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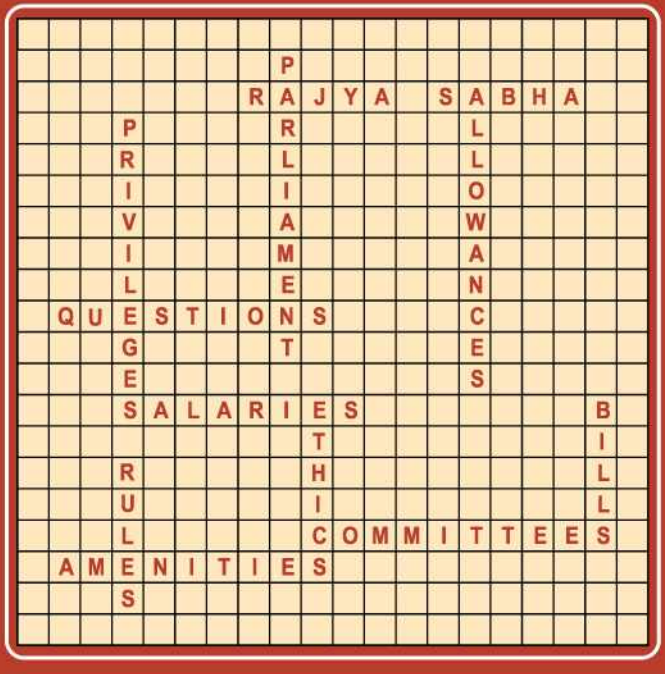
सत्यमेव जयते

PARLIAMENT OF INDIA
RAJYA SABHA



THE LAW MAKING PROCESS

भारतीय संसद, राज्य सभा

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PREFACE

This booklet is one in the series of booklets brought out for the benefit of the newly elected Members of Rajya Sabha. It briefly covers different aspects of law making process in our Parliament. For detailed information, original sources may be referred to.

It is intended to serve as a handy guide for ready reference. I hope, the Members will find the booklet useful.

New Delhi
July, 2018

DESH DEEPAK VERMA
Secretary-General

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INTRODUCTION

An important function of Parliament is to make laws. According to the most generally accepted definition, a 'law' is an imperative direction embodied in a Bill which has been debated and passed by a duly constituted legislature or Parliament in the prescribed manner and assented to by the Head of the State, and is binding on every citizen, and which the courts charged with the duty of ensuring respect for law are bound to enforce.[1] The term 'law' includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of law[2].

All legislative proposals are brought before Parliament in the form of Bills. A Bill is a statute in draft, and no Bill, whether it is introduced by the Government or by a Private Member, can become law until it has received the approval of both the Houses of Parliament and assent of the President. When a Bill is passed by Parliament and assented to by the Head of the State, it becomes law.

Mechanism of Law-making

In a welfare State, laws are designed to bring about an orderly society to mitigate public hardships as far as possible, to curb social, political and economic evils, and to smoothen the way to securing justice. Formulation of a legislative proposal requires a comprehensive knowledge of the subject matter of legislation, a mastery of language, an

[1] S.L. Shakdher, *The Process of Legislation*, 2nd edn., 1967, p. 3.
[2] The Constitution of India, Article 13(3).

accurate and precise conception of the objects desired to be embodied in the law and the skill to express those objects in unambiguous phrases. Legislation involves the collaboration and agreement of experts and laymen both. Framing of legislation requires great skill on the part of those who are connected with initiating and drafting of laws. It also requires acumen on the part of the legislators who should have the vision and the capacity to go beyond the written words so as to ensure that the proposed law is conducive to the progress of society, is free from any tyrannical bias, is easily understandable by men of ordinary intelligence, and has no loose ends or loopholes for mischief.[3]

Bill Format

A Bill has to begin with a short title, a long title, the preamble, wherever necessary and an enacting formula. It also specifies the extent of applicability and in certain cases the date on which it will come into force. If a date is not indicated, it means that the provision of the Bill will come into force in accordance with the provision of section 5 of the General Clauses Act, 1897 *i.e.* on the date on which it receives the assent. In some cases, the Bill may provide that the law will come into force on such date as may be specified by the Government by a notification in the Official Gazette. Some Bills contain definition clause which is intended to avoid ambiguities and tedious repetitions. The Bills also contain the operative section or sections, exceptions and exemptions, procedural provisions, overriding effect of Act and rules, penal clauses, power to delegate functions, removal of doubts, power to issue directions and saving clauses.

[3] The Process of Legislation, *op. cit.,* p. 6.

A Bill is divided into self-contained paragraphs known as clauses, each containing a feature of the proposals embodied in the Bill. A clause may be divided into sub-clauses and a sub-clause may be further divided into parts. The clauses are numbered serially 1, 2, 3, etc., the sub-clauses (1), (2), (3), etc., and the parts (i), (ii), (iii), etc. or (a), (b), (c), etc. Where necessary a Bill may also have Schedules. As a rule, matters of details, like lists, tables etc., are appended to Schedules. If a Bill is long, it is divided into chapters. Each chapter, clause and schedule is given a brief heading. A Bill embodying new proposal, ideas or policies and having more than 25 clauses also contains a list of clauses in the form of an 'Arrangement of Clauses' which is in the nature of contents of the Bill. Certain Bills contain 'Notes on Clauses' after the Statement of Objects and Reasons which explain the object of each clause of the Bill. The amending Bills also contain extracts of relevant provisions of the Constitution or the principal Act, as the case may be, in the form of an Annexure.

