CHAPTER XI

LEGISLATION

All proposals for legislation are initiated in the form of bills, which when passed by the Legislature and assented to by the Head of the State become Acts. Where the Legislature consists of two Houses, legislation can be initiated in either of the Houses except that Money and Financial Bills can be introduced only in the Lower House and that all Bills (other than Money Bills) must be passed or deemed to be passed by both the Houses. If Bills are introduced in the Lower House of a State Legislature (the Assembly), they can become law without the concurrence of the Upper House (the Council). But Bills introduced in the Upper House must be concurred in by the Lower House; otherwise they cannot become law.

Bills may be classified into Government Bills and Private Members' Bills. But the procedure for both the classes is the same.

Bills originating in either of the Houses are considered in three stages - Introduction, Consideration and Passing. The procedure followed in the two Houses is the same (except in the case of Money Bills). We

1 Arts. 107, 196.
shall now discuss the procedure common to both the
Houses and then take up the discussion of the procedure
relating to the transmission of Bills from one House to
the other.

Introduction

When it is proposed to introduce a Bill, the member
who wishes to do so gives notice of a motion that he would
ask for leave to introduce a Bill. The period of notice
varies in different legislatures.

The procedure of giving notice of motion for
leave to introduce a Bill is usually dispensed with in
the case of Government Bills. The rules of some of
the State Legislatures provide that the Head of the State
may direct any Bill to be published in the official
Gazette although no motion for leave to introduce the
Bill has been made and that if a Bill is so published,
it is not necessary to move for leave to introduce the
Bill. This procedure is resisted by the Government.

2 The origin of the rule is as follows: One of the
principles that was followed in framing the rules of procedure
was that full opportunity for discussion and consideration
of every legislative measure should be afforded to the Legislative
Council and to the public. Accordingly there was a rule that
when leave was given to introduce a Bill, the Bill should be
published in the Official Gazette and that a period of 8, and
in some cases 12, weeks should intervene before the Bill could
be taken up for consideration. It was felt that this rule should
be so changed as to enable the Council to consider a Bill without
undue delay and at the same time to ensure that the Public should
be afforded sufficient time to offer their criticisms. The Lieutenant
Governor was therefore authorised to publish a Bill beforehand so
that the public might have an opportunity to examine and discuss
the Bill.
In the Indian Parliament and in some State legislatures, the Presiding Officer and not the Head of the State may, on a request made to him, direct the publication of any Bill and on such publication being made, no leave of the House is necessary for the introduction of the Bill. It appears that the authority of the Presiding Officer is not confined to Government Bills; he may direct the publication of private members' Bills also.

A notice to a motion for leave to introduce must be accompanied by a statement of Objects and Reasons and by a certain number of copies of the Bill; when a Bill is published in the official Gazette without prior leave of the House, a Statement of Objects and Reasons must also be published along with the Bill.

Two further statements are also necessary to be submitted in addition to the Statement of Objects and Reasons. If the Bill involves expenditure, a financial memorandum drawing attention to the relevant clauses and containing an estimate of the recurring and non-recurring expenditure involved, proposals for delegation of legislative power, and a memorandum explaining such proposals, drawing attention to their scope and stating whether they are of normal or exceptional character must also be submitted.
In the case of private members' Bills, the sanction or recommendation of the President, if previous sanction or recommendation is necessary, must also be annexed to the notice. In other cases, the order of the President granting or withholding the sanction or recommendation must be communicated to the Secretary by the Minister concerned in writing.

If a Bill is introduced to replace any Ordinance, the rules require that there shall be placed before the House along with the Bill a statement explaining the circumstances which had necessitated immediate legislation by Ordinance. When an Ordinance embodying wholly or partly or with modifications the provisions of a Bill pending before the House is promulgated, a statement explaining the circumstances which had necessitated immediate legislation must be laid on the Table at the commencement of the session following the promulgation of the Ordinance.

Government Bills are, as stated above, usually published in the official Gazette without asking for leave of the House and, therefore, no leave of the House is necessary for the introduction of such Bills. If a notice is received from the Minister-in-charge of such a Bill that he will introduce the Bill, it is placed in the List of Business for the day allotted to it by the Government.
At the time of giving notice of introduction, a member may simultaneously give notice of motions he would like to move after introduction, e.g., that the Bill be taken into consideration and be passed or that the Bill be referred to a Select Committee, etc.

When a Government Bill which has been previously published in the official Gazette is called on, the Minister-in-Charge does not ask for leave but merely says that he begs to introduce the Bill. The Secretary thereupon reads out the long title of the Bill and the Minister-in-Charge proceeds to move the motion of which he has given notice, e.g., motion for consideration or reference to Select Committee.

In regard to Bills which have not been previously published in the official Gazette the member who has given notice of a Bill asks for leave of the House to introduce the Bill. The introduction of a Bill is not usually opposed. But there are precedents when the introduction of such Bills has been opposed.


If the introduction of a Bill is opposed, the rules of all Legislatures provide that the Presiding Officer may, after permitting the member who seeks to introduce the Bill and the member who opposes to make a short explanatory statement, put the question forthwith without debate. Although under such a rule the Presiding Officer has a discretion to allow a discussion in the case of any Bill. The rules however expressly provide that the Speaker may permit a full discussion in the case of Bills the introduction of which is opposed on the ground of legislative incompetence.

Where no leave of the House is necessary for the introduction of Government Bills, copies of such Bills are made available to the members. But where leave is necessary Bills are published in the official Gazette only after leave is given by the House to introduce the Bill. Copies of such Bills are not therefore circulated (unless the member-in-charge himself takes steps to have copies printed and circulated) to members before leave is given. Copies of the Bill must however be available to members before the Bill can be taken into consideration.

Motions after Introduction

When a Bill has been introduced, a motion may be made:

(a) that the Bill be circulated for eliciting opinion; or

(b) that the Bill be referred to a Select Committee or a Joint Select Committee of the Houses where the Legislature consists of two Houses; or

(c) that the Bill be taken into consideration.

When any of the above-mentioned motions is made, the general principles of the Bill are discussed. No amendments to the clauses are allowed at this stage. Only amendments which are relevant to the motion then before the House, e.g., if it is a motion for consideration of the Bill, an amendment that the Bill be referred to a Select Committee and so on, may be moved. The above motions can be made as a substantive motion only by the member-in-charge of the Bill. A member-in-charge of a Bill means in the case of a Government Bill any minister, deputy minister or parliamentary secretary and in the case of a non-official Bill, the member who has introduced the Bill or in the case of a Bill transmitted by the other House, the member who has given notice of his intention to move that the Bill be taken into consideration.

Any member may move any such motion which is relevant by way of amendment to any other such motions.

If the member-in-charge of a Bill is unable, for reasons which the Speaker considers adequate, to move any motion after introduction, he may authorise another member to move such a motion with the approval of the Speaker. The member who has introduced the Bill, however, remains the member-in-charge of the Bill.

(For such amendments see under relevant motions).

(1) Motion for Circulation

When the member-in-charge of a Bill makes a substantive motion that the Bill be circulated for eliciting opinion, it is clear that the member does not desire the House to take the Bill into consideration immediately. The rules of all Legislatures provide that a motion that a Bill be taken into consideration can be made only by the member-in-charge of the Bill, i.e., the member who has introduced the Bill. No amendment to the effect that the Bill be taken into consideration can therefore be made to such a motion for circulation. But there is no bar to an amendment being moved to a motion for circulation that the Bill be referred to a Select Committee.

A motion that the Bill be circulated for eliciting opinion may also be moved as an amendment.
A date is fixed by which the opinions are to be received. When several circulation motions (as amendments) fixing different dates are tabled, all the motions are moved, and the debate conducted on them simultaneously. But when putting the motions to the vote it is convenient to split up one of these motions into two portions: first, that the Bill be circulated for eliciting opinion leaving out the date and then, if that motion is carried, the portion relating to the date. If the first portion is negatived all the motions for circulation fall through. If the first motion is carried, then each motion relating to the date is put before the House until a verdict as to the date is obtained. If the House agrees to a particular date all the other motions fall through.

As a substantive motion for circulation of a Bill can be made even in the case of a Government Bill, it is evident that a motion for circulation (whether as a substantive motion or an amendment) is not considered a dilatory motion and if carried is not accepted as a virtual rejection of the Bill. It may be mentioned that in England an amendment that the Bill be read a second time six months hence instead of now is proposed when it is desired that

the Bill should not be considered by the House. If the Chair is of the opinion that a motion for circulation or recirculation of a Bill after a Select Committee or a Joint Committee has reported thereon is in the nature of a dilatory motion in abuse of the rules of the House in as much as the Select Committee or the Joint Committee has dealt with the Bill in proper manner, or that no unforeseen or new circumstance has arisen since the Bill emerged from such Committee the motion for circulation is considered to be dilatory. In such a case the chair may forthwith put the question or may decline to put the question.

