ROLE AND FUNCTIONS OF UPPER HOUSE

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Vidhan Bhavan, Nagpur

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FOREWORD

An attempt is made by this publication to present the position of the second chambers of Legislature in the Indian Parliamentary System and the world. It throws light on the role and necessity of bicameral system in our Parliamentary form of Government.

The House of Elders, as is popularly known, takes a lead in reaffirming the core values of the republic and set up the highest standards of healthy debates and meaningful discussions in Parliamentary Democracy. The debate and discussion can be more free, more objective and more useful in the second chamber.

Bicameralism is a fit instrument of federalism and it acts as a check to hasty, rash and ill-considered legislation by bringing sobriety of thought on measures passed by the Lower House. Due to over increasing volume of legislations in a modern State, it is extremely difficult for a single chamber to devote sufficient time and attention to every measure that comes before it. A second chamber naturally gives relief to the Lower House.

I am extremely grateful to Hon. Shri Ramraje Naik-Nimbalkar, Chairman, Maharashtra Legislative Council, and Hon. Shri Haribhau Bagade, Speaker, Maharashtra Legislative Assembly for their continuous support and motivation in accomplishing this task.

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INDEX

Sr. No.	Subject	Page No.
1.	Rationale behind the Bicameral system	1-9
2.	Bicameralism in World today	10-25
3.	Indian scenario	26-37
4.	Some important features about Upper House ..	38-40
5.	Conclusion	41
6.	Relevant constitutional provisions in respect of Upper House. ..	42-52
7.	List of Hon. Presiding Officers of Upper House ..	53-56
8.	Bibliography	57

1. RATIONALE BEHIND THE BICAMERAL SYSTEM

In a democracy the majority rules and this majority is probably right. At present legislation is a tripartite affair, as the two chambers with the Head of the State are jointly vested with the responsibility. A unicameral legislature with the right of overriding the executive veto is bound to be arbitrary and there is a danger of mass hysteria rather than public opinion propelling legislative activities.

The 18th century witnessed one of the great experiments in constitution making. The constitution of U.S.A. made provision for bicameral legislature thereby demonstrating that a second chamber is essential for the successful working of a federal system. So most of the countries in Europe in the 19th Century adopted a bicameral system. To quote the view of WINSTON CHURCHILL:

"No free country enjoying democratic institution that I know of, has adopted single chamber Government, no free country of which I have heard upto the present. I quite agree that there might be some countries in the world which are enjoying democratic institutions - have adopted single chamber Government. The Americans, the Swiss, the Dutch, the Belgians, the French, even in their latest constitutions, have a second chamber. Eire has created its own senate. Our Dominions, the most democratic countries in the world, all have, with the exception of Queensland, I am reminded, sought and preserved two chambers Government what clever people would call bicameral Government. All feel that between the chance vote of an election on Universal suffrage and the permanent alteration of the whole slowly built structure of the states and the nation there ought to be some modifying process. Show me a powerful, successful, free democratic constitution of a great sovereign state which has adopted the principle of single Chamber Government."

The bicameral legislature is historically rooted in the stratified social order of the later middle ages, in a regime in which the various social classes - higher nobility, lower nobility, clergy and townsman, are represented. In the ancient world the functions of a second chamber seem to have generally been not to revise the decision of popular assembly but to consider the process. In France three estates met separately at irregular intervals until 1614 and did not meet again until 1789 on the eve of the French Revolution. In Sweden four separate estates continued to meet until 1866. The modern bicameral system in the continent of Europe really dates back from the later 18th Century when the French revolutionary ideas reinforced by English example, ushered in the new epoch of constitutionalism.

In democratic regimes the bicameral system is no longer explained by the need for a separate aristocratic representation. Now a days the theoretical arguments for a bicameral system are of two kinds: First, the concern for a more stable balance between the executive and the legislature, the unbridled powers of a single chamber being restrained by the creation of a second chamber constituted on a different basis. Secondly, the desire to make the parliamentary machine run, if not more efficiently at any rate more smoothly by having a so called revising chamber to maintain a careful check on the hasty decisions of the first chamber. Previously the second chambers were reactionary bodies and conservative in outlook. Excepting in Great Britain and Canada, nowhere it is a body of vested interests or reactionaries and it does not act as a stumbling bloc to democracy. At one time the labour party of Great Britain was against the retention of the House of the Lords. The Japanese House of Peers resembling the British House of Lords, has been replaced by the popularly elected body. LASKI - Says

"A second chamber is no more likely than the first to be correct in its judgments on the electoral will."

Laski's statement that the Second Chamber will be a premium not upon improvement but upon a position in terms of vested interest, may be falsified by the fact that modern second chambers do not represent the vested interest excepting a few. Democracy is not a government by majority, it is also government by compromise. In India bicameralism came as a matter of course by the force of British tradition and need for giving protection to the vested interest. The institution of bicameralism after the establishment of democracy is due partly to tradition and partly the result of imitation.

Why the Bicameral system ?

(a) The political scientists are of opinion that bicameral legislature is more useful and better than a unicameral one. Prof. A.MARRIOT says that with rare unanimity the civilized world has decided in favour of a bicameral legislature.

According to FINER, Legislatures are bicameral for two broad and different reasons, as part of federalism and as the result of a desire to check the popular principle in the constitution. This does not mean that in federal states, the second chamber is designed only to represent the states. It is likely that there would have been a sort of second chamber even if it were not required by the federal principle. There are two basic motives for the establishment of a bicameral system. One is more universal and is likely to be more enduring and that is multitude of councilors. People want advice

from other people because of either self-doubt, fear of responsibility or the desire to keep themselves away from blame if matters go wrong. They establish delays and adjournments. These arguments go in favour of a second chamber.

(b) Secondly, quite apart from the need for mature deliberations, second chambers have come into existence for the reason that those who have power and possessions create all possible barricades to prevent their loss, conservatism has produced more. Indeed all second chambers have been instituted and are maintained, not only because of mature deliberations. The example in this regard is the House of Lords of England. By establishing the second chamber, all the communities and interests get representation in legislature, such a second chamber will have men who are eminent by their ability and the services they have rendered to the nation or to the district in which they reside, men who have gained experience in various forms of public work, such as local government and permanent civil-service at home or abroad, or who possess special knowledge of important branches of national life as for instance agriculture, commerce, industry, finance, education, etc.

(c) Bicameralism is fit instrument of federalism, Everywhere there are federations and where nation-states were formed as in the United States, Germany, Switzerland, Australia and Canada, bicameral legislature was adopted as a means of representing states. The reason for bicameralism is that it acts as a check to hasty, rash and ill-considered legislations by bringing sobriety of thought on measures passed by the lower house.

(d) Due to over-increasing volume of legislation in a modern state, it is extremely difficult for a single chamber to devote sufficient time and attention to every measure that comes before it. A second chamber gives relief to the lower house.

(e) It helps in securing somewhat the independence of the executive. This is in case of presidential government where the executive may be impeached by the legislature. But where there is a Second Chamber one house frames the charges and the other house sits as a court of trial. Thus the second chamber prevents the single all powerful legislative chamber from dominating the executive branch and thus from nullifying the separation of powers widely regarded as essential for the proper working of democratic government.

The critics of the bicameral system argue that if the Upper House frequently exercises its restraining influence, it defeats the chief purpose

for which the Lower House is created. The law is the will of the people and people can not leave two different wills on the same subject and at the same time. Some critics observe that the second chamber is highly wasteful and expensive and the interests of the units in a federation can perhaps be better safeguarded through a proper distribution of powers between the centre and the state and by a process of judicial review.

Single chamber government was tried in abnormal times in England and also it has been tried in the United States and twice in France. Both these countries found it a failure. The experience of history has been in favour of two chambers. No major state with whatever form of government, has been willing to dispense with a second chamber. Bicameralism ensures a more correct interpretation of general will. A single House with all its members elected at one time, tends to grow out of sympathy with popular opinion before the expiry of its term. The two Houses constituted at different times or for different terms may go a long way in meeting this problem and even represent more accurately the public opinions on issues which arise from time to time.

It is the duty of the Second Chamber to use its suspending power in relation to any measure on which the attitude of the country is in doubt and in particular if it affects the constitution. This conception of the role of a Second Chamber is in exact harmony with the functions which the Bryce Conference advocated in 1918. After declaring that a Second Chamber should not have equal power with the Commons, nor the power of making and unmaking ministries nor any marked permanent one-sided political bias, Conference laid down four functions as appropriate for a Second Chamber. These have been generally approved.

The first was a revision of Bills, particularly in view of the fact that the Lower House sometimes resorts to procedure curtailing discussion. The second is the initiation and examination of comparatively non-controversial bills. The third is the interposition of so much delay (and no more) in the passing of a bill as may be needed to enable the opinion of the nation to be adequately expressed upon it and the fourth, full and free discussion of matters of public policy. About the first, second and fourth, there is no dispute. These may be described as useful functions of a Second Chamber.

Dr. AMBEDKAR observed that –

"The Upper Chamber represents the States and their resolutions would be tantamount to an authority given by the States. The framers also conceived of the Rajya Sabha as a sort of House of Elders which would provide

representation to learning and experience and where seasoned people would hold dignified debates. But in actual practice the Rajya Sabha does not appear to have followed the intentions of the farmers very closely. The hope that it would function as a federal Second Chamber representing the constituent units has not been borne out either by its constitution or by its actual working."

As MORRIS-JONES puts it,

"This does not seem to have made the floor or the Council a battleground between the centre and the states; a defence of the state rights: an expression of regional demands is just as likely to be heard in the other House."

In most of the important democratic countries of the world there is a Second Chamber and that we might follow the majority as is done in a democracy.

For the successful working of a federal system, Second Chambers are regarded as essential for safeguarding the rights and interest of the federating units.

