CHAPTER 9
"Each House, within the terms laid down in the constitution, is independent. If there is a sense of hostility between the two Houses, both suffer. Parliament is an organic whole and I do submit that our approach should be a friendly approach."

—Jawaharlal Nehru
Prime Minister of India.

HISTORY OF THE COUNCIL OF STATES (Rajya Sabha)

The Provincial part of the Act of 1935 alone came into operation on April 1, 1937 and on the outbreak of the second world war in September 1939 the establishment of Federation was postponed sine Die. In fact, the Indian National Congress was opposed to the Act, lock, stock and barrel as it saw in the Act a fresh attempt to rivet the chain of slavery from India's neck more firmly than ever. In a publication issued under the auspices of the Indian Congress it was said:

"It. (the Act of 1935) is a prodigy of imperialist statesmanship. It is an elaborate and ingenious device to frustrate the emergence of a free India and to secure — so far as constitutional provisions can secure — the continuance of British rule in circumstances totally different from those prevailing at the time of its establishment." Jawaharlal Nehru described this act "a new charter of bondage" in his presidential address at the Faizpur Session of the Congress.

The federal part of the constitution never came into operation. It was a misfortune that the Federation was not set up soon after the beginning of Provincial Autonomy and there were no opportunities to test the full potentialities of the Act of 1935. Events alone could have shown whether the British or Indian views of the Act were really correct. The years since the inauguration of provincial Autonomy in 1937 to the establishment of independence in 1947 have been the most eventful in the recent history of India. The outbreak of the war precipitated a grave constitutional crisis in India. Public opinion in India largely opposed the British attitude during the war and demanded full dominion status as a condition precedent to public cooperation in the prosecution of war. Mahatma Gandhi was invited by the Viceroy to an interview. He told Lord Linlithgow that his "own sympathies were with England and France" but he made it clear that he spoke only in his personal capacity not as a representative of the Congress. A little later he wrote in the Harijan that "whatever support was to be given to the British should be given unconditionally." A declaration of Indian independence was necessary to "make the people of India enthusiastic about a war which was not theirs." The British Government sent Sir Stafford Cripps to bring about conciliation with the Congress. The Cripps mission failed. Thereafter the Cabinet mission came to India and put forward its plan for the future constitutional development, which was based upon the scheme of All India Federation with the option of middle tier,

2 Dr. Pattabhi Sitaramaiah--the history of the Congress. Vol. 2 pp. 124-125.
the formation of regional sub federations in the North-East and the North-West. On the basis of the plan new general elections to the legislatures were held in India and the newly elected provincial legislatures elected their quota of members to the Constituent Assembly envisaged in the plan, which the Indian States were also asked to send their representatives in drawing up the Federal Constitution. The Constitution of the Constituent Assembly was based on communal representation as agreed to between the parties. The Constituent Assembly was boycotted by the Muslim League. At long last the internal conflict between the Congress and the Muslim League was resolved by Mountbatten Plan for the partition of India. When this plan came into operation on 15th August 1947 India got full independence and became a sovereign state for all practical purposes. The Constituent Assembly as reconstituted by the addition of representatives of the States that immediately acceded to the Indian Polity and the withdrawal of the members from the regions that constituted the State of Pakistan started afresh the work of the drafting a constitution for India.

FRAMING OF THE PRESENT CONSTITUTION:

The Constituent Assembly had a tremendous job to do. It had to provide a constitution which would unite population of over 300 millions. In the famous objectives Resolution moved by Pandit Nehru it laid down the objectives of the new constitution, which in brief-stated that: India would be a Federal Republic; the constitution would recognise the fundamental rights of the people; liberty, equality, fraternity and justice could
be the basis of citizenship. After prolonged deliberations on the draft scheme as prepared by the sub-committee under the chairmanship of Dr. B.R. Ambedkar, the constituent Assembly finally accepted the Republican Constitution of India on 26th November 1949 and the new constitution derives in great measure from the Government of India Act of 1935. Both in language and substance it is a close copy of the Act of 1935 and its description as a palimpsest of that Act is not incorrect. The new constitution may be indeed be described as the working constitution of the country under the old Act adapted to its new political status. 3

