CHAPTER I

REPORT ON THE UTILITY OF SECOND CHAMBERS IN PARLIAMENTARY DEMOCRECY IN INDIA.

The question of utility and composition of second chambers can be studied from a number of points of view, general as well as specific. From the general point of view the most important question that arises is whether a second chamber in the legislative branch is compatible with democracy as a system of government.

Democracy in this context is hard to define in terms of single concepts, for it is combination of a number of postulates. If, for example, democracy is defined as representative government, government by a single representative of the people may satisfy this condition. But that would result in concentration of all the powers of the government —— of legislation, execution and adjudication —— in one single person and would be worse than even a dictatorship in which there is at least an elected legislative body always in existence even though it performs the function of rubber-stamping the legislative proposals of the dictator. At best this definition of democracy could replace a hereditary despotic monarch by an elected but equally despotic monarch for life.

From this deficiency in the definition arises the second postulate of democratic government, *viz.*, reasonable separation of powers and functionaries with adequate amount of independence of one set of functionaries from the other to prevent complete domination of one branch of government by the other single or in combination with the remaining third branch. But if that alone were the additional requirement, election of three representatives by the people, one each to be solely competent to make, execute and interpret laws would have served the purpose of democracy. This aspect of democracy has been successfully tried in only one branch, the executive, in the U. S. A. where the whole executive function has been vested in a single elected representative of the people. But a number of legislative and judicial checks have been placed on the powers of the elected Chief Executive, along with the check of limitation on the tenure for which he shall remain in office after election.

Application of this principle all-round also does not satisfy the third important tenet of democracy, *viz.*, rule of law, which when broken into its component parts means not only supremacy of law but also equality of all before law. When this concept is added to the foregoing two concepts, it leads to need for conferment of greater powers on the organ of government elected to lay down laws which would bind the executive as well as the judicial organs. This consideration has given rise to a number of complicated controversies. If law made by an organ were to be supreme, can this most important law-making function be left to one man alone and if so, for how long. If one man,

howsoever popularly elected he may be, cannot be entrusted with this important task, what should be the number of persons who should jointly or in separate bodies perform such task and what should be the method by which such a body or bodies of persons should be elected to represent the will of the people. A number of devices by way of dividing the State into Constituencies and inventing methods of poll have been resorted to make the law-making organ as competent and as representative of the will of the people, as possible.

As law in democracy is the most important element in the governance of a State, a host of questions about the procedure to be followed in making laws, as distinguished from procedure for reaching decisions on other congnate functions of the representative body, also became important. The first problem was whether a body of people should be deemed to have decided an issue only when the decision was unanimous. This method would have given the power of creating a stalemate in the hands of few and was not a practical proposition. So, as a workable method, the general practice of arriving at decisions by majority was adopted, with the safeguard of free and full opportunity to all of expressing their views for or against the question at issue. However, the prevalence of majority view was only a method of reaching a decision, if no unanimity could be reached through full and free discussion and was not an essential part of democratic government. As L. S. Amery in 'Parliament : A Survey' says at p. 54 :

> "The second and kindred misconception concerns the meaning of majority decision and majority rule. Decision by majority is not an absolute and unquestionable principle. 'Our Constitution', to use Burke's phrase, 'is something more than a problem in arithmetic'. There is no divine right of a mere numerical majority of x/2 plus I, any more than of Kings. Majority decision is a measure of convenience essential to the despatch of business, 'the result', to quote Burk again, of a very particular and special convention, conformed by long habits of obedience'. Thanks to that convention Government is carried on with the acquiesance of the minority. When it comes to legislation it is of the very essence of our conception of the reign of law that it should not be regarded as a mere omanation of the will of the Government, but as some thing accepted by the nation as a whole."

Another equally important problem was what should be the procedure for law making so as to make the resulting law not only as unanimous but also as perfect and executable as possible. For this reason a proposed law was not disposed of after a single discussion like other matters but was given a number of readings or opportunities for discussion, amendment and decision. Even up to as late as 1848 a bill could not be passed by the House of Commons in England before it was voted upon as many as 18 times, besides votes on amendments moved to it. But that did not finish deliberation on it. By sheer necessity it had to be examined by another body, the House of Lords, whose primary function was not legislation. As is well-known, the House of

Lords before it became a separate House of Parliament, was primarily an executive and judicial body with which began to be associated on important occasions the Knights and Burgesses to give counsel to the King. When the House of Commons began to deliberate separately the petitions from its members, which were the fore-runners of the present-day bills, began to be referred to the House of Lords for advice and correction of drafting errors, after they had been approved by the House of Commons. This function of revision and amendment by another body has been felt necessary and expedient to make the resultant law intelligible as well as flawless in its execution and interpretation. The value of the House of Lords revision lay not in merely giving the proposed law another set of readings which could as well be given by the lower House of Commons. It consisted in application to the proposed law a different kind of mind and outlook. This was done not in the interest of a class of people to give them a say in the matter, but primarily in the interest of the people among whom the law was to operate.

As such, the need for a second chamber in the legislative organ of a democratic state arose purely from the desire to make the resultant law as possible, because under the doctrine of rule of law, law was to be the sole determinant of the conduct of the people, the rulers and the judges. Though the early second or revising Chambers were largely hereditary or nominated or elected out of certain chosen classes of people, they were continued as part of the legislative organs on account of their contribution to sound law making.

With the advent of demand for making the legislative organs more and more representative by extending the right of vote to larger and larger sections of the people an anachronism developed between the two legislative bodies of the same Legislature, because while one House began to represent the people directly, the revising or the second Chambers continued to be hereditary or nominated or even elected from or by certain defined classes of people. The result was that the differences of opinions between the two Houses which in times gone by were looked at by the elected chambers as matters of course, began to be interpreted as obstruction to the will of the people. The points of view of the two chambers also, because of the wider differences in their compositions, also became divergent. As there was no remedy at hand at that time to make these chambers also more democratic and as these chambers stuck more and more to their particular attitudes, there was no alternative, but to demand their abolition. Such clamour became more pronounced at abnormal times of national upheavals when peoples' passions rose against not only the second chambers, but also against all the established organs of government. The abolition of the House of Lords along with the beheading of the King in England, in the middle of the seventeenth century and similar situation in France in eighteenth century are instances in point. But as the modern historians say and as the latter events in the two countries

proved, the demand for the abolition of the second chambers was not based on their uselessness or incompatibility with the principles of democracy, as such, but on the mere fact that they were not democratised to the same extent as their sister bodies. In England the House of Lords was restored without any attempt at the least democratisation while in France it was restored after democratising its Constitution; this proves that second chambers fitted the democratic ideals even at the time when these ideals had run wild, sweeping in their wake many other established institutions. For instance, monarchy and the then established Church in France was not found compatible with democracy and was effeced for ever. But not so the second chamber. In England, the real grouse was against the arbitrariness of the Stuarts who under their notion of the Divine Rights of King's attempted to ride roughshod over the will of the House of Commons and also to patronise one set of religious doctrines to the detriment of the other. A change in monarchy, the consent of the monarch to the famous Bill of Rights of 1688 which gave to the people and the parliament what they had claimed as their rights and privileges and the reform of the controversial Church restored normalcy with all the institutions including the House of Lords, in tact.

The utility of Parliaments generally and the second chambers particularly in democracy lies in the opportunity it provides for discussion and deliberation from different points of view on the subject under consderation, specially legislative measures. But certain recent trends in democratic parliaments, specially those in which. unlike the U. S. A., the persons responsible for executing the laws are selected from amongst the members of parliament and are jointly responsible to the directly elected House, came very near to annihilating the deliberative aspect of democracy. It may be recalled that ministerial responsibility to the House of Commons in England is a comparatively recent development. Earlier, the King used to appoint the ministers of his choice who were, in the words of H. W. Wiseman:

> "Responsible for the conduct of 'the King's policy and government and for dispensing 'his' patronage. As a corollary, it was felt that Parliament should not impose upon the King Ministers whom he did not want; that organised opposition was disloyal; that M. P.'s had a duty to support the 'King's Government'. Certainly they might act according to their conscience, though the stimulation of favourable attitudes by material and social rewards was in no way improper."

But with extension of franchise from 1832 onwards, elections began to be fought on organised party lines and from 1867 onwards the Ministers began to expect unflinching support from the members of their parties. Gladstone, who was a staunch supporter of party discipline in the House of Commons resigned as Prime Minister in 1874 because of withdrawal of the support of his party and Disraeli followed suit in 1880 for similar reasons. These developments became the accepted norms and members seldom voted against their

parties in large numbers. But resignation as a consequence of defeat in the House of Commons by the Ministers or dissolution consequent on the defeat of the Ministry was still not compulsory. As Sir Gilbert Campion says in "Parliament : A Survey" at p. 15 :

> " 'Penal' dissolution was rare and generally unfortunate in its results. Ministers were willing to accept the collaboration of private members in the shaping of their measures ; they not infrequently consented to be over ruled in matters of policy. Even Palmarston, whose Premiership heralded the era of party consolidation, accepted on an average two defeats a session with, possibly, Christian but, certainly, no other kind of resignation. Such pliability became incompatible with ministerial dignity in the succeeding period ; between 1886 and 1905 Government defeats averaged one a session, and in 1895 a 'snap' division in Committee of supply afforded Rosebury a respectable excuse for resignation.
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> Debate really counted for something. It was carried on chiefly by the 'big guns' on both sides, while the bulk of members were content to sit as a jury and listen to the evidence and arguments. There was always the possibility that a speech might turn votes ; the result of a division was not a foregone conclusion."

Further at p.17 he says :

> " In this period the parliamentary method, control of government by talk, worked better on the whole than it had before or has since. Debate was educative — great debates, giving all sides of important questions were fully reported in the daily Press, because there was a public which read them. Debate was effectiv — it could turn votes in the House of Commons and bring down governments. Some members were independent of party and many who were party men, sat pretty loose at party control . . ."

But party discipline, the threat of dissolution on defeat of a government and ministerial responsibility changed the concept of efficacy of parliamentary debate and discussion in democracy altogether. In the words of Ronald Butt in his book " Power of Parliament " at p. 179 :

> " . . . . . They know that the official opposition is fore-ordained to lose every battle, if victory is to be measured in Division figures or in terms of a government retreat from some major policy decision as a result of an adverse vote in the House. They are no less sceptical about the reality of the influence now exerted on a Government by its own followers. Supporters of modern Governments are seen to vote pliantly for policies in which they do not believe. Much publicised back-bench revolts collapse when the Members who sponsor them have to face the test of the Division lobby — especially when their party is in power. . . ."

At page 181 he adds :

> " . . . . The newest M.Ps., on the other hand, are almost invariably disappointed by what they find to be their position and status once they arrive at Westminister — specially if they are men and women who feel they have entered politics to 'get things done'. A man who may well have been in command of his own day, and who may have been used to holding executive authority suddenly finds himself at the disposal of his whips. He must hang about for Divisions on subjects that do not interest him."

This tendency of staunch party alignments, irrespective of the merits of the subject-matter before the House of Commons has led some respectable political thinkers to advocate abdication by the House of Commons even of its limited powers of discussion and debate.

In "Problems of Socialist Government" Sir Stafford Cripps and his other socialist co-authors, including Mr. Attlee, in 1933 proposed that an Emergency Powers Bill should be passed through all its stages on the first day of its session, to be followed by an Annual Planning and Finance Bill which would take the place of the King's Speech, the Budget, financial resolutions and the second reading debate on most of the important measures of the year because, according to them, it was idle to discuss again and again the wisdom of a course of action which has been once dicided upon by the Parliament.

In Sir Stafford Cripps' own words :

> "The devising of the detailed administrative methods for the working out of the Plan are not matters with which the House of Commons need concern itself. Ministers with the advice of their administrative staffs and experts should handle the detailed work. Full powers to that end should be delegated to them. . . ."

This attitude had its repercussions on the free will of the Ministers also to determine what the policy of the Government and laws of the state should be. It was contended by the Socialist Party bosses in England that the members of the Cabinet should be guided by the Party Executive outside the Parliament in formulating its proposals, whatsoever their own or the members' views in Parliament may be.