In India the enacting formula of a Bill is — 'Be it enacted by Parliament in the .... Year of the Republic of India'. This means that Parliament which consists of the President and the two Houses together, enacts laws for the country.

Types of Bills

Subject to the provisions of the Constitution, a Bill may originate in either House of Parliament.[4] Bills may be classified into Government Bills and Private Members' Bills accordingly as they are sponsored by a Minister or a private

[4] Article 107(1).

member. Depending upon their contents, the Bill may be of the following types:

(a) Original Bills or Bills embodying new proposals, ideas or policies;

(b) Amending Bills or Bills which seek to modify, amend or revise the existing laws;

(c) Consolidating Bills or Bills which seek to consolidate the existing law on a particular subject;

(d) Expiring Laws (Continuance) Bills or Bills to continue an expiring Act;

(e) Repealing Bills or Bills seeking to repeal existing Acts;

(f) Bills to replace Ordinances; and

(g) Constitution (Amendment) Bills.

Money Bills on Taxation and Appropriation and Financial Bills because of their special features are treated separately from other Bills.[5]

[5] M.N. Kaul and S.L. Shakdher, *Practice and Procedure of Parliament,* 7th edn., 2016, p. 586.

GOVERNMENT BILLS

Initiation of Legislative Proposals

Government legislative proposals are initiated by the Cabinet or a Minister of a Ministry. Proposals involving major policies of Government are initiated to implement the electoral promises on the basis of which the party was returned to power. Proposals of minor or secondary importance may be initiated by a Minister or his Ministry as a result of the experience of the working of the existing laws. In all cases, however, as soon as a legislative proposal has been thought of, the concerned Ministry works out its implications, *viz.*—political, administrative, financial, economic or social. If other Ministries of the Government or State Government are in any way concerned, their advice is taken into account. The opinion of experts, wherever necessary, is also obtained. The legal or constitutional aspects of the problem are examined in consultation with the Ministry of Law or the Attorney-General. After the proposal has been thoroughly examined from all points of view and those concerned with it have been consulted, a self-contained Memorandum is prepared, which after being cleared by the Ministry of Law is submitted to the Cabinet for approval. The Cabinet confines its discussion to the broad aspects of policy underlying the proposal and gives its decision. If the proposal is important, the Cabinet may ask one of its Standing Committees, or an *ad-hoc* Committee, to go into it in greater detail, and it may also require that after it has given approval to the principle or policy underlying the proposal, the draft

of the actual Bill should be submitted to it for detailed scrutiny.[6]

Drafting of Bills

After the Cabinet has approved the proposal, the administrative Ministry forwards the papers to the Draftsman in the Ministry of Law for putting it into the shape of a Bill. The Draftsman's job is very exacting and he has to be specially trained and experienced in this art. He must possess a wide and intimate knowledge not only of the Indian Statute Book, but also of the machinery, of technical expressions used in different branches of Government activity and of their exact connotation. He must have an overall picture of the working of the Government, judicial decisions and the problems of the country. The words and phrases that he chooses for a particular provision of the Bill should convey the intention clearly, without any ambiguity whatsoever. He is not only concerned with the form of the Bill and its wording; he should also see to it that it is simple, effective and easily understood by men of average ability. The principal officers of the executive Ministry concerned with the measure should give him the assistance and co-operation, make available to him all the relevant papers and documents connected with the proposal and also supplement the information by oral discussions with him, so that the draft Bill is as near perfection as possible. The Bill, as drafted, is examined in detail by the administrative Ministry. Sometimes, a Bill has to be drafted several times before it can meet all the criticism and satisfy the various experts connected with the matter. The Bill, if important, may also be scrutinised in detail by the Cabinet or by one of its Committees.[7]

[6] The Process of Legislation, *op. cit.,* p. 8.
[7] The Process of Legislation, *op. cit.,* p. 9.

Statement of Objects and Reasons

After the Bill has passed through all these various channels and has been finally agreed to by the Draftsman, experts, the Minister and the Cabinet, it is referred to the administrative Ministry for preparation of a 'Statement of Objects and Reasons', briefly explaining the purpose of the proposed legislation. The statement is explanatory of the contents and objects of a Bill and helps in understanding the necessity and scope of the Bill. It should be framed in non-technical language and should not be unduly long. In some cases, Bills are also accompanied by 'Notes on Clauses', a 'Financial Memorandum', a memorandum explaining the proposals, if any, for delegation of legislative powers, and in the case of a Bill seeking to replace an Ordinance with modifications, a memorandum explaining the changes made in the Bill. If the Bill seeks to amend an existing law, extracts of the provisions which are sought to be amended by the Bill are attached to the Bill as a separate Annexure. The Bill, after it is complete in all respects together with the various Memoranda, Annexures, etc., is sent to the Draftsman who after a final check sends it for printing. Two proof copies duly corrected and attested by him are then sent by him to the Secretary-General of the House in which the Bill is proposed to be introduced.[8]