THE COUNCIL OF STATES IN FREE INDIA:

Before taking up the examination of the upper house in the present constitution in the Indian Republic it is necessary to state chief principles which have by their incorporation in the new constitution completely altered the fundamental factors on which the Federal Legislature has been constituted. The Constitution recognises the equality of all the citizens without distinction of caste, colour, creed or sex. It promises equality before law to all the citizens of the Republic. Hence communal electorates and communal representation that had for long disturbed the equanimity and political life of the country have disappeared and India is a secular democratic sovereign State. The State does not recognise any religious as its own but gives full religious freedom to its citizens and its object is to secure the material well-being of all without any kind of distinction. These objects have permeated every institution and organ of Government including the Federal Parliament. Part V,

N. N. Srinivasan: Democratic Government in India.
Chapter 2, Article 79 to 122 deal with the Parliament of the Republic. Article 79 says that there shall be a parliament for the union which shall consist of the President and Two Houses to be known as the Council of States and the House of the People. India's parliament is not a sovereign legislature like the British parliament on which it is modelled. Its legislative authority extends in normal times only to the subjects enumerated in the Union and concurrent lists in the Seventh Schedule of the constitution. Further its supremacy even in these cases is limited by the system of fundamental rights guaranteed to the citizen by the constitution and protected by the supreme court. In spite of these restrictions on its authority Parliament is the vital centre of the whole scheme of Government under the new constitution. It is entrusted with a great degree of power and responsibility than any other institution. The responsibility for the good government of the entire country in the last resort is placed in its hands and it is based on universal suffrage and is representative of every part of the Union. Sovereignty in a practical sense may indeed be said to vest in it.

The maximum strength of the Council of States which is the upper federal House is 250.

Article 80 of the constitution says:

(1) The Council of States Shall consist of—

(a) Twelve members to be nominated by the president in accordance with the provisions of clause(3); and

4 The Council of States and the House of the People are now known as Rajya Sabha and Lok Sabha respectively.
(b) not more than two hundred and thirty-eight representatives of the states.

(2) The allocation of States in the Council of States to be filled by representatives of the States shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.

PART V.--THE UNION -- Arts. 80-81.

(3) The members to be nominated by the President under sub-clause (a) of clause (1) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:--

Literature, Science, Art and Social Service.

(4) The representatives of each State specified in Part A or Part B of the First Schedule in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of single transferable vote.

(5) The representatives of the States specified in Part C of the First Schedule in the Council of States shall be chosen in such manner as parliament may by law prescribe.

Thus as will be seen above twelve members are to be nominated by the President from among persons distinguished by special knowledge or practical experience in the fields of literature, science, art or social service and the like. The rest are elected. The representatives of Part A and part B
states are elected by the elected members of their respective Legislative Assemblies. The representatives of Part C States are elected by the elected members of the Legislative Assemblies in States where these have been established and in others by electoral colleges specially constituted for the purpose by direct election on basis adult suffrage. The election of members is through the system of proportional representation by means of the single transferable vote.

The allocation of seats in the Council of States among the constituent States and territories of the union is not on the basis of the equality of federating units but on that of population slightly weighed in favour of the smaller units. A constituent State is accorded representation at the rate of one member for each million for the first five millions of its population and thereafter only one seat for every additional two millions. The allocation contained in the Fourth Schedule of the constitution is as follows:

Allocation of seats in the Council of States:

PART 'A' STATES:

1. Andhra: 13
2. Assam: 6
3. Bihar: 21
4. Bombay: 17
5. Madhya Pradesh: 12
6. Madras: 18

5) Inserted by the Andhra State Act, 1953.
7. Orissa 9
8. Punjab 8
9. Uttar Pradesh 31
10. West Bengal 14

