

## Legislative Powers of Rajya Sabha: An Analysis

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### Abstract

A large amount of the legislatures in modern constitutional system are bi-cameral. On the other side, various democratic countries adopt unicameral legislatures where the powers are well defined. But in bi-cameral legislature it is hard to explore the power and position of both of the houses. Most second chambers exercise different legislative competences than those of their corresponding first chambers. Rajya Sabha is an elder house of bi-cameral parliament of India. It represents the states in parliamentary system and gave federal character to the Constitution. It is a Permanent chamber. As far as comparison of powers between Lok Sabha and Rajya Sabha there are many differentiations among them. Present study will explain that why the founding fathers of Indian Constitution treat both houses equally in legislative matter.

**Key Words:** Bi-cameral Legislature, Constitution, Deadlock, Joint sitting, National Emergency

### Introduction

Survival of the democracy is depending upon its institutions. “Political regimes which call themselves democracies or subscribe to democratic ideals and values have in fact emerged under very different historical conditions and assumed diverse forms and modes of functioning.”<sup>1</sup>Modern Indian democratic institutions have roots in British Colonial Rule. “Democracy however came to constitute a central part of the political *imaginaire* of the Indian political elite. Though the idea of democracy came through the colonial contact with Britain, the presence of British power delayed the institution of genuine democracy in the eyes of most nationalists. The state in India after independence therefore created a constitution based on universal suffrage”<sup>2</sup>. The members of constituent assembly debated that what form of government is suitable for India. Dr. B.R. Ambedkar evidently defends the parliamentary form of

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<sup>1</sup> Andre Beteille, *Democracy and Its Institutions* 9 (Oxford University Press, New Delhi, 2012).

<sup>2</sup> Sudipta Kaviraj (ed.), *Politics in India* 13 (Oxford University Press, New Delhi, 1997).

government for India. Why we adopt this form of government he said, “the Draft Constitution in recommending the Parliamentary system of Executive has preferred more responsibility to more stability”.<sup>3</sup> It was first time in the history of India that a democratic institution was established for constructing the social revolution in modern India. “The constituent assembly accepted the principle of the parliamentary executive collectively responsible to the popular house of Parliament”.<sup>4</sup> After explaining the form of government Dr. B.R. Ambedkar address the second question i.e. form of Constitution. He describes it as “the Draft constitution can be both unitary as well as federal according to requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in time of war, it is so designed as to make it work it though it was a unitary system”.<sup>5</sup> “In bicameral legislatures, the interaction between the two houses is crucial to understanding legislative outcomes. Examination of the legislative process in only one house ignores strategic aspects of legislation generated by the existence of the second house”<sup>6</sup>. However, Rajya Sabha enjoy less power to control the executive but have equal powers in the matters of legislation. Founding fathers of Indian Constitution adopted Parliamentary System of government. They crafted the Parliament of India a supreme institution in context of law making, controlling unit of executive and contoured of federal structure. Article Seventy-Nine of the Constitution of India describe that Parliament consist of the President and two houses Lok Sabha and Rajya Sabha. Article Seventy-Five (Clouse Three) of the Constitution says that the Council of Ministers is collectively responsible to Lok Sabha. So Rajya Sabha cannot make or mar the Government. It can, however, exercise control over the Government and this function becomes quite prominent, particularly when the ruling party or alliance does not enjoy majority in Rajya Sabha. It has become an important platform of resistance to the majoritarianism of the Lok Sabha during the Janata Pary regime of 1977-79, National Democratic Alliance rule of 1998-2004, UPA II of 2009-2014 and in the last two years of NDA rule. The hot debate over many bills which were passed by Lok Sabha but could not take assent of Rajya Sabha and are still waiting for complete their journey to become act. NDA choose joint sitting route on Prevention of Terrorism Bill in 2002 and 2009 to present Rajya Sabha control the autocratic legislation of executive including proposed amendment to the Land Acquisition, Rehabilitation and Resettlement Act in 2015 etc.

### **Ordinary Legislative powers of Rajya Sabha**

The Indian Constitution divides legislative powers between the Union and the States through three lists in the Seventh Schedule i.e. the Union List, State List, and

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<sup>3</sup> Valerian Rodrigues (ed.) *The Essential Writings of B.R. Ambedkar* 476 (Oxford University Press, New Delhi, 2002).

<sup>4</sup> Subash Kashyap, *Our Parliament* 20 (National Book Trust, New Delhi, Revised edn., 2004).

<sup>5</sup> *Supra* note 3 at 479.

