Summaring the Legislature

The right to summon the legislature is vested in the Executive Head of the State - the President of the Union, or the Governor of the State, as the case may be. He can summon the legislature at any time; but the Constitution requires that not more than six months shall elapse between the day appointed for the first meeting of one session and the day of the last meeting of the previous session. The legislature is summoned by an order under the signature of the Executive Head of the State published in a notification in the Official Gazette; the time and place of meeting are specified in the notification. Individual summonses to the members are issued by the Secretary to the Legislature.

A rule of the Lok Sabha provides that if a session is called at short notice, summonses may not be issued separately but an announcement will be published in the Official Gazette and/or the Press and the members may be informed by telegram. In other Legislatures having in their rules no such provisions, when a session is summoned at a very short notice, besides summonses being issued as usual to individual members, announcement is made in the Gazette.

1 Arts. 85, 174.
and in the Press and telegraphic intimation sent to members. Apart from the summonses to the members, intimation is also given of a session to persons who, although not members of the Legislature, are entitled under the Constitution to take part in its deliberations, e.g., Ministers who are not members of the House concerned, the Attorney-General, the Advocates-General of the States.

The question whether, once a House has been summoned to meet on a particular date, the date can be changed by a subsequent notification, arose in the Council of States in 1953. On 28 May the Rajya Sabha was summoned to meet on 17 August 1953. By a subsequent notification purporting to supersede the previous notification dated 5 August 1953, the House was summoned to meet on 24 August 1953. A protest was made by the members of the Rajya Sabha that the House should be treated more seriously and not in the way it had been treated. It was also argued that the President had no authority to alter the date once he had issued the summons. As regards the second point, the Government contended that the President had the right to alter the date on the ground that the authority who could summon a meeting had also the power

2 Arts. 88, 177.
to cancel the notice and summon a meeting on a later
date. The Law Minister, however, added that he was
expressing the opinion off-hand as the matter had not
been considered from the legal or constitutional point
of view. In the end, the Chairman said that when lawyers
differed on the question of legality, he would not express
any opinion but it should be presumed that the President
had obtained the best legal advice and his action should
be presumed to be regular. He also added that he had no
doubt that the House would have no occasion to be called
on one date and then be asked to come on another. Such
a change of date was also made in West Bengal in July,
1956.

The general proposition that the authority who can
convene a meeting has also the authority to postpone or
alter the date of meeting does not appear to be correct
so far as the ordinary law of meetings is concerned. It
was held in Smith v. Paringa Mines, 2 Ch. p. 193, that when a meeting has been properly convened by the
directors of a company for a certain date, they have no
power to postpone the meeting to another date.
In the British Parliament, the King has the authority to defer or accelerate by subsequent proclamation the date fixed for a meeting of the Parliament. That authority is however derived from the Meetings of Parliament Act, 1797 and the Prorogation Act, 1867. Various other Acts authorise the King to summon the Parliament on dates other than previously fixed, in national emergency. If the general propositions above-mentioned were correct, there would have been no necessity for authorising the King by special enactments.

The Indian Constitution says that the President shall from time to time summon each House of Parliament at such time and place as he thinks fit. But no power is given to him expressly to postpone a meeting or accelerate a meeting. In the absence of such power it is doubtful whether the President has the power to alter the date of meeting after he has once summoned it for a particular date.

Even if the President has the power, it is submitted that summoning a House should not be made a light affair which a frequent or hasty change of date may imply. Only in the case of national emergency or in grave circumstances may the dates, once fixed, be altered.

The same considerations will apply in the case of the summoning of State legislatures also.
Oath or Affirmation

The first duty of a member elected or nominated to the Legislature is to make and subscribe the oath or affirmation of allegiance; for, if any member sits or votes as a member without taking the oath or making the affirmation, he is liable to pay a penalty of Rs. 500 in respect of each day on which he sits or votes.

The oath or affirmation is in the following form:

'I ......... having been elected/nominated a member of .......... do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter.'

The Executive Head of the State or any person authorised by him can administer the oath or affirmation. The Presiding Officer of the Legislature, the Speaker or the Chairman, as the case may be, is generally authorised to administer the oath or affirmation to members. The oath may be taken or the affirmation made either in the House or in the Chamber of the Presiding Officer.

When the Lower House meets for the first time after

3 Arts. 99, 104, 188, 193.

4 Constitution, Schedule III.
a General Election, the Presiding Officer of the former House, who continues to be so till immediately before the first meeting of the new House, can administer the oath or affirmation to the newly elected member/s by virtue of the power, if any, previously delegated to him. In the case of the Upper House, the Chairman continues in office unless his seat itself is vacated and he can administer the oath to any newly elected member.

Election of the Presiding Officer

After the members have taken their oaths, the first business that the House of a Legislature enters into is the election of its Presiding Officers. The Presiding Officer of the House of the People or of a State Legislative Assembly is called the Speaker and that of the Council of States or of a Legislative Council is called the Chairman. Two Deputies, the Deputy Speaker and the Deputy Chairman, have also got to be elected. In the case of the Upper House, the members of which retire by rotation, a Chairman or a Deputy Chairman has got to be elected if the previous Chairman or the Deputy Chairman vacates his seat by rotation. As there is no

5 Arts. 94, 179.
6 Arts. 93, 178, 182.
7 Art. 89.
one to preside over a meeting till the election of the Presiding Officer takes place, it is necessary to have somebody to preside over the meeting which is to elect the Presiding Officer. In the British House of Commons, no one actually presides at the election of the Speaker but the Clerk of the House practically acts in such capacity. In India, however, the Constitution provides that if the offices of the Presiding Officer and his Deputy are vacant, the Executive Head of the State may appoint any member of the House to act as the Presiding Officer. Under a similar provision of the Government of India Act, the Executive Head of the State used to appoint a member of the House to preside at the election of the Presiding Officer. The same procedure has been followed under the Constitution also.