Total 148

PART 'B' STATES:

1. Hyderabad 11
2. Jammu and Kashmir 4
3. Madhyabharat 6
4. Mysore 6
5. PEPSU 3
6. Rajasthan 9
7. Saurastra 4
8. Travancore-Cochin 6

Total... 49

PART 'C' STATES:

1. Ajmer
2. Coorg 1 The seat is held in rotation by two states.
3. Bhopal 1
4. Bilaspur
5. Himachal pradesh 1
6. Delhi 1
7. Kutch 1
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<th>State</th>
<th>Seats</th>
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<td>1</td>
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<tr>
<td>Vindhya Pradesh</td>
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Total... 207

**Note:** With the reorganisation of the States on the linguistic basis with effect from November 1, 1956 the position is completely changed.

As will be seen above in constituting the Council of States the principle of equal representation of the constituent States which is characteristic of almost all Federal States has not been adopted for two reasons. Equality is artificial and undemocratic when applied to units which differ enormously both in area and population and in their resources and development. The framers of the constitution did not consider that the individuality of the States or their particular interests stood in need of any special protection. Bicameralism has been adopted less for any reasons connected with the protection of special interests of the different regions of the country than for the more general purposes for which second chambers have been set up in most democratic constitutions elsewhere. At the same time we have to remember that at no time ever since 1913 when the Indian Legislature became bicameral was there a demand for such equality. The British Parliament laid down almost
arbitrarily determined representation of provinces in the Council of State constituted under the Government of India Act of 1919. And almost the same basis of representation in the Council of States projected in the Act of 1835 was continued, with this addition that the Indian States were allotted 104 out of the maximum of 260 seats, that is, 40 per cent representation and not 50 per cent as some members had demanded at the Round Table Conference. When the constitution was framed the chief factors and problems which faced the constituent Assembly were the necessity to frame the constitution as early as possible and to usher into existence a very strong Federation with all the Indian States included in it.

The Central Government was, therefore, made strong in the divisions of powers, particularly by the vesting of residuary powers in the union and not in the units. Moreover, all the Indian States had not given their final consent to join the Federation, for example, Hyderabad, Kashmir, Bhopal and Travancore-Cochin. Hence the feelings of State particularism had largely remained either suppressed or unexpressed.

The method of partial nomination by the President and indirect election by the legislatures of the States for the choice of the members of the Council of States has been criticized as undemocratic and as likely to lead to corruption and to domination by party bosses. But there are certain obvious advantages in the method. It is simple. Nomination is used only to fill a very small part of the council and it cannot seriously affect its democratic character. Indirect elections as well as nomination can serve to bring into the council distinguished
non-party men who are unwilling to enter the arena of party conflict. Further it satisfies the requirements of political theory that the method of constituting a Second Chamber must be different from that of constituting the first.

The council is a permanent body and is not subject to dissolution. A third of its members retire every two years. The normal term of a member is thus 6 years. Its sessions are called and prorogued by the President.

As regards the powers of the Council of States, the constitution gives it co-equal legislative powers with the House of the people, except that Money Bills will originate in the Lower House, but other Bills may originate in any House. It further lays down subject to the provision of the Articles 108 and 109, a Bill shall not be deemed to have been passed by Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses. In the event of disagreement between the two Houses over a non-Money Bill, a joint sitting of the two Houses may be held to resolve the deadlock. A decision is to be taken at such meetings by simple majority of votes. It will be seen that in a joint sitting the House of the People will predominate because its strength will be twice that of the Council of States. This shows that in all matters not being Money Bills the Council of States legally has coequal powers with the lower chamber and is thus a true second chamber. Of course, as shown above in a joint sitting of both Houses the upper House will be at a disadvantage. But it will not be a secondary Chamber like the British House of Lords. In regard to Money

\[\text{The Constitution of India, Article 107.}\]
\[\text{Ibid. Article 107(2).}\]
Bills the constitution lays down that they shall not be introduced in the Council of States. The two Houses of Parliament do not stand on a footing of equality.