After the proof copy of a Bill has been received from the Draftsman by the Secretariat of the House in which it is proposed to be introduced, action is taken by that Secretariat to give Bill number of the year, to have the lines on each page of the Bill numbered as 5, 10, 15, etc. (to facilitate the moving and the consideration of amendments in the House)

[8] *Ibid.*

and to have the requisite number of copies printed. Clauses or provisions in Bills involving expenditure from Consolidated Fund of India are printed in thick type or in italics; but where this requirement has not been fulfilled, the Chairman has power to permit the member-in-charge of the Bill to bring such clauses to the notice of the House.[9] The Bill is included in the List of Business for the day on which the Minister proposes to introduce it. The requisite recommendation of the President for consideration of the Bill under article 117(3) of the Constitution, if received in time, is reproduced at the proof stage after the 'Statement of Objects and Reasons' of the Bill. If the recommendation is received, after the Bill has been printed, it is published in the Parliamentary Bulletin, if time permits.

Bills Originating in the Rajya Sabha

The passage of a Bill in a House involves three readings.

First Reading

The legislative process starts with the introduction of the Bill in either House of Parliament—the Rajya Sabha or the Lok Sabha. Money Bills [*i.e.* Bills which contain only provisions for the imposition, abolition, remission, alteration or regulation of taxes, for appropriation of moneys out of the Consolidated Fund and other matters referred to in clauses (a) to (f) of Article 110 of the Constitution] and Financial Bills containing provisions attracting Article 110 as well as other matters can, however, be introduced only in the Lok Sabha.

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[9] Rules of Procedure and Conduct of Business in the Council of States (Rajya Sabha), 9th edn., 2016, Rule 64(2).

It is necessary to ask for leave to introduce the Bill.[10] If leave is granted by the House, the Bill is introduced. This constitutes the First Reading of the Bill. Normally, the motion for introduction is not opposed, but there have been occasions when motions for introduction of Government and Private Members' Bills have been opposed.[10a]

If a motion for leave to introduce a Bill is opposed, the Chairman may, if he thinks fit, allow a brief explanatory statement to be made by the Member who opposes the motion and by the Member who moves it. Thereafter, without further debate, the question is put to the vote of the House. A member can also oppose a Bill on the ground that it initiates legislation on a matter which is outside the legislative competence of the House, in which case the Chairman may permit a full discussion thereon.[11&11a]

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[10] Rule 62.

[10a] On 4 February, 2004 the introduction of the University of Allahabad Bill, 2004 was opposed and motion when put to vote was negatived by the House.

[11] Rule 67.

[11a] During the 224th Session, a notice for introduction of the Rani Lakshmi Bai Central Agricultural University Bill, 2011 was received from the Minister of Agriculture. However, on opposition of some Members, the introduction of the Bill was deferred on 28 December, 2011. The Bill was introduced during the 225th Session on 22 May, 2012.

On 25 April, 2013, the introduction of the Constitution (One Hundred and Nineteenth Amendment) Bill, 2013 was opposed and the Bill was not introduced.

On another occasion, when Minister of Home Affairs moved the motion for leave to introduce the Prevention of Communal Violence (Access to Justice and Reparations) Bill, 2014, the Leader of Opposition and other Members opposed the introduction of the Bill and as a result thereof motion for introduction of the Bill was deferred on 5 February, 2014.

Publication in Gazette

After a Bill has been introduced, it is published in the Official Gazette as soon as possible.[12] But even before introduction, a Bill might, with the permission of the Chairman, be published in the Gazette. In such cases, leave to introduce is not necessary and the Bill is straightway introduced.[13]

With the introduction of the Department-related Parliamentary Standing Committees, the Bills introduced in the Rajya Sabha or the Lok Sabha may be referred to these Committees by Hon'ble Chairman, Rajya Sabha or the Hon'ble Speaker, Lok Sabha for examination and report.[13a]

Hon'ble Chairman, Rajya Sabha and Hon'ble Speaker, Lok Sabha have agreed to specify ordinarily a time-frame of three months for examination and report on a Bill by a Committee.

Second Reading

The Second Reading consists of consideration of the Bill which is in two stages. The first stage consists of a discussion on the Bill as a whole when only the principles of the Bill and its provisions are discussed in general. At this stage it is open to the House to refer a Bill to a Select

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[12] Rule 68.

[13] Rule 61.

[13a] Rule 270(b) and 273. In one case the Public Sector Iron and Steel Companies (Restructuring) and Miscellaneous Provisions (Amendment) Bill, 1993 was referred to the Department-related Parliamentary Standing Committee on Industry before it was introduced in the Lok Sabha. In another similar case the Trade Unions (Amendment) Bill, 1994 was also referred to the Department-related Parliamentary Standing Committee on Labour and Welfare before it was formally introduced in the Rajya Sabha.