<sup>6</sup> Jeannette Money and George Tsebelis, “Cicero’s Puzzle: Upper house power in comparative perspective” 13 *International Political Science Review*, 26 (1992).

Concurrent List.<sup>7</sup> Parliament has exclusive authority over subjects in the Union List, such as defense and foreign affairs, while the State List includes matters like police and public health under the jurisdiction of State Legislatures. The Concurrent List allows both Parliament and State Legislatures to legislate on subjects such as criminal law and marriage, but in cases of conflict, the Parliamentary law prevails unless the State law, having received Presidential assent, is given precedence within that State. Residuary powers to legislate on unlisted subjects rest with Parliament.<sup>8</sup> Parliament can also legislate on State List matters if the Rajya Sabha declares it necessary in the national interest<sup>9</sup> by a two-thirds majority, if two or more States consent,<sup>10</sup> to fulfill

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<sup>7</sup>Subject-matter of laws made by Parliament and by the Legislatures of States

(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament and subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the 'State List').

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List. Constitution of India, art. 246.

<sup>8</sup> Residuary powers of legislation

(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists. Constitution of India, art. 248.

<sup>9</sup> Power of Parliament to legislate with respect to a matter in the State List in the national interest

(1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in national interest that Parliament should make laws with respect to [goods and services tax provided under article 246A or] any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

(2) A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein: Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force.

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period. Constitution of India, art. 249.

<sup>10</sup> Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State

(1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any

international agreements,<sup>11</sup> or during a National Emergency.<sup>12</sup> This structure maintains a balance between State autonomy and Union supremacy while allowing flexibility to address national priorities.

A bill can be introduced in either house of Parliament. Both the Rajya Sabha and Lok Sabha must approve ordinary bills for them to become law.<sup>13</sup> Bills may be classified into Government Bills and Private Members' Bills accordingly as they are sponsored by a Minister or a private Member. Depending upon their contents, the Bill may be of (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.<sup>14</sup> Rajya Sabha is a continuing chamber and when Lok Sabha gets dissolved, urgent important works such as extension of president's rule in a state and proclamation of emergency can be

other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State. Constitution of India, art. 252.

<sup>11</sup> Legislation for giving effect to international agreements

Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

<sup>12</sup> Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation

(1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have, power to make laws for the whole or any part of the territory of India with respect to [goods and services tax] any of the matters enumerated in the State List.

(2) A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the in competency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period. Constitution of India, art. 250.

<sup>13</sup> Provisions as to introduction and passing of Bills

(1). Subject to the provisions of articles 109 and 117 with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament.

(2). Subject to the provisions of articles 108 and 109, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed by both Houses.

(3). A Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses.

(4). A Bill pending in the Council of States which has not been passed by the House of the People shall not lapse on a dissolution of the House of the People.

(5). A Bill which is pending in the House of the People, or which having been passed by the House of the People is pending in the Council of States, shall subject to the provisions of article 108, lapse on a dissolution of the House of the People. Constitution of India, art. 107.

<sup>14</sup> *Parliament of India: Rajya Sabha*, "The Law Making Process" (Rajya Sabha Secretariate, New Delhi, 2022).

approved by the Rajya Sabha. It also shares the work burden of the lower house as ordinary bills can be introduced in it.<sup>15</sup>

### **Provision of Joint sitting**

If disagreements arise, a joint sitting of both houses is convened, where Lok Sabha usually prevails due to its numerical strength. Article 108<sup>16</sup> of the Indian Constitution provides for a joint sitting of both Houses of Parliament to resolve deadlocks on certain types of bills. It is a mechanism to resolve legislative impasses between the two Houses. The Speaker of the Lok Sabha presides over the joint sitting. Since the adoption of the Constitution in 1950, joint sittings under Article 108 have been convened only three times.

The Dowry Prohibition Bill, 1961, is a significant piece of legislation in India's history aimed at curbing the social evil of dowry. The bill sought to outlaw the giving and taking of dowry, which was a widespread social practice causing economic strain and social injustice, especially for women. The bill was first introduced in the Lok Sabha in 1959 to address this social issue. The bill was passed by the Lok Sabha in 1960 and sent to the Rajya Sabha for consideration. The Rajya Sabha suggested several amendments to the bill, which the Lok Sabha did not agree to. The

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<sup>15</sup> Mayengbam Nandakishwor Singh, "Rajya Sabha as the Second Chamber: Relevant or Redundant Today?" 78 *Indian Journal of Political Science* 316 (2017).