After the expiry of the period of circulation, a motion may be made that the Bill be referred to a Select Committee. In an exceptional case, if the Presiding Officer permits, a motion may be made that the Bill be taken into consideration. If a motion is made for reference to a Select Committee, an amendment for the recirculation of the Bill is in order. If a motion is allowed to be made for the consideration of the Bill, an amendment for reference to a Select Committee or for the recirculation of the Bill would be in order.

(2) **Motion for Reference to Select Committee.**

A motion may be made by the member-in-charge of a Bill that the Bill be referred to a Select Committee. It is usual to find in the rules of many of the Legislatures that the Minister-in-charge of the Department concerned and the mover of the motion (if he is not the Minister-in-charge, e.g., if the motion is made as an amendment) shall be named as members of the Select Committee. It is also necessary that the consent of the members proposed to constitute the Committee must be forthcoming before the motion can be moved. No one can be appointed to a Select Committee if he is not willing to serve on the Committee and the member proposing the name of any member must ascertain that he is willing to serve on the Committee.

**Mode of choosing, and Maximum Number of, Members.**

There is no hard and fast rule as to how the members of a Select Committee are to be chosen. In some Legislatures, there is a convention that all parties in the Legislature should be represented in the Select Committee. In the House of Commons, in England, members of Standing Committees are so chosen as to reflect the composition of the House but no such procedure is followed in the case of Select Committees.

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14 May, p.646.
15 May, p.612.
A question may arise whether a Bill, in respect of which a motion that it be taken into consideration has been passed and several clauses have been adopted as parts of the Bill, can be referred to a Select Committee.

The stages in which a Bill is considered in the Legislatures in India are as stated above three, (i) Introduction, (ii) Consideration, and (iii) Passing, corresponding to (i) first reading, (ii) second reading, committee stage and consideration by the House on report from the Committee, and (iii) third reading of a Bill in the British House of Commons. At the second, i.e., consideration stage, a motion that the Bill be referred to a Select Committee can be made either in the alternative or as an amendment to a motion that the Bill be taken into consideration. If the motion that the Bill be taken into consideration be passed, the Bill is considered clause by clause. There is a difference at this stage between the procedure obtaining in the Indian Legislatures and the House of Commons. In the House of Commons, as soon as a motion is adopted that a Bill be read a second time, the Bill is automatically referred to a Standing Committee or, if the House so directs, to a Select Committee, or a Committee of the whole House. That is, a Committee stage (at which the Bill is considered clause by clause) always intervenes between the passing of a motion for second reading and the
consideration of the Bill as a whole by the House when also amendments to clauses may be offered. Therefore no precedent exactly applicable to the question raised can be available in the practice of the House of Commons. But the procedure which obtains there for the recommittal of a Bill to a Committee after it has once been reported may be of some help by way of analogy. In India, if a Bill has been reported by a Select Committee, ordinarily, a motion that the Bill be recommitted is made by way of an amendment to a motion that the Bill as reported be taken into consideration. It appears that in the House of Commons, a motion for recommittal may be made either at the beginning or the end of the consideration stage but not during the proceedings on consideration. That is to say, a motion that the Bill be recommitted to a Select Committee may be made even after (in fact, must be made after, if not made at the beginning) the entire Bill has been considered by the House on report from the Committee. Then again, such a motion can be made after the House has ordered the Bill to be read the third time; the order of third reading is discharged and the Bill is recommitted. In either case, a Bill can be recommitted as a whole or only in part. If a Bill can be recommitted to a Select Committee after the Bill has been adopted by the House on report from a Committee or even at the third reading

16 May, p. 574
17 May, p 576
stage by discharging the order for third reading, it seems a Bill can be committed to a Select Committee in the circumstances envisaged above subject to a limitation discussed later on.

It may be argued that in consideration stage, once a motion has been adopted that a Bill be considered, or some clauses have been adopted, it amounts to a decision of the House which cannot be altered on the principle that a decision once taken by the House cannot be altered during the same session. That principle is applicable to the House of Commons also; but it appears from the practice referred to above that a decision that a Bill be read a second time or a third time can be discharged and the Bill recommitted. It also appears that if a Bill is referred to a Standing Committee, the order of reference can be discharged and the Bill referred to some other Committee, e.g., a Select Committee. This practice can be supported on the basis that the general principle that a decision once taken by the House cannot be altered during the same session applies only to a final decision. The order of the House that a Bill be read a second time or be referred to some Committee is only a stage in the process of consideration of the Bill and it cannot be said

18 May, p. 536
19 May, p. 573
that a final decision has been taken by the House until
the motion that the Bill be passed has been adopted.

It will have been seen that no motion for recommittal
can be made during the proceedings on consideration. If
the practice of the House of Commons is followed, it seems
a motion that a Bill be committed to a Select Committee
cannot be made at the stage when only certain clauses of
the Bill have been adopted but it can be made at the end
of the consideration stage.

Standing Order No. 50 of the House of Commons
provides that if a motion for recommittal of a Bill is
opposed, the question must forthwith be put to the House
without debate after a preliminary explanation from the
mover and the opposer. -It has however been held that
Standing Order No. 50 applies only to the recommittal of
a Bill as a whole and to such a motion made at the beginning
of the consideration stage but not otherwise.

Amendments.

To a motion for reference to a Select Committee,
the following amendments may be moved:-

(a) that the Bill be circulated for eliciting opinion;

(b) that the Bill be referred to a Joint Select Committee
of the two Houses, (where the Legislature consists of
two Houses);

19 May, p.575.
(c) that names of certain proposed members be omitted or certain other names be added either as addition to or in substitution of proposed names.

Committee of the Whole House

No motion for the reference of a Bill to a Committee of the whole House is now made in India. For, if a Bill is not referred to a Select Committee, the House proceeds to consider the Bill clause by clause after the motion for consideration is passed and in effect does the function of a Committee.

Joint Select Committee or Joint Committee

A motion may be made either substantively or by way of amendment that a Bill be referred to a Joint Select Committee of the two Houses. Such a Committee can only be appointed with the concurrence of the two Houses.

British Practice

A joint Committee composed of an equal number of members of each House is appointed at the instance of one House or the other.

If either House considers it expedient that a Joint Committee should be appointed to consider a Bill, it passes a

20 L.A.D. 5 April 1932, p. 3003.
resolution to the effect 'that it is expedient for the Bill to be committed to a Joint Committee of the Lords and Commons' and sends the resolution to the other House for concurrence. The other House thereupon passes a resolution 'that this House concurs in the Resolution communicated by the ............. ............. viz., that it is expedient etc'.

After the message of concurrence of the other House is received, the originating House appoints a 'Select Committee to be joined by a Committee to be appointed by the other House' and sends a message stating that a Select Committee has been appointed of a certain number of members and requesting it to appoint a Committee of equal number of members. The names of proposed members are not sent.

The other House thereafter appoints a Select Committee to join with the Committee of the originating House.

To appoint a Select Committee straightaway and ask the other House to appoint members to the Committee is considered discourteous to the other House. The Joint Select Committee elects its own Chairman (who may be a member of either of the Houses) and its procedure is guided by the rules of procedure of a Select Committee of the House of Lords where the rules differ from the procedure of a Select Committee of the House of Commons.
The Report of a Joint Select Committee upon the Bill is presented to both Houses, by the Chairman to the House to which he belongs, and by a member of the other House appointed by the Committee to that House.

When a Bill is reported from a Joint Committee to the House in which the Bill originated, the Bill is always recommitted to a Committee of the whole House.

After the Bill has been considered clause by clause by a Committee of the whole House, it is again considered by the House (this is known as the Report stage) and then a motion is made that the Bill be read a third time.

When a Bill reported by a Joint Committee is passed by the House in which it originated, it is sent to the other House for concurrence. And the other House considers the Bill in the same way as it would in the case of any other Bill. The Bill is considered on a motion for second reading and is as a rule committed to a Committee of the whole House.

It therefore appears that the House by concurring in the appointment of a Joint Select Committee is not committed to the principles of the Bill. In fact, when a Bill is committed by the House to a Committee, the Committee is bound by the principles of the Bill and not the House. The House can always negative the Bill at any stage. This was also the

21 May, p. 665.
22 Ibid., p. 568.
23 May, p. 500.
view taken by the Chairman of the Council of States in India when the Preventive Detention Amendment Bill (introduced in the House of the People) was referred to a Joint Select Committee. He observed—

'So far as that (discussion of the principles of the Bill) is concerned, we will have ample opportunities when the House of the People refers this Bill back to us to enter into complete detail, to consider whether an Act like this is necessary at all and whether particular details required to be modified or not - all these questions we will have at a later stage when the House of the People refers this matter to us.'