While replying to the debate on the Report of the Union Constitution Committee; Shri Gopalaswamy Ayyangar observed:

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

Replying to felicitations offered to him on his election as the first Vice-President of India-and the first Chairman of the Rajya Sabha - Dr. S. Radhakrishnan observed:

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

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

In every bicameral legislature each House should function in the sphere allotted to it under the Constitution. It needs hardly any emphasis to say that for the successful working of the legislative machine there should be the closest cooperation between the two Houses, and their relationship should be harmonious. Although occasional frictions or sour feelings have occurred in the early years, by and large, the relationship between the two Houses has been of mutual forbearance, cordiality and cooperation.

As observed by Shri Jawaharlal Nehru in the context of an early instance of conflict,

"The two Houses are in fact parts of the same structure and any lack of that spirit of co-operation and accommodation would lead to difficulties and come in the way of the proper functioning of our Constitution. This authoritative exposition of the relations between the two Houses by the first Prime Minister has served as a guide to the Houses of Parliament and State

Legislatures in their relations with each other. They are clearly laid down in the Constitution, Rules of Procedure and Conduct of Business of each House and the rules relating to the Joint Sittings of the Houses and communications between them. In addition, conventions and practices have grown up in respect of the host of other matters of major and minor details. Hence their roles have been complementary and supplementary to each other.

In the matter of legislative functions while the Upper Houses, or the councils as they are called, have been given the power to discuss, deliberate and consider the legislative matters before it or passed by the Assembly, ultimately the will of the Lower House, *i.e.,* the Legislative Assembly, prevails and there is no provision in the Constitution even for a joint sitting of the two Houses in the States.

Though the significance and role of the second chambers has always been the subject of acute controversy in the history of representative Government, yet most of the democratic countries have found it useful to have a bicameral legislature. The desire for a two chambered legislature is so strong in Norway that the Storting which is selected as one body breaks itself into two, a Lagting of 38 members and the Odelsting in which the remaining members sit. A revolutionary state like the U.S.S.R. has also adopted a bicameral legislature: Soviet of the Union and Soviet of the Nationalities. This clearly indicates that even in leftist political ideology there is some use for the second chamber. The same was proposed in New South Wales also, but when it was referred to the electorate for confirmation it was rejected by an overwhelming majority.

In parliamentary democracies, to avoid concentration of power in a single chamber, a bicameral legislature is indispensable. In such countries the Government is responsible to the popularly elected House and in the case of defeat of the Government; the threat by the cabinet for the dissolution of the House does not allow its members to discuss the bills freely, and even to suggest useful amendments. Staunch party alignment has also inhibited the members of the first House to improve many legislative measures. This idea that the electorate has chosen a particular party to rule also tends to make popularly elected House a puppet in the hands of the cabinet. For instance, in England, 'After 1918 there was no serious talk of abolition of the House of Lords except from the rising of the labour movement which, by the time it came firmly to power in 1945, was faced with a situation in which the volume of government work was so great that a second chamber could hardly be dispensed with".

The bicameral legislature in some of the Indian States was for the first time introduced under the Government of India Act, 1935. It appears that the architects of the Indian constitution had a favourable experience about the working of the second chambers in the States. However, its retention was extensively debated by the members of the Constituent Assembly. Shri Kuladhar Chaliha had opined,

"A Second Chamber is nothing but a clog in the way of progressive legislation." Shri Krishnaswami Bharati on the other hand countered, "I am inclined to think that it is born more out of prejudice of the present second chambers and the general view is, and I also agree with that view, that the idea of second chamber is to prevent or check hasty legislation." (Constituent Assembly Debates, Vol.VII, PP.1307-1310).

Delay many a time gives opportunity for reflection and second thoughts which often times prove wiser than the earlier ones. In the course of discussion in the House of Commons on 3rd February, 1969 one of the Members referred to this delaying power and made a significant statement,

"They (the Lords) are to be given just that kind of delaying power which is necessary to make the House of Commons reconsider its opinion and no more."

Herbert Morrison, one time Leader of the House of Commons in England during the Labour Government, has the following to say on this aspect of the objection:-

"The single Chamberman may object, how ever, that as two Houses and not one have to examine Legislation, the legislative output must be slowed down. Even this argument in my experience is not only untrue but more probably the reverse of the truth. When the House of Lords is examining a bill which has come from the House of Commons, usually it is improving the work of the House of Commons often-indeed probably in the case of most amendments at the request of the Government itself, whether the Government be Labour or Conservative. If that work of revision were not done in the House of Lords it is reasonably certain that one additional stage would have to be invented in the Commons in order that the work of revision could be continued. As a consequence the work of the House of Commons itself would become more congested and slowed down. There is another equally important point. Bills can start in either House; therefore. the second reading of different Bills and their examination in Committee and on Report can be proceeded with simultaneously in the two Houses. Controversial Bills quite properly usually and Money Bills, always, start in the House of Commons, but there are many

Bills, including Bills of substance and specially less controversial Bills of legal complexity which may best start in the House of Lords. This ..... is also calculated to save time in the Commons because the Bill when it reaches them has been already largely and usefully tidied up. It will be seen, therefore, that this two way legislative traffic is not only valuable in insuring good legislative revision and in bringing two types of minds to bear upon legislation, but almost certainly saves time and is helpful in preventing legislative congestion in the House of Commons." (from 'Government and Parliament' by Herbert Morrison).

The Chairman of Rajya Sabha, Shri Bhairon Singh Shekhawat, while responding to the felicitations of the members on the floor of the House had stated that "...public perceptions of the functioning of the democracy is not only based on the quality of governance provided by the executive but also on how far the proceedings in the House are relevant for its welfare". He, therefore, suggested that to find out the relevance and effectiveness of the proceedings from the viewpoint to their contribution towards public governance and public welfare, the House should evaluate them at the end of every Session. In this context he further added that "...the House of Elders... take a lead in reaffirming the core value of the republic and set up the highest standards of Parliamentary democracy worth emulation by others".

In the course of discussion in the Maharashtra Legislative Assembly (on the subject of enhancement of seats in the Legislative Council), a Member (Shri P.G. Kher) wittily narrated an anecdote to illustrate his point. He said:

"It has been stated that the existence of the second Chamber is essential for the purpose of exercising a check on hasty legislation or on any impulsive action of the Lower House. From that point of view also political thinkers have justified the existence of the second Chamber. One of the sincere and great democrats of the world, George Washington, has made a very illuminating observation with regard to the existence of a second Chamber. His friend, Thomas Jefferson, had returned from France where the constituent Assembly had voted in favour of a unicameral legislature. George Washington and Thomas Jefferson were at the breakfast table. Thomas Jefferson protested against the creation of the second Chamber. George Washington asked him, "Why have you poured your coffee in the saucer?" Jefferson replied, "I have poured it to cool." Washington thereupon replied, "And so we pour legislature into the Senatorial saucer to cool it." Therefore, if I have in any way offended the hon. Members of the House I am in the good company of George Washington."

2. BICAMERALISM IN WORLD TODAY

1. CANADA :

The Parliament of Canada is composed of the Sovereign, the Senate and the House of Commons and the consent of all three is necessary for the passage of legislation. The formal powers of the Senate are co-equal to those of the House of Commons with two exceptions : (a) Section 53 of the Constitution Act, 1867 directs that money bills are to originate in the House of Commons and (b) Section 47 (1) of the Constitution Act, 1982 provides that amendments to the Constitution can be made without the consent of the Senate.

The constitutional foundation defines a selection process whereby Senators are appointed by the central government's executive (specifically by the Governor General, acting on the advice of the Prime Minister) and whereby the Legislature is limited to a fixed size, based upon an equality of regional divisions. Senators are to be at least thirty years old, citizens by birth or naturalization and hold property of at least $4,000 in the province for which they were appointed. Previous to 1965, Senators were appointed for life. In 1965, in what was the first significant step forward Senate reform, the Constitution Act, 1867 was amended so that all Senators appointed after that date were to retire at age seventy-five. Originally, the Senate was composed of seventy-two members, but increased as the country geographically and demographically grew in size. In the first forty years of Confederation, a series of arrangements to provide representation to Manitoba, British Columbia, Prince Edward Island, Alberta and Saskatchewan brought a total number of Senate seats to eighty-seven. In 1915 the number of Senators increased to ninety-six, in 1949 to one hundred and two, in 1974 to one hundred and four and in 1999 to one hundred and five. Pursuant to Sections 26, 27 and 28 of the Constitution Act, 1867, four or eight additional Senators may be appointed, upon the direction of the Queen. The total number of Senators cannot exceed one hundred and thirteen, but the normal compliment is set at one hundred and five.

2. FRANCE :

I. The Senate of the Fifth Republic: a Parliamentary Assembly that is a direct descendant of the French bicameral tradition

Parliamentary tradition has established the existence of two chambers in many democratic States: on the one hand, an Assembly elected by direct suffrage by the entire electorate; on the other, a Second Chamber designed to balance the decisions of the former. Because of the ways in which it

recruits, its term of office and its competences (for the most part, these are different from those in the First Assembly), the Second Assembly is first and foremost designed as a regulator of the political system.

France has generally kept to this plan throughout its constitutional history since 1795; in particular, it has been able to maintain the existence of a Parliament incorporating two Assemblies almost without interruption.

It goes without saying that the present Senate differs from earlier Second Chambers on many counts.

For example, the Second Assembly was not elected between 1799 (when the Conservative Senate was installed in the Luxembourg Palace) and 1870, and accordingly took on an essentially aristocratic character, but under the Third Republic (1875-1940), the Senate became a democratic, elected Assembly. By ensuring representation of territorial authorities in Parliament through its method of voting, the '*Grand Council of the local authorities of France'* imposed itself as a key component of government. That ceased to be true between 1946 and 1958 when a Second Chamber, known as the Council of the Republic, was set up; the Council was endowed with competences that were initially limited, but it (the Council) was gradually able to rediscover most of its powers, particularly following the Constitutional Review of December, 1954.