The principle behind this line of thinking in the recent past was that once the electorate has chosen which party shall rule, the function of Parliament is over except for formally rubber-stamping the dictates of the party at the commencement of each session and then going into a state of deep-freeze till it is again called upon to ditto the next year's programme. According to such a line of thinking, it was natural that a second chamber was considered quite useless though the need for an elected House of Commons was conceded as a formal approving legislative body to keep the sembalance of a Parliamentary democracy. The demand for the abolition of the House of Lords by the

Labour Party in the late twenties and the early thirties of this century in the U. K. had its echo-almost in all parliamentary democracies, including India.

But the very party which had sought to reduce discussion and debate in this way and advocated the abolition of the second chamber in England, when returned to power in 1945, not only gave up these ideas but carried out its socialistic programme in the normal course of discussion and debate with the only difference that it reduced from two to one year, by the Parliament Act of 1949, the power of the House of Lords to delay legislation. L.S. Amery in the book quoted above says at p. 55 :

> "Happily, the passage of years partnership in the conduct of a great war, and since then the full responsibility of office would seem to have toned down these vagaries. The late Prime Minister and his Cabinet came into office in accordance with ordinary constitutional practice. They pushed through their legislation expeditiously — some may think too expeditiously — but certainly on normal constitution, like those of our parliamentary life, are, indeed, strong and pervasive, and tend to imping their mould on even the most revolutionary elements."

This reversion to the accepted democratic way of discussion and debate naturally resorted the confidence of these people in the House of Lords and the demand for its abolition was changed into a demand for change in its Constitution and reduction in its powers of delay. Describing this change of attitude Dr. Bornard Crick, in his book "The Reform of Parliament" says at p. 123 :

> "After 1918 there was no serious talk of abolition except from the rising 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."

All this again proves that as long as the principle of discussion and debate is accepted as a part of democratic government, the need for a second chamber continues as a part of democratic legislature. Only when such need is considered redundant a second chamber also becomes superfluous and the retention of the elected popular chamber is necessary only to maintain a facade of democracy.

The place of a second chamber in democratic legislatures may also be considered in the light of another postulate of democracy, viz., dispersal and sharing of powers and responsibility of the State both horizontally and vertically in all its branches. For instance, some of the powers of law-making and administration are not concentrated in the organs of the State at the apex but are shared by local bodies vertically at district and sub-district levels, under the over all supervision and guidance of the central powers. These bodies under powers conferred on them make bye-laws and administer local

affairs. Horizontally a number of Boards, Universities Commissions and Corporations make bye-laws and administer affairs of the State under powers conferred on them by law. Justice is also dispensed not by a central body but through a heirarchy of Courts with defined jurisdictions, under the over-all supervision of the central judicial organ. In between the three central wings also subordinate law-making and certain quasi-judicial functions are shared by the executive or by administrative tribunals appointed specfically for the purpose.

In Presidential types of democracies of the kind prevalent in the U. S. A. though there is only one elected head of the executive much of the executive, legislative and adjudicatory power is vested by law not only in the local bodies but also in some national agencies like the Inter-State Commerce Commission, Federal Communications Commission and the National Labour Relations Board which are in themselves like any other department of the State.

Speaking of the causes of the success of the British Constitution, Sir Arthur Sâltar says in "Parliament A Survey" at p. 107 :

> ". . . . Its actual success, however, to an extent to which the countries that imitated it did not as a rule realise was due to other facts, other institutions and other factors for example, the strength of local government, to the practical sharing and dispersal of power. . ."

As such concentration of the sole law-making function only in one single body would be inconsistent with the general democratic principle of sharing and dispersal of governmental functions. It is interesting to note that even in those countries where parliaments were or are like parade ground squads with the dictators acting as drill sergeants, e.g., U.S.S.R. a semblance of two Houses representing two sets of view points has been kept probably to give to their governments a modern democratic visage.

Another ingradient of democracy is that at any given time the voice of the people should prevail. This aspect of democracy is the most difficult to observe in practice and has seldom been acted upon in modern times in the day-today working of democratic institutions. Any way, this principle, even at its face value does not mean that no other voice of the representatives of as its face value does not mean that no other voice need at all be heard. What it means is that where there is a conflict, the voice of the representatives of the people must prevail. The very word 'prevail' means that there are other voices also over which the voice of the people should get preference.

If this tenet is taken at its face value, then every decision of a State legislative or administration should get the direct approval of the people as was the custom in the early Greek City States. But it is well-neigh impossible in these times of centralisation when decisions have to be taken at the level of the country or a State as a whole. In place of direct participation by the

people, their participation through representatives elected by them had to be substituted for sheer convenience, evn though it means a modification of the main principle as formulated by Plato, Aristotle and Socrates.

But even this indirect application of the principle has been, in practice, further modified to the extent that certain basic principles of government of a State which had been laid down earlier have been made unchangeable by the majority of the representatives of the people acting on their behalf. Written Constitutions, and a large majority of democratic countries have such Constittuions, are not capable of being altered by the representatives of the people through the ordinary procedure by which other rules of binding conduct can be enacted. Almost all written Constitution provide either special majorities for their alterations or, over and above them, either ratification by the constituent units or direct approval by the people through a referendum. Certain Constitutions have much more complicated methods of Amendments. For instance, the Constitution of Sierra Leone provides that after the House of Legislature has approved an amendment of the Constitution by a two-third majority it will be dissolved and after its fresh reconstitution it would have to pass it again by the same majority. The Constitution of Burundi provides a still more complicated procedure for its amendment in that after the two chambers have agreed that an amendment of the Constitution is necessary, they will be dissolved. After that one or both chambers with the counsellors of the Crown, in agreement with the King, shall pronounce on matters submitted for amendment. But neither chamber may meet without two-third of its members being present and every amendment shall be passed with a majority of two-third of its membership. Many other novel procedures exist in the Constitutions of very recently established democracies. This is one aspect in which the representatives of the people have not been trusted to voice the will of the people or, conversely, there are certain matters in which the voice of the present people is not to prevail over the voice of the people recorded through written constitutions long ago. The Indian Constitution is itself an example of the fact that the voice of the people through their representatives elected thorugh adult franchise cannot prevail over the voice of their representatives elected on a very restricted franchise, for the members of the Constituent Assembly of India were not elected either directly or for that purpose specifically or through adult franchise or even on any issues concerning the future Constitution of India.

Nor is this principle inapplicable only in amending the basic laws of the States. In the Constitutions of Libya, Niger, Ivory Coast and Tanzania a provisions exist to the effect that the head of the State can, after an ordinary bill has been passed by the popular House of the Legislature—and Houses of Legislatures in these States are all elected on the basis of adult franchise—refer it back to the House for reconsideration and further action can be taken only if the House again passes it by two-third majority of total membership. In Tanzania such a bill may not also be passed again before six months. In

Ivory Coast and Niger even if the bill has been passed by two-third majority, it may also be referred to the people. In Senegal after a returned bill has been passed by the House by a majority of three-fifth of the total members, the Head of the State has also powers, before giving assent to the Bills, to refer it to the Chief Justice of the Supereme Court for opinion on its constitutionality and in Niger he has also the power to refer a bill to the people through referendum after it has been repassed by a two-third majority. A number of other similar provisions in the Constitutions can be mentioned. All such provisions show that at any time a fresh majority of peoples' representatives may in a heat of passion or passing emotional upsurge change the very basic principles which after great deliberations have been laid down by their own people.

[The committee may here also point out that the provisions about greater restrictive powers of this sort appear only in those Constitutions wherein a unicameral Legislature has been provided for and no State with a bicameral legislature, as far as is known, has made such provisions about the ordinary law-making powers of the legislature This might also mean that the makers of the Constitutions of these countries did not feel that a popularly elected single chamber legislature can always reflect the will of the people so as to alter the very basic structure of the State or can judge of the complicated questions of constitutionality of a law.] That such provisions do not exist in States with bicameral legislatures may well mean that a second chamber was an adequate safeguard against a law being against the real will of the people or the provisions of the Constitution It may also be noted here that these two patterns are contained in Constitutions made almost during the same period of time after the Second World War and reflects greater trust in bicameral legislatures both in constitutional as well as law-making fields.

That the representatives of the people do not always reflect the will of the people is also apparent from the provision for recall of a representative in some Constitutions like Switzerland and Combodia. Such provisions mean that there may be representatives who may after election show that they do not represent the will of the electors, and therefore, the electors should be given an opportunity to change their representatives in such circumstances, similar distrust of the elected representatives is shown from provisions about refrenda or fresh elections in certain crucial situations.

It may therefore be concluded that the popularly elected single chamber Legislatures have not always been presumed to reflect the will of the people and in certain matters they do not allow the representatives to claim to reflect it without direct reference to the people, or a special vote of enlarged majority or even some stricter tests.

U. K. to-day is perhaps the only modern democracy without a written constitution or with a Constitution which can be changed like other ordinary laws of the realm. But it has also a hereditary second chamber as a safeguard to the accepted constitutional beliefs of the people, though the safeguard of

a second chamber is not considered to be enough by some modern thinkers, Mr. J. J. Craik Henderson in 'Parliament : a Survey" in his article "Dangers of a Supreme Parliament" says at the very start, at p. 89 :

> "Whilst the supremacy of Parliament has many advantages, it is also a serious danger should a Government be formed of men prepared to curtail liberties or to form a dictatorhsip. as has happened in Czechoslovakia. The methods employed by Communism should make us consider very carefully whether the dangers of a supreme parliament do not override the advantages of a flexible Constitution."

Speaking about the usefulness of a second chamber in checking such vagaries of the House of Commons, he says at p. 101 :

> "The position accordingly is that, though the House of Lords has the right to refuse a Bill to prolong the life of Parliament and has the right to delay other non-money Bills, in fact the Government in power can probably give itself a majority in the Upper House with the result that no adverse decision would be given, but even without a majority the present powers of delay are very limited. It may be that it is also a disadvantage that the House of Lords is a purely hereditary body and liable to attack as an aristocratic body out of touch with the 'common people'. This would be an unfair criticism, but it is one which would be used against the House of Lords in the event of a dispute between the Lower and Upper Houses. If our Constitution should provide some check on the arbitrary decision of a Government, this should be found in a strengthened second Chamber which would have the confidence of the country and be given effective powers."

Lord Bryce says in 'Modern Democracies':

> "That a majority is always right, i.e. that every decision it arrives at by voting is wise, not even the most fervent democrat has ever maintained seeing that popular government consists in the constant effort of a minority to turn itself by methods of persuation into a majority which will then reverse the action or modify the decisions of the former majority . . . . Every people that has tried to govern itself has accordingly recognised the need for precautions against the errors it may commit, be they injurious to the interests of the State as a whole or in disregard to those natural or primordial rights which belong to individual citizens. Some sort of safeguard is required."

A via media between the irksome process of referendum or recall is the doctrine of mandate according to which as long as the representative House acts according to the programme or schemes on the basis of which the majority party or majority of members of a party have been returned by the people, the House is deemed to be acting according to the will of the people. But if it proposes to act either contrary to the mandate or in some way for which it had not the approval of the people, it should either seek a mandate from the

people through fresh elections or wait till the time for the next opportunity to obtain a mandate. As Mr. Herbert Morrison, the Leader of the House of Commons in the Labour Government of 1945–50, in his book 'Government and Parliament', (2nd Edition), says at p. 98 :

> "Even if a Government has a working majority there is a duty upon it to avoid highly controversial legislation or administrative policies for whch it has not proper mandate from the people. . . ."

The role of a second chamber in such circumstances is to oppose such radical measures as have not been approved by the electorate in the last general elections to the popular chamber. Mr. F. W. Lascelles in 'Parliament : a Survey' says at p. 205-6 :

> "Since then there has been a development of a 'mandate' theory and the policy of the Lords today appears to be that no measure included in the programme of the party victorious at the polls should be rejected by them, but they hold that it is the duty of a 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."

