

RAJYA SABHA

REPORT OF THE GROUP CONSTITUTED BY THE CHAIRMAN TO GO INTO THE QUESTION OF ISSUES PERTAINING TO STATE SUBJECT/LEGISLATURES WHICH CAN BE RAISED AND DISCUSSED IN THE HOUSE

(Presented to the Chairman, Rajya Sabha on the 24th July, 2003)

RAJYA SABHA SECRETARIATE
NEW DELHI
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Minutes of the meeting dated the 11th March 2003

Note for Record

**THE GROUP CONSTITUTED BY THE CHAIRMAN TO GO INTO THE
QUESTION OF ISSUES PERTAINING TO STATE SUBJECTS/LEGISLATURE
WHICH CAN BE RAISED AND DISCUSSED IN THE HOUSE**

Composition of the Group

1. Shri Pranab Mukherjee Convenor
2. Shrimati Sushma Swaraj, Minister of Health & Family Welfare and Minister of Parliamentary Affairs
3. Shri Fali S. Nariman, M.P.
4. Shri Kapil Sibal, M.P.

Secretariat

1. Dr. Yogendra Narain, Secretary General
2. Shri N.C. Joshi, Joint Secretary
3. Shri Sham Sher Singh, Director
4. Shri S. K. Ganguli, Deputy Secretary
5. Shri P.C. Paikray, Under Secretary
6. Shri S.K. Tripathi, Under Secretary

INTRODUCTION

I, the Convenor of the 'Group constituted by Chairman, Rajya Sabha to go into the question of issues pertaining to state subjects/legislatures which can be raised and discussed in the House', appointed by the Chairman on the 11th March, 2003 in the meeting of the leaders of political parties/groups and other members, present the Report on behalf of the Group to the Chairman, Rajya Sabha .

2. The Group thanks Shri Fali S. Nariman, a member of the Group, for preparing a paper titled Brief note on permissibility of raising matters pertaining to State Governments and State Legislatures in the Council of States which presented an elaborate analysis of the Rules of Procedure and Conduct of Business in Rajya Sabha.

3. The Group considered and adopted the Report in its meeting held on 21.7.2003.

NEW DELHI
.....,2003

PRANAB MUKHERJEE
Convenor of the Group

REPORT

On the 26th November, 2002, the Chairman, while permitting a member to raise a matter concerning State Government of Maharashtra, observed:

माननीय सदस्यगण, आपको जानकारी होगी कि मैंने कल क प्रश्न पर जो एक स्टेट के मामले से संबंधित था, यह कहा था कि सदन की इस संबंध में जानकारी लूंगा। इसकी कोई व्यवस्था की जाएगी कि स्टेटस से संबंधित मामलों को सदन में चर्चा के लिए लाया जाय या नहीं लाया जाय कल मुझे श्री संजय निरुपम ने यह दिया था और मैंने उनसे कहा था कि मैं कल तक इस पर राय ले लूंगा लेकिन सारे माननीय सदस्यों से मेरी नेताओं सं मेरी नहीं हो सकी है, इसलिए परसों रूल्स की कमी की मीटिंग के समय मैं इस विषय पर "चर्चा रखूंगा इस समय मैं श्री निरुपम को संक्षेप में बोलने की अनुमति देता हूँ ।

2. Accordingly, the question of raising matters pertaining to state subjects in the House was placed before the Committee on Rules for its consideration. The Committee on Rules, which held its meeting on the 24th January, 2003 discussed the matter. The Committee noted that under the existing rules any matters pertaining to State subjects could not be discussed in the House; nonetheless occasions did arise when Chairman had to exercise his discretion in allowing such a matter of urgent importance to be discussed in the House. It was felt desirable to define broad framework of circumstances and related factors for allowing discussions on such matters. It was also agreed that for this purpose Shri Fali S. Nariman, should prepare a comprehensive note on the subject to be discussed by the Committee at its next meeting.

3. Since occasional demands were being made by members to raise matters relating to state subjects in the House, the Chairman decided to hold a meeting of Leaders of parties/groups and other members on the 11th March 2003 to further consider the matters pertaining to State Governments and State

Legislatures which should be or should not be discussed on the floor of Rajya Sabha. During discussion, the following observations were made :

a) Rajya Sabha being the Council of States, it should be appropriate for the members to raise urgent issues of importance pertaining to States even through the position under the rules appeared to be different; this had also been the practice followed so far.

b) The practice had been the Chairman to decide the admissibility of notice for discussion on state-related issues, keeping in view the over all circumstances relevant to the subject. It would be desirable to continue with this practice in future as well; it would be difficult to formulate any rigid guidelines in this regard.

c) Whider issues such as relating to human rights, welfare of scheduled castes and scheduled tribes and minorities, would be appropriate for discussion. However, a discussion on issues in respect of which Union Government might not be directly answerable, or which might impinge on the autonomy or sensitivity of the States could lead to avoidable clash or conflict between different elected bodies. It would, therefore, be desirable to build a consensus on types of issues, discussion on which should generally be avoided.