Indian Practice

A Bill may be referred to a Joint Select Committee of both Houses with the concurrence of the two Houses. The practice appears to be to appoint a Committee of a certain number of members of the House in which the Bill has originated and to fix the number of members to be appointed by the other House and to ask the other House to concur in the appointment of a Joint Select Committee and to name its members. The proportion of the number of members of the House of the People and the Council of States is fixed by convention as 2 : 1. Such a procedure is, as already stated, not allowed in the British Parliament. No motion for reference to a Joint Committee can be made in respect of Money Bills. When a Bill is taken into consideration on a


25 The Indian Parliament, ed. by A. B. Lal, p. 108.
report from a Joint Select Committee, an amendment may be moved that the Bill be recommitted or be circulated or recirculated for opinion.

When a Bill originating in one House is sent to the other House, the Bill is not referred to a Select Committee if it has already been considered by a Joint Committee. No amendment that the Bill be circulated for opinion is also allowed.

The procedure would therefore be as follows:

A motion is moved in the House in which the Bill has been introduced that the Bill be referred to a Joint Select Committee of the two Houses. The motion names the members (of the House in which it is moved) who should be the members of the Joint Committee and usually specifies the number of members of the other House who should be joined. The motion if carried is sent to the other House for concurrence. The other House then concurs in the motion, names its own members and sends back the motion to the originating House. The Bill then stands referred to the Joint Select Committee. The procedure followed in the Joint Select Committee is the same as that of a Select Committee (see below). The Chairman to preside over the deliberations of the Joint Select Committee, unless otherwise provided by the rules of any Legislature, is elected by the members of the Joint Select Committee.
Amendment to a Motion for Reference to a Joint Select Committee

To a motion for reference of a Bill to a Joint Select Committee of the two Houses the following amendments are in order:

(a) motion for circulation of the Bill

(b) motion for reference to a Select Committee of the House in which the motion is moved

Addition or Substitution of Names

When an amendment is moved for the addition or substitution of the name of a new member, his consent must be forthcoming before the amendment can be moved.

Effect of Acceptance of Motion for Reference to Committee

When a motion is made for reference to a Select Committee or a Joint Select Committee of the two Houses, the general principles of the Bill are discussed. The clauses can be discussed only in so far as they are relevant to elucidate the general principles of the Bill. If such a motion is carried, the general principles of the Bill are taken to have been accepted by the House and are binding on the Committee; the Committee cannot go beyond the principles of the Bill as accepted by the House. In the case of a Joint Select Committee, however, the House in which the Bill is not

26 B.L.A.P. 1938, vol. LIII, no. 1, p. 138
pending but which has only concurred in the appointment of a Joint Select Committee is not bound by the decisions of the originating House because of the appointment of the Committee. It can discuss the general principles of the Bill when the Bill actually comes before it after being passed by the originating House.

**Procedure in Select Committee: Chairman**

The rules of Legislatures in India provide that the Speaker shall nominate the Chairman. The Deputy Speaker is to be nominated as the Chairman if he is appointed a member of the Select Committee. In a Joint Select Committee, the members elect a Chairman.

**Quorum**

A quorum for a meeting of the Select Committee is fixed by the Rules of Procedure (one third of the number of members). A quorum must be present throughout the sitting of the Committee.

The rules provide that if a quorum is not present on two successive days fixed for a meeting of the Committee, the Chairman should report the fact to the House.

The rules also provide that if a member is absent from a meeting on two or more successive occasions, a motion may be made in the House for the discharge of the member from the Committee.


29 The Calcutta Municipal Bill, 1951, West Bengal.
Sittings of Select Committee

A Select Committee can sit while the House is sitting. There are rules which require that a Select Committee should suspend or adjourn its sitting if a division is called in the House.

There is no bar, as there is in England, to a Select Committee sitting when the House is not in session. But a Committee cannot sit during the question hour.

Sitting beyond the Precincts of the House

In England, a Select Committee cannot, without the leave of the House, sit in any place beyond the precincts of the House. In India the same rule is followed except that a meeting can be held elsewhere with the permission of the Speaker. There are instances in some Legislatures in which the Select Committees have at the instance of the Committees held their sittings in places other than the House.

Date and Adjournment of Meeting

The date of the first meeting of a Select Committee is usually fixed by the Chairman of the Committee and the officer who acts as the Secretary to the Committee issues the notices to members.

Powers of the Select Committee

A Select Committee is a Committee of the House and has such authority only as is conferred upon it by the House. When a Bill is committed to a Select Committee, the Select Committee has authority to consider the Bill clause by clause and amendments relevant to the subject matter of the Bill. A Select Committee is bound by the decisions of the House given at the time of reference as regards the principles of the Bill and cannot go into the question of principles; nor can it amend the Bill in a manner which is opposed to such principles. There is, however, no limitation to the power of the Select Committee to amend a Bill in such a way as to make it a new Bill altogether, of course, if the amendments made are within the scope of the Bill; In such cases, the Select Committee makes a report that the Bill should be republished. The rules provide that a Select Committee when reporting a Bill should state whether or not, in its opinion, the Bill has been so altered by it as to require republication.

The rules also provide that if a Bill is altered by the Select Committee, the Select Committee may make a recommendation to the member-in-charge of the Bill that his next motion should be one for circulation or when the Bill has already been circulated, for recirculation.
Instructions may be given to a Select Committee to make some particular or additional provisions in the Bill and if necessary or convenient to consider and report on amendments which may be proposed to the original Act which a Bill seeks to amend.

The House can also give instructions to consider amendments to the sections of the parent Act when an amending Bill does not seek to amend such sections.

**Power of a Select Committee to recommend the dropping of a Bill**

A Select Committee to which a Bill has been referred has no power to put an end to the Bill itself. In the British House of Commons, Select Committees have sometimes negatived all the clauses and the preamble of Bills and have made a special report to that effect to the House. If a Select Committee is of opinion that a Bill should be dropped, it may make a special report that the Bill should not be further proceeded with. If such a report is made, ordinarily the Bill is dropped. A Bill can, however, be recommitted or referred back to a Committee after the Committee has reported that it is not expedient to proceed further with the Bill.

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33 May, p.644
In West Bengal, recommendations that the Bill should not be proceeded with were made and accepted by the House in the case of the following Bills:

(i) Bengal Municipal Amendment Bill, 1934;
(ii) Bengal Moneylenders Amendment Bill, 1937;
(iii) West Bengal Special Powers (Second Amendment) Bill, 1947.

Examination of Witnesses

The rules of all Legislatures authorise the Select Committee to take expert evidence and hear representatives of special interests affected by the Bill. Whether a Select Committee can summon a witness and compel his attendance or can compel the production of any paper would depend upon the powers given to the Committee by the House. The rules also expressly authorise a Select Committee to do so. The Legislatures in India enjoy the power and privileges of the British House of Commons and therefore have the power to summon a witness and compel the production of any paper. A default on the part of any person in complying with the directions of the Committee would be a breach of privilege and would be liable to be visited with penalty.

The Government, however, may decline to produce any document on the ground that its disclosure would be prejudicial to the safety or interest of the State.
Witnesses are summoned by an order signed by the Secretary.

It is doubtful whether a witness appearing before a Select Committee can be put on oath or affirmation. In England, there are statutes (Parliamentary Witnesses Act, 1858 and Parliamentary Witnesses Oaths Act, 1871) which authorise the Parliament and its Committees to administer oaths to witnesses before the Parliament. But in practice, witnesses are not ordinarily examined on oath except in cases of judicial or exceptional character.

Under the Constitution, the Houses of Legislatures in India have inherited the powers of the British House of Commons; whether they can claim not only the powers which are parts of the privilege of the House of Commons but also any power which is conferred by statutes upon the House of Commons is a question of some difficulty. The language of the Constitution seems to warrant the wider view. Under the Indian Oaths Act, 1873, 'persons having by law or consent of parties authority to receive evidence' are authorised, by themselves or by any officer empowered by them, to administer an oath or affirmation. A House of a Legislature or any Committee thereof is not authorised under any 'law' to receive evidence unless the provision of the Constitution is interpreted to attract the powers conferred by the Parliamentary Witnesses Oaths Act, 1871.
Authority to receive evidence by consent of parties contemplates arbitration tribunals and not Committees or Houses of Legislatures where there are no parties at all.

It appears that the Committee of the House of the People which was appointed in 1951 to enquire into the conduct of a member (H.G. Mudgal) was authorised by a resolution of the House to receive evidence and the Committee itself decided to take evidence on oath. The course may be open to objection. The matter is not merely of academic importance and should be put on a surer footing. For, any witness giving false evidence before a Committee cannot be prosecuted for perjury if he is not on oath or is on an oath which is unauthorised. There is now a rule which empowers a Committee to administer oath.