It is not necessary here to mention how the House of Lords insisted on the postponement of the date for the vesting of the nationalised Iron and Steel Industry in the United Kingdom which the House of Commons had to agree to with some modification and how when the issue was included in the Labour Party manifesto in the 1950 elections the country returned it with such a slender majoriy that the nation's verdict was in favour of the Lord's view. Another occasion for interference by the Lords in the decision of the Commons on a free vote was the question of the abolition of death penalty which had not received the approval of the electorate. This proposal was also accepted in a modified form by the Commons, this time with the whips on, retaining death penalty in cases of certain heinous crimes.

This part of the enquiry may be ended with the following remark of F. W. Lascelles at p. 203 of "Parliament : "a Survey":

> "I am not going to spend any time on the general question of one chamber or two. Single chamber Government was tried here (U. K.) in abnormal times, but it has been tried in the United States and twice in France. Both these countries fount it a failure. Nor is there any thing undemocratic or reactionary in a second chamber on the contrary, bicameral government has been adopted in the newest republics, such as Eire and India."

I para enough.

CHAPTER II

Historical Experience

The oldest second chamber of which history knows was the Roman Senate of which it is said that it was the most consistantly prudent and sagacious body that ever administered public affairs.

It is well-known that the Roman Senate at that time was responsible not only for expansion of Roman Empire, but also for giving to the world the Roman Law, the principles of which even to-day are operative as civil law in most of the Continental and Latin American countries and the province of Quebec in Canada. The commercial law of to-day even in Common Law countries follows the same principles which developed around the mediterranean during the hey-day of the Roman Empire.

The next oldest Second Chamber is the House of Lords of U. K. which developed into a second chamber when the Knights and Burgesses, who were called to assemble for parleys with the King, started conferring separately in the Painted Chamber in the first half of the 14th century. The Lords then were the barons and other tenants-in-chief of the King, Archbishops and the Bishops of the Church of England. Since 1876, life peerages began to be conferred by the King on Lords of appeal in Ordinary and since the Life Peerages Act of 1958, life peerages for seats in the House of Lords have been conferred not only on men, but also on ladies. Before this date they were disqualified to sit in the House of Lords even if they were baronesses in their own rights.

The earliest contribution of the House of Lords, was the Magna Carta. The other one, which is still of great significance, was the consolidation of the Common Law of England, which is the basis of the legal systems of U. S. A., U. K. and the Commonwealth countries. It is not necessary to detail how this tremendous task was performed; but it is enough to say that at the time of the Norman Conquest each locality had its own customary law which was administered by the local courts, called the moots, or the Signorial Courts, held by the barons. It is said some rimes that the Court of Star Chamber which was derived from the members of the House of Lords was a tyrannical body to suit the King's autocratic powers. But the recent historians of the Tudor period have said that but for such a Court, not only the rivalries between the Houses of York and Lancaster would have disintigrated the country, but would have made England a lackey of France. However, it is admitted by all historians of the English Law that this Court gave to the country new laws of sedition, treason and libel which even today not only protect the very existence of modern democracies, but also the reputation of individual citizens.

The real need of the House of Lords, the second chamber of Parliament there, was felt when England was torn by the Civil War in the middle of the

seventeenth century. Cromwell himself, on whose instigation the House of Commons had abolished the House of Lords, had earlier called it as useless, dangerous and ought to be abolished (February 6, 1649). But after abolishing the House of Lords and the monarchy, the House of Commons resolved on November 14, 1651, that it should further continue till Novembtr 3, 1654. During discussion on a bill to give effect to this resolution on April 20, 1653, Cromwell himself denounced it (the House of Commons) for its injustice and tyranny, its corruption and self-interest.

About the further deeds of the House of Commons during that period of one Chamber legislature, Macaulay says :

> "No portion of our Parliamentary History is less pleasing or more instructive. It will be seen that the House of Commons became altogether ungovernable, abused its gigantic power with unjust and insolent caprice, brow-beat the King and the Lords, Courts of Common Law and the Coustituent bodies, violated the rights guaranteed by the Great Charter and at length made itstlf so odious that the people were glad to take shelter under the protection of the throne and the hereditary aristrocacy from the tyranny of the Assembly which had been chosen by themselves."

Cromwell himself had to call the unfettered House of Commons at the time of dissolving it for good in 1653, as "the horridest arbitrariness that ever existed on earth" and had to draw the attention of the country by saying—

> "By the proceeding of the Parliament you see that they stand indeed of some checking or balancing power. I tell you that unless you have some such thing as a balance we cannot be safe."

During the eighteenth century a new experiment in unicameralism was tried in France where before the Revolution there was a three Chambered legislature, the Commons' House, the Noblemen's House and the Clergy's House to represent the three sections of society. Influenced by the Social contract theory of Jean Jacques Rousseau, the Abbe'Sieyes, who drafted a number of Constitutions for France, described the uselessness of Second Chambers with that fallacious logic that, "If a Second Chamber dissents from the First, it is mischievous ; if it agrees it is superfluous". But the same Sieyes on June 10, 1789, moved in the Assembly that it should verify its powers in the case of each member, whether the members of the two privileged Houses were present or absent. By this he meant that the three Houses should sit together and by majority decide what the powers of the Assembly against the other two Houses and the King were and got a resolution passed about the powers of the Assembly in the absence of all, but three members of the House of Clergy.

After this declaration of its powers, the Assembly abolished the two other Houses and ultimately captivated the King, the Queen and got them guillotined

along with a number of nobles who had not till then fled the country. But that was not all. Under his inspiration, the Assembly abdicated its own powers and vested it in a Committee, called the Committee of Safety, which ruled even without consenting the Assembly and sought to usurp the powers of the local bodies to govern themselves. This was resisted by the City Council of Paris and the mob of Paris, which wanted the right to govern itself, was butchered by the orders of this Committee which Sieyes had envisaged as the sole repositary power of the State. Other towns like Lyons, Nantes, Marseilles and Vendees rose against the Committee which had been nicknamed as "Terror" and which in Paris alone subsequently sentenced and executed two thousand people who had demanded their freedom to manage their own affairs. Thus ended the single Chamber experiment of Sieyes. His experiments with single Chamber Constitutions of 1791 and 1793, failed miserably till in 1795, a bicameral legislature with a Council of Ancients as a Second Chamber was established. After some other experiments again, the Constitution of 1814 established a bicameral legislature which became unicameral in 1848 and again bicameral in 1870, since when bicameralism has staved. As Campion has said, "History has come down pretty heavily against him (Sieyes)".

It was in U. S. A., in this century that a dispassionate discussion took place on the merits and demerits of bicameralism, not only in the federal legislature, but also in the States after independence. At the federal level they had provided for only one Chamber in the days of confederacy as a measure of economy, but the representatives proved so region-minded and lacking in vision that the Constitution had to provide for another Chamber, consisting of representatives of greater vision and wisdom to think in terms of the whole nation while protecting the interests of the respective States from the regionalism of the lower House, the upper house called the "Senate" had to be given equal powers with the lower House, the House of Representatives.

But it was really in the States that the question was debated hotly. At that time the States were not very prosperous and the question of burdening the exchequer was an important consideration before them. But the reports of the French bloodshed perpetuated by a single Chamber government were pouring in, in the States in U. S. A., as also of the devastation that the ambition of the single Chamber Government of France in imposing republican governments in Austria, Prussia and England had produced all over Europe, while imposing misery and mass slaughter on their own people at home. They had also before them the recent examples of the House of Commons of England imposing on the American Colonies duties on tea and stamps against their wishes and thus abusing its financial privileges against the House of Lords and the King, who were really not in favour of these taxes. This made them cautious against not only having single Chamber

egislatures in the States, but also against confering financil powers on the ower Houses exclusively and making the heads of the States the nominal xecutive heads. It was to check on abuse of their powers by the popular Iouses that not only second Chambers were created in all the States, but the opular Houses were all denied exclusively financial powers. Since then, only one State, Nebraska, which at that time had a population of only about half a million people, has abolished its Second Chamber in 1933. Even the new States of Alaska and Hawaii with very small permanent population have bicameral legislatures — with the result that 49 out of 50 States there are bicameral.

Some reasons are given why the example of the States in the U. S. A. is not applicable to the States in India. The first one is that the constitutions of the States in the U. S. A., were made in the eighteenth and the nineteenth centuries and, therefore, while these States are only traditionally following an old system, India need not do so. But it is not so. The following table shows that constitutional revisions which took place in these States during this century also retained bicameralism :

State	*Year*
Alabama	1901
Alaska	1959
Arizonia	1912
Florida	1968
Georgia	1945
Hawaii	1959
Louisiana	1921
Michigun	1964
Missouri	1945
New Jersy	1947
New Mexico	1912
Oklahoma	1907
Puerto Rico	1952
Virginia	1902*

Many States in the U. S. A., had begun with unicameral legislatures, but became bicameral. In State and Local Government, Meesrs. Russel W. Maddox and Robert F. Fuquay (East and West Edition) says at page 130—

> ". . . . Georgia, Pennsylvania and Vermount had unicameral legislatures upon their entry into the Union, but in 1789, Georgia

*The book of the States, 1966-67, p. 10.

adopted the bicameral plan, and Pennsylvania followed suit a year later. Only in Vermount, where it persisted until 1836, had unicameralism been in effect for an extended period of time."

Giving the reasons for adoption of bicameralism by all the States, the authors say at pages 130—131—

"Justification for early resort to the bicameral system was found in several consideraions. Some feared that a single house might become too powerful and establish itself as the sole authority in government. Since popularly elected bodies were out generally regarded as temperate, it was felt that some kind of check was needed. Further, a unicameral body was not considered to be truly representative of all elements in society. It was also argued that an upper house whose members enjoyed longer terms would give more continuity to legislative policy."

As professors Melcolm E. Jewell and Emanuel C. Patterson of the Universities of Kentucky and Iowa respectively say, after giving all the reasons for bicameralism in the States in the U. S. A.—

". . . . in the last analysis, it is the instinct for legislative self-preservation that has maintained bicameralism as the prevailing system." *

Specific proposals for turning the bicameral system into a unicameral one were made the subject of referanda in the following States in the years mentioned against each in the present century :

States	*Years.*
Ohio	1912 and 1914.
California	1913, 1915, 1917, 1921, 1923 and 1925.
Kansas	1913, 1915, 1919-20.
Nebraska	1913, 1915, 1919, 1220 and 1934.
Oklahoma	1914.
Alabama	1915-1916.
Arizona	1915 and 1916.
Washington	1915 and 1917.
South Daksta	1917, 1923 and 1925.

Speaking of these referenda, W. Brook Graves in American State Government (third Edition) says—

"The Governors of Arizonia, Kansas, and Washington in 1913, recommended constitutional amendments providing for a Single Chamber

* The legislative process in the United State, p. 137.

system, and in the years immediately following, legislative committees in California, Michigan, Nebraska, and Washington recommended similar action. In most cases where the proposition was submitted to the voters, it was defeated by a majority of two to one, or more."

There has been a lot of difference of opinion about the success or otherwise of the unicameral system in Nebraska. Of this the author says that a number of changes, including an increase in the number of members of the former lower house from 32 to 49, establishment of a legislative council consisting of 15 members of the House as almost an independent body to advise on legislation between sessions, provision for public hearing on all bills and employment of three non-member counsellors to consider the constitutionality of doubtful measures and creation of an independent office of constitutional reviewer to give opinion upon constitutionality and validity of bills on the request of any member. However, while only 6 bills passed by the bicameral legislature were vetoed in 1935 (the last year of bicameralism) as many as 18 bills passed by the unicameral legislature were vetoed in 1937 (the first year after unicameralism). The fall in the number of days for which the unicameral house had to sit over the total number of the sittings of both the Houses was only 12, the total number of the sittings of the unicameral house being 98 as against 110 of the two Houses added up together.

About the experience of unicameralism in Nebraska, Robert F. Sitting in the winter 1967, issue of State Government, at page 39, says—

"Until this time, only those political reformers who viewed things through rose-coloured glasses were confident about the future of unicameralism. In thirty years not a single State has followed the pathway, Nebraska had opened. In the last few years, discussion of the unicameral principle has enjoyed a re-birth.