Here the popular House enjoys a prominent position while the Council of States has extremely limited powers. The Money Bill after its passage in the Lower House is to be sent to the Council for its recommendations and the Council must return it to the House along with its recommendations within fourteen days. Thereafter whether the House of the People accepts or rejects any or all of these recommendations, the bill shall be deemed to have been passed by both chambers. If the Council of States fails to return the Bill within fourteen days, it will be considered to have been passed by both Houses. Thus the Council of States can only delay the enactment of a Money Bill for a fortnight. In this respect the Council resembles the British House of Lords which is equally powerless in money matters.

POWERS REGARDING AMENDMENT OF THE CONSTITUTION

The Council of States exercises equal powers with the House of the people in the important sphere of the amendment of the constitution. The equal power enjoyed by the House acquires very great significance for it is an admission of the fact that the constitution cannot be amended unless the Council of States as representative of the States has agreed or unless the States have themselves agreed. It indicates that the Council of States

9 Ibid. Article 109.
10 Ibid.
11 Ibid. Article 368.
is the repository of States' Sovereignty or independence and that the constitution is truly federal.

SPECIAL POSITION OF THE COUNCIL OF STATES:

The Council of States enjoys one very special power which does not share with the House of the people and which adds further weight to the view that in the Indian Republic the upper Chamber of Federal Legislature reflects the contractual nature of the constitution and safeguards the rights of the units. This power is expressed in Article 249(1) which says that "if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force." This gives a special position to the Second Chamber in the Indian Republic. It can enable the Parliament to encroach upon the legislative jurisdiction of the state legislatures. But the requirement of two-thirds majority of the Council comes to this that it can permit the exercise of the above power by Parliament only when there is a demand for it by the representatives of a large number of states and not otherwise. To that extent the Council of States can be looked upon as the guardian or protector of the particular rights of the States. There is also no likelihood of the Council of States acting in an irresponsible manner in the exercise of this important power as, they being the representatives of the State legislatures, their responsibility to their constituencies will be immediate.
COUNCIL OF STATES ASSOCIATION WITH PUBLIC ACCOUNTS COMMITTEE:

It is interesting and significant to note that the second chamber in Indian Constitution, instead of being relegated to an insignificant position, occupies a vital place and performs many useful functions as becoming of a worthy institution forming an integral part of the country's constitutional system. It has been playing an active part in the affairs of the country and its debates are usually of a high quality. It is in the fitness of things that the Council is associated with the Public Accounts Committee. An examination of the circumstances leading to the acceptance by the popular House of this position, namely, joint participation of the House of the people and the Council of States on the Public Accounts Committee, is interesting and is of great importance from the point of view of constitutional study. The arguments used in this connection would reveal the normal state of mind of a popular House and its natural reluctance to share power with the upper House particularly in financial matters. In 1963 a proposal was made by the Secretariat of the Council of States for the constitution of a joint Public Accounts Committee of both Houses and sent to the House of the people for consideration. The history of the proposal and the stand taken by the representatives of the House of the People on the Public Accounts Committee and the views of the Rules Committee and the views of the Rules Committee are explained below. It could be noted that the Public Accounts Committee was reluctant to agree to the participation of the Second Chamber with the Public Accounts Committee which was the sole monopoly of the Lower House, and considered the move as a dangerous
practice and a serious departure from the existing constitutional practices. It was only on the intervention of the Prime Minister that the problem was amicably settled and the House of the People agreed to the proposal.