The election of the Speaker in the British House of Commons is a picturesque affair and follows the tradition of a time when to be elected Speaker was rather risky. For it was upon the Speaker that the wrath of the King ordinarily fell if there was a conflict between the King and the House of Commons.

The King directs the Commons to elect one of their members as Speaker and the King's direction is conveyed

8 Arts. 95, 180, 184.
by the Lord Chancellor from the House of Lords. So, when a parliament assembles after a General Election, the Commons are summoned by the Gentleman Usher of the Black Rod (the messenger from the House of Lords, so called because he carries an ebony rod as the insignia of his office) to attend the House of Lords. A few members go there and hear from the Lord Chancellor the message of the King. Before that, each party tends to arrange whom it was going to support, as to who should be elected Speaker and two members, usually back-benchers, have been selected who should respectively propose and second the proposal. If there is no contest and the parties have agreed as to the person, it is usual for the Government party to make, and for the Opposition to second, the proposal. When the message of the King has been received, the House of Commons Proceeds to elect its Speaker. The Clerk of the House calls upon the member or members as prearranged not by words but by pointing his finger at him, to propose or second as the case may be, the name or names of candidates. If there is a contest, he takes a division.

A curious question was raised by the Canadian House of Commons as to what would happen if there is a tie in
the division for the election of the Speaker. It appears that no precedent was available, but the Clerk of the British House of Commons, Sir T.L. Webster gave the following opinion:

"My personal opinion on the precise question asked by you is that in the event of an equality of votes on the first question (i.e., on the first name) proposed from the Chair, the question should be treated as void and the question should be proposed on the second name. I am quite clear that a Clerk of the House has not any power of voting. The question not having received a majority of votes in its favours has not been decided one way or the other, and the decision should be treated as void.

After the election is over, the Speaker-elect makes a show of unwillingness and he has to be conducted to the Chair by pretence of force by the two members who had proposed and seconded his name. Felicitations then follow and a suitable reply is made by the Speaker.

The election of the Speaker is subject to the approval of the King. But it is inconceivable nowadays that such approval would be refused. Approval is given

9 Beauchesne, Parliamentary Rules and Forms, 2nd ed., p. 9."
as a matter of course.

In India, the procedure for the election of the Presiding Officer is regulated by the rules of procedure of the House concerned. The procedure followed in some States is for a member to nominate a candidate from among the members of the House and for another member to second the nomination. The consent of the proposed candidate has to be obtained by the proposer. If there is only one nomination, the proposed candidate is at once declared elected. If there is more than one nomination, a ballot takes place. In case there are more than two nominations, the decision is made by the system of the second ballot. That is to say, if any of the candidates secures a number of votes more than the aggregate number of votes of all the other candidates, he is declared elected. If no one obtains such a number of votes at the first ballot, the candidate who obtains the smallest number of votes is excluded and a second ballot takes place and the ballot is repeated until one of the candidates succeeds in obtaining more votes than the aggregate votes of all the remaining candidates. If two or more candidates obtain the same number of votes, a lot is taken as to which of them should be elected or excluded.
The procedure in the Lok Sabha and some other States is different. Election is made on a motion proposed by one member and seconded by another. If more than one motion is proposed, all the motions are moved and seconded. They are put to vote in the order in which they have been moved. If any motion is carried, the member proposed by that motion is declared elected. The later motions, if any, are not put.

As soon as a member is declared to have been elected as the Presiding Officer, the member appointed to preside at the election vacates the chair and the elected Presiding Officer takes it. Thereafter, the election of the Deputy Presiding Officer takes place in the same manner as that of the Presiding Officer. No approval by the Executive Head of the State of the persons elected as Presiding Officers is necessary.

Presiding Officer of the Council of States

The Vice-President of India is the ex-officio Chairman of the Council of States, and therefore no election of Chairman is necessary; the Deputy Chairman is however elected in the same manner as that for the election of the Speaker of the Lok Sabha.

10 Art. 89.
Temporary Presiding Officers

The Presiding Officer, and in his absence his Deputy, presides over the deliberations of the House. In case both of them are unable to preside, a panel of temporary presiding officers is nominated by the Presiding Officer to preside over the deliberations. If none of the Presiding Officer, his deputy and the temporary presiding officers is available, such other member as may be determined by the House shall act as the Presiding Officer.¹¹

In the British House of Commons, besides the Speaker, another officer known as the Chairman of Ways and Means is appointed by the House on a motion.¹² The Chairman of Ways and Means presides when the House goes into Committee. He also acts as Deputy Speaker and presides over the meeting of the House when the Speaker is absent. There is also a Deputy Chairman, similarly appointed, who acts for the Chairman in his absence and also for the Speaker in the absence of both. The Speaker nominates a panel of ten members to act as Temporary Chairmen of Committees when requested to do so by the Chairman of Ways and Means.

¹¹ Arts. 91, 95, 130, 134.
¹² May, p. 253.
History of the office of the Speaker

Previous to the Montagu Chelmsford Reforms, the Head of the State used to preside over the deliberations of the legislature. The Government of India Act, 1919 first provided for a separate presiding officer of the legislature. The Presiding Officer was called the President and the first President of the Central Legislative Assembly was Sir Fredrick Whyte. Although the Government of India Act provided for the election of the President, it was also provided that the first President will be appointed by the Government. Sir Fredrick Whyte was a member of the House of Commons and he was selected for the post for his deep knowledge of parliamentary procedure.