Perhaps the most thorough consideration of the Single House system has come in the States of Rhode Island, Connecticut and New Jersey. Constitutional review conventions in these States have provided avenues for re-examination and possible overhaul of entire political system. Professional observers from these States and Nebraska exchanged view points and visits. In the end, none adopted unicameralism, although significant support for it existed in all of them."

The author concludes at page 41—

"Perhaps the unicameral device is more appropriate for smaller States ,which may have fewer and lesser intense divisive elements within their borders. But this is conjecture, difficult either to disprove or verify . . . ."

In the nineteenth century two major Constitutions were newly made, one in Canada and the other in Switzerland. Both provided for bicameral

legislatures in the Centre. In the constituent units, only Quebec in Canada has a bicameral legislature and it is a surprise why even Quebec should have a bicameral legislature in view of its population of only 54,59,421 in 1961, which must have been far lesser in 1857, when the Canadian Constitution was made. It is believed that Quebec, which was then predominantly French in population, had got suspicious of the dangers of unicameralism in France and had to safeguard itself against misgovernment by having a bicameral legislature, even though owing to large sparsely populated territory the difficulty of assembling two Houses at short notice was great. It may be noted here that no province in Canada had in 1961, a population of over 95,00,000 and seven of the ten provinces and two territories had populations of less than 10,00,000 each.

Switzerland, before framing its own federal Constitution in 1874, had a bicameral legislature since 1798, when the French also had given it a bicameral Constitution while it was under their occupation, for, at that period, Sieyes' dilemma about second chambers had been proved false in the light of the practical experience of a unicameral legislature's tyranny. In 1874, also it opted for a bicameral legislature, the Cantons being represented equally in the second chamber. The Cantons, twenty-two in number, are just like small districts and, therefore, have only unicameral legislatures.

In the twentieth century a number of Constitutions have been made for new self-governing countries with democratic Parliaments. Of these Kenya, Bahama, Northern Nigeria, Western Nigeria, Trinidad, Lesotho, Isle of Man and South Africa, all have bicameral legislatures with the result that of all democratic countries in the world only Greece, Costa Rica, Finland, Israel, Lebanon, Luxambourg, Monaco, Syria, New Zealand and Denmark, have unicameral legislatures along with some tiny republics in Latin America. As the list itself shows, the unicameral countries are all small with small populations, some of them under-developed and without the multiple problems of a modern State with any strategic, political or economic importance in the international sphere.

The Constitution of Australian Commonwealth at the start of the twentieth century shows that not only at the apex, but also in the States bicameralism was preferred to unicameralism. In the beginning all the six States there had bicameral legislatures. But after the spread of the so-called progressive ideas Queensland abolished the upper House, the Legislative Council, chiefly because it was a totally nominated body. It was at that time the least populous and also the poorest State. The same was proposed to be done by the State of New South Wales and a bill to that effect was passed in 1958. But when, according to the provisions of the New South Wales Constitution, it was referred to the electorate for confirmation, it was rejected

by a surprising majority of about 11 lakhs to about 8 lakhs and thus the electorate rejected the move to abolish the Legislative Council which it knew was motivated by party intrigues and personal jealousies rather than by considerations of the interests of the State. According to latest information available attempts are afoot to restore the Legislative Council in the State of Queensland also

In this way even in the present century there have come into existence by far a larger number of second chambers than have disappeared. A word may be said about the recent (1951) abolition of the second chamber, the Legisltive Council, in New Zealand, which has been made much capital of by those who believe in unicameralism. A look at the debates in the two Houses on the occasion shows that the intention at that time was to abolish the existing Legislative Council and replace it by a Legislative Council with a more democratic representation. A Select Committee was appointed by the House of Representatives itself on September 15, 1950 (soon after the abolition bill was assented to on August 18, 1950).

> ". . . . to consider the establishment of some other or like body as an alternative to the present Legislative Council . . . ."

This committee made a report on July 15, 1952, which dealt with all the aspects of bicameralism and said that—

> "In the constitutions of modern States the bicameral principle was the characteristic of most important States. The evidence placed before the Committee drove them to the conclusion that some form of Second Chamber was very definitely desired by those who had given thought to the matter in New Zealand: this was supported by the press . . . . ."

This report was refererd to Government for consideration by the House of Representatives after discussion. But nothing could be done because of sharp differences between the various political parties over the Constitution of a new Legislative Council. Every party wanted the future second chamber to be so constituted as to perpetuate its own majority. Thus, there has been a stalemate ever since, though all parties desire a second chamber there.

This short review of history of second chambers the world over shows that howsoever, much they may be maligned and decried, not only in the past, but also in the modern conditions second chambers, have proved their utility and their abolition in the past had led to such an unpleasant experience that they had to be quickly resorted. Even in U. K. where the second chamber may be called the most conservatively constituted — being a hereditary one with a few life peers thrown in from time to time — there is no talk about its abolition now, though various schemes for its reform have been

proposed during the last 40 years. What is more surprising is that a predominently hereditary chamber is being maintained there and made the best use of all this time pending its reconstitution, for the British people know that even with its slashed powers and anachronistic composition, the House of Commons cannot be trusted to go it alone.

CHAPTER III

General — Usefulness

Usefulness of an institution depends not only on considerations of its general utility in all circumstances, but also on the special environment in which it has to function. There are people of unexceptional ability who have felt that a second chamber is a necessity in all kinds of democratic legislatures. In Mills opinion a second chamber was necessary because of—

> ". . . . the evil effect produced upon the mind of any holder of power, whether an individual or an Assembly by the consciousness of having only themselves to consult . . . . A majority in a single assembly when it has assumed a permanent character — when composed of same persons habitually acting together and always assured of victory in their own House — easily becomes despotic and overweening if released from the necessity of considering whether its acts will be concurred in by another constitutional authority."

Mill has given another argument which, according to Lord Campion, a former Clerk of the House of Commons, "has not lost its force for democracy". The argument is in the following words :

> ". . . . one of the most indispensable requisites in the practical conduct of politics is . . . . a willingness to concede some thing to opponents and to shape good measures so as to be as little as possible offensive to persons of opposite views, and of this salutary habit the natural give and take between two Houses is a perpetual school."

Speaking in the context of conditions in U. K., in the recent past, Bagehot, says—

> ". . . . If we had an ideal House of Commons . . . . it is certain we should not need a higher chamber . . . . but, beside the actual House, a revising and leisured legislature is extremely useful, if not quite necessary."

On the other hand, Sir Henry Maine, without bothering about the composition of an ideal second chamber has said—

> "Almost any sort of Second Chamber is better then none."

A number of general remarks have been made by many a thinker about the utility in general of Second Chambers. Before quoting them, it would be worthwhile to examine the validity of what has been said against the second chambers in general.

First of all may be considered the oft-repeated quip of the Babbe' Sieyes, that "if a second chamber dissents from the first, it is mischievious ; if it agrees it is superfluous" may be examined. Not much need be said about the

general abilities of the author of this dilemma, for it has been seen that none of the single chamber Constitutions he drafted for France worked for more than a couple of years, the first one having given birth to a Committee of safety which for more than a year was called the "Terror" in France and the First Single Chamber House of Legislature of his design had to be stormed a number of times by Parisians before they scattered it.

Looking at the epigram on merits, it may be said that the function of a deliberative body is not confined either only to differ or to agree. The real function is to suggest or insist upon amendments by way of improvement in what is transmitted to it by the other place or is initially brought before it. On merits, too, it is not mischievous to differ from any body's opinion, much more so from that of a body, which mostly runs on party lines. The right to differ is the hall-mark of democracy and it belongs not only to individuals, but also to bodies of persons. Later writers on second chambers have advocated their establishment only on the ground that they may act as a brake to the actions of temporary majorities in the popular chambers in the larger interests of the nation. The Bryce Conference of 1917-18, had said in this connection that the functions of a second chamber in the U K. should be—

> "(1) The examination and revision of Bills brought from the House of Commons a function which has become more needed since, on many occasions, during the last thirty years, the House of Commons has been obliged to act under special rules limiting debate.
>
> (2) The interposition of so much delay (and no more) in the passing of a Bill into law as may be needed to enable the opinion of the nation to be adequately expressed upon it . . . . . "

These extracts would show that the second chambers have a large field of activity which lies between total agreement and total dissent from the popular chamber. It is from these considerations that F. W. Lascelles says—

> "I am not going to spend any time on the general question of one chamber or two. Single Chamber government was tried in abnormal times, but it has been tried in the United States and twice in France. Both these countries found it a failure. Nor is there anything undemocratic or reactionary in a Second Chamber."

Very recently the All-Party Conference in U. K., came in 1968, to the following conclusion on the question of a Second Chamber :

> "To adopt a Single Chamber system would be contrary to the pratcice of every other Parliamentary democracy which has to legislate for a large population.
>
> More important, the case for a two Chamber government has been strengthened since the end of the Second World War, by the growth

in the volume and complexity of legislation, and also by the increase in the activity and power of the Executive and in its use of subordinate legislation."

The Conference had to say the following against the abolition of their Second Chamber :

> " Moreover, abolition of the Second Chamber would subject the House of Commons to severe strain, and paradoxically result in less procedural flexibility and speed, because of the need to guard against the over-hasty passage of legislation."

This is the most recent and representative view of the usefulness of a Second Chamber from the people, who not only have had the distinction of developing and perfecting parliamentary democracy, but who have also the longest experience of working the bicameral system, for the House of Lords, after the Roman Senate which is now extinct, is the oldest Second Chamber in existence in the world.

Usefulness of a Second Chamber was expressed in a different way by Hon. W. A. Bodkin (Minister of Internal Affairs) in the House of Representatives of New Zealand, on August 5, 1952. Answering the question as to from whom the demand for a Second Chamber emanated, he said—

> " I say that it emanates from those people in the community who are afraid of what they call the extreme 'left wing' section of the community. They are afraid that a government pledged to adopt a totalitarian philosophy will some day occupy the Treasury benches and enact any laws that it thinks fit.
>
> On the evidence of history, we must realise, whether we like it or not, that in the future every country on earth is face to face with the threat of a totalitarian. It is, then to examine the position and to recognise that, ... democracy as we understand it is dependent first upon the sovereignty of Parliament and secondly upon the rule of law . . . ."

These are not the words of a panic-stricken pessimist, but of one whose prophecy has almost fully come true in his neighbourhood and is threatening not only the far east, but also some parts of India.

An argument against Second Chamber on the ground of delay its presence involves in finalisation of legislative measures has been answered in the following words by Mr. Herbert Morrison, who was a Minister and the Leader of the House of Commons in the Labour Government of 1945–50. He says—

"The Single Chamberman may object, however, that as two Houses and not one have to eexamine 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, it is not using up the time of 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 that Government be Labour or Conservative. If that work of revision were not done in the Lords its reasonably certain that at least 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 becme 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 already been largely and usefully tidied up. It will be seen, therefore, that this two way legislative traffic is not only valuable in ensuring good legislative revision and in bringing two types of mind to bear upon legislation, but almost certainly saves time and is helpful in preventing legislative congestion in the House of Commons."

In modern times legislative function of the legislatures in the Parliamentary types of democracies has assumed a secondary importance. Larger attention to-day is paid by the House to the questions of policy of the government of the day or to the day-to-day administration of the policy. As the functions of the Government have been extending to new fields of industry, commerce and social welfare, the need for a close watch on the large and varied governmental activity has become imperative. That is why more time of every House of Legislature is spent in discussing governmental policies or actions than in considering detailed provisions of bills. The popular chamber at a given point of time may either be occupied with a legislative measures of great importance not to be set aside to discuss a topical issue or it may not be able to find enough time for the purpose. May be, by the time the popular chamber has disposed of the business in hand, the matter has already become stale. What is needed on such occasions is a debate in a deliberative body which may clarify the various aspects of the issue to enable the general

public to comprehend the various points of view with which the matter can be looked at. A second chamber, composed as it has to be of persons of greater experience of public affairs and capacity to analyse an issue into its component parts with skill and comperative aloofness from acute party or political points of view, can be better trusted to educate public opinion and give proper advice to the Government. Mr. Herbert Morrison, discussing this aspect of the usefulness of a second chamber, says with reference to such debates in the House of Lords—

> ". . . . They can and at times do stir public opinion, or they may ventilate real public grievances or have repercussions in the House of Commons; so they may make the Government conscious of some failure or short-comnig. No Government, therefore, whatever its political complexion, studiously and systematically ignores the opinion of the House of Lords. Indeed, it is the duty of the Leader of the House of Lords in the Cabinet to indicate to his colleagues the feelings of his House on subjects under consideration."