**PROPOSAL FOR ASSOCIATION OF MEMBERS OF THE COUNCIL OF STATES WITH THE PUBLIC ACCOUNTS COMMITTEE.**

On the 23rd January 1953, the Council of States Secretariat forwarded to the Parliament Secretariat certain draft rules respecting the constitutional and other matters of a Joint Public Accounts Committee of both Houses proposed by their Rules Committee for incorporation in the Rules of procedure of the Council. As these draft rules could not become operative unless both Houses agreed, they were referred to the Speaker for taking steps to make the necessary amendments to Rules 196 and 197 of the Rules of Procedure of the House of the People so as to enable a Joint Public Accounts Committee being constituted on the lines suggested by the Council of States for the opinion of the Public Accounts Committee. The Speaker forwarded the draft rules proposed by the Council of States Rules Committee to the Chairman of public accounts committee in order to ascertain the views of the Public Accounts Committee. The Chairman thereupon circulated to Members of the Public Accounts Committee, along with draft rules, a memorandum giving his views thereon. The Public Accounts Committee at its meeting held on the 23rd February 1953 considered the draft rules and the memorandum circulated by the Chairman. The Committee agreed with the views of the Chairman that it would be a dangerous practice and a serious departure from the constitutional principles
to associate representatives from the Council of States in the Public Accounts Committee and unanimously adopted a Resolution to that effect. The Resolution was communicated to the Speaker. The Speaker subsequently referred these papers to the Rules Committee of the House of the People for its consideration. The Rules Committee at its meeting on 15-4-1953 considered the draft rules proposed by the Council of States and the resolution of the Public Accounts Committee thereon. Leaders of the various parliamentary groups in the House were also present at the meeting by invitation. The Committee unanimously agreed with the resolution of the Public Accounts Committee and in accordance with its direction the report of its conclusions together with a copy of the Public Accounts Committee's resolution were forwarded to the Secretariat of the Council of State on 25-4-1953.

The Prime-Minister of India moved the following resolution: on 12-5-1953 in the House of the People.

"That the House recommends to the Council of States that they do agree to nominate seven members from the Council to associate with the Public Accounts Committee of this House for the year 1953-54 and to communicate to this House the names of the members so nominated.

At the desire of several members for full discussion of important nature, further consideration was postponed for next day. The House of the People accordingly met on 13-5-53 for further discussion and the discussion was inconclusive, it was postponed to next session. Further consideration took place on 24-12-1953. A motion was moved on 10-5-1954.
by the Minister for Parliamentary Affairs and adopted by the House.

**POINTS RAISED DURING DISCUSSION THEN:**

(1) **Arguments against the Motion:**

(a) Members of the House of People were returned by direct election and were therefore responsible to the tax payer and to the electorate and therefore all financial matters were within the sole view of the House of the People. The Council of States was indirectly elected and not directly responsible to the tax payer. It was given no power under the constitution with regard to financial matters. So, it was not proper to associate its members in a financial Committee like the Public Accounts Committee.

(b) There was every possibility of the nominees of the Council of States swamping the Committee if this proposal was accepted and bringing about a situation in which persons not directly representative of Electorate would be able to decide financial affairs of the country. It would be contrary to the spirit of the constitution.

(c) The primary function of Public Accounts Committee was to ensure that the funds voted by the House of the People were properly utilised. The House of the People above had the power to vote estimates on the basis of the Report of the Public Accounts Committee and the House informed regarding how funds voted by it were utilised. Hence the functions of the Public Accounts Committee were exceptional in terms of rights and privileges of the House of People.
(d) Money Bills could be introduced only in the House of the People. Under article 113, the Council could not make any recommendation in respect of demands for grants. Under Article 116, there was no provision for the Council of State to deal with supplementary additional or excess grants. Under article 116, votes on account were not placed before the Council of State. Therefore the Council of State could not regularise any variation in the grants made by the House of People.

Thus, in financial matters, the power of the House of People was supreme. The Council of States was invested only with certain limited functions. "What the constitution precluded the Council of States from performing as a body, the notion sought to enable the Council to do indirectly by way of associating a certain number of members of the Council with the Public Accounts Committee."

(e) The functions of the Public Accounts Committee were to recommend to the House to regulate excess grants and as such the association of the Council in that matter would be against the spirit of constitution.