Under Article 24 of the Constitution of 4 October 1958, 'the Parliament consists of the National Assembly and the Senate' Taking its parliamentary prerogatives as a whole (including voting on laws and controlling government action), the Senate lies half-way between a strictly egalitarian bicameral system (as under the Third Republic) and an excessively non-egalitarian bicameral system (as under the Fourth Republic).

The Senators, who are elected by indirect universal suffrage, are Parliamentarians in the same way that the Deputies are: they enjoy the same status, the same rights and the same prerogatives as their colleagues in the Palais-Bourbon, except for the 'final word' procedure and the opportunity to overthrow the government: these are the prerogative of the National Assembly. Notwithstanding, the principle of equality between the two chambers does not mean they are identical.

The Parliament can only benefit from the diversity of the two Assemblies that make it up. Far from wishing to become the Assembly's 'clone', the Senate has a duty to develop its own specific features through its constitutional function of representing regional and local authorities and French people who have settled abroad.

With growing decentralisation and the globalisation of trade, this 'double bonus' enables the Senate to play its role as a chamber, offering opportunities for reflection and perspective to the full.

The Senate has, on occasions, been challenged, but it has always been 're-legitimated' by the French people, particularly during the referendums of 1946, 1958 and 1969. **The Senate has managed to respond to the challenges that face all modern Parliaments,** such as, taking increasing responsibility for international questions, European integration, the development of new information technology, the continuing progress made by science (particularly life sciences) and, above all, new ways in which public opinion is expressed in a society increasingly informed by media coverage.

The Senate takes the form of a pole of Institutional equilibrium. Thanks to the principle of three-yearly elections, the Senate, which cannot be dissolved, ensures the Republic's institutional continuity: an illustration of this is the stand-in role taken by the President of the Senate when the President of the Republic is absent.

II. The Senate's dual specific role : elected by elected members

The Senate *'is responsible for representing the Republic's regional and local authorities. French people who have settled outside France are represented by the Senate'.* (Article 24 of the Constitution)

Three hundred and twenty-one Senators now sit in the Senate: three hundred and nine represent authorities in Metropolitan France and the overseas territories; twelve represent French people who have settled outside France.

This function is one of the innovations introduced by the 1958 Constitution. It gives some 1,700,000 French people who have settled around the world a right to real parliamentary expression that they do not have in the National Assembly. Their twelve Senators are elected by proportional representation by elected members of the Higher Council of French People Abroad.

As Parliamentarians, it is their duty to express the specific concerns of French people abroad, particularly with regard to a social or fiscal scheme appropriate to their situation, the development of educational establishments around the world, improvements to diplomatic and consular services, and the protection and promotion of French economic interests outside the country's borders.

The existence of these Parliamentarians also contributes to a better grasp of international matters in the Senate.

REPRESENTATION OF REGIONAL AND LOCAL AUTHORITIES

Regional and local authorities represent an element of the foundations of French democracy. It is quite legitimate that they should participate in expressing the will of the nation through their representatives, particularly as many decisions taken in Paris, especially in the fields of finance and taxation, can impact on the budgets of local authorities, departments and regions. The Constitutional Court takes this point up emphatically: '*As a Parliamentary assembly, the Senate participates in the exercise of national sovereignty*'.

As a corollary to this principle, a regulation in force since 1875 states that Senators should always be elected by indirect suffrage, and by a college of the 'great electors'. This voting method does not deprive the Senate of its elective democratic legitimacy in any way, as indirect suffrage has always been universal. In local elections (in France, they are not a simple administrative matter), citizens have a double vote: they elect their Municipal, General and Regional Councillors directly, and their Senators indirectly.

Senators representing regional and local authorities are elected in each department or territory by a college of 'great electors' made up of Deputies, Regional Councillors, General Councillors and local authority Delegates; the Senatorial College is made up of more than 150,000 electors nationally.

Although each local authority is entitled to at least one Delegate, irrespective of its population, Senators are elected on an essentially demographic basis in that the number of Delegates varies according to the size of the Municipal Council and the number of inhabitants.

For several years now, the composition of the Senatorial College has prompted debate on the Senate's representativeness: how can the Constitutional mission to represent all regional and local authorities be reconciled with the need to take account of demographic shifts, while not calling the need for a major readjustment of the country into question?

According to the Electoral Code, local authorities with fewer than 9000 inhabitants elect one to fifteen Delegates depending on the size of the Municipal Council, while all Municipal Councillors in local authorities with 9000 inhabitants or more are Delegates as of right. In local authorities with more than 30,000 inhabitants, Municipal Councillors elect one additional delegate for every 1000 inhabitants over 30,000.

The voting system is plural : In the less densely populated departments (which elect one or two Senators), Senators are elected by single-candidate majority vote, and in departments electing three Senators or more, by proportional representation. In this way, over half the Senators are voted by a proportional system, which is reckoned to be the most equitable form of representing all views.

Just the same, given that France is not a federal State, the Senate has always managed to avoid becoming a 'corporatist chamber' of local elected members.

3. GERMANY :

As you may well know, the political and national life in the **Federal Republic of Germany** is controlled not only by the Federation, which is the central authority, but also by the Lander, the Bundesrat (Federal council) being one of the key institutions in this framework. In comprehensive and intensive consultations, the Parliamentary Council, which prepared the Basic Law (Constitution) of the Federal Republic after World War II, considered the question of how the participation of the Lander should be structure within a second parliamentary organ alongside the Bundestag. Among the models proposed was that of the US-Senate, whose members are elected. Finally, a large majority formed in favour of Germany's traditional form of a Federal Council, in which the members come from State Governments. In the year 1949, the Bundesrat convened for its first session. On 3RD October, 1990, as you all know the day of German unity, the number of Lander in Germany grew from eleven to sixteen.

Before going into the details of the Bundesrat's structure and task in the legislative process, we see briefly its constitutional status, followed by its organisation.

Constitutional Status of the Bundesrat

The Bundesrat is the federal organ. Article 50 of the Basic Law describes its status and function as follows, I quote: "The Lander shall participate through the Bundesrat in the legislative process and administration of the Federation and in matters concerning the European Union". This participation of the Bundesrat in the political process of the Federation expresses both the distribution of power and the checks and balances in the German federal system. The Federation and the Lander monitor and control each other in the fulfillment of their respective tasks, at the same time, however, they must respect each other and function jointly. With respect to

this distribution and performance of tasks, German federalism differs from all other federal systems in that the Governments of the German Lander participate directly in the decisions of the federal state as a whole. This participation takes place through the Bundesrat, which has *three central functions:*

- It represents the interest of the Lander at federal level and, indirectly, at the level of the European Union;
- It incorporates the political ideas and administrative experience of the Lander in federal legislation and administration and, not to forget, in EU matters;
- Like all the other federal institutions, it bears responsibility for the Federal Republic of Germany as a whole.

In exercising these functions, the Bundesrat is a counterweight to the Bundestag at the Federal Cabinet, but at the same time it is also a link between the Federal Government and Lander Governments. As a federal organ, the Bundesrat has responsibility to determine the Federation's policy, but not the policy of the Lander. Neither is the Bundesrat responsible for co-ordinating the work on problems and issues that the Lander, in their dealings with each other, wish to co-ordinate or harmonize. The conference of Minister Presidents and special departmental ministerial conferences are held to provide such co-ordination.

4. SWISS :

The Swiss Federal Constitution contains exactly one Article which is exclusively concerned with the Council of States (Art. 150). The powers attributed to the Swiss Federal Assembly, i.e., to both Chambers of Parliament – the **National Council and the Council of States** – are dealt with in greater detail (Art. 148,151-173). The explanation is simple: both Chambers have absolutely identical powers. This is probably the most striking characteristic of the Swiss bicameral system.

Composition of the Council of State

The Council of States consists of forty-six Deputies. In every canton, whether large or small, two members are elected to the Council of States. For historical reasons, there exist six 'half-cantons', namely, the two Basel, the two Appenzell, and lastly, Nid- and Obwalden, each of which sends but a single member to the Council of States. The composition of the Council of States corresponds to the American Senate.

The members of the Council of States are all elected by the people of their cantons. This was not always the case. Originally, in numerous cantons the cantonal parliaments elected Deputies to the Council of States. The election procedure is determined by cantonal law. Elections are based on the majority system, with the unique exception of the Canton of Jura which uses the proportional system.

The political composition of the Council of States corresponds to the majorities in the individual cantons. At present, the Radical Party sends eighteen members, the Christian Democrats fifteen members, the Swiss People's Party seven members and the Social Democrats, who represent the largest faction in the National Council, occupy six seats. The smaller parties to the left and to the right of the political spectrum which, in the National Council, enjoy representation as well, have no delegates in the Council of States. In this way, the Council of States differs from the National Council in that rural and conservative electors are more strongly represented than the urban and progressive. On occasions, this fact has led to demands that the Council of States be done away with or changed. They have always been refused.

Tasks and functions of the Council of States

The basic powers and duties of the Council of States are set down in Art. 163-173 of the Federal Constitution. In the forefront are legislation, supervisory control of the Federal Council (government) and the Federal administration, approval of the budget, and approval of international treaties. All of these functions are shared by the Council of States and the National Council.

5. UNITED KINGDOM :

The House of Lords is the United Kingdom Parliament's Second Chamber. The long and eventful history of the British Parliament, together with the largely unwritten British Constitution, mean that the House of Lords has slowly evolved into a unique, complex, and interesting institution. The House of Lords is currently going through a process of major reform, so today is a particularly good time to examine its characteristics.