Committee of the House or a Joint Committee of the two Houses or to circulate it for the purpose of eliciting opinion thereon or straightway take it into consideration.[14]

Bill before the Select/Joint Committee

In the case of a Bill having been referred to a Select/Joint Committee[15], the Committee considers the Bill clause-by-clause just as the House does. Amendments can be moved to the various clauses by members of the Committee. The Committee can also take evidence of associations, public bodies or experts who are interested in the measures. After the Bill has thus been considered, the Committee submits its report to the House which considers the Bill as reported by the Committee.

Circulation of Bill for Eliciting Opinion

A Bill may be circulated for the purpose of eliciting public opinion thereon[16] and the opinions may be obtained through the agencies of the State Governments.

Where a Bill has been circulated for eliciting opinion and opinions have been received and laid on the Table of the House, the next motion in regard to the Bill must be for its reference to a Select/Joint Committee. It is not ordinarily

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[14] Rule 69.

[15] The Prevention of Corruption (Amendment) Bill, 2013, as passed by the Lok Sabha, was referred to a Select Committee of the Rajya Sabha on 11 December, 2015 and reported by the Committee on 12 August, 2016; the Constitution (One Hundred and Twenty-second Amendment) Bill, 2014 as passed by the Lok Sabha, was referred to a Select Committee of the Rajya Sabha on 12 May, 2015 and reported by the Committee on 22 July, 2015; and the Constitution (One Hundred and Twenty-third Amendment) Bill, 2017 as passed by the Lok Sabha, was referred to Select Committee of the Rajya Sabha on 11 April, 2017 and reported by the Committee on 19 July, 2017.

[16] Rule 69.

permissible at this stage to move a motion for consideration of the Bill, unless the Chairman allows it.[17]

Clause-by-Clause Consideration

The second stage of the Second Reading consists of clause-by-clause consideration of the Bill, as introduced or as reported by Select/Joint Committee. Discussion takes place on each clause of the Bill and amendments to clauses can be moved at this stage. If an amendment requires previous sanction or recommendation of the President, the Member giving such an amendment shall annex the same to his notice which shall not otherwise be valid.[18] Each amendment and each clause is put to the vote of the House. The amendment becomes part of the Bill if they are accepted by a majority of the members present and voting. After the clauses, the schedules, if any, the Enacting Formula, Long Title and Short Title of the Bill have been adopted by the House, the Second Reading is deemed to be over.

Third Reading

Thereafter, the Member-in-charge can move that the Bill (or the Bill, as amended) be passed. This stage is known as

[17] Rule 70(3). *See also* Kaul and Shakdher, Practice and Procedure of Parliament, 7th edn., 2016, pp. 626-631.

[18] On 19 February, 2014, notices of amendments to the Andhra Pradesh Reorganisation Bill, 2014 were received from two members. As the proposed amendments to clauses 46 and 67 of the Bill attracted article 117(1) of the Constitution for moving of amendments, the President's recommendation for consideration of the Bill was communicated by the Minister of Home Affairs to the Secretariat on 20 February, 2014. On 2 September, 2013, amendment given by Private Member to clause 97 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill, 2013 as passed by the Lok Sabha required President recommendations as the amendment sought to exempt the stamp duty and Income Tax from the compensation awarded to land owner. The President recommendation was communicated by the Minister of Rural Development for moving of amendment.

the Third Reading of the Bill. At this stage debate is confined to arguments either in support of the Bill or for its rejection, without referring to the details thereof further than is absolutely necessary. Only formal, verbal or consequential amendments are allowed at this stage.[19] In passing an ordinary Bill, a simple majority of the Members present and voting is sufficient.

Constitution Amending Bills

In the case of a Bill to amend the Constitution, it can be introduced in either House of Parliament and it has to be passed in each House by a majority of the total membership of the House and a majority of not less than two-thirds of the Members present and voting.[20] The Constitution (Amendment) Bill, if it fails to obtain the requisite majority as per the provisions of the article 368 in either House, is treated as not passed. The Constitution does not permit a joint sitting in case of disagreement between the Houses on the Constitution Amendment Bills.

There have been instances in the past both in the Rajya Sabha and the Lok Sabha when Constitution (Amendment) Bills failed to get the requisite majority. For instance, the Constitution Twenty-fourth (Amendment) Bill, 1970 regarding abolition of Privy Purses and Privileges of the Rulers of former Indian States could not be passed as it did not get the requisite majority in the Rajya Sabha. The Bill secured at the consideration stage, 149 votes in its favour and 75 against it. The total members present and voting were 224 out of which 150 *i.e.* 2/3 of 224 were required for the Bill. Therefore, the Bill failed through by a fraction

[19] Rules 109 and 110.
[20] Article 368.

of vote *(i.e.* actually by one vote). The Bill was again introduced as the Constitution Twenty-sixth (Amendment) Bill, 1971, and passed.