Report

A Select Committee after considering the Bill and making amendments, if any, makes a report to the House. If any member disagrees with the report he can submit a minute of dissent. The practice in the British Parliament is different — no minute of dissent or separate report is allowed to be presented. The majority report is the only one which is presented to the House.

34 Mudgal Case published by the Parliament Secretariat, 1951.

35 May, p.636.
A Select Committee may make an interim or special report to the House if it has not been able to finish its deliberations within the time fixed by the House and may ask for an extension of time. The rules provide that a Select Committee must make a report to the House within three months if no time if fixed by the House.

Publication of Proceedings of Select Committee

The proceedings of a Select Committee are treated as confidential and cannot be disclosed. What happened in the Select Committee cannot be disclosed or referred to even in the House when the Bill comes up for discussion.

The Report of the Select Committee or its recommendations cannot be disclosed until and unless the Report has been presented to the House.

The evidence taken by a Select Committee cannot also be discussed until presented to the House or made available to members. This rule may, however, be often relaxed and evidence may be disclosed confidentially in the interest of convenience or advantage in the enquiry, e.g., when the evidence of a witness is disclosed to another witness. It is however the practice in the British Parliament to ask leave of the House to report the minutes of evidence/available generally to witnesses and parties.

37 I.P.D. 27 Mar. 1950, p.2187
38 May, p.627.
In the British Parliament, usually no objection is taken to the publication of the evidence of witnesses examined in public before Committees, provided the report is fair and accurate.

Admission of Strangers

When a Select Committee is deliberating, no stranger is allowed to be present. When evidence is being taken, strangers may be present but may be excluded by order of the Committee. A member of the House which has appointed a Committee is entitled to be present during the sitting of a Committee even when the Committee is deliberating but he is not entitled to take any part in the proceedings of the Committee. A member can only be excluded by an order of the House.

Sub-Committees

A Select Committee cannot divide itself into sub-committees without the authority of the House, unless authorised by the Rules. When a Select Committee is authorised to appoint sub-committees, it can delegate to sub-committees only such functions as by the House are authorised to be delegated. If so authorised, a sub-committee may include persons outside the Select Committee. A Select Committee can, however, appoint

39 May, p.627.
40 Parl. Deb. 1849, vol.102, c.1133.
41 C.J. 1917-18, 170; ibid. 1918, 13, 72, 204; ibid. 1920, 94.
one of their members or some of them to assist the Committee for the purpose of its business, e.g., drafting the Report which does not involve delegation of authority. Rules in India expressly provide for the appointment of sub-committees by a Select Committee.

Presentation of Report

The Chairman of a Select Committee or any member authorised by the Select Committee is authorised to present the Report to the House. When presenting the Report, the Chairman or the member makes a short explanatory statement. No motion is made at the time of presentation. Subsequently, a motion is made that the Bill as reported by the Select Committee be taken into consideration.

Consideration of Bill reported by a Select Committee

Subsequently to the presentation of the report of a Select Committee, the member in charge of the Bill may make a motion:

(a) that the Bill as reported by the Select Committee be taken into consideration; or,

(b) that the Bill be recommitted either (i) without limitation or (ii) with respect to particular clauses or amendments; or (iii) with instructions to make some particular or additional provision in the Bill.

42 May, p.631.
Rules of legislatures provide that a motion may also be made by the member-in-charge for the circulation or recirculation of the Bill. Such a course may be adopted when a Bill has been so altered by the Select Committee as to be unacceptable to the member-in-charge and he may avoid the passing of such a Bill by making a motion for circulation or recirculation. There are instances where the member-in-charge did not make any motion for consideration of the Bill as reported by the Select Committee and the Bill automatically dropped.

When a motion is made for the consideration of a Bill as reported by a Select Committee, any member may move an amendment for the recommittal of the Bill. Rules provide that an amendment may also be moved for the circulation or recirculation of the Bill.

An amendment for the recommittal of a Bill cannot be moved after the motion for consideration has been adopted and the Bill is taken into consideration clause by clause. The practice in the British Parliament is otherwise. A motion for recommittal may be made there either at the beginning or end of the consideration stage, between the consideration and third reading and also on the third reading, although it appears that a motion for recommittal of a Government Bill by a private member has been disallowed by the Speaker.

43 Bengal Secondary Education Bill, 1942
A motion for the recommittal of a Bill as a whole is regarded in certain circumstances as obstructive in the British Parliament and a standing order provides that if a motion for the recommittal of a Bill as a whole is opposed the Speaker, after allowing the mover of the motion and the member who opposes to make explanatory statements must forthwith put the question. Such is not the position in India.

A Bill may be recommitted to the same Select Committee. In the British Parliament, a Bill reported from a Select Committee is always recommitted to a Committee of the whole House. Motions are also made for the recommittal of a Bill reported by a Standing Committee to a Select Committee. In India there are no standing committees on Bills. Whether a Bill reported by a Select Committee can be recommitted to another Select Committee is an open question. The rules of procedure do not bar such recommittal although some may consider such a course as discourteous to a Select Committee reporting the Bill. It has also been ruled in the House of the People that recommittal of a Bill to a new Select Committee is permissible.

45 S.C. no.50. If a motion to re-commit a bill as a whole be opposed, Mr. Speaker shall permit a brief explanatory statement of the reasons for such re-committal from the Member who moves and from a Member who opposes any such motion respectively, and shall then without permitting further debate put the question thereon.

46 May, p.568
48 I.P.D., 4 Sept. 1951, c.1902.
When a Bill is recommitted with respect to particular clauses or amendments, or with any particular instruction, only those matters and amendments relevant to those that have been referred are considered by the Committee. When a Bill is recommitted as a whole, the entire Bill is before the Committee and the Committee can make such further or other amendments as it desires.

A Bill may be recommitted as many times as the House pleases.

Consideration of Clauses

When a motion for consideration is accepted without referring the Bill to a Committee or on a report from a Committee, the House considers the Bill clause by clause and any member can propose amendments to the clauses of the Bill. There is some difference in this respect between the procedure of the British House of Commons and the Legislatures in India. In the House of Commons, Bills are invariably committed to Committees - either to the Standing Committees or Committees of the whole House. The Committees consider the Bill clause by clause. The House never considers a Bill clause by clause but considers it as a whole. Consequently, there are certain restrictions as well as liberties as regards amendments that can be proposed to a Bill under consideration by the House. For
instance, no amendment which purports to impose a tax or a charge upon the public revenue can be proposed in the House. On the other hand, an amendment to leave out a clause or several clauses is in order because no question is put for each clause to stand part of the Bill.

In the Indian Legislatures however the House, when considering a Bill on second reading acts, as has already been started, more or less as a Committee. And the rules which govern the procedure in a Committee of the House of Commons are applied when a Bill is being considered by the House clause by clause.

Each clause is called out by the Presiding Officer. If there are amendments proposed, the amendments are put to the vote. Then the question is put that the clause (or the clause as amended) do stand part of the Bill. If there is no amendment to any particular clause, and no member desires to speak on the clause, the question is put forthwith. Sometimes for convenience's sake and in order to save time, several clauses are put en bloc, unless any member desires to speak on any particular clause. Schedules are treated in the same manner as clauses.

The consideration of the preamble is postponed till after the clauses have been considered, because it may be
necessary to amend the preamble in consequence of amendments made in the clause. Consideration of particular clauses also can be postponed if thought convenient.

In the Lok Sabha, the consideration of clause 1 is also postponed. After all the clauses, schedules, etc., are disposed of, clause 1, the enacting formula, the preamble and the title of the Bill are taken up and put to the House.

Clauses and schedules can be amended, clauses or schedules omitted or new clauses or schedules added by way of amendment.

**Amendments.**

Notices of amendments have to be given and the period of notice is prescribed by the rules of the respective Legislatures. The Presiding Officer is empowered to accept amendments at short notice, even on the floor of the House when a Bill is under consideration.

An amendment must be relevant to and within the scope of the Bill and when offered to a clause must be relevant to the subject matter of the clause.

Whether an amendment is within the scope of a Bill has to be judged from the Statement of Objects and Reasons, the Preamble and the provisions of the Bill. No single one of these is conclusive. Each is a factor to be taken into consideration.

The scope of a Bill has to be decided on the merits of each case and the fact of each case and it is the function of the Chair to say whether a particular amendment is within the scope of a Bill.

An amendment which is dependent upon amendments which have already been negatived is inadmissible. In practice, such amendments are not put as having fallen through.

An amendment which is inconsistent with any decision of the House on any clause or part of the Bill or a previous amendment is inadmissible.

An amendment which is unintelligible, vague or offered "in a spirit of mockery" is inadmissible.

An amendment which would be unintelligible without subsequent further amendments is inadmissible if no notice of such further amendments has been given.