The House's main characteristics include:

- its non-elected membership ;
- its long history and the evolution of its functions ;
- its wide-ranging role as a legislature ;

- the fact that compared to other legislature it has few rules governing its procedure; and

- the fact that members (except for a few office-holders) are part-time and unpaid.

Membership of the House of Lords

One of the most distinctive features of the House of Lords is its membership. The number of members (about 775) is large for a legislature; in contrast to most legislatures, members are not elected by the citizens of the country; and members remain members for life. Most members are not professional or career politicians, many are at, or near, the end of their careers in other walks of life, and for others their membership is an honour and not a job.

Until the 1999 reform of the membership, the granting of a peerage automatically conferred membership of the House of Lords. A peerage is an honour given by the Crown, normally on the recommendation of the Prime Minister of the day. Persons given a peerage have the title "Lord" or "Lady". There has always been a close connection between the House and the aristocracy, dating from the days when it was believed that the upper classes and the landed gentry needed separate representation in Parliament.

Until 1958, all peerages were hereditary; and the title and the right to sit and vote in the House of Lords passed from father to son. In 1958, life peerages were introduced, the title and right to sit in Parliament died with its holder and did not pass to his heirs. Since 1958, the House has contained both hereditary and life members, but the creation of life peers rather than hereditary peers soon became the norm. By 1999, the numbers of each type were approximately equal (six hundred and fifty-hereditary, five hundred and fifty-life). A reform of the House's membership in 1999 reduced the number of hereditary members to ninety-two, so today the vast majority of members are life peers.

The number of hereditary peers remained fairly constant over the years because most hereditary peers were succeeded by their heirs. But the number of life peers has increased enormously since 1958, to more than six hundred in June 2001. Fairly large number of new life peerages are created on a regular basis. These various factors explain why the total membership of the House is very large. Before the 1999 reform it was one thousand two hundred and ten in total. After the 1999 reform, it was six hundred and sixty-six and it was 775 in June 2012. So, although the membership was cut by about half, the House still has the largest membership of any chamber in the world.

TYPES OF MEMBERS

The House of Lords is made up as follows :

- Life peers created under the Life Peerages Act, 1958 ;
- Lords created for life under the Appellate Jurisdiction Act, 1876 (as amended) to serve as Lords of Appeal in Ordinary :
- ninety hereditary peers elected by members of the House pursuant to the House of Lords Act, 1999 ;
- the Earl Marshal ;
- the Lord Great Chamberlain ;
- the archbishops of Canterbury and York ;
- the bishops of London, Durham and Winchester ; and
- twenty-one other diocesan bishops of the Church of England according to Seniority of appointment to diocesan sees.

All members must be aged twenty-one years or over.

LIFE PEERS

It will be seen that life peers now make up more than eighty-five per cent of the House. Life peers are persons drawn from many sections of society. They are usually persons who have achieved eminence in their chosen professions, and who are therefore, generally, middle-aged or older. Life peerages are also given to politicians retiring from the House of Commons; and a tradition has grown up that former Cabinet Ministers and Speakers of the House of Commons are entitled to peerages on their retirement from the Commons. The power of appointment to the House of Lords is a significant source of patronage for a British Prime Minister. He usually invites the other party leaders to advise on nominations of peerages from among their own party ranks. Recently, a new independent appointments commission has been established to nominate non-political members of the House known as Crossbench peers.

LAW LORDS

Life peers created under the Appellate Jurisdiction Act, 1876 are known as 'Lords of Appeal in Ordinary'. They are in fact the country's senior judges and sit in the House because the House has a judicial function as the Supreme Court. There are up to twelve Lords of Appeal in Ordinary at any one time but they must retire at the age of seventy. However, after retirement they remain as full members of the House and keep their right to sit and vote until death.

BISHOPS

The Church of England alone is represented by its senior clergy. While they are members of the House, the archbishops and bishops have all the rights enjoyed by other members. They take it in turns to read the daily prayers at the beginning of business. The archbishops and bishops are the only members of the House who are not members for life, as they are replaced upon retirement from their dioceses at the age of seventy.

HEREDITARY PEERS

The 1999 reform of the House's membership was embodied in the House of Lords Act, 1999. The Act allowed ninety-two hereditary peers to remain as members of the House and these are now the only peers who are hereditary members. However, their heirs will not succeed them, as in the past. They make up 13.5 per cent of the House, in contrast to the situation before the Act, when hereditary peers accounted for 53 per cent of the House's membership.

Composition of the House of Lords

At 11th June 2012 there were 775 peers able to sit in the House of Lords. Total membership was 816, including 28 Members on leave of absence, 12 disqualified as senior members of the judiciary and one disqualified as an MEP.

Table 1 : Number of peers by party and type, 11 June 2012

	Hereditary				
	Life Peers	Peers	Bishops	Total	% of total
Conservative	164	49	...	213	27%
Labour	227	4	...	231	30%
Liberal Democrat	86	4	...	90	12%
Crossbench	150	31	...	181	23%
Bishops	...	...	26	26	3%
Other	33	1	...	34	4%
Total . .	660	89	26	775	100%

1.1 Peerage type : pre-and post-reform

The House of Lords Act 1999 removed the right of most hereditary peers to sit and vote in the House of Lords. 92 excepted hereditary peers were allowed to remain as Members of the House : two hereditary office holders,

15 Members elected by the whole House to serve as Deputy Speakers or in other offices and 75 elected by hereditary peers in each party group. When one of these 75 dies, the excepted hereditary peers in their party group elect another hereditary peer to take their place. When one of the 15 Members elected as an office holder dies, the whole House elects their replacement.

Table 2 : Number of peers by peerage type

Before and after reforms of House of Lords Act (1999) and currently.

Type of peer	Pre-reform November 1999	Post-reform November 2000	Latest June 2012
Hereditary	647	92	89
Life	537	572	660
Bishops	26	26	26
Total ..	1,210	690	775

The functions of the House of Lords today

The House has four main functions (leaving aside its judicial function) :

- to examine and revise bills brought from the Commons;
- to initiate bills, mainly of a non-controversial character;
- to delay the passing into law of a controversial bill so that the opinion of the nation can be expressed on it (especially one affecting the Constitution); and
- to scrutinise the executive, by its Committee work and by questions to Ministers and in debates.

6. UNITED STATES OF AMERICA :

In 1787, the Framers of the United States Constitution created the Senate as a safeguard for the rights of states and minority opinion within a federal system. They modeled the Senate on colonial-era governors' councils and on the state Senates that had evolved from those bodies in the late 1770s and 1780s. James Madison, the "Father of the Constitution", explained that the Senate's role was "first to protect the people against their rulers and secondly to protect the people against the transient impressions into which they themselves might be led." The Framers gave the Senate ample powers with which to accomplish these fundamental responsibilities. They provided,

for example, that no legislative act may be sent to the President for approval until both the Senate and the House of Representatives have agreed to it in precisely identical language. While the Constitution confers exclusive responsibility on the House for initiating revenue-raising measures, it allows the Senate co-equal power to revise and amend such legislation. Unlike the House, the Senate has sole authority to approve or reject treaties and presidential nominations. The Senate's constitutional prerogatives, relatively small size, permissive rules, and tradition of unlimited debate have guaranteed its standing among the world's "greatest deliberative bodies".

To balance power between the large and small states, the Framers agreed that states would be represented equally in the Senate and in proportion to their populations in the House. Further preserving the authority of individual states, the Constitution writers provided that state legislatures would elect Senators. To guarantee Senators' independence from short-term political pressures, the Constitution assigns them a six-year term, three times as long as that of popularly elected House members. James Madison reasoned that longer terms would provide stability. "If it not be a firm body", he concluded, "the other branch being more numerous, and coming immediately from the people, will overwhelm it." Responding to fears that a six-year Senate term would produce an untouchable aristocracy capable of conspiratorial behavior, the Framers specified that one- third of the terms would expire every two years, thus combining the principles of continuity and rotation in office.

Over the past two centuries, Senate observers have employed many images to describe the institution's purposes and operations. Among their rich vocabulary of descriptive terms are "saucer", "fence", "sanctuary", "citadel", "burial ground", "anchor", and "cave". President George Washington is said to have explained to Thomas Jefferson, who had been out of the country during the Constitutional Convention, that the Framers of the Constitution created the Senate to serve a function like that of a saucer to a teacup. Washington observed Jefferson pouring his hot tea into a saucer and seized the analogy. "Why did you pour the tea into your saucer?" To cool it", the Virginian responded. "Just so!" exclaimed Washington, according to Senate lore, "That is why we created a Senate; to cool the work of the House of Representatives." James Madison regarded the Senate as a "necessary fence" against the "fickleness and passion" of the House, whose members would be subject to changing public moods and fashions.

With the passing years, other coined memorable expressions. As Vice President Aaron Burr stepped down as the Senate's constitutional presiding officer in 1805, he described the Senate as a "sanctuary; a citadel of law, of order, and of liberty." The French aristocrat Alexis de Tocqueville visited Washington in 1832. On his trip to Capitol Hill, he first looked in on the House of Representatives, whose members he considered mostly "obscure individuals", "village lawyers", and "persons belonging to the lower classes of society". Then, he moved to the Senate Chamber. There, Tocqueville observed "within a small space a large proportion of the celebrated men of America." The Senate, in his opinion, was "composed of eloquent advocates, distinguished generals, wise magistrates, and statesmen of note, whose arguments would do honor to the most remarkable parliamentary debates of Europe."

Of course not all observers over the decades have subscribed to Tocqueville's flattering view. Presidents and members of their administrations, frustrated by the delays and redundancies inherent in a government of separated branches and divided powers, have routinely characterized the Senate as a "burial ground" of presidential initiatives. Looking to its tradition of unlimited debate, others have likened the Senate to a blustery "cave of the winds".