This useful function of a second chamber was recognised and appreciated both by the Bryce Conference of 1917-18 and also by the All-Parties Conference of 1967-68.

A look may be had at how the public opinion in the United States considers the usefulness of second chambers. Soon after the move to abolish the Legislative Council was set afoot in the State of Nebraska in U. S. A. public discussion began on the need of second chambers in the rest of the States in U. S. A. The American Legislators Association sent a post-card enquiry to (*a*) all members of the Congress, (*b*) 1,900 Senators in the States and an equal number of Representatives in the States, (*c*) 300 Newspaper Editors, (*d*) the first 500 members of the American Political Science Association selected alphabetically from the top of the list, (*e*) the first 200 members of the United States Chamber of Commerce on the alphabetical list, (*f*) the first 200 similarly selected members of the American Bar Association, (*g*) the first 200 names on the list of Bankers' Association, (*h*) 200 directors of governmental research bureaus, (*i*) the first 200 members of the American Association of University Women, (*j*) the first 200 members of the American Federation of Labour and (*k*) 200 members of the National League of Women.

The question was framed in the following terms:

> "Do you think that one-House State Legislature would not be preferable to two-House Legislatures?"

The ballots were not accompanied by any arguments for or against, nor by any explanatory information of any kind which might have influenced the voters.

The result was, category-wise—

Group	For one-House Legislatures per cent	Against one-House Legislatures per cent.
United States Representatives ...	... 24	76
United States Senators ...	... 31	69
State Representatives ...	... 34	66
State Senators ...	... 24	76
Nebraska Representaives ...	... 20	80
Nebraska Senators ...	... 38	62
American Bankers Association ...	... 31	69
Business Executives ...	... 45	55
Newspaper Editors ...	... 41	59
American Bar Association ...	... 34	66
Government Research Assocaition	... 82	18
American Political Science Association	... 85	15
American Federation of Labour	... 64	36
League of Women Voters ...	... 73	27
American Association of University Women	... 52	48
Total votes cast	... 41	59

The result shows that those who had legislative experience were overwhelmingly for a bicameral legislature, U. S. Senators and Representatives voting 3 to 1 in favour of bicameralism while the State Representaives voted 2 to 1 and State Senators 3 to 1, in favour of bicarmeralism. What was the most interesting part of the poll was that the Nebraska Legislators themselves 3 to 1 for bicameralism, ever though they had the distruction of belonging to the only unicameral legislature among the States in the U. S. A. Professors of government and others engaged in governmental research voted 4 to 1 or 5 to 1 against bicameralism. The total of combined votes was 3 to 2 in favour of bicameralism.

The aforesaid result also shows that those who had practical experience of legislatures were in favour of bicameralism by 3 to 1 and the opposition to bicameralism came only from those who had no such practical experience.

More need not be said except that an argument of additional expense on second chambers is resorted to when all other arguments fail. This arguments is true. A second chamber does involve additional expense which

can be calculated in exact arithmetical figures and produced in a tangible form before the dessenters while there is no known formula to reduce to terms of money the advantages that follow. For instance, nobody can calculate in terms of money the cost to the public of any bag, not to say of tyrannical, law. Nor can the value of contributing to good government be calculated in monetary terms because these are intagible benefits. But if all the cost of democracy is calculated without considering the advantages it confers on the people, it can be easily said that democracy is an unnecessary financial burden on the people. Some political thinkers have used this trick to antagonise the people against democracy and have succeeded in some countries. Only when the trick has/have/had its full impact the people realised, though too late, what they have been led into bargaining for to save a paltry expense. The same may be said of savings on second chambers where they can perform a useful democratic function.

Another argument against second chambers which is generally advanced is that it becomes a place for seating the favourites of the Government in power through nominations or staged elections. This argument has more to do with the question of composition of second chambers rather than their utiliyt. But it may be noted that the real utility of second chamber consists not in the fact that it adds up to the number of legislators in a State unit, but in the fact that it contains legislators who are expected to bring to hear on the functions of legislatures a more mature, experienced and sagacious mind. So if persons qualified to do so are nominated or inducted into a second chamber otherwise than through an election based on adult franchise, this only strengthens the second chamber.

Even the entry of a defeated candidate to a second chamber should not be an enigma. As late as August 6, 1970, Mr. Harold Wilson, the outgoing Prime Minister of the United Kingdom got as many as eight such persons elveated to peerage and membership of the House of Lords who had been defeated in the general elections to the House of Commons in June, 1970. One of these was no other than Mr. George Brown the former deputy leader of the Labour Party and Foreign Secretary in the previous Labour Government. But the merits of these eight defeated candidates were such* that there was no adverse comment on Mr. Wilson's action in getting them in the House of Lords. Hence if a progressive party like the Labour Party of U. K. can see no harm in bringing talent to the second chamber, even if that talent has been rejected by the general electorate, the mere fact that second chambers can provide membership otherwise than through popular utility. But it may be noted that the real utiliy of second chamber consists vote should not be an argument against second chambers, as such.

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*_Vide_ extracts from the _London Times_, dated August 7, 1970, Annexures 1 and 2.

A very important debate took place in the House of Commons on November 19 and 20, 1968, on the reform of House of Lords as suggested in a White Paper (Commnd. Paper no. 3799 of 1968). The debate covered a very wide ground including the very need of a second chamber there. Out of members who took part in the debate only one opposed the retention of the House and he was more rediculed than praised for his observations by subsequent members. The various grounds on which the retention of the second chamber was advocated will cover a large space if reproduced here. But some of the observations from well-known British Parliamentarians may be briefly mentioned.

Mr. Richard Crossman, the Secretary of State for Social Services in the Labour Government, while moving for taking note of the White Paper remarked—

> "To demonsrate what I mean, I will describe my personal position. During the many years when I was either a don lecturing on politics, or a journalist writing about them, I had always been a staunch theoretical supporter of single chamber government. It seemed to me that the British House of Commons should be not only the prime element, but the sole element in our sovereign legislature. However, as I got to know more about parliament and party machines, I began to realise the difficulty about the project of simply abolishing the House of Lords . . . ."

This confession is just in tune with the views expressed against bicameralism by teachers, journalists and others without any legislative experience in the U. S. A., in 1934, a reference to which has been made earlier and show that antagonism against second chamber is more based on theory or sentiment than on practical experience.

When one member referred to delay by the House of Lords in the abolition of capital punishment, Mr. Crossman replied—

> "I hesitate to correct my Hon. Friend about that history, but I think he has got it wrong. It is very ungenerous of him not to face the fact that time after time the other place (the House of Lords) has ventilated unpopular issues which would not ventilated here. This is a useful function for a Second Chamber to perform which we would lose if we abolished it."

This remark represents the real gist of democracy in which there has to be represantation of those who may for the time being not holding what may be called "popular views". It may be mentioned in passing that the rejection by the House of Lords of the clause abolishing death penalty on the ground that the majority party had no mendate on the issue from the electors was ultimately agreed to by the House of Commons which after second thoughts

as a sequel to the debate in the House of Lords had agreed to confine capital punishment to categories of members committed with "express malice". But the House of Lords thought that the amended clause would make the task of the judges still more difficult.

Second Chambers in Parliamentary democracies generally do not possess concurrent powers wtih the popular chambers in the financial and legislative spheres besides this, the Second Chambers have no say in the formations or exit of a government as it is responsible to the popular chamber only. This political strength of the popular chamber is also one of its weaknesses because the fear of defect keeps the members of the majority party under restraint in their speeches or votes. This fear of defeat and consequent dissolution of the House on the recommendation of the Prime Minister (or Chief Minister) has been expressed by Mr. Herbert Morrison in the following words :

> ". . . . If the House of Commons sets aside the poling or wishes of the Government, the Prime Minister can seek a dissolution from the Sovereign, and this is a deterrant to Parliamentary revolt . . . . Therefore, if Governments are often saved from Parliamentary defeat by the back-benchers fear of dissolution, it is no less true that Governments must treat their supporters with respect and understanding . . . ."

In contrast, the second chambers have greater freedom of speech or vote as the fall or stability of the governments do not depend on their vote. Thus they might on occasion reflect current public opinion more positively by their vote or speeches than the popular chamber where certain fears may lead the members to acquiesee in the official opinion.

This difference between the role of the two Houses also leads to greater demonstrative tendency in the popular chambers where members try to reach the ears of the electorate as well. These two basic advantages of second chambers are illustrated by the following recorded conversation between an old member of the House of Lords and a new member who had just come from the House of Commons :

> "Why is it that compared with the House from which I came, the House of Lord is so lacking in excitement and seems more like an academic — debating society than an Estate of the Realism. The speeches are extraordinarily well-informed. They are often pungent and wilty. There are few if any of those tedious repetitions of argument to which I have had to listen from M. Ps. who were in reality addressing their constituents rather then their fellow members. And yet I am conscious of a tremendous drop in tension. This House is not to-day the seat of power", was the crisp and revealing reply.

The same sentiment has been expressed by Mr. Herbert Morrison, the Leader of the House of Commons, and an important Minister in the Labour, Government while recording his impressions between the approach of the two Houses in legislation in the following words :

> "I was impressed by the contrast between Lords and Commons during the Committee stages of my Bill which became the Road Traffic Act, 1939. The Bill was important, but politically non-controversial. It sought to bring about much needed reforms in the interests of safety, of Road Traffic Regulation, and improvement in the liceinsng of public service vehciles. In the Standing Committee of the Commons, I experienced four months of irritating, meticulous talk and obstruction the aim of the opposition being to prevent another Bill (which was controversial) coming before the Committee. I found it a very tiring and exasperating experience.
>
> There could have been no greater contrast between this and the proceedings that had taken place on the committee stage in the Lords, where my valued Parliamentary Secretary, Earl Russel, had been incharge of the Bill. Within a few days their Lordships had made a workman-like job of their Committee stage revisions. An amendment would be moved in about one-tenth of the time that would have been taken in the Commons . . . . Of course, there were some discussions of greater length, but the handling of this Bill in the Lords' Committee of the whole House impressed me very much with its business like character and its objectivity."

About the composition of popular chambers in U. S. A. Austin F. Mac Donald in his book, American State Government and Administration, fifth Edition, says at page 162—

> "There is a real danger that the man elected from a small district will be a small man — small in mentality and lacking in vision. Because he has long focussed his attention on his local community and its needs, he may be unable to see the broader horizon of State affairs. Every proposal for the betterment of the State may be measured in terms of its effect upon local conditions. The general welfare may be sacrificed for lack of competent defenders and the legislative process may degenerate into a game of bargaining each representative seeking to secure as many special privileges as possible for his own locality. These dangers are not theoretical ; they menace every legislative assembly. And the larger the legislature becomes, the greater, is the likelihood that their mischievous influence will be felt."

Of the size of the popular chambers, the Federalist, no. 58, says—

> "In all legislative assemblies the greater the number composing them

> may be, the fewer will be the men who will in fact direct their proceedings. In the next place, the larger the number, the greater will be the proportion of members of limited information and of weak capacity."

The same idea has been put in the following words by Austin F. Mac Donald :

> "But it can scarcely be said that, that the lower houses of the State Legislatures are true deliberative bodies. Most of them are entirely too large to permit full expression of opinion by the rank and file of the members and for that reason tney possess some of the characteristics of a mob. Little cliques of season veterans find it relatively easy to secure control and bend the majority to their will."