An amendment to leave out a clause is out of order, as it has the effect of a negative vote and the same result can be obtained by voting against the clause. An amendment to omit the only effective word of a clause, or words, upon which the rest of the clause is dependent, or any amendment which is a negative of the clause as it stands, is out of order.

53. L.S.D., 8 Sept. 1955, c. 12797.
54. May, p. 556.
56. May, p. 555.
An amendment to substitute an alternative clause is allowed in the Indian Legislatures; in England, the practice is to negative the clause and offer the alternative as a new clause.

When a clause contains several sub-clauses, an amendment to omit any sub-clause is not in order if the sub-clause is dependent upon another which is not sought to be omitted or any amendment to do so has been negatived.

An amendment which purports to impose any charge or which involves expenditure from the public funds is inadmissible unless recommended by the Head of the State. Under Articles 117(1) and 207(1), no amendment which imposes any tax or involves withdrawal of money from the Consolidated Fund or contains any provision which is of the nature of a provision of a Money Bill can be moved without a recommendation from the Head of the State. Under Articles 117(3) and 207(3) any amendment which, if passed, would involve expenditure from the public funds, cannot be passed without such recommendation although such amendments can be moved. The effect is that such amendment cannot be put unless recommended by the Head of the State.

The effect of this provision of the Constitution is that an amendment which would involve a higher expenditure than that provided for in a Government Bill is inadmissible unless recommended by the Head of the State.

57 May, p.555

Amendments to Amending Bills.

When a Bill seeks to amend an Act, the question of the scope of amendment often arises in the form whether amendments to the provisions of the Act which are not sought to be amended are admissible or not. In such a case, if the amending Bill has what is known as an open preamble, i.e., if the amending Bill seeks to amend the parent Act without any limitation, all the provisions of the parent Act are open to amendment. But if the preamble is a restricted one, as is often the case, i.e., if the amending Bill seeks to amend the parent Act 'in the following manner and for certain purposes', provisions which are sought to be amended are only open to amendment. The other provisions of the parent Act cannot be touched. There are rulings of the House of Commons which appear to hold that when a Bill seeks to amend only certain sections of an Act, amendments to other sections are out of order.

In the case of the Preventive Detention (Second Amendment) Bill, it was ruled by the Speaker of the House of the People that amendments to the provisions of the parent Act which were not sought to be amended would be admissible if they were within the scope of the amendments which were before the Committee.

When it is sought to continue an Act after the expiry of the date mentioned in the Act by an amending Bill, an amendment seeking to amend the provisions of the Act is inadmissible. It has been the practice in the House of Commons that in the case of Expiring Laws Continuance Bills, amendments to the provisions it is sought to continue are ruled out of order.

**Bill to confirm Agreements.**

When a Bill is introduced to ratify or give effect to an agreement, the agreement is appended as a schedule to the Bill. No amendment to the schedule embodying the agreement can be made. The House may reject the agreement as a whole; no alteration of the terms of the agreement is possible.

**Titles, Marginal Notes and Headings of Bills.**

Marginal notes, headings of chapters or parts of a Bill are not put to the House and no amendment of these is admissible. If by reason of amendments any change in the marginal note or heading is necessary, it may be made by the Secretariat.

The long title of the Bill is also not put for standing part of the Bill. The long title can be altered, if necessary, by the Secretariat if the Bill as amended makes such a course necessary.

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In the British Parliament an amendment of long title is made in the Committee although no question that that long title do form part of the Bill is put.

In the Indian Parliament, however, the long title and the enacting formula also are put to the House for standing part of the Bill.

Third Reading.

When the clauses and the schedules and the preamble, if any, and the enacting formula and the title of the Bill where necessary have been agreed to, a motion is made that the Bill as settled in the House be passed. The debate on such a motion is commonly known as third reading although no motion in terms that the Bill be read a third time as is made in the House of Commons is made in India. There is a rule incorporated in the rules of procedure of all Legislatures that if a Bill has been amended in the House any member may object to the third reading of the Bill on the same day and such objection if raised should prevail. This is a salutary rule, (but often not observed in practice, the Presiding Officer having authority to suspend the rule and often doing so) particularly when a Bill has been extensively amended because it allows some time to consider the effect of amendments and to see whether any inconsistencies have crept in. Such a course would also help the members to participate in the debate on the third reading of the Bill more profitably.

65 May, p.564.
A Bill may be amended during the course of the third reading but to a motion that the Bill may be passed, the only amendments that are permissible are those of a formal or verbal character or consequential upon any amendment having been made to the Bill during the consideration stage.

The debate on the third reading of a Bill is of a restricted character, limited to the matters contained in the Bill; the rules provide that the discussion must be confined to submission of arguments either in support or rejection of the Bill and the details of the Bill cannot be referred to further than is necessary for the purpose of such arguments which should be of a general nature.

The motion is then put and voted upon.

After a Bill has been passed, no alteration in the Bill is permissible; the rules of procedure of all Legislatures, however, authorise the Presiding Officer or the Secretary (as in West Bengal) to correct patent errors and make such other changes in the Bill as are consequential on the amendments accepted by the House, e.g., renumbering of clauses and correcting references to sections in the clauses necessitated by such renumbering.

66 May, p. 578
After a Bill has been passed and is in possession of the Lok Sabha, the Bill is sent to the Draftsman, Ministry of Law for scrutiny. Where an amendment to a clause has been moved and adopted by the House and subsequently the official draftsman while scrutinising the Bill as passed has suggested any correction which is accepted by the Speaker as a patent error, such a correction is incorporated in the body of the amendment itself without any footnote in the printed debate. Where the Speaker accepts a correction suggested by the official draftsman relating to a clause and not to an amendment to a clause which has been adopted by the House, such a correction is indicated with an appropriate footnote in the printed debate. For instance, extensive changes were made to the Companies Bill 1956, after the Bill had been passed by both the Houses.

Sending of Bill from one House to the Other.

Where there are two Houses of the Legislature, the next step is to transmit the Bill as passed by the House in which the Bill originated to the other for its concurrence.

A message from the originating House signed either by the Presiding Officer or the Secretary and accompanied by a certain number of copies of the Bill also similarly signed is sent to the other House. The message is read in the House and copies of the Bill are laid on the table. Thereafter,
any Minister in the case of a Government Bill or any member in the case of a private member’s Bill may give notice that the Bill be taken into consideration. The period of notice is provided by the rules of procedure and short notice may also be given with the consent of the Presiding Officer.

The subsequent procedure of discussion and amendment is the same as in the originating House discussed above except in the case of Money Bills. After the Bill is passed by the receiving House, it is sent back to the originating House with amendments if any.

Disagreement between two Houses.

(a) Indian Parliament.

If a Bill (Except a Money Bill) passed by, and transmitted from, one House is amended by the other House, the Bill as amended is sent back to the originating House. If the originating House does not agree to the amendments or makes further amendments to which the other House does not agree, the President may summon a joint session of the two Houses. If the President notifies his intention to summon a joint session by message, the Houses are precluded from further proceeding with the Bill. The Bill is considered by the two Houses in the joint sitting and is deemed to be passed by the two Houses in the form in which it is passed by a majority of the total numbers of members of both Houses present and voting.

69 Art. 108.
At a joint sitting (i) if the Bill, having been passed by one House, has not been passed by the other House with amendments and returned to the originating House, no amendments can be proposed to the Bill other than such amendments, if any, as are made necessary by the delay in the passage of the Bill, and (ii) if the Bill has been so passed and returned, only such amendments as above mentioned and such other amendments as are relevant to the matter with respect to which the Houses have not agreed may be proposed. The decision of the Presiding Officer as to the admissibility of such amendments is final.

A joint session may also be summoned, if a Bill passed by one House is rejected by the other or 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.

A curious procedure appears to have been adopted in the Lok Sabha with regard to the Manipur State Hill Peoples (Administration) Regulation (Amendment) Bill, 1954, on 30 May 1956. This Bill was passed by the Rajya Sabha on 21 September 1954, and was transmitted to the Lok Sabha on 23 September 1954. When a Bill is transmitted by the Rajya Sabha to the Lok Sabha, a Minister or a member, under the Lok Sabha Rules, has to give notice of a motion that the Bill be taken into consideration.
It is not clear whether such a notice was given or not. On the other hand, it appears that a motion seeking the concurrence of the Rajya Sabha to leave being granted by the Lok Sabha to withdraw the Bill was adopted by the Lok Sabha on 11 May 1956, and was transmitted to the Rajya Sabha for its concurrence. The Rajya Sabha having concurred, a motion for leave to withdraw the Bill was placed on the order paper on 30 May 1956, and was thereupon adopted.