When the term of Sir Fredrick Whyte expired in 1925, Mr. V.J. Patel was elected as President beating his rival Mr. Rangachari by 2 votes. He had an eventful career as President, came with frequent conflict with the Government, but it was he who laid the foundation of independence of the Speaker, Speaker's severance from party politics and the independence of the legislature Secretariat. His first conflict was with regard to the Public Security Bill. When the bill was pending before the Assembly, the Meerut conspiracy case had been launched. Mr. Patel took the view that no proper discussion of the bill could take place without reference being made to the Meerut Conspiracy Case and the matter being **subjudice** all such references would have to be ruled out of order. In consequence there could be no proper discussion and he refused to place the motion for the consideration of the bill before the House. On the next day, the Viceroy addressed the House and said that the interpretation given by the President was not in accordance with the intention of the rule and the rule was amended taking away the powers of the President of refusing to place a motion before the House.
The next encounter with the Government was when the Government made certain security arrangements within the precincts of the House without consulting the President, Mr. Patel closed the public galleries for a month. A compromise was arrived at whereby all security arrangements were to be under the control of the President who exercised his authority through officers directly appointed by him (the Watch & Ward staff).

The foundation of a separate and independent secretariat for legislature was also laid by President Patel. Although from the very inception, the need for a separate Assembly Department had been felt and canvassed, it was not till 1925 that a separate Assembly Department was created to be under the control of the President in presence of a resolution passed by the Assembly on a motion moved by Pandit Motilal Nehru on September, 22, 1928. The Indian Constitution adopted the same principle by Articles 98 and 187 which say that each house of legislature of a State shall have a separate Secretariat.

President Patel also extracted an apology from the Government when it came to his notice that his rulings were commented upon by official members in the lobby.

President Patel resigned in 1930 and was succeeded by Mahammed Yakub. Then came Ibrahim Rahimutulla and Shanmukhan Chetti. After the resignation of Patel, it seemed as if life had almost left the Assembly; its proceedings became completely lifeless. Sir Abdur Rahim held the office of President from 1935 to 1945 by which time the office of the President came to
be known as that of the Speaker. Abdur Rahim maintained dignity of
the chair and once when Bhulabhai Desai and Aney criticised one of his
rulings in a statement to the Press, he took great exception. Ultimately
after a conference between the various leaders of parties it was agreed
and stated in the Assembly that it should not be open to any member
of the House to criticise directly or indirectly outside the House any
ruling given, opinion expressed or statement made by the Speaker in
the discharge of his duties.

The next Speaker was Mr. Mavlankar who was elected in January,
1946, after defeating his rival Sir Cawasjee Jehangir, a nominated member
set up by the official circle. But it was the vote of some officials
which turned the scale in his favour. In his time certain conventions
were established as regards the independence of the Secretariat. One
was that the officials were to be selected not by the Selection Board
of the Government but by the Speaker and the other was when he insisted
that the Economy Committee set up by the Government should make its
report so far as the Parliament Secretariat was concerned to the Speaker
and it would be for the Speaker to implement the recommendations of the
Committee. It also appears that he had a hand in the incorporation in
the Constitution of the provision of the President's address at the
opening of a Session in imitation of the King's speech and the financial
procedure of having Appropriation Bills. The privileges of Parliament
also were equated with those of the House of Commons at his suggestion
and the Articles 105 and 194 were accordingly incorporated in the
Constitution.
Presiding Officer and Political Party

What should be the position of the Presiding Officer when once elected vis-a-vis the political party to which he belongs has received considerable attention not only in India but also in England. The question may be considered in three aspects: (a) whether the Presiding Officer after being elected should remain a member of the political party; (b) whether, (i) when seeking re-election in a general election, he should be opposed, (ii) when seeking re-election as Speaker he should be opposed; (c) how the grievances of the constituency from which he is elected can be brought before the House.

As regards (a), it has been the strict convention in the British Parliament that the Speaker of the House of Commons severs all connection with the party to which he belonged before his election and does not participate in any activities of the party. In India, however, the Presiding Officers remain members of the party but do not usually attend or participate in any party meetings except on ceremonial or social occasions.

As regards (b)(i), the question whether the Speaker's seat should be contested in a general election if the...
Speaker desires to continue his services was raised in the British Parliament in 1939 and a Select Committee of the House of Commons went into the question thoroughly. A number of schemes providing for a safe seat for the Speaker including the setting up of an imaginary constituency where a contest would not take place and an agreement among the various parties not to contest the Speaker's seat were examined by the Committee but all were rejected. It may be pointed out that in practice, the Speaker's seat is seldom contested. As a matter of fact, from 1714 to 1945 only five contests have taken place, in 1806, 1885, 1895, 1935 and 1945. After 1945, there have been two more instances of contest, namely, in 1950 and 1955, but in each case by an Independent candidate. But there is no convention that the Speaker's seat should not be contested at all. On the other hand, it has been recognised that the ex-Speaker cannot stand as a party candidate. A tradition has therefore grown up that if the Speaker signifies his desire to accept Speakership for the next term, his seat is not contested unless there are very special reasons to do so. On the reassembling of the Parliament, the ex-Speaker is again
elected Speaker. On retirement from the Speakership, the Speaker quits politics - usually with a peerage.

The Select Committee, which consisted of such eminent persons as Mr. Lloyd George, Mr. Churchill and Mr. Lansbury, reported that the existing practice should continue and no safe seat should be provided for the Speaker either by legislation or by agreement.

The recommendation of the Select Committee may best be given in their own words:

"Your Committee attach the greatest importance to the preservation of the right of the electors to choose their own candidate, and they are not prepared to recommend any proposal which would secure the immunity of the Speaker from Opposition in his constituency by a statutory limitation of this right.

Your Committee have carefully considered the possibility that opposition to the Speaker might be avoided by an agreement between all parties. But, even if the principal parties were to accept such an agreement and, in defence of it, were prepared to withdraw all support from a local organisation which was insisting on its undoubted freedom of choice, it is not certain that such contests would be abandoned
or even that their frequency would be abated.