This is not to be little the prestige or the function of the popular Chambers, far from it. But this would surely prove that a single chamber in view of certain limits — in characteristics is not able to do all that is expected or required by a modern legislature.

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CHAPTER IV

Need of Second Chambers in India

Various thinkers have expressed different views about second chambers. Some of these have already been quoted. On one extreme is the view of the well-known French revolutionist Seiyes, that whatever way the problem is looked at, a second chamber is either mischievous or superfluous. On the other extreme is the view of Sir Henry Maine that any kind of a second chamber is better than none. In between these two chambers is the view of Bagehot who, looking at the problem from a practical point of view, said that if England could have an ideal House of Commons there would be no need of a House of Lords.

Taking this observation as the starting point, it has to be seen whether now or in the near future we can have in India ideal popular chambers specially in the states to obviate the need of second chambers. Before speculating on that it is worth-while seeing how far removed from the ideal are the popular chambers in other countries which have a much older Parliamentary or democratic tradition and people where are more educated and more politically conscious. Some of the views of the modern observers both in the U. K. and the U. S. A. which have been already quoted are relevant in this context. Only one more observation from the *Federalist*, No. 58 may be quoted below :

> " In all legislative assemblies the greater the number composing them may be, the fewer will be the men who will in fact direct their proceedings. In the next place, the larger the number, the greater will be the proportion of members of limited information and of weak capacity."

It is not necessary to comment on the functioning of the lower chambers in India in the light of the observations reproduced above. But few characteristic comparisons may be made between relevant factors in India and these two countries.

The methods of election to the lower chambers in these two countries and India are the same namely, plurality system of voting under which out of any number of contestants the one securing the largest number of votes is declared elected. But the political conditions in India make some vital difference. Both in the U. K. and the U. S. A. there have been during this century only two major political parties. For instance, in the beginning of this century the U. K. had liberals and conservatives as the two major parties but later on the Liberal party lost ground and Labour party took its place. Even during the transitional period the Liberal and the Labour parties, called the Lib-Lab party, jointly contested the elections; generally represented the majority of the constituency. Similarly in the U. S. A. there

are only two major parties, the Republicans and the Democrats. There also the winning candidate mostly represents the majority of the constituency. But in India there are a number of parties and the results of elections show that in most cases the winning candidates do not poll the majority of votes. This way the popular chambers in India are less representatives of current public opinion than are those in the U. K. and the U. S. A. The following extract from a recent book 'The Indian Polity' by R. A. Gopalaswami, would amply illustrate the point:

> "I shall begin with the phenomenon which I describe as 'Vote-splitting'. In 1967, contested elections took place in 515 Parliamentary constituencies. There were 2,364 contesting candidates per constituency 1.5. These candidates may be divided into two groups and referred to as the serious candidates and the frivolous candidates. According to our election laws, a candidate who fails to poll a minimum of one-sixth of the total vote is penalised by forfeiture of his election deposit. The penalty is trivial and fails to serve its purpose. But, we get a good definition of frivolous candidates, as one who fails to poll this minimum of one-sixth of the total vote. Applying this definition, we find that there were 1,201 frivolous candidates. That is to say, the frivolous candidates outnumbered the serious candidates. The average number of frivolous candidates per constituency was 2.4. This, I must stress, was the average number for the country as a whole. In many States, it was higher. In Uttar Pradesh, for instance, the average number of frivolous candidates per constituency was 3.4. This phenomenon is not peculiar to Parliamentary elections. It was fully reproduced in the general elections for State legislatures also."
>
> "I shall now turn from vote-splitting to what I have described as 'electoral instability'. A few figures will help to explain it. In 1967, Congress polled 40.7 per cent of the total vote in 515 contested Parliamentary constituencies. It secured 279 seats out of 515. The seating percentage was 54.2 against the polling percentage of 40.7. Thus, the electoral system gave an electoral bonus of 13.5 per cent. I may say, straightway, that this does not mean that Congress is a minority party in the country or that the system is favouring it unjustly. The point which I hope to make presently, is that the system fails to reveal the true strength of parties; that it awards electoral bonuses and inflicts electoral penalties in an arbitrary and anomalous manner; and that it operates much more unpredictably than in the United Kingdom; all because of the high ratio of frivolous candidature which I have already referred to.
>
> I shall illustrate this generalization. During the parliamentary election of 1967, in which Congress polled 40.7 per cent of the total vote in the country as a whole, the same party polled 41.7 per cent of the total vote in Madras State. There were 39 contested seats in this State, of which Congress won only 3. The seating percentage works out to 7.7

against the polling percentage of 41.7. In other words, the same party which got an electoral bonus of 3.5 per cent in the country as a whole, not only failed to get any bonus in Madras State after polling one per cent more, it suffered an electoral penalty of 34.0 per cent. In the same election in Madras, the D. M. K. was the second-ranking party in the polls; it polled 35.0 per cent, that is six per cent less than the Congress. The D. M. K. secured 25 seats out of 39. While the first ranking party suffered an electoral penalty of 34 per cent, the second-ranking party gained an electoral bonus of 40 per cent. The electoral system operated in exactly the same way in the general elections for the Madras State Legislative Assembly. The Congress stood first and the D. M. K. stood second in the polls. But the latter was swept into undisputed power with a comfortable margin of absolute majority of seats in the legislature. Again, I am not suggesting that this was unjust to Congress. I have explained already that I am making a different point. Let me conclude my description of how the system operates with a few more illustrations. In Kerala, Congress stood first and polled 36.2 per cent of the total vote and secured only one out of 19 contested seats. In the same State, the Left Communist Party stood second after the Congress, polling only 24.6 per cent of the total vote and it secured 9 out of 19 contested seats. In Maharashtra, on the other hand, Congress polled 48.5 per cent of the total vote and secured 37 out of 45 contested seats, which works out to 82.2 per cent. Thus, Congress in Maharashtra was awarded a handsome electoral bonus of 33.7 per cent."

The second difference is about the political consciousness and education of people who vote and those who are elected to popular chambers. The percentage of literacy in India is 20 while it is 100 in both the U. K. and the U. S. A. Elections in both these countries are held by names of candidates whose party affiliations even are not shown on the ballot paper. This compels the party bosses to select as their candidates only those persons who have a reputation with the voters of having a minimum amount of ability and credit for public service. In India, only symbols were used in the beginning instead of names and even now names of candidates are followed by symbols and election campaign is carried out on the basis, of symbols, rather than the personality of candidates. As such, voters being mostly illiterate, vote for symbols rather than for their future representatives as individuals.

As for political consciousness, it has been publicly acknowledged by all the leaders of political parties that voters vote more on considerations of castes, communities and extra political ties rather than those of the social, economic and political issues before the country The contrast in political consciousness in U. K. and India is proved by the June 18, 1970, general elections in U. K. The Labour party chose June for elections on the basis chiefly of the favour-

able balance of payments which the country had achieved for the first time during the last three months. On this basis the public opinion was very favourable to the Labour party and the poll estimates reckoned their majority of 8 per cent. But just on the 17th of June were published the figures of the balance of payment position in May which showed a deficit. This turned the tide against the Labour party which was returned in a minority. It may be said without any fear of contradiction that all these factors in India contribute towards forming a less ideal popular chamber than in the U. K. or the U. S. A.

The conditions in the U. S. A. and India may be compared from the point of view of kind of roles the legislatures there and here are meant to play. The Legislatures there are not meant to hold the mirror to the executive in the House for its actions. As the executive is not represented in the Houses there, it cannot be asked to answer questions nor to make any statements or reply to censorial discussions in the House. The Houses there are only confined to dealing with legislation and investigating actions of executives acts through Committees. In India the Houses have also to keep a check on the executive actions. If one House there is not considered enough to perform efficiently the function of legislation, how can one House here be considered sufficient not only to perform legislative functions but also the function of supervision over the day-to-day and general executive actions of the executive.

Even in the field of legislation, the Chief Executive in the States in United States has the power to veto a measure in the first instance and he can be compelled to assent to it only if it is again passed by the two Houses by a definite majority which may be two-third or three-fourth of the membership of each House. In India Article 200 of the Constitution has given the Governors only the powers of returning a Bill to the Houses with suggestions for amendments and if they do not agree to any of the amendments recommended by the Governor, he has no alternative but to assent to it. There is no further safeguard of a specified majority overriding the will of the Governor. In this way, while, besides the second chamber, there is another built-in safeguard in the States in U. S. A. to check hastly legislation, in India only a second chamber can perform this function under the limitations laid down in Article 197 of the Constitution.

From these two points of view also there is a greater need for a second chamber in the States in India than in the States in the U. S. A. which are almost all bicameral.

One other argument which may look rather unimportant but which in its impact upon the people is very important, concerns the fundamental liberties of the people. Both in the U. S. A. and in India the Constitution confers certain rights on the people which no law either of the Union or the States may infringe. In the U. S. A. the judicial system is so efficient and the system of legal aid by the State to persons of less than the prescribed minimum

income so efficient that the validity of any law can be speedily tested in a court of law. In India the power to to do so is present in Articles 32 and 226; but the delay, the expense, as well as the ignorance of the illiterate people even of the laws, not to say of their rights and their infringement by laws, leaves the validity of many laws or executive actions undermined by a court of law either for a very long time or for all the time. A typical example of executive arbitrariness may be quoted here. In Mahabir Prasad *versus* State of U. P. (A.I.R. 1970 S.C. 1302) the Court has observed at p. 1303:

> "The appellants have by a series of official acts which flout the rule of law been deprived of even the semblance of protection they may claim in an administrative functioning under a democratic Constitution."

The court further says:

> "This series of actions and orders passed by the executive authorities require something more than a plea of ignorance of the law on the part of the authorities. . ."

Adding:

> "The case discloses a disturbing state of affairs. The authorities have disclosed by their conduct a reckless disregard of the rights of the appellants."

In such circumstances it falls upon the House of Legislatures themselves to examine all proposals for legislation, substantive or subordinate, from this point of view also a task which is normally left to the courts in the U. S. A. This also therefore is an additional function which the Houses of Legislature have to continue to perform in India for a long time to come and can be better performed by a bicameral rather than a unicameral legislature.

Lastly, it may be pointed out that much more responsibilities have to be discharged by the State Legislatures in the States than by the Parliament of India as far as the day to day life of the people is concerned. Under the scheme of our Constitution, the States list contains all the topics of legislation which concern the welfare of the people like education, public health, medical relief, irrigation, roads, local government, agriculture, old age pensions, unemployment relief etc. These welfare activities affect the day-to-day life of the people; Legislation on these subjects is either too antiquated to meet peoples modern needs or has not been at all in certain spheres. As the State becomes more developed, the State share of these welfare activities will have to be expended in the right directions and regulated by law as is done in the U. K. This will need not only control on legislation on rules made there under but also their actual execution. This will be the responsibility of the Legislatures of the States exclusively and no amount of labour or expense will be too high to see that this function is performed efficiently.

Moreover, the executive power in respect of subjects included in the concurrent list of our Constitution also primarily vests in the States, unless it is reserved by the Union under a law made by it. This power includes not only the power to administer the law but also the power to make rules and regulations to regulate that power. Many laws made by the Union Parliament on subjects in the concurrent list have conferred the rule-making powers in the States. This at present does and would in future involve larger and larger responsibilities on the State Legislatures and a second chamber would be a distinct help in sharing the responsility of the popular chamber in this field also.

Most of the States in India are heavily populated with the result that in the larger States a member of the popular chamber represents more persons than in any of the modern States where even in the national — not to say of regional — legislatures the members represent a much lesser number of people as will be apparent from the table given in Appendix C. This would also show that the popular chambers in India are less representative of all shades of opinion than elsewhere.

From all these points of view, specially in view of the fact that the legislatures in Parliamentary type of democracies, unlike those in the presidential types of democracy as in the U. S. A. and partly in France, are the sole repositories of power to make laws and supervise the rule-making and administrative activities of the Executive, as the popular chambers can not perform all these functions single-handed, second chambers will be needed in the interests of the public to share the responsibilities of the popular chambers.