This seems to be a rather strange procedure to adopt. If the Lok Sabha was not willing to pass the Bill, it could have rejected the Bill or laid it aside. There are instances in the British Parliament when either the House of Lords or the House of Commons has laid aside the Bill transmitted by the other. Of course, under the Indian Constitution there is a provision for a joint session in such cases. If the Government was not eager to proceed with the Bill, the President who acts on the advice of the Ministers might have called a joint session and the Bill would have been laid aside without any further action. Then again, what was the necessity of seeking the concurrence of the Rajya Sabha? For the concurrence of the Rajya Sabha to a motion in the Lok Sabha for withdrawing a Bill is absolutely unnecessary. The Lok Sabha itself might have given the leave. And what is the effect of granting of the leave by the Lok Sabha? The effect
is that the Bill is withdrawn from the Lok Sabha but not from the Rajya Sabha. The leave of the Lok Sabha has no effect on the Rajya Sabha. The Bill remains where it was, that is to say, the Bill has been passed by the Rajya Sabha, has been transmitted to the Lok Sabha and remains laid on the Table of the Lok Sabha.

The Speaker of the House of the People presides over a joint sitting and in his absence the Deputy Speaker and in the absence of both the Speaker and the Deputy Speaker, the Deputy Chairman of the Council of States, presides.

In regard to Money Bills, the House of the People may or may not accept the recommendations of the Council of States for amendments. In either case a Money Bill is deemed to be passed by both the Houses in the form it emerges from the House of the People after the Bill is passed a second time.

The Council of States is bound to return a Money Bill with or without recommendations within 14 days of the receipt of the Bill. If it does not do so, the Bill is deemed to be passed after the expiry of 14 days in the form in which it was passed by the House of the People.

71 Art. 109

72 Art. 109
State Legislatures.

There is no provision for any joint session in the State Legislatures. There is some difference of procedure when a Bill (other than a Money Bill) is amended by the receiving House dependent upon whether the receiving House is the Upper or the Lower House. If a Bill transmitted by the Lower House has been amended by the Upper House, the Bill is sent back to the Lower House. The Lower House again considers the Bill and may or may not accept the amendments made by the Upper House. If the Lower House accepts the amendments, the Bill is passed by the Lower House in the amended form. If it does not accept the amendments made by the Upper House, or if a Bill passed by the Lower House is rejected by the Upper House or more than three months elapse from the date on which the Bill is laid before the Upper House without the Bill being passed by it, the Lower House may again pass the Bill with or without amendments, if any, suggested by the Upper House and sent it back again to the Upper House for concurrence. If, after a Bill has been passed for the second time and transmitted to the Upper House, the Upper House (a) rejects the Bill or, (b) does not pass it within one month from the date on which the Bill is laid before it or (c) makes any amendments to which the Lower House does not agree, the Bill is deemed to be passed by both the Houses in the form in which it was passed for the second time with such amendments as may have been made by the Upper House and agreed to by the Lower House.

73 Art. 197
In the case of a Bill originating in the Upper House, the Bill is sent to the Lower House. If the Lower House amends the Bill, it is sent back to the Upper House. If the Upper House accepts the amendments the Bill is deemed to be passed. But if the Upper House does not accept the amendments made by the Lower House, it can again send back the Bill to the Lower House. But unless and until the Bill is agreed to by both the Houses, it cannot become law.

In regard to Money Bills, the Upper House is bound to return a Money Bill within 14 days of the receipt of the Bill. If it does not do so, the Bill is deemed to be passed by the two Houses after the expiry of 14 days in the form it was passed by the Lower House. If the Upper House makes any recommendations for amendments, the Lower House may or may not accept the amendments. In either case, the Bill is deemed to be passed by the two Houses in the form it is passed by the Lower House on the second occasion.

Money and Financial Bills.

There are two classes of Bills which may contain financial provisions (i) Money Bills as defined in Arts. 110 and 199 of the Constitution and (ii) other Bills containing financial provisions which may be called financial Bills.

A Bill is deemed to be a Money Bill which contains only provisions dealing with all or any of the following matters:
(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 Union or the State or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Union or the State;

(c) the custody of the consolidated fund or the contingency fund of the Union or the State, the payment of moneys into or the withdrawal of moneys from any such fund;

(d) the appropriation of moneys out of the consolidated fund;

(e) the declaring of any expenditure to be expenditure charged on the consolidated fund or the increasing of the amount of any such expenditure;

(f) the receipt of money on account of the consolidated fund or the public account of the Union or the State or the custody or issue of such money, (and in the case of the Union) the audit of the accounts of the Union or of a State;

(g) any matter incidental to any of these specified above.

It should be noted that in order to be deemed a Money Bill, a Bill should contain only any or all of the matters enumerated in Articles 110 and 199. If any other matter is included in a Bill containing any or all of the aforesaid
matters, the Bill will not be considered a Money Bill. This definition substantially follows the definition of a Money Bill in the English Parliament Act of 1911. And such an interpretation has been put upon the relevant section of that Act.

An Appropriation Bill which does not impose any tax or divide the amount sought to be drawn from the consolidated fund is not a Money Bill.

Three other classes of Bills involving financial matters have been excluded from the category of Money Bills:

(a) Bills which provide for the imposition of fines or other pecuniary penalties;
(b) Bills which provide for the demand or payment of fees for licenses or fees for services rendered;
(c) Bills which provide for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

75 H.O.P.D.(1955) vol.viii, c.15810;
76 May, p.820.
78 Arts. 110, 199.
Restriction as to Money Bills

There are two restrictions in regard to Money Bills; (i) they cannot be introduced in the Upper House and (ii) they cannot be introduced without the recommendation of the Head of the State. 79

The power of the Upper House is also limited in regard to Money Bills. A Money Bill after it has been passed by the Lower House is transmitted to the other House for its consideration and recommendation. The Upper House has no right to amend a Money Bill; but it can recommend to the Lower House that certain amendments be made. 80 This provision of the Constitution has been adopted from the practice which obtains in Australia and is known as 'the process of suggestion.' The practice had its origin in the South Australian Parliament in 1857 when the two Houses agreed that it would be 'competent for this Council to suggest any alteration in any such Bill,' viz., Money Bill. Such a provision was subsequently embodied in Sec.53 of the Commonwealth of Australia Constitution, 1900.

The procedure adopted is as follows: after a Money Bill has been transmitted to the Upper House, the

79 Arts. 109, 117, 198, 207.
80 Arts. 109, 198.
Minister-in-charge of the Bill makes a motion that the Bill be taken into consideration. After the motion for consideration is adopted, a motion may be made in the following form - 'That the Council recommends that in Clause such and such, the following words be added or substituted' as the case may be. The motions for recommendations are taken clause by clause. The recommendations may be for specific amendments in the clause or in general terms. It is more convenient if recommendations are in the nature of specific amendments of clauses as in that case drafting motions for amendments is obviated in the Lower House.

If the motions for recommendations are accepted, the Bill is sent back to the Lower House with the recommendations in the form of a schedule. If no recommendations are made the Bill is sent back without any recommendations.

There is no necessity of putting the clauses to the vote or of making any motion that the Bill be passed. Although in certain legislatures, questions are put that the clauses do stand part of the Bill and also that the Bill be passed, the procedure is not warranted by the Constitution. There does not seem to be any scope for the Upper House to pass a Money Bill although the
words 'shall be deemed to have been passed by both Houses' in clauses (3), (4) and (5) of Article 198 seem to imply that passing by the Upper House is also necessary in the case of Money Bills. It is difficult however to see in what form a motion for a third reading would be made in the Upper House when recommendations have been made for amendments in the Bill. The motion cannot be in the form that 'the Bill be passed' because the House is not willing to pass the Bill as transmitted by the Lower House. It cannot be that 'the Bill be passed with the recommendation made,' because that would carry no meaning. It seems therefore that the only duty of the Upper House is to take up a Money Bill at the consideration stage, to have a general discussion and if the consideration motion is passed, to propose recommendations (either in general terms or in the form of specific amendments to the clauses of the Bill) and after the recommendations are adopted to send back the Bill to the Lower House with the recommendation and if no recommendations are proposed, to send the Bill after the consideration motion is passed to the Lower House with a certificate that no recommendations are made. Of course, if no recommendations for amendments
are made the Upper House may pass a motion that the Bill be passed. But it does not seem logical that two different procedure should be adopted in respect of the same class of Bills.

It is instructive to note here the procedure adopted by the Irish Senate, because analogous provisions obtained there in respect of Money Bills. Mr. Hugh Kennedy, the Attorney-General, who afterwards became Chief Justice, was of opinion that the functions of the Upper House in regard to Money Bills were strictly limited to the making of recommendations. But the Senate drew up its standing orders in accordance with the view that Money Bills should be dealt with as far as possible on the same basis as other Bills. Every money Bill was given a second reading when a general discussion might take place; a third (Committee) stage and a fourth (Report) stage when recommendations (instead of amendments) might be proposed; and a fifth stage when the Bill was finally passed. It was then duly certified and returned with a list of recommendations, if any, that had been made or with a certificate that no recommendation had been made.