As a potent national legislature, the Senate will always evoke strong positive and negative feelings. At the time of its bicentennial in 1989, however, there was at least common acceptance of Senator Robert C. Byrd's characterization of this Upper House as "the anchor of the Republic, the morning and evening star in the American constitutional constellation, the sure refuge and protector of the rights of a political minority."

Today's Senate

REPRESENTATION

Today, the Senate is the only deliberately malapportioned legislative body in the United States. While court decisions in the 1960s required every state legislature to structure its membership to allow all citizens equal representation, the U.S. Constitution maintains an unbalance representational system within the national Senate. That charter apportions seats in the House of Representatives according to population, but it gives each state – from California with thirty-three million residents to Wyoming

with less than half a million inhabitants – two seats in the Senate. The Constitution guarantees that this system will never be changed through its provision that no state may be deprived of its equal representation without its consent. Consequently, the nation's fifty states are represented in the Senate by one hundred members, while their delegations in the four hundred and thirty-five member House of Representatives range from California's fifty-two to Wyoming's one.

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Upper chambers in other National Parliaments

Compared to other European Union or G20 countries with bicameral Legislatures, the UK has by far the most members in its upper chamber. However attendance patterns in the House of Lords will differ from those in other upper chambers. In the last session, average daily attendance in the House of Lords was 475.

The methods by which members enter the upper chambers of different national parliaments are summarised in an article by Meg russell, elected Second Chambers and Their Powers : As International Survey. These include direct election (for example, in Australia, Japan and the United States) ; indirect election (as by local councilors in France and subnational governments in Germany) ; and by appointment (Canada). Other countries use a combination of methods : the Italian Senate includes both directly elected and appointed members while the spanish Senate includes members elected by subnational parliaments alongside directly elected members.

Size of Upper Chambers in EU27 and G20 countries with Bicameral Legislatures.

Country	Number of members in Upper Chamber
UK	775
France	348
Italy	321
Spain	264
India	245
Japan	242
Russia	178
Romania	137
Mexico	128
Canada	105
Poland	100
United States	100
South Africa	90
Brazil	81
Czech Rep.	81
Australia	76
Netherlands	75
Argentina	72
Belgium	71
Germany	69
Austria	62
Ireland	60
Slovenia	40

3. INDIAN SCENARIO

Council of States and Legislative Councils with special reference to Maharashtra Legislative Council.

Constitutional Provisions :—

"Article 80 : Composition of the Council of States —

(1) The Council of States shall consist of —

(a) twelve members to be nominated by the President in accordance with the provisions of clause (3); and

(b) not more than two hundred and thirty-eight representatives of the states and of the Union territories.

(2) The allocation of seats in the Council of States to be filled by representatives of the states and of the Union territories shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.

(3) The members to be nominated by the President under sub-clauses (a) of clause (1) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely :—

Literature, science, art and social service.

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

(5) The representatives of Union territories in the Council of States shall be chosen in such manner as parliament may by law prescribe.

Article 84 : Qualification for membership of Parliament :—

A person shall not be qualified to be chosen to fill a seat in Parliament unless he –

(a) is citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

(b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than Twenty-five years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Article 171 : Composition of the Legislative Councils :—

(1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one-third of the total number of members in the Legislative Assembly of that State:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative Council of a State—

(a) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district board and such other local authorities in the State as Parliament may by law specify;

(b) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly.

(e) the reminder shall be nominated by the Governor in accordance with the provisions of clause (5).

(4) The members to be elected under sub-clauses (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (e) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following namely :-

Literature, Science, art, co-operative movement and social service.

Article 172 : Duration of State Legislatures :—

(1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly :

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

(2) The Legislative Council of a State shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

Article 173: Qualification for membership of the State Legislature :—

A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he -

(a) is citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

(b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and in the case of a seat in the Legislative Council, not less than thirty years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament."

STRUCTURE AND HISTORY OF MAHARASHTRA LEGISLATIVE COUNCIL

The history of the Legislative Council in Maharashtra actually extends over a period of about 152 years, when the first Legislative Council under Indian Councils Act, 1861 was formed. Thereafter successive Acts such as Indian Councils Act, 1892, Indian Councils Act, 1909, the Government of India Act, 1919 made further advances in the composition of the Council and at every stage the elective element was included more and more until finally, by Government of India Act, 1935 a bicameral legislature was envisaged in the Provinces of Madras, Bombay, the United Provinces and Bihar and the two Chambers of the Provincial Legislature came to be known respectively as the Legislative Council and the Legislative Assembly. Though the nomenclature 'Legislative Council' was in vogue before 1935, the Legislative Council as understood today as an Upper Chamber came to be established for the first time only after the Government of India Act, 1935.

Position under Government of India Act, 1935

Under section 61 of the Government of India Act, 1935 the composition of the Legislative Council was laid down in the Fifth Schedule of that Act and it was also stipulated that the Legislative Council shall be a permanent body not subject to dissolution but that as nearly as may be one-third members thereof shall retire in third year in accordance with the provision made in that behalf in the Fifth Schedule. The Fifth Schedule allocated the seats in the Bombay Legislative Council as follows:—

Total of Seats	General Seats	Muham-madan Seats	Indian Christian Seats	Seats to be filled by Legislative Assembly	Seats to be filled by Governor
Not less than 28 Not more than 29	20	5	..	..	Not less than 3 and Not more than 4.

The following clauses of the said Fifth Schedule will throw some light on the manner of election of the members to the Council:—

"15. A Province, exclusive of any portion thereof which the Governor-General may by order declare unsuitable for inclusion in any constituency

or in any constituency of any particular class, shall be divided into territorial constituencies.

(i) for the purpose of electing persons to fill the general seats;

(ii) for the purpose of electing persons to fill the Muhammadan seats ;

(iii) (Omitted);

(iv) for the purpose electing persons to fill the Indian Christian seats, if any, or, if as respects any class of constituency it is so prescribed, may form one territorial constituency.

In the case of each such class of constituency as aforesaid the total number of seats available shall be distributed between the constituencies by the assignment of one or more of those seats to each constituency. "

"16. At an election in a constituency to fill a general seat, persons entitled to vote in a Muhammadan constituency, or an Indian Christian constituency shall not be entitled to vote.

In the case of a Muhammadan constituency, or an Indian Christian constituency no person shall be entitled to vote who is not, as the case may be, a Muhammadan, or an Indian Christian."

"17. The qualifications entitling a person to vote in territorial constituencies at elections of Members of a Provincial Legislative Council, and the qualifications to be possessed by members of such Councils, shall be such as may be prescribed."

"18. The term of office of a member of the Legislative Council of a Province, other than a member chosen to fill a casual vacancy, shall be nine years, but upon the first constitution of the Council the Governor shall make by order such provision as he thinks fit, by curtailing the term of office of some of the members then chosen, for securing that, as nearly as may be, one-third of the members holding seats of each class shall retire in every third year thereafter.

A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office."

It may thus be seen that constituencies were on community basis unlike the constituencies representing Graduates, Teachers, Local Authorities, etc., as we find today. Beside term of office was nine years, one-third of members retiring every 3 years.

After the attainment of Independence, it became necessary to provide for extension of term of the then members of Legislative Council since the first general election was due in 1950 under the new Constitution of India and it was not certain what would be the composition of the Council. A resolution was accordingly moved on 28th October 1948, recommending extension of time and, it appears, subsequently the Government of India Act was also amended to include Section 61A to give power to the Governor to extend the term of the members for such a period as he deemed fit.

Change due to merger of Princely States

The composition of the Council as it was under the Government of India Act, 1935 continued till the elections under the Constitution of India were held. In the meantime, however, some smaller Princely States like Baroda, Kolhapur, etc., were merged in the then State of Bombay. As a consequence, 10 new members were added to the strength of the Council and the total strength of the Council became 39. The distribution of seats among those Princely States which merged were as follows:-

Baroda	...	...	4
Kolhapur	...	...	1
Rajpiple Group	...	...	1
Cambay Group	...	...	1
Bhor Group	...	...	1
Sangli Group	...	...	1
Idar Group	...	...	1
	Total	...	**10**

Position under Constitution of India

On the commencement of the Constitution on 26th January 1950, the Government of India Act, 1935 stood repealed and the composition of the Legislative Council was laid down by article 171 of the Constitution of India. Under the said article, the total number of members in the Legislative Council of a State was not to exceed *one-fourth* of the total number of the members of the Legislative Assembly of that State and the minimum membership would not be less than 40. *One-third* of the total membership of the Council was to be elected by electorates consisting of members of municipalities, district

boards and such other local authorities to be specified by law. Likewise, *one-twelfth* of the total was to be elected by an electorate consisting of persons residing in the State who were for at least three years *graduates* of any University in the territory of India or having qualifications equivalent to that of a graduate of any University; again, another *one-twelfth* was to be elected by an electorate consisting of persons who were for at least three years *engaged* in *teaching* in such educational institutions within the State, not lower in standard than that of a secondary school, as might be prescribed by or under any law made by Parliament. The members of the Legislative Assembly of the State would be required to elect about *one-third* of the total members of the Legislative Council from amongst the persons, who were not members of the Assembly. The remaining seats would be nominated by the Governor from amongst persons having special knowledge or practical experience in respect of Literature, Science, Art, Co-operative movement and Social service. The territorial constituencies for the purpose of electorate relating to local authorities, graduates and teachers would be prescribed under the law to be made by Parliament and the election of persons by the members of the Legislative Assembly would be in accordance with the system of proportional representation by means of the single transferable vote.

In accordance with these provisions and in accordance with the provisions of the Representation of the People Act, 1950, the Legislative Council of Bombay had the following number of seats commencing from May, 1950 :—

Total Members	Elected by Local Authorities	Elected by Graduates	Elected by Teachers	Elected by Assembly Members	Nominated by Governor
72	24	6	6	24	12

(The total number of Assembly seats was 315).