CHAPTER V

Composition of a Second Chamber

The question of composition of a Second Chamber is, by any means more controversial than that of their utility because while there is almost a unanimous opinion among those who believe in ordered progress that a second chamber is a necessity in all legislatures in countries following the principles of rule of laws made by the representatives of the people, there is a good deal of difference of opinion among them on the subject of their composition. These differences sometimes arise out of political theories, bias or experience of the working of second chambers of different compositions in the same country from time to time or in different countries at some point of time. The change in the constitution of the popular chambers has also some times produced a demand for a similar change in the composition of the second chambers.

The opposition of most of the opponents of the second chambers arises not because they do not consider second chambers to be useful but because they cannot answer the collateral question as to how a second chamber should be constituted. The latest example of the difficulty about the constitution of a second chamber is the question of restoration of the Legislative Council in New Zealand which had been abolished because it was a nominated body and which all parties intended to restore with a new composition. Another example of letting an antiquated composition of a second chamber to continue is U. K. specially for want of an agreed and workable formula for its reconstitution is the U. K. where only some frill-work has been done towards the reform of the House of Lords.

The difficulties of arriving at workable formula for the composition of a second chamber are writ large on the various attempts made on the continent and in other countries like the U. K., Canada, Australia and the U. S. A. On the Continent and in the U. K. such attempts were made consequent upon democratisation of the lower chambers and local authorities which gave rise to demand for democratisation of the second chambers also which continued to be composed of representatives of the nobility or the Clergy or even of martial classes. A detailed study of those attempts would need a separate study. But it may be briefly stated that the demand for reform or, in the alternative, abolition of the House of Lords arose soon after the start of the reform of the House of Commons in 1834 which continued up to 1928, if abolition of Universities constituencies in 1948 is left out. The crisis came when in 1909 the House of Lords rejected Lloyd George's Budget. In the absence of any agreed formula to reform it the power of the House of Lords to delay the House of Commons in legislation was limited to two years and the power in purely financial measures to a nominal period of one month. The Parliament Act of 1911

through which this was brought about contained a definite declaration in its preamble that "it is intended to substitute for the House of Lords as it at present exists a second chamber constituted on a popular instead of a hereditary basis, but such substitution cannot immediately be brought into operation.

A Conference under Lord Bryce was appointed about the reconstitution and powers of the House of Lords. The report of the Conference published as Command Paper no. 9038 of 1918 was not acted upon because of its not being unanimous and because of differences among political parties. Many other proposals came up from time to time for reform of House of Lords but without any results. The Parliament Act of 1949, further reduced the delaying powers of the Lords by one year in the case of ordinary bills. Deliberation about reform of the House of Lords continued but only agreement reached was about conferment of life peerages. By an Act of 1963 hereditary peers could renounce their peerage and thus be members of the House of Commons and Peeresses by succession could take their seats in the House of Lords.

But efforts to reform the House of Lords continued. An all Party Conference was appointed recently the proposals of which were accepted by the Labour Government and published as Command Paper no. 3799 of 1968. A Bill for reform of the House of Lords based on the recommendations of this Conference was introduced in the House of Commons in 1969 but there was so much controversy about the scheme of reform that after a futile discussion of one week it had to be dropped and allowed to lapse. This shows the enormity of the problem and also brings out the irony that a nation which had framed constitutions for dozens of second chambers is not able to decide what its own second chamber should be like.

But some practical considerations governing the composition of second chambers may be discussed here briefly. The most vital consideration is whether the second chamber is intended to be a co-ordinate chamber or a subordinate one to the popular chamber. The term co-ordinate is applied to those second chambers which have equal or almost equal powers with the popular chambers. Subordinate, some times nick-named as utilitarian, second chambers, are those which, without competing or rivalling the popular chambers, serve as complementary or ancillary functionaries to help them discharge their functions efficiently. Such chambers are advocated by those who interpret democracy to mean that ultimately the voice of the direct representatives of the people should prevail. Co-ordinae chambers, however, are preferred where they are created to protect some regional or other vested interests. Thus, the second chambers in the national or federal legislatures of Unions or Federations of regional Governments, called the State or Provinces, are created primarily to protect the interests of smaller or weaker States or Provinces from the combined strength of a few larger States or Provinces in the popular chambers. The popular chambers are constituted on the basis of representation according to numbers of electors in a State or Province

it is feared that a few of them may, in combination, ride roughshod over the interests of a larger number of small or thinly populated States or Provinces.

The composition of such co-ordinate second chambers has to be on the basis of equality among the States. For instance, in U. S. A. the Senate consists of 100 members representing 50 States with two each. In Australia, the six States are represented by 10 members each in the Senate. In Canada the Original four provinces or groups thereof have 24 members each and the later entrant, Newfoundland, had to be satisfied with only six seats as the total membership of the Senate was fixed at not more than 104. In Switzerland, the second chamber has two representatives of each Canton and one of each half-canton. Even in the U. S. S. R. semblance of equal representation of equals has been preserved by allocating 25 seats to each Union Republic, 11 to each Autonomous Republic, five to each Autonomous Region and one to each National Area.

These Chambers are all elected directly or indirectly from large constituencies or are even totally nominated on State-wise basis for life or long periods so that they may be able to stand up to their popular chambers either as representatives of the people or as unafraid of losing their seats and thereby assume independent attitudes.

It may be noted here that under the common law principle that some larger financial powers in every legislature should vest in the popular chamber, the Senates of Canada and Australia cannot initiate financial measures. But that is all. Except this handicap they have equal powers with the lower House and in case of legislative deadlocks between the two Houses not more than eight nominees may be added by the Governor General to the Senate of Canada. In Australia in such contingencies both Houses may be dissolved, after which, if the deadlock continues, a vote in a joint sitting of the two Houses determines it. In Switzerland and U. S. A. there is no means of compulsory resolving a deadlock, though joint committee system evolved by the two Houses often comes to the rescue. In the U. S. S. R. also a double dissolution is the sole means of ending a deadlock.

Experience has shown that an elected co-ordinate second chamber not only justifies its equal powers with the popular chamber but is also preferable to a nominated one, specially if its members are nominated for life (as was the case with Canada till some time ago) or for a very long period during which the complexion of the popular chamber may change politically and the second chamber may turn from a co-ordinate into an intractible chamber for political reasons, completely paralysing the legislative machinery. An elected second chamber generally reflects the changing public attitudes and thus is able to act according to the needs of the times and avoid deadlocks.

It is not that directly elected second chamber exists only in the national legislatures of federal countries. In Italy, for example, which has a Unitary

Government, the second chamber is directly elected.

Nor is it necessary that only a directly elected second chamber should have co-ordinate powers. It has been seen that the nominated Canadian Senate has almost equal powers with the House of Commons except the power of initiation of financial bills. The Senates of Belgium and Sweden, both unitary countries, have equal powers with the popular chambers even in financial matters though they are not wholly directly elected. Half the number of Senate of Belgium is directly elected while the rest of it is elected partly by the local councils and partly by the two Houses voting together. The Swedish Cabinet is wholly indirectly elected by the local electoral colleges, as in France.

It is in case of subordinate or ancillary second chambers that the real problems of composition arise because the whole function of such chambers is to be of use to the popular chamber in discharging the functions of an efficient deliberative and legislative organ. Generally speaking the composition of such a chamber depends on the state of various affairs in the country. An additional function of such a second chamber may also be at some places to protect the interests of well recognised minorities in the State, if they have no reservation in the popular chamber to watch their interests. From this point of view its composition should provide for the representation of such minorities also. There may be regional imbalances in the State and from that point of view such regions may also have to be represented. Apart from such safeguards, it has to be a chamber of talented persons without strong political or religious biases but with a keen insight into and experience of affairs of men and also some foresight to be able to look at the future, impact of legislative and executive policies on the welfare and basic liberties of the people. From where and how to obtain such persons depends on which regions, classes or associations of people can best be trusted to send them to such chambers.

A brief review of the composition of second chambers of the utilitarian type would show that there is no uniform pattern available. In France, for instance, during the Third Republic the Council was elected by an electoral college composed of Deputies of each Department along with other representatives of each department and of various grades of local councils. In the Fourth Republic it was elected by similar electoral colleges with 1/6th being elected by the National Assembly. In the present Fifth Republic the Council consists of representatives of the various departments in France and of overseas territories and Frenchmen residing abroad. The Netherlands First Chamber (Upper House) is totally elected by local councils. A novel system operates in Norway where the two Houses are jointly elected. Out of this number 1/4th are set aside for considering bills. The rest of the business is transacted by the members of both the Houses sitting together. In New South Wales the members are elected by a joint vote of the Legislative Assembly and the then existing Legislative Council.

The composition of the Seanad (Senate) of Ireland, consisting of 60 members, has a more varied representation. Besides the 11 nominated members, three are elected by the National University of Ireland, three by the Dublin University and the rest 43 from five panels of candidates formed so as to include persons having knowledge and practical experience of (1) national language, culture, literature, art, education and the like to be determined by law, (2) Agriculture and allied interests and fisheries, (3) Labour, (4) Industry and commerce, including banking, finance, accountancy, engineering and architecture and (5) Public Administration and social services, so that not less than five and not more than eleven are elected from each panel.

Certain other qualifications of personal nature for candidates are provided in certain constitutions to enhance the utility of such second chambers. As an instance of personal qualifications may be mentioned qualifications of age or property. The former ensures maturity of thinking while the later ensures independence from fear or losing position or emoluments as a member. In Belgium and Italy the minimum age for a Senator is 40 years and in cases of some seats in the Belgium Senate he is to belong to one of 21 classes specified in the Constitution as is the case in Ireland where five classes have been specified. In France and Sweden the members of the Council of Republic have to be over 35 years of age. Property qualification obtains only in Canada where a Senator has to possess a minimum amount of property of 6000 Dollars.

Certain second chambers provide for longer term of members as compared to those of the popular chamber. In France and Netherlands the term of a Member of the Council is six years whereas that of one of the National Assembly is four years. In Italy the term of Senators is six years while that of a member of popular chamber is five years.

Second chambers have also been made indissolvable to make them free from the threats of the Executive. It may be noted that the lower chambers being dissolvable, this fear is one of the most important factors in keeping the party behind the Government on crucial occasions. In France and Sweden, the second chambers are not dissolvable while in Denmark the second chamber can be dissolved only to end a deadlock or in cases of some proposed Constitutional amendment.

The other corporate power of second chambers of insisting on a joint sitting and voting is a weakness rather than their strength. It may be recalled that the arch enemy of second chambers, Sieyes had, on June 10, 1789, proposed that the three chambers of France should sit and vote together to determine their and the King's powers. The device was to nullify the voice of the two other chambers whose total strength was lesser than that of the National Assembly.

This brief review would show that except in the national legislatures of federal countries what is needed are second chambers of a utilitarian type

which may advice and hold up the popular chambers for a time to enable them to give a second thought to their earlier decisions. As such, their composition must be such as to bring to them mature and independent minds, not closely tied to party ideologies, able to deal with all the intricate problems of the State coolly and in the light of their experiences of various fields of activities. As law-making is still an important, if not the most important activity of legislatures, a sprinkling of members who can detect flaws in and improve bills is essential.

The most common method of composition of such chambers is nomination coupled with election by the popular chambers and local bodies or by electoral colleges composed of persons with special qualifications or experience in various social or technical fields. It is worth noting here that both the Bryce Conference of 1917 and all-parties Conference of 1967-68 had rejected election to the House of Lords by Local Councils on the ground that that would introduce politics in bodies which are meant to function on different non-political considerations. This view certainly has a lot of weight.

It is imperative in the interest of the State that special rights of choosing their representatives are not conferred on those persons or bodies whose normal or public functions do not call for their working on political basis.