As has been stated above, it is difficult to formulate the form of a motion for third reading when recommendations

81 Donal O'Sullivan, Irish Free State and its Senate 1940 Ed, p.546.
for amendments in the Bill have been accepted by the Upper House. In the case of Bills other than Money Bills, a motion may be made that the Bill be passed because the Upper House may pass a Bill in a different form than that passed by the Lower House although such a Bill would not become law unless some other formalities are gone through. But a motion, in the case of a Money Bill when recommendations have been made, that 'the Bill be passed' or that 'the Bill be passed with recommendations' seems singularly inappropriate. If at all necessary, the motion may be that 'the Bill be sent back to the Lower House with/without recommendations'.

In the Upper Houses in India, a motion that the Bill be returned is made. In West Bengal, previous to the adoption of new rules in 1961, no motion was made after the consideration motion was passed. The Bill was returned with a message that no recommendations had been made or that recommendations had been made as the case may be.

Financial Bills cannot be introduced without the recommendation of the Head of the State and cannot be introduced in the Upper House but they can be amended by the Upper House because Articles 109 and 198 apply
When a Money Bill is transmitted to the Upper House from the Lower House, a certificate that the Bill is a Money Bill has to be subscribed by the Speaker. The certificate is conclusive on the question whether a Bill is a Money Bill or not. The Upper House has no right to question the certificate. This is also the view taken in the British Parliament where the Speaker has to certify a Money Bill under the Parliament Act, 1911.

There was some discussion in the Indian Parliament as to what is the meaning of the expression 'if any question arises' in clause (3) of Article 110 (a similar expression occurs in Article 199) which lays down that the decision of the Speaker shall be final if any question arises whether a Bill is a Money Bill or not. It was contended that the Speaker's certificate appended under clause (4) could not be conclusive but that if a question is raised in the House (whether the Lower or the Upper) the Speaker would be called upon to give a decision and such decision would be conclusive. But the contention did not prevail.

(For Appropriation Bills, see Financial Procedure)

82 May, p. 818.
Ultra Vires Bills.

Questions often arise as to whether a Bill is within the legislative competence of the Legislature in which it is introduced and what is the function of the Presiding Officer if such questions are raised. The competence of the Legislature is determined by various factors. Certain bills (e.g., Bills regulating trade and commerce) require the previous sanction of the President if they are to be introduced in State Legislatures; certain Bills, e.g., Money Bills, require the recommendation of the Head of the State before they can be introduced. The legislative competence also depends upon the subject matter of legislation—whether a particular subject matter is within the Union List or the State List of Sch. VII of the Constitution. Such a question can arise not only when a particular Bill is with respect to a matter not within the legislative list giving the Legislature the authority to legislate, but also when a Bill is prima facie within the relevant legislative list but may incidentally encroach on a matter not within the competence of the Legislature. Different questions of law arise in such circumstances and reports of decided cases show to what extent even the law courts may differ in their views.
The following principles should therefore be borne in mind when any question of legislative competence is raised. If a Bill is on the face of it inadmissible, e.g., if it is sought to introduce a Bill which requires the previous sanction or recommendation of the Governor, without such sanction or recommendation, the Presiding Officer will rule such a Bill to be out of order and inadmissible unless such sanction or recommendation is forthcoming. But if the competence of the Legislature depends upon the construction of the Constitution or any question of law upon which different views may be held, the Presiding Officer would not take upon himself the responsibility of deciding such a question and prevent the Bill from being introduced or passed. The question of ultra vires of such a Bill would have to be decided, if occasion arises, in a court of law. In short, if the admissibility of a Bill depends upon some question of procedure, the Speaker will decide the point and give his ruling either for or against the Bill; but if it depends upon some substantive question of law, the Speaker would not decide the question so as to prevent the Bill being introduced or passed. As has been expressed by Bourinot: *The Speaker will not give a decision upon a constitutional question, nor decide a question of law
though the same be raised on a point of order or privilege. 84

In a case in West Bengal a question arose whether the President's prior sanction was necessary to a Bill. The Government obtained legal opinion that it was not necessary. The Speaker, although he felt some doubt as to the soundness of the opinion, allowed the Bill to proceed in view of the fact that the defect, if any, may be cured by the subsequent assent of the President. 85

In Madhya Bharat, however, in a similar case, a Bill was not allowed to proceed without the President's sanction. 86

Assent

When a Bill is passed or deemed to have been passed


86 Ruling of Deputy Speaker, 12 April 1956.
by both Houses, the Bill is sent to the Head of the State for his assent. The Head of the State may assent to the Bill or may withhold his assent and may in the case of Bills passed by State Legislatures reserve the Bill for the consideration of the President. If a Bill, is, in the opinion of the Head of the State, of such a nature that if it becomes law, it would so derogate from the powers of the High Court as to endanger the position which the High Court is designed to fulfil under the Constitution, the Bill must be reserved for the consideration of the President.

If a Bill which a State Legislature is competent to enact under the Concurrent List contains any provision inconsistent with the provision of any law made by the Parliament or any existing law, then, in order that such provisions may have validity, the Bill must be reserved for the consideration of the President and must receive his assent.

There are certain other classes of Bills, such as Bills for the acquisition of any 'estate' or property, which also require the assent of the President.

87 Arts. 111, 200.
88 Art. 200.
89 Art. 254.
90 Art. 31.
There has been no occasion after 1947 of any Bill being refused assent by the Head of the State. In England also, there has been no occasion of any Bill being refused assent by the Crown since 1707. There has been some difference of opinion among constitutional lawyers as regards the question whether the Head of the State in assenting to a Bill should act in his discretion or on the advice of his Ministers. It may be argued that as all legislation must have been initiated or supported by the Ministry, the Ministry can have no occasion to advise against the giving of assent by the Head of the State and if the Head of the State is to act on the advice of his Minister, his assent is a mere formality. Circumstances may, however, be conceived in which the Head of the State, e.g., a Governor, may have to withhold his assent on the direction of the President to any Bill which has been passed by a State Legislature but which is against the policy of the Central Government. A constitutional crisis may arise but it cannot be said that the Governor would be acting unconstitutionally if he withholds his assent in such circumstances. This is, however, a matter of constitutional propriety and not of
procedure and we can leave the question at that.

The Head of the State may also send back a Bill for reconsideration either as a whole or with respect to any specified provisions thereof and may also suggest amendments to the Bill. The House, or where there are two Houses of Legislature the Houses, must then reconsider the Bill and may or may not accept the amendments suggested by the Head of the State. The Bill, after being reconsidered and passed, has to be presented again to the Head of the State for his assent. This time, the Head of the State is bound to give his assent. 91

The President may also direct the Head of any State to send back a Bill (other than a Money Bill) which has been reserved for his consideration, for reconsideration by the Legislature which had passed Bill. The Legislature must reconsider the Bill within six months and present it to the President for his assent. The President may then assent to the Bill; he may also withhold his assent. 92

Procedure on Reconsideration

When a Bill is returned for reconsideration, the

91 Arts. 111, 200
92 Art. 201.
procedure in regard to Bills in general applies mutatis mutandis to the consideration of the Bill as a whole of the amendments suggested by the Head of the State. Amendments suggested by the Head of the State are treated as amendments to clauses and are moved and put accordingly.

Whether the President or the Governor can return a Bill with a message that the Bill be 'dropped' arose in the Bihar Legislative Assembly on 18 January 1951. It appears that the President sent a message to the Bihar Legislature, recommending the dropping of the Bihar Black Marketing Bill, which had been reserved for his assent. The Speaker ruled and it seems he was right in ruling that the message was not inconsistent with the provisions of the Constitution. The real difficulty would be as to the form of the motion which should be made. In such cases, the usual motion is that the Bill as returned by the Governor be taken into consideration and amendments if any suggested by the Governor or President are either accepted or rejected. In this case, a motion was moved that the Bill be 'dropped'. The proper motion would have been, after the consideration of the Bill as returned by the Governor, to move that the decision of the House that the Bill be passed be rescinded or discharged.
Pending Bills

A Bill pending in the Legislature (in any of the Houses where there are two Houses) does not lapse on prorogation of the Legislature or of any of the Houses of the Legislature. A Bill will be deemed to be pending when it has been introduced and not when only notice of an intention to introduce (in the case of Government Bills) and to move for leave to introduce (in the case of private members' Bills) is given. The rules of Legislatures, however, provide that Bills of which only notice has been given but which have not been actually introduced would not lapse.

When a Bill has been partly gone into in one session, it can be proceeded with in the next session from the stage in which it was left in the previous session. The practice in the House of Commons is quite different. All proceedings pending at the date of prorogation are quashed. Every Bill has to be renewed after prorogation as if it was introduced for the first time. Proposals were made for the continuance of Bills from one session to another but did not find favour.