If the Speaker is to be faced with opposition at
general elections the crux of the matter is the extent
to which he and his supporters can properly go in the
defence of his candidature. Your Committee have already
set out above the course which has previously commended
itself to Speakers who have been placed in this dilemma.
And, in their opinion, the adoption of this line of
conduct displays the great political wisdom which the
House now confidently expects from those who are called
upon to preside over its deliberations. While your
Committee cannot but regret — and they are in no doubt
that this regret is fully shared by members of all parties —
that the weight of any additional anxiety should be added
to the heavy burden already laid upon the Speaker, they
are convinced that it is by the ability to meet such
opposition with the same consistent impartiality, which
marks his conduct in the Chair, that the highest
traditions of the Speakership are best served. It would
be better that a Speaker should suffer defeat through
strict adherence to his principles than that he should
deviate in the slightest degree towards political
controversy. Your Committee can envisage no half-way
house, and a return to partisan Speakership would be inevitable.

If the modern Speaker is to be required both to face contests in his constituency, even though perhaps not with the same frequency and regularity as other members, and at the same time to maintain the traditions of his office in such a way that he can continue to discharge to the full satisfaction of the House and of himself the onerous duties that today rest upon him, what course of action is open to him? He clearly cannot stand as a party candidate; but he can stand as the Speaker seeking re-election — a course which has been followed not only by the present Speaker in 1935, but by those Speakers in New Zealand who have most closely adhered to the British tradition. As a non-party and independent candidate with no political proposals to put before the electors, he can but offer them the high ideals of his office, the historical background from which these have developed, and the

13 It appears, however, that Mr. Speaker Morrison stood as a Conservative candidate in the General Election, 1955, and was opposed by an Independent Labour Candidate. See Dod’s Parliament Companion, 1955. In India, Speakers generally stand as party candidates. In Madras the Speaker stood and was elected as an Independent candidate in the General Election, 1952, and was also elected Speaker subsequently.
need for their preservation if freedom of speech and a proper regard for minority opinions are to remain outstanding characteristics of the House of Commons. Thus confining himself to the pure statement of a case without in any way being drawn into argument with his opponents or attempting to controvert any statements that they may make, he is placed in the embarrassing position of being a party to a fight in which he can take no part. The difficulties of such a position may be felt even more keenly by his supporters than they are by the Speaker himself.

Your Committee cannot but agree that such a state of affairs is far from desirable. On the other hand, they are emphatically of opinion that any departure from these traditions that would again bring the Speaker back into the mill of party controversy, and so strip him of that great authority he can now wield in the defence of democracy, would be a retrograde step which would inevitably tend to cast doubt upon the impartiality of the occupant of the Chair and thus impair that confidence which is essential to its unique influence and prestige. ¹⁴

As regards (b) (ii), it appears that the convention that a Speaker is usually re-elected as long as he is

¹⁴ H.C. Paper 98 of 1939.
willing to serve irrespective of changes in the political complexion of the House has been established in England for more than a century. But even then the Select Committee says that there can be no absolute bar to a contest on the re-election of a willing former Speaker.

The Committee says:-

' Though it is now over a hundred years since the re-election to the Chair of a willing Speaker has been challenged, there is no question that the members of each new Parliament have been, and still are, free to take that course. The retention of that full freedom is a vital safeguard in the defence of high traditions of the Speakership, and it might be so exercised against some occupant of the Chair who, entirely innocent of any offence, might yet prove himself unequal to the weight of the immense and growing burden of his office.'

As regards (c), this question was also considered by the Select Committee; in fact the inability of the Speaker to bring forward the grievances of his constituency before the House was advanced as an argument for changing the system of election by either creating an imaginary constituency for the Speaker or making his constituency
a two-member one. The Select Committee met the arguments as follows:

'It has been argued by those who advocate some change in the existing system that the Speaker's non-political position after election further disenfranchises his constituents, in that he cannot express their views in the debate or by his vote in divisions, nor can he by political means seek to redress their grievances. Your Committee do not find themselves impressed by these arguments. In the British political system, whatever may be its merits or demerits, there is a strong party control over the actions of members in the House and the sterilisation of a single vote on whichever side it might have been delivered will have so small an influence on matters which are the subject of party decisions as to be entirely negligible. On the other hand, on non-controversial matters and particular grievances your Committee feel assured that there are many members in any House who would most willingly place their services at the disposal of the Speaker and his constituents.

In matters of individual interest or grievance the Speaker's constituents are in fact in a peculiarly favoured position. Though the Speaker himself can put down no
questions, any matter affecting them which he feels justified in raising privately with a Department of State will, in the nature of human reactions, coming from such a source, receive the most careful consideration. Again, if the circumstances of a particular case require that a question should receive public expression, it would be, and in fact, is willingly sponsored by other members.'

**Outside interests of Presiding Officers**

Whether Presiding Officers or the Deputy Presiding Officers can have outside interests, e.g., whether they can hold directorships of companies, or follow any profession such as the profession of law, has been occasionally asked but no authoritative decision seems to have been laid down.

In England, the question has been raised in the case of Ministers and once at least in the case of a Deputy Speaker. In the case of Ministers a rule was laid down by Sir Henry Campbell-Bannerman in 1906 in the following terms:

'The condition which was laid down on the formation of the Government was that all directorships held by Ministers must be resigned except in the case of honorary directorships, directorships in connection with philanthropic undertakings, and directorships in private
In 1937, the then Prime Minister Baldwin declared that this rule had been followed by successive Prime Ministers and would be followed by him. The rule was further elucidated in 1939 in respect of private companies which had been excepted in the Campbell-Bannerman rule. It was said:

"At the time when this rule was announced the term "private company" had no statutory significance and was used probably to cover companies dealing wholly or mainly with family interests. Since then the term has received a statutory definition which covers a very wide field and examples of existing private companies submitted by the hon. and learned Gentleman show that such companies may control very large amounts of capital while their shares may be in turn controlled by public companies engaged in the widest possible range of activities. In these circumstances it is clear that if the term "private companies" in Sir Henry Campbell-Bannerman's ruling were to be interpreted in the statutory sense it would be travel far beyond the intentions of the original framers of the rule."  