But what other methods can be available which can bring to the second chambers persons with experience of the functioning of democratic institutions has to be also considered. Nomination of the whole Chamber is *prima facie* undemocratic and the second chambers of New Zealand and Queensland were abolished only on the ground of their being nominated Chambers. The only nominated chamber that exists to-day is the Senate of Canada with a few nominated life-peers in the House of Lord, the proposed reform of which is still hanging in balance.

The Committee after full deliberation has decided not to pronounce any final opinion on the constitution of the second chambers in the State but has contented itself with laying down the various aspects of the problem.

CHAPTER VI

Contribution by Second Chambers

The contribution of second chambers to the efficient functioning of the Legislatures is generally of two kinds tangible and intangible. Tangible contribution can be easily ascertained by finding out how many amendments were made by the second chambers to bills which were accepted by the popular chamber, the number of resolutions passed by the second chambers which were acted upon by the Government the number of matters raised by way of adjournment motions and call-attention motions and the number of important matters brought up before the House through questions and raising discussions on matters of public importance. The intangible contribution of a second

chamber consists in the contribution made by its members in the councils of the Government, in Joint Select Committees of the two Houses and in discussions on the various matters including bills coming up before the House. In one way or the other, all these contributions of the members of the second chambers go to influence the policies of the Government, its executive actions as well as its general orientation. These intangible contributions cannot be counted because most of them do not form part of any record of the House and others are too scattered in the records of the House to be collected and appraised. It may be mentioned here that a larger part of the activity of the House of Legislature now a days consists in keeping a watch over the policies and administrative activities of the Government and these intangible contributions generally relate to such activities.

The Committee was not successful in obtaining information from the various second chambers in India about the contributions they have made since their inception to the working of the different legislatures. However, a fleeting glance at the contribution made by the second chamber in the State of Uttar Pradesh (formerly United Provinces) would show that it is considerable. From 1950 to 1970, excluding aout 2½ years of President Rule in this State, as many as 138 bills were introduced in the U. P. Legislative Council which makes an average of 8 bills per year. Almost all these bills were passed by the Legislative Assembly without any amendment though quite a large number of these were amended in the Council after their introduction. It may be mentioned here that most of the bills that come up before the House of Legislature in a State are amending Bills of a formal nature which may consist of a few clauses to meet the requirements of a judgement of a court of law or the changing times or even to plug some loop-holes in the current law. In these cases there is not much controversy about the language or the contents of the bill. It is the bills seeking to make laws on new subjects that raise not only large questions of policy but also controversy about their contents. For instance, the U. P. Zamindari Abolition Bill, 1950, was the first substantive legislation that came up before the U. P. Legislative Council after it had been passed by the Assembly The Council made about 500 amendments in the bill within a span of 30 continuous sitings while the bill had taken the best part of a year in the Assembly earlier. Almost all these amendments were agreed to by the Assembly. A bill amending this law which came up before the Council from the Assembly a couple of years later was also extensively amended by the Council. Apart from this, almost all the bills on new subjects which came up before the Council from the Assembly were extensively amended by the Council in which the Assembly later on concurred. These bills were :

(1) The Pure Food Bill, 1950.

(2) The U. P. Children's Bill, 1950.

(3) The Cattle Tres-pass (U. P. Amendment) Bill, 1954.

(4) The Allahabad University (Amendment) Bill, 1954.

(5) The Hastinapur Town Development Bill, 1954.

(6) The U. P. Large Holdings Bill, 1963.

(7) The U. P. Laws Amendment Bill, 1963.

(8) The U. P. Agricultural University (Amendment) Bill, 1966.

(9) The U. P. Essential Services Bill, 1966.

(10) The U. P. Kshetra Samiti and Zila Parishad Bill, 1970.

It is also well-known that most of the important bills originating in either House are referred to Joint Select Committees of the two Houses in which as the members of the second chamber are represented. The question of second chambers making any amendments on the floor of the House seldom arises. The following 17 bills which all relate to original legislation on new subjects were referred to Joint Select Committees of the two Houses in which the Council made its due contribution which is of an intangible but important nature :

(1) The U. P. Zamindari Abolition and Land Reforms Bill, 1950.

(2) The Cattle Tres-pass (U. P. Amendment) Bill, 1954.

(3) The U. P. Sales Tax (Amendment) Bill, 1955.

(4) The U. P. Urban Areas Zamindari Abolition and Land Reforms Bill, 1955.

(5) The Gorakhpur University Bill, 1956.

(6) The Intermediate Education (Amendment) Bill, 1956.

(7) The U. P. Nagar Mahapalika Bill, 1957.

(8) The Kumaon and Uttarakhand Zamindari Abolition and Land Reforms Bill, 1957.

(9) The State Territorial Army Bill, 1957.

(10) The U. P. Land Ceiling Bill, 1959.

(11) The U. P. Co-operative Societies Bill, 1960.

(12) The U. P. Housing and Development Board Bill, 1965.

(13) The U. P. Religious Endowment Bill, 1960.

(14) The U. P. Slum Areas Bill, 1960.

(15) The U. P. Municipalities (Amendment) Bill, 1964.

(16) The U. P. Cornial Grafting Bill, 1964.

(17) The U. P. Goonda Virodhi Bill, 1970.

The second chamber in U. P. has also made its contribution to many bills which are supposed to be the exclusive responsibility of the popular chamber. During the 1935 Act regime, it made amendments in the U. P. Court Fees and U. P. Stamps Bills which had sought to raise these two taxes.

Due to disagreement between the two Houses the bills were referred to a joint sitting of the two Houses. The amendments of the U. P. Legislative Council were rejected, but it appears that the stand of the Council to the effect that justice should be cheap had received a wide public support. During the currency of the present Constitution, it made amendments (recommendations) to the following bills all of which were ultimately accepted by the Assembly :

(1) The U. P. Court Fees (Amendment) Bill, 1958.
(2) The U. P. Stamp (Amendment) Bill, 1958.
(3) The U. P. Eletctricity (Duty) Bill, 1952.
(4) The U. P. Appropriation (Second Supplementary) Bill, 1952.
(5) The U. P. Appropriation (Vote on Account) Bill, 1952.

In this way, the second chamber has made its due contribution in the U. P. in financial matters also.

As an example of expeditious and businesslike approach of the U. P. Legislative Council may be mentioned the instance in which the U. P. Legislative Council referred to its own Select Committee the Allahabad University (Amendment), Bill, 1954, transmitted by the Assembly, amended it in the Select Committee in a couple of days and passed it with amendments the next day. The Assembly concurred in all such amendments. Very recently a Bill, the Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Bill, 1971, was referred to a Select Committee of the House on 12th of August, 1971. The Committee met during the Janamashtami Holidays and reported it back on the 17th of August with extensive amendments to the Council which passed it the same day. There have been occasions when the Council was met till past mid-night to thoroughly but expeditiously consider urgent pieces of legislation. This would show that the Council instead of being obstructive has made definite contribution to the work of the Legislature without in any way delaying it.

Among other kinds of contributions made by the Council may be mentioned 191 resolutions discussed in the House most of which were withdrawn after discussion on assurances from the Government to do the needful in the matter under discussion. Out of these as many as 16 resolutions were passed by it on which Government took the necessary action. The U. P. Council had no rule about call-attention motions till 1958 but owing to the desire of the members to raise in the House matters of public importance otherwise than by questions, a rule to this effect was incorporated. Since then the attention of the Government has been called to as many as 760 matters.

Questions are important means of not only seeking information from the Government but also of drawing their attention to matters involving the administration. From 1950 to 1970, 46,663 questions were asked in the House besides those which could not be reached due to paucity of time during the

question-hour, but the answers to which according to the rules of the Council, were published in the proceedings.

Some aspects of the achievements of the Bihar Legislative Council, information about which is available to the Committee, may also be mentioned. During the period, from 1950 to 1970, 78 bills were introduced in the Bihar Legislative Council. Out of 390 bills transmitted to the Bihar Legislative Council from the Assembly during the same period it made amendments in 47 bills. Most of these bills related to important matters. Apart from these, as many as 15 bills were referred to the Joint Select Committees of the two Houses during this period to which the Council made its due contribution. The number of resolution moved and adopted in the Bihar Legislative Council comes to 18. From 1952 to 1970, the number of questions asked and answered in the Bihar Legislative Council was 12,847.

Mention may also be made about the contributions made by the members of the second chambers in the Joint Select Committees of the two Houses on such matters as Public Accounts and Delegated Legislation or in other Committees on which the Upper House may be represented. Besides these, the U. P. Legislative Council has a number of Committees which draw the attention of the Government to their administrative affairs of different categories For instance, it had a Committee on Prevention of Beggary in the State, which after studying the question, made a report to the House and a draft of a Bill to be introduced on the subject. Another Committee of the Council went into the question of the use of unfair means by the examinees at the High School and Intermediate Examinations and how to prevent such mal-practices. Another Committee went into the question of delays in declaration of results of those students at the High School and Intermediate level whose results have been withheld. These two Committees have made recommendations most of which are in the course of being accepted by the Government and the U. P. Board of High School and Intermediate Education. Some Committees of the Council have been appointed on matters which had been almost forgotten. For instance, a Committee was appointed on adequacy and the procedure of pensions to political sufferers which brought to light a number of obscure aspects of the problem. A Committee of the Council has also recently made a report on the ways and means of developing sports in the State. The U. P. Council has recently appointed a Committee on Public Undertakings which has made two reports already on some public undertakings and is making a detailed investigation of the administrative and utilitarian aspects of the U. P. Electricity Board. Mention need not be made of a Committee on Government Assurances which has by its investigations made the departments of the Government alert in fulfilling expeditiously the numerous assurances given on the floor of the House by the Ministers. An important Committee which has been appointed by the U. P. Legislative Council is on the causes of administrative delays, a subject which has vexed the public for a long time.

Besides submitting reports, an important function is performed by such Committees in exchanging with Government Officers during their investigations information and passing to them ideas about how particular problems can be tackled. It is this mutual exchange of ideas and suggestions which not only tones up the administration but also brings about an understanding between the points of view of the officials and representatives of the people. It may be said that the U. P. Legislative Council has made its definite contribution in this field as must have been done by other second chambers in India also.

It is generally said that second chambers are by their very nature orthodox, conservative and stumbling block in implementation of progressive ideas either in legislation or administration. As far as the U. P. Legislative Council is concerned, a list of subjects* on which resolutions were given notice of moved or even adopted in the House would show that it has positively taken initiatives and giving a lead in promoting progressive ideas. For instance, as early as 1950, it adopted a resolution on need of consolidation of holdings and another one for establishment of a Board for encouraging cottage industries. About ten years ago, it discussed a resolution regarding fixing of a ceiling of Rs.1,000 p.m. and Rs.100 p.m. in the emoluments of the Government servants in the State. About the same time it had discussed a resolution about abolition of land revenue on small holdings which was ultimately bore fruit in the State very recently. In 1959 and again in 1961, a resolution for acquisition by Government of sick mills in the State was discussed in the House. This has also been adopted by the Government. It may also be mentioned that a resolution about nationalization of Sugar Mills in U. P. was brought before the Council in early 1961 but which at that time was withdrawn. Another resolution to this effect was passed by the Council this year. On the whole the list of subjects on which resolutions came up before the Council definitely shows that members of the second chamber have put forth as progressive ideas before the Council as any other House of Legislature. Another resolution about ceiling on agricultural land has been recently under discussion in the House about which there is a unanimity on all sides.

Lastly, mention may be made of the standards of parliamentary decorum and etiquette set up by the Legislative Council of U. P. During its existence as a second chamber since 1937, there have been only two occasions when members have had to be asked to leave the House for misconduct. There has been no occasion when any member had to be forcibly removed from the Chamber. There has been only one occasion when the sitting of the House had to be suspended in view of grave disorder. When the late Lord Attlee, the former Prime Minister of the U. K. visited India in 1954 or thereabout he visited the Legislative Council of U. P. for about half an hour. On leaving he remarked that the House was better behaved than even the House of Lords.

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*Please see Annexure III.

It may be stated generally that the second Chambers in India have set very high standards of parliamentary behaviour and have helped in sustaining the confidence of the people in parliamentary democracy.