All Bills pending in that House, as also all Bills which have been passed by the Lower House but are pending in the Upper House, lapse on the dissolution of the

93 Arts. 107, 196.
94 Bengal Secondary Education Bill, 1940 (order of Speaker, 18 Sept. 1941).
95 May, p. 280.
Lower House.

However, Bills pending in the Upper House, except Bills transmitted by the Lower House, do not lapse on the dissolution of the Lower House. 97

More than one Bill with the same purpose in the same Session.

There is no bar to the introduction of more than one Bill relating to the same subject and containing similar provisions during the same session. But if the House has given a decision on one of such Bills, e.g., if the House has taken one Bill into consideration or committed it to a Select Committee or has circulated the Bill for opinion, the other Bill cannot be proceeded with in the same session. If, however, a Bill has been withdrawn, another Bill with the same object may be proceeded with. If a part of a Bill refers to a subject on which the House has already come to a decision in another Bill, the subsequent Bill may be proceeded with in Committee (e.g., can be referred to a Select Committee) for it would then be open to the Committee to strike out the offending clause. 99

97 Arts. 107, 196.
98 May, p. 522.
Amendment of Act in the same Session

In England, formerly, an Act could not be amended in the same session in which it had been passed, on the ground of repetition. But this is now allowed by the Interpretation Act, 1889. There is no statutory provision either way in India. And it seems the principle of the Interpretation Act would be followed in India, and amendment of an Act in the same session in which it is passed would be allowed.

Delegated Legislation

The grant of rule-making powers to the executive Government has been a feature of legislative practice from the very beginning of the functioning of Legislatures in India. There is no constitutional impropriety in the delegation of powers to the executive, since, as in England, the doctrine of the separation of powers is not the basis of the Indian Constitution. Although at one time the Supreme Court had viewed such delegation with abhorrence, there has been a change in the outlook and the recent trend of the decisions of that Court is in favour of holding such delegation valid.

100 Jatindra's Case, 1949, F.C.R. 595.
The usefulness of the delegation of rule-making powers cannot be questioned. In these days of extensive legislation, minute procedural or technical details can be left out to be worked by rules rather than taking up the time of the Legislature for such matters, provided definite principles are laid down and there is scope for proper parliamentary control.

Statutory instruments as they are known in England or rules or regulations as they are known in India fall into the following classes:

(a) Rules that are not laid before the Legislature; these relate to minor procedural matters which may safely be left to the executive without any provision for parliamentary control;

(b) Rules that are laid before the legislature for information only without any further provision for parliamentary control;

(c) Rules that are laid before the legislature and are liable to modification by the legislature within a prescribed period of time;

(d) Rules that are liable to be annulled by the legislature;

(e) Rules that require the approval of the legislature before they can come into operation.

Classes (d) and (e) do not appear to have come into
existence in India. Class (c) exists in India but does not exist in England. The Select Committee of the House of Commons on Delegated Legislation, however, disapproved the proposal for the introduction of this class of rules on the ground that -

"If a procedure were introduced whereby amendments to the statutory instruments could be moved, debated and decided, then Parliament instead of being relieved of the burden of attending to detail, would find itself engaged more than ever in disposing of matters of detail." (H.C. Paper 310, 1953)

Parliamentary control over delegated legislation, that is to say, over statutory rules framed under statutes, may be exercised in various ways. The Legislature may empower the authority delegated to frame rules without any reference to the Legislature. In such a case parliamentary control can only be exercised by the Legislature as the supreme legislative authority by either repealing or amending the rules by legislation.

Parliamentary control can also be exercised in any of the following ways: -

(a) by retaining a power of scrutiny, without any power of annulment or confirmation;

(b) by retaining the right of annulment by simple resolution; or
(c) by retaining the right of confirmation by simple resolution.

In the first case, a statute may prescribe simply that the rules framed thereunder shall be laid before the Legislature. In such a case, the House has no authority to amend or annul the rules (except of course by legislation). The House cannot take into consideration such rules unless there is a motion before the House. As the Government would be under no necessity to allot any time for the consideration of such rules, they may be considered only on a non-official resolution on a non-official day.

In England, any matter relating to statutory rules which are simply laid before the House of Commons can be raised either by question to the Minister concerned or on a motion for adjournment at the end of business. It is also possible to canvass such a rule on a substantive motion; but if such a motion were agreed to, it would have no binding legal effect, being merely the expression of the opinion of the House.

It should be noted that the validity or the coming into operation of such rules does not depend upon the
laying thereof before the Legislature if the statute simply says that rules shall be laid before the Legislature. The only consequence is to make the Minister responsible to the Legislature. Even if the rules are laid after inordinate delay, no consequence follows. In 1944 a point of order was raised in the Bengal Legislative Assembly as to whether rules made under the Motor Vehicles Act which it was proposed to lay before the House long after they were made should be allowed to be laid. Mr. Speaker Nausher Ali ruled that he could not disallow the laying. The Chief Minister pointed out that the House might censure the Government but there was no defect in the laying. The enabling statute may of course provide that the rules would not be operative unless laid before the House.

In the British House of Commons, a curious incident happened some time ago. Under the Fire Services Emergency Provisions Act, 1941, it was provided that regulations made under the Act should be laid before Parliament and that either House would have the power to annul any regulation within twenty-eight sitting days after the
regulation had been laid. It was discovered about three years after the regulations were made that the regulations were not laid in time. The regulations were laid again before the Parliament after the discovery and an Act (National Fire Service Regulations Indemnity Act, 1944) indemnified the Secretary of State from all consequences of not laying them in due time. It does not appear that any objection was raised as to the validity of the regulations.

When a right of annulment is retained by the Legislature, the statute ordinarily provides that the rules shall be laid before the Legislature and shall be liable to annulment within a specified period. That is what is known as the method of control by negative resolution.

In the case of confirmation - known as the method of 'positive resolution' - the rules must be confirmed by the House before they can come into operation.

In either of the above cases, a right of amending the rules may also be retained.

In the case of a positive resolution, it is the Government which must come before the House and allot time for discussion. In the case of a negative
resolution, if a member gives notice of any such resolution or gives notice of any amendment when a right of amendment has been retained, it seems it would be the duty of the Government to allot time for the discussion. In the British Parliament proceedings for annulment of statutory regulations are 'exempted business' and do not interfere with the programme of daily business. But as pointed out by May, in the case of exceptionally controversial orders or regulations the Government may find it necessary to set apart some of their own time for debating motions for disallowance. The procedure of 'prayers' for the annulment of statutory rules is not known in India.

When any statute prescribes that rules can be amended or annulled within a specified time, and the legislature is prorogued or adjourned before the expiry of the period, a question may arise how the requirements of the Statute are to be satisfied. The English Statutory Instruments Act, 1946, provides for the contingency and lays down that in computing the period no account is to be taken of time during which the Parliament is dissolved or prorogued or during which both

103 May, p. 306.
Houses are adjourned for more than four days. The rules of all legislatures provide that where rules are required to be laid before the House for a specified period, and such period is not completed on or before the day of last sitting of the Session in which they are laid, the rules shall be relaid in the succeeding session or sessions until the said period is completed in one session.

The Presiding Officer may allot time for the consideration of amendments to such rules of which notice may be given by any member.

Rules provide that when a Bill contains proposals for the delegation of legislative power, a memorandum explaining such proposals and drawing attention to their scope and stating also whether they are of normal or exceptional character must accompany the notice of the Bill.

The Indian Parliament and most of other legislatures set up Committees to scrutinise and report to the House whether the powers delegated by the Legislatures have been properly exercised within the frame-work of the statute delegating such powers. When rules are laid before the House, it is the duty of the Committee to
examine such rules and report to the House after considering the following matters:

(i) whether it is in accord with the general objects of the Act pursuant to which it is made;

(ii) whether it contains matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament or the State Legislature;

(iii) whether it contains an imposition of taxation;

(iv) whether it directly or indirectly bars the jurisdiction of the courts;

(v) whether it gives retrospective effect to any of the provisions in respect of which the Act does not expressly give any such power;

(vi) whether it involves expenditure from the Consolidated Fund or the Public Accounts;

(vii) whether it appears to make some unusual or unexpected use of the powers conferred by the Act pursuant to which it is made;

(viii) whether there appears to have been unjustifiable delay in the publication of laying it before the Legislature;

(ix) whether for any reason its form or purport calls for any elucidation.
Many of the statutes of Indian legislatures provide that rules are to be made after previous publication. If such be the case, a draft of the rules has to be published in a manner prescribed by the Government (ordinarily in the official Gazette) and time has to be given for submitting objections to the rules and the rule-making authority has to take into consideration objections if any are submitted.