The Prime Minister proposed to interpret the term in future as applying only to concerns dealing wholly or mainly with family affairs or interests and not principally engaged in trading.

As regards following independent professions, the question was raised with respect to Solicitors in private practice. Mr. Baldwin said in 1937 that it would be unreasonable to require that a Solicitor, on becoming a member of the Government, should dissolve his partnership or should be obliged to allow his annual practising certificates to lapse; on the other hand he should, in accordance with the principle laid down in Sir Henry Campbell-Bannerman's rule, cease to carry on the daily routine work of the firm or to take any active part in his ordinary business although he should not be precluded from continuing to advise in matters of family trusts, guardianships and similar other cases; a certain amount of discretion was to be allowed since it was impossible to cover all conceivable cases in any rule.

This principle was accepted by the House and it was applied to Ministers both inside and outside the Cabinet.

As regards the Speaker, a question was put to Sir Gilbert Campion, as he then was, by a Select Committee
which was appointed to consider the case of private practice by the Chairman of Ways and Means who is also the Deputy Speaker, whether Sir Henry Campbell-Bannerman's rule applied to the case of the officers of the House. Sir Gilbert Campion replied that it had never been explicitly applied but he said that the Speaker did not have any outside interest. The Speaker of the House of Commons after election to the office resigns all public directorships; as regards private directorships it depends on the nature of the company, but the Speaker does not take any part in the activities of a company likely to be connected with Parliament or Parliamentary business in any way. There does not appear to be any precedent in India. In West Bengal, however, it appears, a former President of the Bengal Legislative Council continued to hold directorships in Companies while in office. It appears that a convention has now been established in West Bengal that a member on being elected Speaker should resign any directorship of a company.  

So far as the Deputy Speaker is concerned, a Select Committee of the House of Commons considered the matter

and it transpired in evidence that a distinction was made between the Speaker and the Deputy Speaker and that several Chairman of Ways and Means continued to have outside interests such as holding active directorships of Companies or practising the profession of a Barrister or Solicitor. 18

As a result of the report of the Committee, a rule was laid down by the House of Commons that the Chairman and the Deputy Chairman, if they happen to be lawyers, should refrain from acting in a professional capacity on behalf of or against members of the House. 19

In West Bengal successive Deputy Speakers and Deputy Presidents have practised the legal profession.

Powers of Deputy Speaker

Article 95, clause (1) and Article 180, clause (1) of the Constitution provide that when the office of the Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker. Clause (2) of these Articles says that when the Speaker is absent from any meeting, the Deputy Speaker shall act as Speaker. Clause (2)

refers to the circumstances when the office of Speaker is not vacant, but the Speaker for some reason or other, e.g., illness, is unable to attend the meeting, and obviously authorises the Deputy Speaker only to preside at the meeting and exercise such functions of the Speaker as are exercisable in a meeting, e.g., keeping order, deciding points of order and so on.

But besides presiding at meetings the Speaker has other duties to perform in regard to the work of the House. Some such duties are enjoined by the rules of procedure and some by the Constitution itself. One of the duties cast upon the Speaker by the Constitution is to certify Money Bills when they are sent to the Upper House or to the Head of the State for assent. Articles 110 and 199 specifically mention the Speaker and under Articles 95, clause (1) and 180, clause (1), the Deputy Speaker can perform this duty only when the office of the Speaker is vacant. He cannot, it seems, certify Money Bills when the office of Speaker is not vacant but for some reason (e.g., absence from the country) the Speaker is not available. In the British

20 Arts. 110, 199.
21 ibid.
House of Commons, Money Bills are required to be endorsed by the Speaker in accordance with the provisions of the Parliament Act, 1911. The Deputy Speaker has, however, endorsed Money Bills during the absence of the Speaker. This is in accordance with the Deputy Speakers Act, 1855.

The rules of procedure of the House require that all bills should be authenticated by the Speaker when they are transmitted to the Upper House or sent to the Head of the State for assent. The rules also require the Speaker to decide on the admissibility of adjournment motions, questions etc., before they come before the House. The question is whether when the Speaker is not available, the Deputy Speaker can exercise these functions of the Speaker. Unless the rules specifically authorise the Deputy Speaker, it seems, the Deputy Speaker would have no authority to do so. Rules of many Houses provide that the Speaker may give such directions as may be necessary for giving effect to the rules; under such a rule, the Speaker may authorise the Deputy Speaker to exercise his functions or he may delegate the authority to the Deputy Speaker. If this view is correct, there may not be any difficulty about these matters.

22 May, p.818, f.n.
23 18 & 19 Vic. c.84.
So far, however, as Money Bills are concerned, the Constitution will stand in the way, for the Constitution enjoins the Speaker to certify Money Bills and the Constitution itself provides for the exercise of the functions of the Speaker in the absence of the Speaker. There seems to be a lacuna here which should be removed.

Resignation and Removal of Presiding Officers

The Presiding Officer may resign his office by a letter addressed to the Deputy Presiding Officer; similarly the Deputy Presiding Officer may resign his office by a letter addressed to the Presiding Officer. If either of the offices is vacant, it seems the occupant of the other office cannot resign until the vacant office is filled up. It appears, however, that in the Lok Sabha when Mr. Speaker Kavalankar died, Mr. Ananthasayanam Ayyangar resigned his office of Deputy Speaker on 7 March, 1956 by a letter addressed to the office of the Speaker although there was no incumbent of the office at the time. Thereafter the Secretary of the Lok Sabha informed the President of India that the office of both the Speaker and the Deputy Speaker were vacant and the President appointed another member to perform the duties of the

24 Arts. 90, 94, 179, 183.
Speaker till a Speaker had been elected, Mr. Ananthasayanam Ayyangar was then duly elected as Speaker of the Lok Sabha on 8 March 1956. If both the Presiding Officer and Deputy Presiding Officer desire to resign at the same time it appears they cannot do so. The solution may be found in resigning the offices by each of them in a letter addressed to the other; for, it may be argued that resignation does not take effect unless the letter reaches the addressee and each continues to hold the office up to that time. How far this view is correct may be open to question.