As stated earlier, the election to fill these seats were actually held only in 1952; till then, the old composition continued.

Changes under States Reorganization Act, 1956.

The States Reorganization Act, 1956 provided that the Legislative Council for the new State of Bombay would consist of—

(*a*) all the sitting members of the Legislative Council of the existing State of Bombay, except those representing the Belgaum (Local Authorities), Bijapur (Local Authorities) and Dharwar (Local Authorities) constituencies and

(*b*) 25 members to represent the territories specified in clauses (*b*), (*c*), (*d*) and (*e*) of sub-section *(1)* of section 8 who would be chosen in such manner as might be prescribed. (*i.e.* from Marathwada, Vidarbha etc.).

After such reconstitution, the total membership of the Council and the strength of different electorates was as follows :—

Total Members	Elected by Local Authorities	Elected by Graduates	Elected by Teachers	Elected by Assembly Members	Nominated by Governor
72	24	6	6	24	12

The Act also provided that from 1st November, 1956, till the first meeting of the Legislative Council of the New State of Bombay the persons who immediately before the said date were the Chairman and the Deputy Chairman of the former Bombay State would continue to be the Chairman and the Deputy Chairman respectively of Legislative Council of the New State also. Likewise, it was also provided that the rules of procedure of the former State would have effect in relation to the Legislative Council of the New State subject to such modification and adaptations as might be made therein by the Chairman.

Changes under the Constitution (7th Amendment) and Legislative Councils Act, 1957.

The Seventh Amendment to the Constitution raised the maximum limit of the strength of the State Legislative Council from *one-fourth* to *one-third* of the strength of the Legislative Assembly *[vide article 171(1)]. It* was represented by some Members of Parliament as well as by some State Governments that compared to the Legislative Assemblies the strength of Legislative Councils was meagre and that the Constitutional amendment should be availed to increase that strength. Resolutions to this effect were passed by the Legislatures of Bombay, Madhya Pradesh, Madras, Mysore, Punjab and Uttar Pradesh.

As a result, the Legislative Councils Act, 1957 increased the strength of the Legislative Council to 108 and correspondingly increased the seats relating to different electorates. The position as envisaged by the said Act was as under :—

Total Members	Elected by Local Authorities	Elected by Graduates	Elected by Teachers	Elected by Assembly Members	Nominated by Governor
108	36	9	9	42	12

Section 5 of the said Act also made certain consequential provisions to provide that every sitting member of the Council representing any Council Constituency specified in that Section should be deemed to have been elected to the Council by the revised Council Constituency specified therein, if immediately before the commencement of the Act he was an elector for an Assembly constituency in the State of Bombay.

Likewise, every sitting member of the Council elected by the members of the Legislative Assembly of the former State of Bombay and every sitting member of the Council chosen under the State Reorganisation Act, 1956 (representing areas newly added to State of Bombay) was deemed to have been elected by the members of the Legislative Assembly then existing, on condition that immediately before the commencement of the Legislative Council Act, 1957 he was an elector for an Assembly Constituency in the State of Bombay. All other members who did not satisfy the above condition of being an elector in the State, ceased to be members of the Legislative Council.

Changes under Bombay Reorganisation Act, 1960.

The Bombay Reorganisation Act, 1960 under which the Maharashtra State came into being provided for the Legislative Council with the following strength :—

Total Members	Elected by Local Authorities	Elected by Graduates	Elected by Teachers	Elected by Assembly Members	Nominated by Governor
78	22	7	7	30	12

The sitting members of the Legislative Council of Bombay representing areas which have gone over to Gujarat as also seven members specified in the Sixth Schedule of that Act ceased to be members. The remaining members became the members of the new Maharashtra Legislative Council with effect from 1st May, 1960. Section 25 of the Act laid down that the Deputy Chairman of the erstwhile Bombay Council would continue to be the Deputy Chairman of the Maharashtra Legislative Council. Provision was made for the election of the Chairman, after completion of biennial election which was then due. This was because the earlier Chairman had ceased to be a member of the Council.

Maximum permissible strength

Under the existing provisions of the Constitution, our Legislative Council can have a maximum of 96 members (i.e. one-third of the strength of the Legislative Assembly which is 288 at present) though the present strength is only 78.

Delimitation of Constituencies in 1983.

The Council constituencies were delimited from time to time and the latest position of the constituencies is as contained in the Delimitation of Council Constituencies (Bombay) Amendment Order, 1983, extract of which is given below :-

"In the Delimitation of Council Constituencies (Bombay) Order, 1951 for the existing Table, the following shall be substituted namely :—

TABLE

	Name of Constituency (1)	Extent of constituency (2)	No. of seats (3)
	Graduates' Constituencies		
1	Bombay Graduates	Bombay City and Bombay Suburban districts.	1
2	Konkan Division Graduates	Thane, Raigad, Ratnagiri, Sindhudurg districts.	1
3	Pune Division Graduates	Pune, Solapur, Satara, Sangli, Kolhapur districts.	1
4	Nashik Division Graduates	Nashik, Ahmadnagar, Dhule, Jalgaon districts.	1
5	Aurangabad Division Graduates.	Aurangabad, Jalna, Beed, Nanded, Osmanabad, Latur, Parbhani districts.	1
6	Amravati Division Graduates	Amravati, Akola, Buldhana, Yavatmal districts.	1
7	Nagpur Division Graduates	Nagpur, Bhandara, Wardha, Chandrapur, Gadchiroli districts.	1

	(1)	(2)	(3)
	Teachers' Constituencies		
1	Bombay Teachers	Bombay City and Bombay Suburban districts.	1
2	Konkan Division Teachers	Thane, Raigad, Ratnagiri, Sindhudurg districts.	1
3	Pune Division Teachers	Pune, Solapur, Satara, Sangli, Kolhapur districts.	1
4	Nashik Division Teachers	Nashik, Ahmadnagar, Dhule, Jalgaon districts.	1
5	Aurangabad Division Teachers.	Aurangabad, Jalna, Beed, Nanded, Osmanabad, Latur, Parbhani districts.	1
6	Amravati Division Teachers	Amravati, Akola, Buldhana, Yavatmal districts.	1
7	Nagpur Division Teachers	Nagpur, Bhandara, Wardha, Chandrapur, Gadchiroli districts.	1
	Local Authorities Constituencies		
1	Bombay Local Authorities.	Bombay City and Bombay Suburban districts.	2
2	Dhule Local Authorities	Dhule district	1
3	Jalgaon Local Authorities	Jalgaon district	1
4	Nashik Local Authorities	Nashik district	1
5	Ahmadnagar Local Authorities.	Ahmadnagar district	1
6	Thane Local Authorities	Thane district	1
7	Raigad-cum-Ratnagiri-*cum*-Sindhudurg Local Authorities.	Raigad, Ratnagiri and Sindhudurg districts.	1
8	Pune Local Authorities.	Pune district	1
9	Kolhapur Local Authorities.	Kolhapur district	1

	(1)	(2)	(3)
10	Sangli-*cum*-Satara Local Authorities.	Sangli and Satara districts	1
11	Solapur Local Authorities	Solapur district	1
12	Osmanabad-*cum*-Latur-*cum*-Beed Local Authorities.	Osmanabad, Latur, Beed districts.	1
13	Aurangabad-*cum*-Jalna Local Authorities.	Aurangabad and Jalna districts.	1
14	Parbhani Local Authorities	Parbhani district	1
15	Nanded Local Authorities	Nanded district	1
16	Akola-*cum*-Buldhana Local Authorities.	Akola and Buldhana district	1
17	Amravati Local Authorities	Amravati district	1
18	Yavatmal Local Authorities	Yavatmal district	1
19	Nagpur Local Authorities	Nagpur district	1
20	Bhandara Local Authorities	Bhandara district	1
21	Wardha-*cum*-Chandrapur-*cum*-Gadchiroli Local Authorities.	Wardha, Chandrapur, Gadchiroli districts.	1

Any reference in this Order to a district shall be construed as a reference to the area comprised within that district on the 1st day of April, 1983."

It would appear from the above analysis that the Legislative Council, which started under Government of India Act, 1935 as an 'Upper Chamber' of the Provincial Legislature with 29 members, got transformed into an 'Upper House' of the State Legislature with nearly three times its initial strength under the new Constitution of India and, in the process, shed its 'communal' representation and, instead, a choice of representatives from local authorities, graduates, teachers, Legislative Assembly and others having special knowledge of Literature, Science, Art, etc. In the same process, the 'President', the 'Deputy President' and 'Prime Minister of the Province' were also converted into the 'Chairman', the 'Deputy Chairman' and the 'Chief Minister of the State', respectively.

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4. SOME IMPORTANT FEATURES ABOUT UPPER HOUSE

The main object for the retention of the second chamber was to revise the bills passed by the Legislative Assemblies, and if necessary suggest suitable amendments for the betterment of the people and the State, and not to create an unnecessary obstruction in the implementation of the progressive policy of the government. Since there is no provision of a joint sitting in case of disagreement between the two chambers, the suggestions are in the interest of the people and the State, the Legislative Assembly has no reason not to accept them. Therefore, the success of any second chamber can be judged from its performance namely whether or not the amendments suggested by it have been finally accepted.

Money bills are considered to be the exclusive responsibility of the first chamber, and the amendments suggested by the second chamber are only recommendations. But the Maharashtra Legislative Council has not failed even to give recommendations with respect to Appropriation Bill on the last day of the Budget session i.e. on 10th April, 2003 and sent the Appropriation Bill to the Legislative Assembly, which was adjourned by that time and announcement of prorogation of session was also made. It was necessary that Assembly should pass it again and therefore one day's special session of Assembly was convened on 8th May, 2003 and the said Appropriation Bill was passed with the recommendations of the Legislative Council.