Again in the Rajya Sabha in October 1989, the Constitution Sixty-fourth (Amendment) Bill, 1989 and the Constitution Sixty-fifth (Amendment) Bill 1989 regarding Panchayati Raj institutions failed to secure the requisite majority. Both the Bills in separate divisions at the consideration stage secured 158 votes in favour and 83 votes against and 157 votes in favour and 83 votes against respectively. The total votes required for the motion were 160 (2/3 of 240). So the Bills could not be passed for want of 3 votes.[21]

During the Budget Session of 1990 in the Lok Sabha the Constitution Sixty-fourth (Amendment) Bill, 1990 as passed by the Rajya Sabha, regarding extension of President's rule in Punjab for a further period of six months beyond three years failed to secure the requisite majority required at the initial stage *i.e.* the majority of the total membership of the House which worked out to 273 for the Lok Sabha. The Bill secured only 236 votes in its favour and 5 against. The same Bill was, however, re-introduced and passed as the Constitution Sixty-fifth (Amendment) Bill, 1990 in the Lok Sabha. The Rajya Sabha also again passed the Bill on 10 April, 1990.

When a Bill has been passed by the Rajya Sabha, it is transmitted to the Lok Sabha for concurrence with a message to that effect.

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[21] R.S. Debate, 13.10.1989, c. 294-308.

Bills Originating in the other House and Transmitted to the Council

After a Bill is passed by the Lok Sabha, it is sent to the Rajya Sabha for concurrence with a message to that effect and is, as soon as may be, laid on the Table. It goes through the same stages in the Rajya Sabha — consideration and passing or return. In regard to Money Bills,[22] the Lok Sabha has got the exclusive power to legislate and the Rajya Sabha can only recommend amendments therein and must return such a Bill to the Lok Sabha within fourteen days from the date of its receipt. It is open to the Lok Sabha to accept or reject any or all the recommendations of the Rajya Sabha with regard to a Money Bill. In the past, on three occasions the recommendations made by the Rajya Sabha were accepted by the Lok Sabha. If a Money Bill passed by Lok Sabha and transmitted to the Rajya Sabha for its recommendations is not returned to the Lok Sabha within the said period of fourteen days, it is deemed to have been passed by both Houses at the expiration of the said period[22a] in the form in which it was passed by the Lok Sabha.

Consideration of the Bill at a Joint Sitting of both Houses

If a Bill, other than a Money Bill and the Constitution (Amendment) Bill, passed by one House is rejected by the other House, or the Houses have finally disagreed as to the amendments to be made in the Bill, or more than six months elapse from the date of receipt of the Bill by the other

[22] Article 109.

[22a] The Sugar Cess (Amendment) Bill, 2015 was passed by the Lok Sabha on 15 December, 2015 but it was not returned by the Rajya Sabha within 14 days. The Bill was deemed to have been passed by the Houses of Parliament under Article 109(5) of the Constitution.

House without the Bill being passed by it, the President may summon a Joint Sitting of the two Houses to resolve the deadlock. The Bill is deemed to have been passed by both the Houses in the form in which it is passed by a majority of the total number of members of both the Houses present and voting in the Joint Sitting.[23]

There have been only three instances of Joint Sittings of both the Houses so far. First Joint Sitting was held on May, 1961 at which the Dowry Prohibition Bill, 1959 on which both Houses had finally disagreed as to the amendment to be made in the Bill, was passed. The other was held in May, 1978, at which the Banking Service Commission (Repeal) Bill, 1977, rejected by the Rajya Sabha, was passed. The third Joint Sitting was held on 26 March, 2002 in which the Prevention of Terrorism Bill, 2002, rejected by the Rajya Sabha was passed. At the first Joint Sitting, that is Joint Sitting of the Houses in 1961 on the Dowry Prohibition Bill, 1959, some of the amendments insisted upon by the Rajya Sabha were adopted and were incorporated in the Bill as passed at the Joint Sitting.

[23] Article 108.

PRIVATE MEMBERS' BILLS

Member, other than a Minister, who wants to introduce a Bill has to give notice of a motion for leave to introduce the Bill and has to submit a copy of the Bill and explanatory Statement of Objects and Reasons which shall not contain arguments, together with the notice. The period of notice of a motion of leave to introduce a Private Member's Bill is one month unless the Chairman allows the motion to be made at shorter notice.[24] Such Bills can be taken up only on the days which are allotted for transaction of Private Members' Bills.

The last two and half hours of sitting on every Friday are normally allotted for the transaction of Private Members' business and alternate Friday is made available for Private Members' Bill, the other Friday being devoted to Private Members' Resolutions.

The primary responsibility for drafting of Private Members' Bills is that of the members concerned. Nevertheless the Secretariat renders all possible technical assistance and advice to members, so that the Bills are not rejected on technical ground. The Chairman, may, if he thinks fit, revise the Statement of the Objects and Reasons.[25]

On the day allotted for the disposal of Private Members' Bills, Bills for introduction are set down as the first item in the list of Private Members' Business for the day.[26] By

[24] Rule 62.
[25] Proviso to Rule 62.
[26] Rule 25(2)(a).

convention, the motion for introduction of a Bill is not opposed. However, in some cases the introduction of Bills was opposed.[26a] In case the introduction of a Private Members' Bill is opposed on ground that the Bill initiates legislation outside the legislative competence of the Rajya Sabha, the Chairman may permit a full discussion thereon.