(f) The Public Accounts Committee might make an adverse recommendation on the spending activity of Government which might lead to a censure motion against the Government being moved in the House of People ultimately, as the Ministers were responsible only to the House of People. Therefore, it would not be proper that the deliberations of the Committee were influenced by the members of a House to which Ministers were not responsible.
(g) Procedure re Money Bills in constitution was closely based on British precedents where House of Commons had absolute supremacy which was not shared by the House of Lords or by any of its members in a joint financial committee.

(h) The statement of expenditure was laid on the table of the Council of States only to enable discussion with the aid of relevant papers. This fact did not constitute any right to appoint a financial Committee of their own circumventing the constitution.

ARGUMENTS FOR MOTION—SUPPORT OF ASSOCIATION

(a) It was stated that the question of the financial powers did not arise in this matter. The functions of the Public Accounts Committee was only post-mortem examination of moneys already spent so as to make sure that the parliamentary grants for the year had been properly applied for the prescribed purposes. As the Report of the Comptroller and Auditor-General was also laid on the table of the Council of States they too had the right to examine the way in which the moneys appropriated had been spent. If the Council of States were to function effectively within the spirit of the constitution they should also be associated with the work of the committees like the Public Accounts Committee.

(b) In a Federal form of Government there were two kinds of representatives viz., Representatives according to population and secondly representing according to states. The members of the Council of States were the representatives of
the States. It was therefore not fair to say that the Council of States lacked proper representative capacity.

(c) The fear that the Council step by step would gain supremacy over the House of the People was groundless because it could never happen as long as the House continued to have the power over the purse and the existence of the Government depended upon the confidence of the House.

(d) Re the argument that the motion suggested would interfere with the financial powers of the House of People, the position was that the Public Accounts Committee was a product of the rules of procedure and not of the Constitution and those rules could be changed at will at any time.

(e) It was also open to the Council of States to appoint their own Public Accounts Committee but it would be unfortunate if it did so as that would lead to duplication of work amongst other undesirable consequences.

(f) The Speaker would continue to exercise the same powers over the Committee as he did at present.

(g) The motion did not infringe the powers or the authority of the House of People and as the whole structure of Federal Government required co-operation between the two houses it was desirable from the point of view of co-operative effort of the two Houses.
Thus as we see the Council of States occupies a special position and this position was succinctly put by the Prime-Minister of India when he said:

"Our Council of States was envisaged something different from its counterparts and could not be compared with the House of Lords. The Council of States was not an ineffective Second Chamber nor was it an unrepresentative body."

On another occasion a conflict arose between the two Houses with regard to the constitution of a joint Select Committee for the Special Marriage Bill. On this occasion also, the leader of the House stressed the need for close cooperation between the two Houses, the House of the People and the Council of States. The importance of the Council of States should not be ignored. The Council of states, he said, was a definite and important part of our constitution as it has been envisaged. The members did not represent a particular class or group. They came from the same classes and groups of political opinion as members of the other House and it was desirable, therefore, that parliament consisting of the two Houses should function in a smooth way, in a cooperative way and that each House should have as much opportunity to cooperate with the other as possible. It was for this reason, the Prime-Minister concluded that it was decided to have a joint Select Committee for particular Bills where ever possible. The Council of States, ever since its inception, has been functioning quite satisfactorily being alive to its responsibilities and privileges, though opinion to the contrary is sometimes expressed by some persons as for example, Honourable Mr. S.S. More(Sholapur)
who once said:

The other day the Council of States people were very particular about their own privileges. They entered into a sort of open fight with this House, (The House of the People) and passed a resolution calling upon the Minister concerned not to remain present in the House when a particular matter was being discussed. The two Houses have come into existence only a year or so back and within a very short period of our constitutional existence, a sort of bitterness, a sort of rivalry is already prevailing between the two Houses. 12

12 Debates of the House of the People —12th May 1953.