As regards removal of Presiding Officer see Chapter IX.

Sitting Arrangement

The sitting arrangement for members is left, by the rules of procedure, to the discretion of the Presiding Officer. In accordance with the universal practice in Parliaments, members belonging to the Government Party take their seats on the right of the Presiding Officer, and those in the Opposition to his left. If there is

more than one party in the Opposition, the Presiding Officer allots, on the application of parties, a block of seats for each party. Each party then may allot the seats to its members as it chooses. The Presiding Officer may also reserve seats for particular members once seats have been allocated to them. A group of members in order to be considered a party is usually required to consist of at least one-tenth of the total number of members of the House. A smaller number of members may also be recognised as a group for allotment of a compact block of seats.

The Chamber in most Indian legislatures is, unlike the British House of Commons which is oblong and which has accommodation only for about two-thirds of the members, circular or semi-circular in shape and has ample accommodation for all the members of the House; desks are also provided for the members. The House of Commons was destroyed by bombs during the Second World War and when it was going to be rebuilt, a question was raised whether the shape should be changed and a large chamber built to provide accommodation for a larger number of members. 26 The conservative spirit of the British people prevailed and the chamber was rebuilt

almost as it was before it was destroyed. The speech of Sir Winston Churchill in that connection is well worth quoting. The Prime Minister said:  

'The semi-circular Assembly which appeals to the political theorists, enables every individual and every group to move round the centre adopting various shades of pink according as the weather changes. I am a convinced supporter of the Party system in preference to the group system. I have seen many earnest and ardent Parliaments destroyed by the group system. The party system is much favoured by the oblong form of Chamber. It is easy for an individual to move through these insensible gradations from Left to Right, but the act of crossing the floor is one which requires serious consideration. I am well informed on this matter, for I have accomplished that difficult process, not only once but twice. Logic is a poor guide compared with custom. Logic which has created in so many countries semi-circular Assemblies which have buildings which give to every member, not only a seat to sit in, but often a desk to write at, with a lid to bang, has proved fatal to Parliamentary

27 H.C.D. 1943, vol. 393, c. 403.
Government as we know it here in its home and in the 
land of its birth ... If the House is big enough to 
contain all its members, nine-tenths of its debates 
will be conducted in the depressing atmosphere of an 
almost empty or half empty Chamber. The essence of 
good House of Commons speaking is the conversational 
style, the facility for quick, informal interruptions 
and interchanges. Harangues from a rostrum would be 
a bad substitute for the conversational style in 
which so much of our business is done. But the conver­
sational style requires a fairly small space, and 
there should be on great occasions a sense of crowd and 
urgency.1

Opening of Legislature

The first session of the Legislature in each year 
is opened by the Executive Head of the State by a 
speech informing the Legislature of the causes of its 
summons.28 In the legislatures which have two Houses, 
the Executive Head of the State addresses the two 
Houses assembled together. If the Legislature meets 
for the first time after a general election, the 
Executive Head addresses the Legislature on the first 
sitting day after the election of the Presiding Officer;29

28 Arts. 87, 176.
29 Saradhkar vs. Legislative Assembly, A.I.R. 
1952 Orissa, 234.
otherwise he addresses it on the first sitting day before any business is entered upon.

This provision of opening the Legislature by the Executive Head of the State has been taken from the practice obtaining in England where the King opens the Parliament annually with a speech. In the Dominions of the British Commonwealth also, there is the practice of the Governor-General addressing the Legislature.

The King's speech enunciates the policy of the Government and discussion on the King's speech is initiated by a motion for giving an address to the King. Formerly, the address to the King's speech used to be an answer, paragraph by paragraph, to the speech, and a Committee was formed to draft the address. Since 1890–91, no such detailed address is given. But the answer is recorded in the form of a single resolution expressing the thanks of the House for the most gracious speech delivered by His Majesty, and amendments are moved by way of addition thereto. In some of the Dominions, the older form is in use. The procedure is as follows: The House assembles to hear the King's speech or the Governor's speech or
Governor-General's speech as the case may be. As the speech is delivered to the two Houses assembled together, the Presiding Officer of each House then reports the speech to the House and upon such report, discussion on the speech follows by means of a motion for Address and amendment. But before that is done, some formal business is transacted in the House in order to assert the right of the House to deliberate without reference to the immediate cause of summons. This formality has its origin in history in the struggle between the King and the Parliament. It is unnecessary to introduce such formality in our country where the Constitution is written and fixed and particularly in view of the fact that the Legislature has no right to meet unless summoned by the Executive Head of the State.

As in England, the speech of the Executive Head of the State in India usually deals with the legislative programme, the financial recommendations and administrative policy of the Government. Each House of the Legislature has the right to discuss the speech of the Executive Head, and usually the debate on the speech is given precedence over other business. Formerly the
Constitution specifically provided for such precedence but that provision has now been amended and it is not obligatory now to give precedence to the debate on the speech.

Walk-out in Protest against the speech of the Executive Head

On February 18, 1963, when the President of India was addressing the two Houses of Parliament, five members staged a walk-out in protest against the President's speech being read in English. A Committee was appointed to consider their conduct and the Committee reported that any interruption or walk-out during the President's speech will be considered grossly disorderly conduct and for such disorderly conduct a member may be suspended for a period extending to one year. These offending members in this case were reprimanded by the House and the conduct of the other two disapproved. 30(a)

In the Kenya Legislative Assembly walk-out on the occasion of Governor's speech was held to be grossly disorderly conduct. 30(b)

In England however, when Charles I came to arrest certain members, the members protested crying 'privilege', 'privilege'.