The relative precedence of Private Members' Bills after their introduction, as regards the subsequent legislative stages, is determined by ballot held in accordance with the orders made by the Chairman and on such day not being less than fifteen days before the day with reference to which the draw of lot is held. The procedure for draw of lot with respect to Bills which have been introduced and are pending in the Rajya Sabha is that the names of members whose Bills are pending are balloted and the members who have secured

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[26a] On 30 July, 1993, Shri Satish Pradhan, M.P. moved for leave of the House to introduce the Constitution (Amendment) Bill, 1993 (Omission of article 370). The motion was opposed by some members on the floor of the House. After the submissions of the members the Vice-Chairman put the motion to the vote of the House. The motion was negatived by the House and the leave to introduce the Bill was refused.
Again on 23 August, 1993 the motion for leave to introduce the Constitution (Amendment) Bill, 1993 (to amend article 30) by Shri Krishan Lal Sharma was opposed by some members. But before the motion could be put to the vote of the House Shri Krishan Lal Sharma withdrew the Bill following brief submissions from the members opposing the Bill. On 9 July, 2004, Shri Vidya Niwas Misra, M.P. moved for leave of the House to introduce the Constitution (Amendment) Bill, 2004 (to amend the Preamble). The motion was opposed by some members. After submissions of members, the motion was put to vote of the House. The motion was negatived by the House and leave to introduce the Bill was not granted. Shri Manohar Joshi, M.P. moved a motion to introduce the Constitution (Amendment) Bill, 2006 (to amend article 370). The motion was objected to by some members. After submission of members, the motion was put to vote of the House. The motion was negatived and leave was not granted to introduce the Bill.

first ten places in the ballot are asked to choose their Bills for being taken up in the House.

So far as the stages in the consideration of Private Members' Bills in the Rajya Sabha and the rules relating to general procedure are concerned, there is no difference between Government Bills and Private Members' Bills. A Private Members' Bill proceeds on the same lines as the Government Bill in its passage through the Houses of Parliament and in receiving President's assent.

So far since 1952, 14 Private Members' Bills have found their way in the Statute Book, out of which five had originated in the Rajya Sabha.

Recently, the Rights of Transgender Persons Bill, 2014 introduced by Shri Tiruchi Siva, was passed by the Rajya Sabha on 24 April, 2015 after a span of 36 years. The Bill is pending in the Lok Sabha for consideration and passage.

ASSENT OF THE PRESIDENT

When a Bill is passed by both Houses, the Secretariat of the House, which is last in possession of the Bill, obtains the assent of the President. In the case of a Money Bill or a Bill passed at a Joint Sitting of the Houses, the Lok Sabha Secretariat obtains the assent of the President. The Bill becomes an Act only after the President's assent has been given thereto.

As per article 111, the President can give his assent or withhold[27] his assent to a Bill. The President can also return the Bill (except a Money Bill) with his recommendations to the Houses for reconsideration[28] and if the Houses pass the

[27] The Salary, Allowances and Pension of Members of Parliament (Amendment) Bill, 1991 as passed by the Houses of Parliament was submitted to the President for assent on 18 March, 1991. The Bill remained pending with the President for almost a year till a communication was received from the Secretary, Ministry of Law, Justice and Company Affairs intimating that the President has withheld his assent to the Bill. An announcement in this regard was also made in the House.

[28] The Indian Post Office (Amendment) Bill, 1986, as passed by the Houses of Parliament, was submitted to the President for assent on 19 December, 1986. The Bill remained pending with the President for over three years. On 7 January, 1990 the next incumbent to the office of the President in pursuance of Proviso to article 111 of the Constitution returned the Bill to the Houses of Parliament for reconsideration. This was for the first time that a Bill was returned by the President for reconsideration. The Bill was subsequently withdrawn by the Government. Again in year 2006, the Parliament (Prevention of Disqualification) Amendment Bill, 2006 as passed by the Houses of Parliament was submitted to the President for assent on 24 May, 2006. The Bill was returned by the President on 30 May, 2006 for reconsideration by the Houses of Parliament. The Bill was again passed by the Houses of Parliament in the same form and resubmitted to the President who accorded his assent to the Bill on 18 August, 2006.

Bill again with or without amendment, the Bill has to be assented to by the President.

In the case of a Bill which seeks to amend any of the provisions of the Constitution in terms of article 368 of the Constitution after it is passed by the Houses by requisite special majority and ratified by the States where required by the proviso to clause (2) of article 368 of the Constitution, the President has to accord his assent thereto.[29]

[29] Article 368.

FINANCIAL MATTERS

Money Bills and Financial Bills

Money Bills

A Money Bill, as defined in article 110 of the Constitution, is a Bill which contains only provisions dealing with all or any of the matter detailed in clause (1) thereof. The matters detailed therein are as under:

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;

(c) the custody of the Consolidated Fund or the Contingency Fund of India, the Payment of moneys into or the withdrawal of money from any such fund;

(d) the appropriation of moneys out of the Consolidated Fund of India;

(e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;

(f) the receipt of money on account of the Consolidated Fund of India or the Public Account

of India or the custody or issue of such money or the audit of the accounts of the union or of a State; or

(g) any matter incidental to any of the matters specified in sub-clauses (a) to (f).

