, any person whom it considers to be guilty of contempt. The penal-jurisdiction of the House is not confined, to its own members nor to offences committed in its immediate presence, but extends to all contempts of the House, whether committed by members or by persons who are not members, irrespective of whether the offence is committed within the House or beyond its walls.

The power of the House to punish any person who commits a contempt of the House or a breach of any of its privileges is the most important privilege.

It is this power that gives reality to the privileges of Parliament and emphasizes its sovereign -character so far as the protection of its rights and the maintenance of its dignity are concerned.

Question of Codification of Privileges

The powers, privileges and immunities of either House of Parliament and of its members and committees have been laid down in article 105 of the Constitution. In this article, the privilege of freedom of speech in Parliament and the immunity to members from “any proceedings in any court in respect of any thing said or any vote given” by them in Parliament or any committee thereof are specifically provided for. The article also provides that no person shall be liable to any proceedings in any court “in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings”. In other respects, however, clause (3) of this article as originally enacted provided that “the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and until so defined shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution”, namely 26th January 1950.

Article 105 (3) was amended by the Constitution (Forty-fourth Amendment) Act, 1978. Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978 which came into force with effect from 20th June 1979 provides that in other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978. Privileges enjoyed by Parliament as on 20th June 1979, have thus been specified as the period of reference and specific mention of the House of Commons has been omitted. The purpose of this amendment, as stated by the then Law Minister while replying to the discussion on the Constitution (Amendment) Bill, was that “a proud country like India would like to avoid making any reference to a foreign institution in its own solemn constitutional document”. The amendments made in the articles 105(3) and 194(3) were, however, of verbal nature and the position remains basically the same as on 26th January, 1950.

No comprehensive law has so far been passed by Parliament to define the powers, privileges and immunities of each House, and of the members and the committees thereof. In the absence of any such law, the powers, privileges

and immunities of the House, and of the members and the committees thereof, continue to remain in actual practice the same as those of the House of Commons, U.K., and of its members and committees, at the time of the commencement of the constitution.

Some important privileges of British Parliament have been recognised as under:

FREEDOM OF SPEECH

The first claim in the Speaker's petition is for freedom of speech in debate. By the latter part of the fifteenth century, the Commons of England seems to have enjoyed an undefined right to freedom of speech, as a matter of tradition rather than by virtue of a privilege sought and obtained. Earlier Speakers made no claim for such a privilege. What they did request was permission to correct any inadvertent misrepresentation of the House's views to the King – a practice perhaps legal in origin, though with obvious political advantages. Secondly, Speakers asked that if the House or the Speaker should displease the king or infringe his prerogative, this should be regarded as unintentional.

FREEDOM FROM ARREST

The second of the Speaker's customary petitions on behalf of the Commons at the beginning of a Parliament is for freedom from arrest. The development of this privilege is in some ways linked to that of other privileges. Arrest was frequently the consequence of the unsuccessful assertion of freedom of speech, for example. At the same time, there are some distinctive features in chronology and development which mark off freedom from arrest from other such claims made by the House. Some elements which still underpin the privilege are found at a very early period. In other areas, the House has subsequently voluntarily narrowed the scope of the privilege.

Whatever the origin of the privilege of freedom from arrest, whether in some recollection of the liberties attached to attendance at traditional popular assemblies or in the principle that the King's servants doing their duty in a superior court should not be impeded by litigation in a lower tribunal, the principle was clearly established at a relatively early date. The first known assertion of freedom from arrest seems to date from 1340, when the King released a Member from prison during the Parliament following that in which he had been prevented, by his detention, from taking his seat. In 1404, the Commons claimed that it was privileged from arrest for debt, contract, or trespass of any kind, according to the custom of the realm. (a kingdom, a country)

From the earliest times, therefore, freedom from arrest was regarded as confined to civil suits. In its original form, the privilege was even wider than freedom from arrest. Members were not to be 'impleaded', which was taken to prevent civil actions being maintained against them at all, by reason of their inability to maintain their private rights while in attendance upon Parliament. The House insisted in 1477 that the privilege had existed. Writs of *supersedes* were first issued to stay such actions but from the beginning of the seventeenth century the Speaker was ordered to stay suits by a letter to the judges, and sometimes also by a warrant to the party, and the parties and their attorneys who commenced the actions were brought by the Sergeant to the bar of the House.

Freedom from arrest, however, was still maintained in such cases for the Members of both Houses but not for their servants.

The freedom of a Member from arrest in civil cases having been put on a statutory footing, the means of securing a Member's release changed. Peers, peeresses and Members of the Commons were normally discharged immediately upon motion in the court from which the process issued, and writs of privilege have been discontinued.

FREEDOM OF ACCESS

The third of the Speaker's petitions is for freedom of access to Her Majesty whenever occasion shall require. This claim is medieval (probably fourteenth-century) in origin, and in an earlier form seems to have been sought in respect of the Speaker himself, and to have encompassed also access to the Upper House. Even when the four petitions were only hesitantly becoming standard in the mid-sixteenth century, the claim for access seems to have been consistently made. The privilege of freedom of access is exercised by the Commons as a body and through their Speaker, though it is not now exercised in Parliament on the initiative of the House. The Commons attends the Queen on summons to the House of Lords, for purposes prescribed by Her Majesty. Out of parliament, the commons exercises its right of access for the purpose of presenting Addresses, which may deal with any subject of public policy chosen by the House. Such an Address may be presented by the whole House or, more usually, the House will order the Address to be communicated by such Members as have access to Her Majesty as Privy Counsellors or as members of Her Majesty's Household.