One more instance, I would like to quote. On 3rd June, 2004 the Hon. Advocate General of Maharashtra State was called before the Legislative Council to give legal opinion with respect to presentation of Annual Financial Statement for 2004-2005 under Article 202 (1) of the Constitution.

It will be of interest to note that Maharashtra Legislative Council has played an active role in passing important and pioneering legislations like Maharashtra Employment Guarantee Act, Maharashtra Capitation Fee Act, Maharashtra Universities Act, Maharashtra Prevention of Ragging Act, etc.

I am proud to say that Maharashtra Legislative Council has acted as a House of Elders and its Hon. members have used their skills, experience, expertise and acumen and always raised the level of debate to a higher level and contributed in a big way to give directions to the administration to work for the upliftment and betterment of the poor and common people.

The detractors of the second chamber of the opinion that the second chamber by nature is orthodox and conservative, and creates obstructions in the implementations of the progressive policies of the government. But the resolutions moved, discussed and adopted by the Maharashtra Legislative Council prove that it has considered the progressive policies of the government with positive and optimistic approach. It clearly indicates that at least the Maharashtra Legislative Council has neither impeded the progress of the State, nor created any obstruction in the implementation of the progressive policies of the Government.

The argument on ground of economy appears to be as ridiculous as it is hollow. What is the percentage to the total expenditure on Legislative Council alone to the total expenditure on administration ? Has not the administrative expenditure increased year after year and bureaucratic tribes swelled the ranks in astounding numbers ? When compared to expenditure on them, what is this expenditure to be incurred on a fixed salary and allowance basis to a fixed member of public men in a democratic institution ?

Sometimes, we also hear a plea that since the Council is not directly elected by the people at large it is not democratic and therefore should be scrapped. Are direct elections the only criterion to classify an Institution as democratic or otherwise ? Can there be any undemocratic Institution to be constituted under our Constitution of India ? Similarly the attempt to differentiate between the Centre and the States and seek justification of Second Chamber in the Centre and abolition in the States is only an attempt to confuse issues.

It will be wholly uncharitable to throw mud on the face of the Legislative Council on the basis of outmoded dogmas and old fashioned theories which have no real relevance in the present times. If, still, this institution is relegated to this uncharitable position, the fault lies not in this institution but in us who have wrought this havoc on this institution. The Second Chambers as such are not such discreditable institutions. Many countries have them. In the United Kingdom too, even when acute confrontation arose, the Government of the day, whatever its political persuasion, did not think of abolition of the House of Lords but was only bringing Parliament Reforms Acts intended to bring in reforms to suit the occasion and not Acts for the annihilation of the Institution. The discussion in the House of Commons, on 3rd February, 1969, when the Parliamentary Reforms Act was taken up for Second Reading, shows that of the nearly 25 or so members who spoke, only

one of them was thinking of abolition of the Lords and all others were speaking of "modernisation" by suitably changing the composition of the Lords. All depends on how we work the institution and even the best of institutions can be made a mockery of. Have we not seen how the Weimer Constitution of Germany which was once considered to be a 'model' democratic constitution, was systematically used to stifle the Legislative Chambers and help the ascendancy to power of Adolf Hitler? The moral is that there is nothing inherently wrong with the institution but only in our working of it.

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5. CONCLUSION

We accuse the Second Chamber of doing repetitive work. Does our Constitution assign only repetitive work to the Council? Certainly not. Does our Constitution lay down that both the Houses should be summoned always simultaneously and prorogued also likewise? Does not our Constitution contemplate one House being in Session while the other is in recess? Is the staggering of the Sessions of both the Houses during almost all the months of year an impossible feat even under the existing provisions of the Constitution? Convenient adjustment of Sessions and planned adjustment of business and programmes of the House in such a way that when one House is in Session the other may have recess would have many advantages- (i) effective and continuous control of Legislature over the Executive. (ii) Current topics alone will dominate the proceedings and duplicate notices of motions, questions etc., before both the Houses getting automatically eliminated to a great extent, (iii) the 'undue' pressure on Ministers attending the work of both Houses at the same time can be eased, (iv) the need to resort to the ordinance making power of the Governor may be minimized, (v) the long 'dark nights' of inter-session periods can yield place to long 'sunny days' of sessions of one House or the other, (vi) hasty Legislation and rushing through of the Bills without giving sufficient time to members of the other House in order to get them passed in the 'other House' the same day or the next, can be eliminated, (vii) many of the Reports of Statutory Boards etc., which are laid before the Legislature and escape discussion by both Houses can be discussed in the Council during the Assembly's pre-occupation with the demands for grants thereby ensuring that at least one of the Houses devote more attention to such Reports.

Many other useful results can be achieved minimizing the repetitive aspect and the institution can be made to play an effective role as an instrument of social change. The discussions and decisions in the Legislative Council unlike in the Assembly, do not involve the fate of the Government and do not pose any danger to Government. The discussion can therefore be more free, more objective and more useful. A new outlook and evolution of new methods even with all limitations and restrictions imposed under the existing framework of Constitution can offer chances for effective supremacy of the Legislature and avoidance of being a captive at the hands of the Executive and the bureaucracy. If this is achieved, all unicameral States will vie with each other to have a Legislative Council in their States. Maharashtra can suggest a systemic change for effective utilization of the Legislative Council and give a lead to others, as has been done in many other fields.

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6. RELEVANT CONSTITUTIONAL PROVISIONS IN RESPECT OF UPPER HOUSES

Parliament

Article 79. Constitution of Parliament.— There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People.

Article 80. Composition of the Council of States.— (1) The Council of States shall consist of—

(*a*) twelve members to be nominated by the President in accordance with the provisions of clause (3); and

(*b*) not more than two hundred and thirty-eight representatives of the States and of the Union territories.

(2) The allocation of seats in the Council of States to be filled by representatives of the States and of the Union territories shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.

(3) The members to be nominated by the President under sub-clause (a) of clause (1) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:—

Literature, science, art and social service.

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

(5) The representatives of the Union territories in the Council of States shall be chosen in such manner as Parliament may by law prescribe.

Article 81. Composition of the House of the People.— (1) Subject to the provisions of article 331, the House of the People shall consist of—

(*a*) not more than five hundred and thirty members chosen by direct election from territorial constituencies in the States, and

(*b*) not more than twenty members to represent the Union territories, chosen in such manner as Parliament may by law provide.

(2) For the purposes of sub-clause (a) of clause (1),—

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

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

Provided that the provisions of sub-clause (a) of this clause shall not be applicable for the purpose of allotment of seats in the House of the People to any State so long as the population of that State does not exceed six millions.

(3) In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published :

Provided that the reference in this clause to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2026 have been published, be construed, —

(*i*) for the purposes of sub-clause (a) of clause (2) and the proviso to that clause, as a reference to the 1971 census; and

(*ii*) for the purposes of sub-clause (b) of clause (2) as a reference to the 2001 census.

Article 82. Readjustment after each census.— Upon the completion of each census, the allocation of seats in the House of the People to the States and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine :

Provided that such readjustment shall not affect representation in the House of the People until the dissolution of the then existing House :

Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the House may be held on the basis of the territorial constituencies existing before such readjustment :

Provided also that until the relevant figures for the first census taken after the year 2026 have been published, it shall not be necessary to readjust —

(*i*) the allocation of seats in the House of People to the States as readjusted on the basis of the 1971 census; and

(*ii*) the division of each State into territorial constituencies as may be readjusted on the basis of the 2001 census, under this article.

Article 83. Duration of Houses of Parliament.— (1) The Council of States shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

(2) The House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the House :

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

Article 84. Qualification for membership of Parliament.— A person shall not be qualified to be chosen to fill a seat in Parliament unless he—

(*a*) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

(*b*) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less than twenty- five years of age; and

(*c*) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Article 85. Sessions of Parliament, prorogation and dissolution.— (1) The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The President may from time to time—

(*a*) prorogue the Houses or either House;

(*b*) dissolve the House of the People.

Article 86. Right of President to address and send messages to Houses.— (1) The President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members.

(2) The President may send messages to either House of Parliament, whether with respect to a Bill then pending in Parliament or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

Article 87. Special address by the President.— (1) At the commencement of the first session after each general election to the House of the People and at the commencement of the first session of each year the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address.

Article 88. Rights of Ministers and Attorney-General as respects Houses.— Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.

Officers of Parliament

Article 89. The Chairman and Deputy Chairman of the Council of States.— (1) The Vice- President of India shall be ex officio Chairman of the Council of States.

(2) The Council of States shall, as soon as may be, choose a member of the Council to be Deputy Chairman thereof and, so often as the office of Deputy Chairman becomes vacant, the Council shall choose another member to be Deputy Chairman thereof.

Article 90. Vacation and resignation of, and removal from, the office of Deputy Chairman.— A member holding office as Deputy Chairman of the Council of States—

(a) shall vacate his office if he ceases to be a member of the Council;

(b) may at any time, by writing under his hand addressed to the Chairman, resign his office; and

(c) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council :

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

Article 91. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.— (1) While the office of Chairman is vacant, or during any period when the Vice-President is acting as, or discharging the functions of, President, the duties of the office shall be performed by the Deputy Chairman, or, if the office of Deputy Chairman is also vacant, by such member of the Council of States as the President may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council of States the Deputy Chairman, or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

Article 92. The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.— (1) At any sitting of the Council of States, while any resolution for the removal of the Vice-President from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of article 91 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman, or, as the case may be, the Deputy Chairman, is absent.

(2) The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of, the Council of States while any resolution for the removal of the Vice-President from his office is under consideration in the Council, but, notwithstanding anything in article 100, shall not be entitled to vote at all on such resolution or on any other matter during such proceedings.