Clause (2) of article 110, however, makes it clear that a Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

On the question, whether a Bill is a Money Bill or not, the decision of the Speaker is final. In every case of a Money Bill, he endorses a certificate thereon signed by him to the effect that it is a Money Bill before the Bill is sent to the Rajya Sabha or presented to the President for assent. This certificate can be endorsed only by the Speaker so long as the office of the Speaker is not vacant.[30]

The procedure with regard to the Money Bills in the Rajya Sabha is the same as in the case of other Bills transmitted by the Lok Sabha with difference that in case of other Bills the amendments are adopted and, the last motion is that the Bill be passed, while in the case of Money Bills the amendments are recommended and the last motion is, that the Bill be returned. On the adoption of this motion, a

[30] Art. 110.

Money Bill is returned to the Lok Sabha with the message that the Rajya Sabha has no recommendations to make to the House in regard to the Bill or with the message intimating to the House the amendments recommended, as the case may be. The Lok Sabha under article 109 has the option to accept or reject all or any of the recommendations of the Rajya Sabha. The Bill, however, has to be returned within a period of fourteen days from the date of its receipt by the Rajya Sabha, otherwise it is deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Lok Sabha.

In the case of a Bill introduced in the Rajya Sabha, if there is any objection that the Bill is a Money Bill and should not be proceeded within the Rajya Sabha, and the Chairman has any doubt in regard to the validity of the objection, he shall refer the matter to the Speaker whose decision on the question shall be final.[31]

Financial Bills — Category-I

A Bill falling under clause (1) of article 117 of the Constitution is called a Financial Bill. It is a Bill which seeks to make provision for any of the matters specified in sub-clauses (a) to (f) to clause (1) of article 110 as also other matters. It is, so to say, a Bill which has characteristics both of a Money Bill and an ordinary Bill. As in the case of

[31] Rules 186(7) and (8).
For instance, on 3 December, 2004 motion for leave to introduce the Customs (Amendment) Bill, 2004 by Shri Lalit Suri, MP was opposed on the floor of the House by Shri Prem Chand Gupta, Minister of State for Finance on the ground that the Bill is a Money Bill. The matter was referred to Speaker, Lok Sabha who held the Bill to be a Money Bill. The Bill was not allowed introduction in the Rajya Sabha.

a Money Bill, firstly, it cannot be introduced[31a] in the Rajya Sabha and secondly, it cannot be introduced except on the recommendation of the President. Except these two points of difference, a Financial Bill in all other respects is just like any other ordinary Bill.

Financial Bills — Category-II

There are Bills of yet another class which are also Financial Bill under article 117(3). Such Bills are more in the nature of ordinary Bills than the Money Bills and Financial Bills mentioned earlier. The only points of difference between this category of Financial Bills and the ordinary Bills is that a Financial Bill of this category, if enacted and brought into operation, involves expenditure from the Consolidated Fund of India and cannot be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill. In all other respects that category of Bills is just like ordinary Bills.

[31a] A notice was received from the Minister of Home Affairs during the second part of the 230th Session (30.01.2014) for introduction of the Andhra Pradesh Reorganisation Bill, 2014. On examination of the proof copy of the Bill received from the Legislative Department, it seemed that some of the clauses of the Bill attracted provisions of article 110(1)(a) and (e) and as such put the Bill in Category-I of Financial Bill. Accordingly, advice of the Ministry of Law and Justice was sought on 10 February, 2014 as to the admissibility of the notice of the Bill for introduction in the Rajya Sabha. However, in the meantime, the Government preferred to introduce the Bill in the Lok Sabha and the Bill was introduced in that House on 13 February, 2014.

STATUTORY RESOLUTIONS

Resolutions tabled in pursuance of a provision of the Constitution or an Act of Parliament are termed as statutory resolutions. A typical statutory resolution which is frequently given notice of by members (generally of opposition) is under article 123 of the Constitution and it is in the following form:

> "That this House disapproves the..... Ordinance, – (No.....of.....) promulgated by the President on the.....(date)."

Such a resolution is invariably discussed as per established convention, together with the Bill replacing the Ordinance.

Statutory resolutions are also given notice of in pursuance of a provision of an Act of Parliament. For instance, a resolution was moved in the following form:

> "That in pursuance of sub-section (3) of section 65 of the Electricity (Supply) Act, 1948 (54 of 1948), read with clause (b) of the Proclamation issued on the 19 March, 1982, by the President under Article 356 of the Constitution with respect to the State of Assam, this House accords approval for fixing under the said sub- section (3) the sum of one hundred and eighty-five crores of rupees as the maximum amount which the Assam State Electricity Board may, at any time, have as loan under sub-section (1) of the said section 65."[32]

[32] Moved by Shri Vikram Mahajan on 5 May, 1992.