<sup>16</sup> Joint sitting of both Houses in certain cases

(1) If after a Bill has been passed by one House and transmitted to the other House (a) the Bill is rejected by the other House; or (b) the Houses have finally disagreed as to the amendments to be made in the Bill; or (c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it. the President may, unless the Bill has lapsed by reason of a dissolution of the House of the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill: Provided that nothing in this clause shall apply to a Money Bill.

(2) In reckoning any such period of six months as is referred to in clause (1), no account shall be taken of any period during which the House referred to in sub-clause (c) of that clause is prorogued or adjourned for more than four consecutive days.

(3) Where the President has under clause (1) notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purpose specified in the notification and, if he does so, the Houses shall meet accordingly.

(4) If at the joint sitting of the two Houses the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses: Provided that at a joint sitting-- (a) if the Bill, having been passed by one House, has not been passed by the other House with amendments and returned to the House in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill; (b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed; and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(5) A joint sitting may be held under this article and a Bill passed thereat, notwithstanding that a dissolution of the House of the People has intervened since the President notified his intention to summon the Houses to meet therein. Constitution of India, art. 108.

disagreement led to a legislative deadlock, as neither House could finalize the bill. To resolve the deadlock, the President convened a joint sitting of both Houses of Parliament under Article 108 of the Constitution. This marked the first-ever joint sitting in Indian parliamentary history. The bill was passed with minor changes during this joint sitting.

The Banking Service Commission (Repeal) Bill, 1978, is notable in Indian parliamentary history as it led to the second-ever joint sitting of both Houses of Parliament under Article 108 of the Indian Constitution. The Banking Service Commission Act, 1975, had established the Banking Service Commission to oversee recruitment in nationalized banks. The commission aimed to ensure transparency and fairness in appointments, especially for managerial and senior posts. In 1977, the Janata Party government, led by Prime Minister Morarji Desai, decided to dismantle the commission, arguing that it was an unnecessary layer of bureaucracy and that recruitment responsibilities could be effectively handled by individual banks. The Banking Service Commission (Repeal) Bill, 1977, was introduced in the Lok Sabha to repeal the Banking Service Commission Act, 1975 and abolish the commission. The bill was passed by the Lok Sabha, where the Janata Party government had a majority. The Rajya Sabha, where the opposition had greater numbers, rejected the bill, citing concerns that abolishing the commission would lead to politicization and irregularities in bank recruitments. With both Houses unable to reach a consensus, the matter was referred to a joint sitting of Parliament, convened on May 16, 1978, under Article 108. Outcome: The Banking Service Commission (Repeal) Bill was passed by a simple majority, resolving the legislative deadlock. This was the second time in Indian history that a joint sitting was used to resolve a disagreement between the two Houses of Parliament.

The Prevention of Terrorism Bill (POTA), 2002, is a significant piece of legislation in India's legal history, as it was passed through a joint sitting of Parliament—the third and most recent instance of such a procedure under Article 108 of the Indian Constitution. The bill was introduced in response to the growing threat of terrorism in India, particularly after the 1999 Indian Airlines IC-814 hijacking, the 2001 attack on the Indian Parliament, and increased militant activities in Jammu and Kashmir. The government argued that existing laws, such as the Terrorist and Disruptive Activities (Prevention) Act (TADA) (repealed in 1995), were inadequate to deal with the evolving challenges posed by terrorism. To provide a robust legal framework to prevent and combat terrorism by giving law enforcement agencies enhanced powers for investigation and prosecution. The Prevention of Terrorism Bill, 2002, was introduced in the Lok Sabha by the Bharatiya Janata Party (BJP)-led NDA government under Prime Minister Atal Bihari Vajpayee. The bill was passed in the Lok Sabha, where the NDA had a majority. The bill faced stiff opposition in the Rajya Sabha, where the government did not have a majority. Critics argued that the proposed law was draconian and could lead to misuse against minorities and political opponents. The legislative deadlock led the President to convene a joint sitting of both Houses under Article 108. The joint sitting was held on March 26, 2002, and the bill was passed by a simple majority.

**Conclusion**

Without the presence of an upper house, the sole legislative body may pass laws driven by its own whims and interests, potentially leading to constitutional chaos in the country. This could result in the central government concentrating excessive power and interfering unduly in state matters. To curb the impulsiveness of the lower house and ensure political stability, the existence of an upper house becomes essential. The Rajya Sabha, though not directly accountable to the public, holds the authority to scrutinize government policies rigorously. Such checks and balances are crucial for a thriving democratic system. While it may delay the passage of legislative bills, this can be justified as meaningful democratic deliberations inherently take time. Hastily passing legislation without thorough discussion could have serious repercussions in the future