This point of view is however open to the objection that the discourtesy shown to the President was outside the House because a joint sitting of the two Houses is not considered a sitting of the two Houses but is merely an assemblage of the members of the two Houses. Whether a member can be punished for his misbehaviour outside the House is open to question (See also p .................)

30(a) Report of the Committee on the conduct of members presented on 12 March '63.

30(b) See Table 9, 1961.
Debate on the Speech of the Executive Head

The speech as such cannot be the subject matter of discussion. The debate is therefore initiated, as in England, by a motion of thanks proposed by a member and usually seconded by another. As all communication between the Legislature and the Head of the State has to be by an Address, the motion generally takes the form of a proposal for presenting an Address in reply to the Executive Head expressing the thanks of the members for the speech delivered by him. The motion is moved on the day the speech is delivered, but is usually postponed for discussion to a subsequent day.

To this motion amendments may be moved by way of adding words at the end of the Address in reply. The words sought to be added usually take the form of expressing regret for any matter omitted from the speech or for the policy contained therein. Amendments may also be moved in any other form that may be formed appropriate by the Speaker.
Scope of Debate

Not only can the administrative policy contained in the speech of the Executive Head be criticised, but any other matter may be raised by amendments moved to the motion of thanks. Although the Constitution provides that the debate is to be on points raised by the speech, in practice debate is allowed on matters which are not referred to in the speech. The whole administration of the Government whether referred to in the speech or not, therefore, may form the subject matter of the debate. The debate generally falls into two parts, the first, a general discussion on the speech which covers the whole field of Government policy and second, a discussion on specific matters raised by the amendments.

The motion of thanks is taken to be a motion of confidence. And in the British House of Commons, usually a specific question of Government policy is raised by an amendment to the motion, e.g., the question of nationalisation of iron and steel in 1950. An amendment in specific terms that the House has no confidence in the Ministers

may also be proposed to the motion of thanks. If an amendment is carried, and the Address in reply as amended is agreed to, it is generally taken to be a motion of no-confidence and the Ministry resigns. In 1924, the Baldwin Ministry resigned after an amendment to the Address in reply that the House had no confidence in His Majesty's Advisers was passed by the House of Commons.33

A division can be claimed on the amendment to the motion of thanks as also on the main motion if amended.34

Presentation of Address and Reply thereto

After the motion of thanks has been agreed to, with or without amendments, the Address in reply is sent to the Executive Head of the State who makes usually a formal acknowledgment which is communicated to the House by the Presiding Officer. In the United Kingdom, the communication is made by a member of the Royal Household.

Adjournment of the House

In England, the sittings of the House of Commons are ordinarily adjourned whether for the day or for a period

34 Ibid.
by means of a motion of adjournment, but a sitting can be adjourned without Question put (a) on a count showing that there is no quorum or (b) in case of grave disorder under S.Q. No. 24. In India, however, no such motion is necessary. The Presiding Officer has the power to adjourn the daily sittings at any time and for any purpose. The time of commencement and termination of a sitting are usually prescribed by the rules of procedure but the Presiding Officer is given by the rules of some legislatures the authority to relax the rules. The days on which the Legislature would sit are generally arranged by the Government or where so allowed by the rules, by the Presiding Officer in consultation with the Leader of the House, having regard to the volume of business to be transacted in a session. In fixing the days, notice is taken of any holiday intervening or of days on which the House would not be willing to sit. If any pre-arranged sitting on any day has to be adjourned, the adjournment is decided upon by the House — not by a formal motion but by the Presiding Officer taking the sense of the House.

Prorogation

The termination of a session of the Legislature is called prorogation and the Executive Head of the State
has the right to prorogue the Legislature.

In England, the Parliament is prorogued either by a Commission when the Parliament is sitting or by a proclamation during the period when it stands adjourned. The British Parliament is always prorogued till a specified date. In India, ordinarily the order of prorogation is sent at the end of a session to the Presiding Officer who announces that the Legislature stands prorogued by command of the Executive Head. But there are precedents when Legislatures have been prorogued by notifications published in the official gazette after the Legislature had been adjourned. No date is specified in the order of prorogation on which the Legislature is to reassemble.

**Effect of Prorogation on pending business**

The effect of prorogation is not, as in England 'to pass a sponge over the Parliamentary slate.' The Constitution provides that Bills pending in the Legislature at the time of prorogation shall not lapse. Rules of Procedure of the different Legislatures prescribe whether other matters such as questions,

35 In Nov. 1942, Apr. 1943, Mar. 1945 and May 1953, such a course was adopted in West Bengal.

36 Arts. 107, 196.
resolutions, etc., should or should not lapse. For instance, the rules of the Indian Parliament prescribes that all pending notices except those for motion for leave to introduce certain bills shall lapse. A motion, resolution or an amendment which has been moved and is pending in the House does not lapse. If any bill has been partly dealt with in any session, the bill can, under the precedent followed in West Bengal Legislature, be taken up in the next session from the stage where it was left at the previous session.\textsuperscript{37}

Effect of prorogation on Committees of the House

In the British House of Commons, all Committees cease to exist upon prorogation and any reference to any Select Committee appointed in one session cannot be taken up by it after prorogation of the Session. The procedure is for the House to appoint a new Committee and make a fresh reference.\textsuperscript{38}

The underlying principle seems to be that any reference to a Committee which itself becomes \textit{functus officio} becomes infructuous and cannot be continued without a fresh order of the House.

\textsuperscript{37} B.L.C.P. 10 Mar. 1934; W.B.L.A.P., 30.9.54.

\textsuperscript{38} May, p.640 and the references cited there.
In India Select Committees do not cease to exist after prorogation and therefore a Select Committee appointed in one session can and does continue its work even after prorogation and may make its report in a subsequent session.