Article 97. Salaries and allowances of the Chairman and Deputy Chairman and the Speaker and Deputy Speaker - There shall be paid to the Chairman and the Deputy Chairman of the Council of States, and to the Speaker and the Deputy Speaker of the House of the People, such salaries and allowances as may be respectively fixed by Parliament by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

THE STATE LEGISLATURE

Article 168. Constitution of Legislatures in States.— (1) For every State there shall be a Legislature which shall consist of the Governor, and—

(*a*) in the States of Andhra Pradesh, Bihar, Maharashtra, Karnataka Tamil Nadu and Uttar Pradesh, two Houses;

(*b*) in other States, one House.

(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly.

Article 169. Abolition or creation of Legislative Councils in States.— (1) Notwithstanding anything in article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.

(2) Any law referred to in clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary.

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

Article 170. Composition of the Legislative Assemblies.— (1) Subject to the provisions of article 333, the Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State.

(2) For the purposes of clause (1), each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State.

Explanation.—In this clause, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published :

Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2026 have been published, be construed as a reference to the 2001 census.

(3) Upon the completion of each census, the total number of seats in the Legislative Assembly of each State and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine:

Provided that such readjustment shall not affect representation in the Legislative Assembly until the dissolution of the then existing Assembly:

Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the Legislative Assembly may be held on the basis of the territorial constituencies existing before such readjustment:

Provided also that until the relevant figures for the first census taken after the year 2026 have been published, it shall not be necessary to readjust—

(*i*) the total number of seats in the Legislative Assembly of each State as readjusted on the basis of the 1971 census; and

(*ii*) the division of such State into territorial constituencies as may be readjusted on the basis of the 2001 census, under this clause.

Article 171. Composition of the Legislative Councils.— (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed one third of the total number of members in the Legislative Assembly of that State:

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).

(3) Of the total number of members of the Legislative Council of a State—

(*a*) as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;

(*b*) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;

(c) as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;

(d) as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;

(e) the remainder shall be nominated by the Governor in accordance with the provisions of clause (5).

(4) The members to be elected under sub-clauses (*a*), (*b*) and (*c*) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.

(5) The members to be nominated by the Governor under sub-clause (*e*) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:—

Literature, science, art, co-operative movement and social service.

Article 172. Duration of State Legislatures.— (1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly:

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

(2) The Legislative Council of a State shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

Article 173. Qualification for membership of the State Legislature.— A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;

(*b*) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and

(*c*) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Article 174. Sessions of the State Legislature, prorogation and dissolution.— (1) The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Governor may from time to time—

(*a*) prorogue the House or either House;

(*b*) dissolve the Legislative Assembly.

Article 175. Right of Governor to address and send messages to the House or Houses.—(1) The Governor may address the Legislative Assembly or, in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members.

(2) The Governor may send messages to the House or Houses of the Legislature of the State, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

Article 176. Special address by the Governor.—(1) At the commencement of the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year, the Governor shall address the Legislative Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of the House or either House for the allotment of time for discussion of the matters referred to in such address.

Article 177. Rights of Ministers and Advocate-General as respects the Houses.— Every Minister and the Advocate-General for a State shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote.

Article 182. The Chairman and Deputy Chairman of the Legislative Council.—The Legislative Council of every State having such Council shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

Article 183. Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman.— A member holding office as Chairman or Deputy Chairman of a Legislative Council—

(*a*) shall vacate his office if he ceases to be a member of the Council;

(*b*) may at any time by writing under his hand addressed, if such member is the Chairman, to the Deputy Chairman, and if such member is the Deputy Chairman, to the Chairman, resign his office; and

(*c*) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

Article 184. Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman.— (1) While the office of Chairman is vacant, the duties of the office shall be performed by the Deputy Chairman or, if the office of Deputy Chairman is also vacant, by such member of the Council as the Governor may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council the Deputy Chairman or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

Article 185. The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration.— (1) At any sitting of the Legislative Council, while any resolution for the removal of the Chairman from his office is under consideration, the Chairman, or while any resolution for the removal of the Deputy Chairman from his office is under consideration, the Deputy Chairman, shall not, though he is present, preside, and the provisions of clause (2) of article 184 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Chairman or, as the case may be, the Deputy Chairman is absent.

(2) The Chairman shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Council while any resolution for his removal from office is under consideration in the Council and shall, notwithstanding anything in article 189, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

Article 186. Salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman.— There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly, and to the Chairman and the Deputy Chairman of the Legislative Council, such salaries and allowances as may be respectively fixed by the Legislature of the State by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

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7. LIST OF HON. PRESIDING OFFICERS OF THE UPPER HOUSE

CHAIRMAN – RAJYA SABHA

Sr. No.	Name	Duration
1.	Dr. Sarvepalli Radhakrishnan	13.05.1952 to 12.05.1957 and 13.05.1957 to 12.05.1962.
2.	Dr. Zakir Husain	13.05.1962 to 12.05. 1967
3.	Shri Varahagiri Venkata Giri	13.05.1967 to 03.05.1969
4.	Shri Gopal Swarup Pathak	31.08.1969 to 30.08.1974
5.	Shri Basappa Danappa Jatti	31.08.1974 to 30.08.1979
6.	Shri M. Hidayatullah	31.08.1979 to 30.08.1984
7.	Shri R. Venkatraman	31.08.1984 to 24.07. 1987
8.	Dr. Shanker Dayal Sharma	03.09.1987 to 24.07.1992
9.	Shri K.R. Narayanan	21.08.1992 to 24.07. 1997
10.	Shri Krishan Kant	21.08.1997 to 27.07.2002
11.	Shri Bhairon Singh Shekhawat	19.08.2002 to 21.07.2007
12.	Shri Mohammad Hamid Ansari	11.08.2007 to 10.08.2012 and 11.08.2012 to till date.

DEPUTY CHAIRMAN OF THE RAJYA SABHA

	Deputy Chairman	Term
1.	S. V. Krishnamoorthy Rao	31 May 1952 – 2 April 1956
2.	S. V. Krishnamoorthy Rao	25 April 1956 — 1 March 1962
3.	Violet Alva	19 April 1962 – 2 April 1966
4.	Violet Alva	7 April 1966 – 16 November 1969
5.	B. D. Khobragade	17 December 1969 – 2 April 1972
6.	Godey Murahari	4 April 1972 – 2 April 1974
7.	Godey Murahari	26 April 1974 – 20 March 1977
8.	Ram Niwas Mirdha	30 March 1977 – 4 April 1980
9.	Shyam Lal Yadav	30 July 1980 – 4 April 1982
10.	Shyam Lal Yadav	28 April 1982 – 29 December 1984
11.	Najma Heptulla	25 January 1985 – 20 January 1986
12.	M M Jacob	2 February 1986 – 22 October 1986
13.	Pratibha Patil	18 November 1986–5 November 1988
14.	Najma Heptulla	11 November 1988 – 4 July 1992
15.	Najma Heptulla	10 July 1992 – 4 July 1998
16.	Najma Heptulla	9 July 1998 – 10 June 2004
17.	K Rehman Khan	24 July 2004 – 2 April 2012
18.	P.J. Kurien	21 August 2012 – till date

CHAIRMAN – BOMBAY LEGISLATIVE COUNCIL

Sr. No.	Name	Duration
1.	Shri Mangal Macharam Pakvasa.	22nd July 1937 to 16th Aug. 1947
2.	Shri Ramchandra Ganesh Soman.	18th Oct. 1947 to 5th May 1952
3.	Shri Ramrao Shriniwasrao Hukkerikar.	5th May 1952 to 20th Nov. 1956
4.	Shri Bhogilal Dhirajlal Lala	21st Nov. 1956 to 10th July 1960
CHAIRMAN – MAHARASHTRA LEGISLATIVE COUNCIL		
5.	Shri Vitthal Sakharam Page	11th July 1960 to 24th Apr. 1978
6.	Shri Ramkrishna Suryabhan Gavai.	15th June 1978 to 22nd Sept. 1982
7.	Shri Jayant Shridhar Tilak	23rd Sept. 1982 to 7th July 1998
8.	Prof. Narayan Sadashiv Pharande.	24th July, 1998 to 7th July 2004
9.	Shri Shivajirao Bapusaheb Deshmukh.	13th Aug. 2004 to 24th April 2008, 25th April 2008 to 24th April 2014 and 8th May 2014 to 16th March 2015.
10.	Shri Ramraje Naik-Nimbalkar.	20th March 2015—till date

DEPUTY CHAIRMAN – MAHARASHTRA LEGISLATIVE COUNCIL

Sr. No.	Name	Duration
1.	Shri Ramchandra Ganesh Soman.	22nd Jul. 1937 to 16th Oct. 1947
2.	Shri Shantilal Harjivan Shah	18th Oct. 1947 to 4th May, 1952
3.	Shri V.G. Limaye	5th May, 1952 to 18th Aug. 1955
4.	Kumari Jethi T. Sipahimalani	19th Aug. 1955 to 24th Apr. 1962
5.	Shri Vishnuprasad Nandarai Desai.	21st Jun. 1962 to 28th Jul. 1968
6.	Shri Ramkrishna Suryabhan Gavai.	30th Jul. 1968 to 12th Jun. 1978
7.	Shri Arjun Giridhar Pawar	1st Dec. 1978 to 24th Apr. 1984
8.	Shri Dajiba Parvat Patil	12th Jul. 1984 to 7th Jul. 1986
9.	Shri Suryabhan Raghunath Vahadane.	29th Jul. 1988 to 27th Jul. 1994
10.	Prof. Narayan Sadashiv Pharande.	30th Jul. 1994 to 23rd Jul. 1998
11.	Shri Vasant Shankar Davkhare	24th Jul. 1998 to 11th May 2004 and 13th Aug. 2004 to 8th Jun. 2010 and 13th July 2010 till date.

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