FAVOURABLE CONSTRUCTION

The final petition which the Speaker makes is that the most favourable construction should be placed upon all the House's proceedings. As in the case of the privilege of free access, this claim was, before the reign of

Elizabeth, for the benefit of the Speaker rather than the House. Even in 1559, Speaker Sir Thomas Gargrave asked that ‘if in anything himself should mistake or misreport or overslip that which should be committed unto him to declare, that it might without prejudice to the House be better declared, and that his unwilling miscarriage therein might be pardoned’; to which the Queen replied that the petition should be granted, provided that ‘your diligence and carefulness be such, Mr. Speaker, that the defaults in that part be as rare as may be. The request is now little more than a formal courtesy, as the proceedings of the House are guarded against any interference on the part of the Crown not authorised by the laws and constitution of the country; and as by the law and custom of Parliament the Queen cannot take notice of anything said or done in the House, but by the report of the House itself.

PRIVILEGE WITH RESPECT TO THE CONSTITUTION OF THE HOUSE.

It is a privilege of the House of Commons to provide for its own proper constitution as established by law.

The origins of this privilege are to be found in the sixteenth century. In 1515, Henry VIII transferred to the Speaker, acting for the House, the authority to license Members to depart before the end of the session. Though much was to flow from the elaboration of this principle, the transfer of substantial authority was delayed. In 1536 the King authorised Thomas Cromwell to continue to sit in the Commons though he had been elevated to the peerage before the session began. Thereafter, however, the House steadily advanced its claims to consider qualifications for membership. In 1571 a select committee approved returns from boroughs (A town or township with a municipal character) which had not elected Members to the previous Parliament, though only eight years before such action had required the agreement of the Lord Steward. In 1576, the House determined the vexed questions of whether a Member who was also Queen’s Serjeant should take his seat in the Commons or act as an official assistant in the Lords and similar issues concerning those ill, or abroad on official duty, or peers’ sons. At the same period, general rules were laid down by the House on the right to continue to sit of those who were arrested for debt, indicted for felony or even outlawed.

PENAL JURISDICTION

Without a power to commit, the privileges of Parliament would not exist in their present form, and it would hardly have been possible adequately to defend the dignity of Parliament against disrespect and affronts (an insult

or indignity, assault) which could not be brought, or could be brought only by implication, under the head of any of the specific privileges.

The origin of the power seems to lie in the medieval concept of Parliament as primarily a court of justice, the 'High Court of Parliament'. The Lords derived its independent power to punish from their original membership of the Curia Regis (The King's Court). Immemorial constitutional antiquity was not similarly available to the Commons, and indeed its possession of penal jurisdiction was challenged on this ground as late as the nineteenth century, and has been defended by arguments which confused legislative with judicial jurisdiction. The difficulties the Commons experienced in proving its case to be a court of record an issue never determined at law – were connected with these problems. Yet whatever the legal or constitutional niceties, in practice the House on many occasions in the sixteenth and seventeenth centuries exercised its power to impose fines and imprison offenders. These offenders might include Members of the House itself or non-Members, the latter comprising sheriffs, magistrates and even judges of the superior courts.

CONCLUSION

The Constitution of India is a most comprehensive document. It is unique in many ways. It cannot be fitted in any particular mould or model. It is a blend of the rigid and flexible, federal and unitary and Presidential and Parliamentary System of Government. It attempts a balance between the fundamental rights of the individual on the one hand and the socio-economic interests of the people and security of the State on the other. Also, it presents a via media between the principles of parliamentary sovereignty and judicial supremacy.

Under our Constitution we have adopted Parliamentary Democratic System, which has proved over a period of six decades that it is the best suited and time tested system of Governance which is instrumental in achieving tremendous progress of a common man and country. While many governmental systems in our neighbourhood had floundered or gone into oblivion, our system of governance inspite of facing many crisis has survived. This itself is the evidence of its resilience, dynamism and growth potential.

Indian Parliament and Legislatures in India, particularly Maharashtra Legislature has enacted various socio-economic Legislations and took various policy decisions to ameliorate conditions of teaming masses.

The Maharashtra Legislature has over the years, played a commendable role in the overall development of State. Due to this yeoman role of the Legislature, the State is progressing a lot and it achieved a unique place in the country. The Maharashtra Legislature is celebrating its Platinum Jubilee year and after taking review of the progress of the State, one can not forget the role of the Legislature in all spheres of life.

Parliamentary democratic system is best suited for our country and we have progressed under this novel system in all walks of life.

We can conclude that the Indian Parliament and the State Legislatures have quite effectively been able to ensure that economic development *vis-à-vis* raising standard of living of common man is achieved with a dignified and honourable life in furtherance of Constitutional obligations. Therefore it is our bounden and duty to safeguard the noble ideals of our Parliamentary democratic system.

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