"That this House approves the Proclamation issued by the President on the 18 January, 2013 under article 356 (1) of the Constitution in relation to the State of Jharkhand."[32a]

"In pursuance of section 8A of the Customs Tariff Act, 1975, read with sub-section (3) of section 7 of the said Act, this House hereby approves of Notification No. 44/2013-Customs, dated 17 September, 2013 [G.S.R. 635 (e), dated 17 September, 2013] which seeks to increase the basic customs duty (BCD) on (a) article of jewellery and parts thereof, of precious metal or of metal clad with precious metal; and (b) articles of goldsmiths' or silversmiths' wares and parts thereof, of precious metal or of metal clad with precious metal falling under CTH 7113 or 7114 from 10% to 15% by amending the statutory rate".[32b]

"That this House approves the Order under article 239AB of the Constitution issued by the President on the 16 February, 2014 read with Section 50 of the GNCTD Act, 1991 and clauses (2) and (3) of article 356 of the Constitution in relation to the Government of National Capital Territory of Delhi."[32c]

Notice of a statutory resolution may be given either by a Minister or by a Private Member, unless the Government is required under the enactment to bring forward a resolution within a specified period of time, no particular period of

[32a] Moved by Shri Sushilkumar Shinde, Minister of Home Affairs on 26 February, 2013.

[32b] Moved by Shri P. Chidambaram, Minister of Finance on 18 December, 2013.

[32c] Moved by Shri R.P.N. Singh on 20 February, 2014 and adopted on 21 February, 2014.

notice is prescribed in the rules for moving a statutory resolution, but usually the period is mentioned in the particular article in the Constitution or in the section of the Statute under which the resolution is moved. A statutory resolution is not subject to ballot. After it is admitted, it is published in the Bulletin under the heading "Statutory Resolution." The allocation of time for such resolution is made by the House on the recommendation of the Business Advisory Committee.

One illustration of a statutory resolution moved by a Private Member may be given in the following form:

> "That this House disapproves the Criminal Law (Amendment) Ordinance, 2013 (No. 3 of 2013) promulgated by the President on 3rd February, 2013."[32d]

[32d] Moved by Shri D. Raja on 21 March, 2013.

STATUTORY MOTIONS

Motions moved for annulment or modification of Rules, regulations etc., which are framed and laid on the Table of the Rajya Sabha or for election of Members to various Councils, Boards, etc. in pursuance of provision of an Act of Parliament come under the category of 'Statutory Motions.'

Any member may give notice of an amendment to any rule, regulation, bye-law, etc., laid before the House which will be in such form as the Chairman may consider appropriate. The Chairman in consultation with the Leader of the House, fixes a day or days or part of a day as he thinks fit for consideration and passing of an amendment to such rule, regulation, bye-law, etc.

The mover of the motion, who has a right of reply, replies to the debates. If the motion is adopted, it is transmitted to the Lok Sabha for concurrence.

As an illustration of such a Motion can be cited a Motion which was moved by Shri Shiva Chandra Jha on the 1 March, 1983, for annulment of the Indian Telegraph (Third Amendment) Rules, 1983 in the following form:—

> "That this House resolves that in pursuance of sub- section (5) of section 7 of the Indian Telegraph Act, 1885, the Indian Telegraph (Third Amendment) Rules, 1983 published in the Gazette of India, dated the 21 February, 1983, *vide* Notification G.S.R. 93(E), and laid on the Table of the House on the 24 February, 1983, be annulled; and

That this House recommends to the Lok Sabha that the Lok Sabha do concur in this motion."[33]

Another instance of such motion can be cited a Motion which was moved by Shri Era Sezhiyan for modification of the Indian Telegraph (Third Amendment) Rules, 1983 in the following terms:—

"That this House resolves that in pursuance of sub-section (5) of section 7 of the Indian Telegraph Act, 1885 the following modification be made in the Indian Telegraph (Third Amendment) Rules, 1983, published in the Gazette of India dated the 21 February, 1983 *vide* Notification G.S.R. 93 (E), and laid on the Table of the House on the 24 February, 1983, namely:—

(i) *Substitute* rule 2 by the following:—

'2. In sub-rule (2) of rule 16 of the Indian Telegraph Rules, 1951 (hereinafter referred to as the said rules) for the works 'one rupee and fifty paise', wherever they occur, the words 'one rupee and fifty-five paise' shall be substituted.'; and

(ii) *Omit* rule 3 to 19; and

That this House recommends to the Lok Sabha that the Lok Sabha do concur in this motion."[34]

Motion for election to various statutory bodies in pursuance of the provisions to that effect in the various Acts are a regular feature of the proceedings of the Houses of

[33] Moved by Shri Shiva Chandra Jha on 1 March, 1983.
[34] Moved by Shri Era Sezhiyan on 1 March, 1983.

Parliament. These motions are moved in the following form:—

> "That in pursuance of clause (c) of sub-section (3) of Section 4 of the Central Silk Board Act, 1948 (LXI of 1948), read with sub-rule (1) of Rule 5 of the Central Silk Board Rules, 1955, this House do proceed to elect, in such manner as the Chairman may direct, one Member from among the Members of the House to be a member of the Central Silk Board."[35]

These motions are adopted without debate.

[35] Moved by Shri Rao Birendra Singh on 27 April, 1984.

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