There are however certain Committees which cease to function by efflux of time, e.g., the Committee of Privileges which is elected annually. The question therefore is whether the work of a Committee of Privileges which has not finished its work during its lifetime can be taken up by its successor. The principle seems to be this that when a Committee ceases to function for whatever reason — whether it is by prorogation or efflux of time — all references fall through. If the Committee has not reported within its lifetime, the reference becomes infructuous and the successor Committee has no jurisdiction to take up the matter left unfinished without a further reference from the House or from the Speaker, as the case may be.39

Dissolution

The House of the People and the Legislative Assemblies of the States stand dissolved by efflux of time after the

39 See also Searchlight Case (2nd reference to Supreme Court). 1961(1) S.C.R. p.96.
expiry of five years from the first meeting of the House concerned after a general election. The period, however, can be extended during a declared emergency by Parliament by law for a period not exceeding one year at a time.  

The Executive Head of the State can dissolve the Lower House at any time. The question as to in what circumstances the Executive Head would be entitled to dissolve the House is a matter not of procedure but of constitutional convention.

The Council of States and the Legislative Council of the States are not liable to be dissolved at any time. But one-third of the members of such Council retire by rotation every second year and a fresh election is made in their place.

Effect of dissolution on business pending in Councils

If the House of the People is dissolved, any bill pending in the Council of States, but not passed by the House of the People, does not lapse. Similarly, bills pending in the State Legislative Councils but not

40 Arts. 83, 172.
41 ibid.
42 Arts. 85, 174.
43 Arts. 83(1), 172(2).
44 Art. 107.
Any Bill which has been passed by the House of the People but is pending in the Council of States lapses on the dissolution of the House of the People, but if in respect of any such bill the President has summoned a joint session of the House of the People and the Council of States and since then the House of the People is dissolved, the Bill will not lapse and a joint sitting of the two Houses may be held in spite of the dissolution of the House of the People.

In the States, however, all bills passed by the Assembly and pending in the Council lapse on the dissolution of the Assembly.

**Suspension of Legislature**

If the President is satisfied that a situation has arisen in which the Government of a State cannot be carried on in accordance with the Constitution, he may by proclamation suspend the Legislature of the State and direct that the powers of the Legislature shall be

45 Art. 196.
46 Art. 107.
47 Art. 108.
48 Art. 196.
exercised by or under the authority of Parliament. Such a proclamation remains in force for two months and if approved by the Parliament for six months from the date of approval. The period of six months can be extended by six months at a time by successive approval of the proclamation. But no such proclamation can remain in force for more than three years. A question may arise as to what would be the position of the Presiding Officers in the case of a suspension of the legislature. There can be no doubt that a proclamation under Article 356 does not operate as an order of dissolution of the Legislature. That article does not authorise the President to dissolve the Legislature. What it does is to authorise him to assume to himself certain powers, to direct that the powers of the Legislature shall be exercisable by or under the authority of the Parliament and to suspend the Constitution in so far as is necessary to attain the abovementioned objects. The effect, therefore, is that the Legislature remains in existence although it cannot function, i.e., exercise any of its powers. In fact, the exercise of the powers of the State Legislature by the Parliament presupposes the existence of a State Legislature and it may have

49 Art. 356.
50 Art. 356.
been noticed that Art. 168 which provides that every State must have a Legislature was not suspended in the case of East Punjab. Indeed it could not have been suspended.

What then would be the position of the Presiding Officer when the Legislature is suspended? If the Legislature does not cease to exist, the Presiding Officer does not, it may be assumed, vacate his office. A Presiding Officer can be removed only by one of the three modes enumerated in the Constitution (Articles 179, 183), viz., by (1) ceasing to be member of the Legislature, (2) resignation, and (3) removal by a vote of no-confidence. There is no other mode by which a Presiding Officer can be removed from his office. Once a Presiding Officer has been elected, any suspension of the articles relating to Presiding Officer cannot in any way have the effect of removing him from his office. Indeed it seems that if the article relating to the Presiding Officers are suspended, none of the above-mentioned modes of removing a Presiding Officer would be available. It may be noted that the Speaker continues in his office even after a dissolution till the first meeting of the Assembly after the
dissolution (Article 179). As there is no power to remove a Presiding Officer from his office except as provided by the Constitution, the Presiding Officer does not vacate office during the period of suspension of the Legislature.

It may be noted that if the article as to prorogation and dissolution is also suspended, the Assembly cannot be dissolved until and unless the proclamation is revoked. In Bengal, when section 93 of the Government of India Act was applied in 1945, the proclamation under section 93 was revoked before dissolution of the Assembly and fresh elections were ordered.

Article 356 of the Constitution in all material particulars is in almost the same language as section 93 of the Government of India Act, 1935, and a question regarding the Speaker arose in Bengal in 1945 when that section was brought into operation. The Government declined to pay the salary of Mr. Speaker Nausherali on the ground not that Mr. Nausherali had ceased to be the Speaker but on the ground that the section under which the Speaker was entitled to draw his salary had (as in Punjab) been suspended. Mr. Nausherali continued to exercise his administrative functions as Speaker and indeed it was in effect recognised by the Government.
that he continued to be the Speaker, for, he was allowed to draw his compensatory allowance although the payment of his salary was objected to. After the revocation of the order of suspension, Mr. Speaker Nausher Ali was paid all his arrears of salary. That could be done only on the basis that he had not ceased to be the Speaker in the meantime.

It appears therefore that the suspension of the articles as aforesaid cannot have the effect of removing the Presiding Officer from his office and would not affect his right to get his salary.

A question may arise whether the House can assemble under the direction of the Presiding Officer if a proclamation of suspension is made during a period of adjournment of the House without proroguing the House. It is unlikely in fact, for, a House is sure to be prorogued before any such proclamation is issued. But even if the House is not prorogued and the House assembles, it cannot function as a legislature, for all its powers are to be exercised under the proclamation of the Parliament.