4. After careful consideration of the matter, and in the light of the discussion, it was felt that on the basis of various rulings in the past by the Chair, for and against raising issues pertaining to States, it would be desirable if some guiding principles could be evolved for permitting, or otherwise, a discussion or raising of state-related issues in Rajya Sabha. It was decided that this task be assigned to the Group comprising the following:-

i) Shri Pranab Mukherjee, Convenor

ii) Shri Fali S. Nariman

iii) Shri Kapil Sibal

It was also decided that the Group might associate the Minister for Parliamentary Affairs and such other members as considered necessary. The Group was requested to submit its recommendations to the Chairman early.

5. As mandated by the Chairman, Shri Fali S. Nariman had prepared a note titled *Brief note on permissibility of raising matters pertaining to State Governments and State Legislatures in the Council of States*¹. The note was circulated to all the four members of the Group appointed by the Chairman.

6. In the note Shri Nariman has identified two sets of rules which exist in the Rules of Procedure and Conduct of Business in the Council of States _ one set of rules precludes members from raising matters which are not primarily the concern of the Government of India and the other set of rules do not specify any such restriction. For example conditions of admissibility of questions [Rule 47(2)(viii)], Motions on matters of public interest [Rule 169 (xiii)] and special mention [Rule 180B(ii)] provide that matters which are not primarily the concern of the Government of India should not be raised through these procedural devices. Rules relating to the short duration discussion (Rule 176 to 179), raising matters of public importance (calling attention) (Rule 180) and Resolutions (Rule 157) do not specify any restriction for holding a discussion on a matter which is not primarily the concern of the Government of India.

7. As regards rules relating to special mention (Rule 180A to 180E) the view of Shri Nariman is that the condition of admissibility that 'it shall not refer to a matter which is not primarily the concern of Government of India' prescribed for special mention appears to be a case of inclusion by oversight. It is not in Rule 180 which is in the same chapter. According to him special mentions of matters relating exclusively to States are permitted

in practice and continue to be mentioned rightly since they express concerns of the representatives of a particular State in the Council of States. He further wrote in his note:

"The Council of States is elected by State Legislatures, and State matters are, therefore, not alien to the Council of States unless particular provisions so restrict the subject matter under the relevant rule invoked by the member".

The overriding consideration when issues on matters concerning State Government and/or State Legislatures are raised in the Council of States under Chapter XI or Chapter XIII or under Rule 180 of Chapter XIV) is whether or not the matter raised is one of general public interest or urgent public importance _ once the Chairman is satisfied that it is, the fact that it pertains only to a particular State is of no consequence when the matter is brought in the Council of States. A matter may be of "general public interest" or "urgent public importance" even if it primarily concerns a State or State Government or State Legislature".

8. The Group met on the 29th May, 2003 to discuss the matter further and examined the question in detail whether issues pertaining to state subjects and state legislatures can be discussed in Rajya Sabha.

9. While commending Shri Nariman for his observations made on the Rules of Procedure and Conduct of Business in Rajya Sabha in a detailed and comprehensive manner, the Group noted that matters pertaining to States and State Legislatures had been raised in the past.²

10. The Group noted that with regard to States, the Centre has certain responsibilities. For example, under article 355, the Union has to ensure that the government of every state is carried on in accordance with the provisions of the Constitution. Similarly, under article 365 where any state fails to comply with the directions given by the Union in exercise of its executive power, it is lawful for the President to hold that situation has arisen in which the Government of the State cannot be carried on in accordance with the provision of the Constitution. It was further noted by the Group that Rajya Sabha being the federal Chamber representing the States has certain powers specially conferred on it under article 249 which deals with power of Parliament to legislate with respect to a matter in the State list in the national interest and article 312 for the creation of All-India Services.

11. The Group is of the view that even though rules for raising matters of public importance (calling attention) do not specify that state subjects cannot be raised through this procedure, issues relating to States should not ordinarily be raised through a calling attention because a notice for raising a matter in the House through this procedure is addressed to a Minister and the issue has necessarily to be within the administrative jurisdiction of that Minister. But still, it is felt that if a state matter having national implications is to be discussed through a calling attention, it is for the Chairman to decide the admissibility of such a notice. Resolution is, of course, another mode through which state matters can be raised, the admissibility of which, again, has to be decided by the Chairman. The Group has noted that matters like atrocities on Dalits, developments in

States, atrocities on minorities, atrocities on women, communal riots have often been discussed in the House under various procedural devices.

12. The Group is of the view that if a particular matter is a matter of urgent public importance although it concerns the States, the matter can be raised under Rule 176 because the rules governing short duration discussion do not provide that "it shall not relate to a matter which is not primarily the concern of the Government of India". The Group also observes that many a time issues pertaining to States have been raised after the Question Hour (during the so called 'zero hour') or any other time with the permission of the Chair³.

13. The Group strongly feels that there is no need of modifying or amending the rules. There is enough flexibility in the rules to permit discussion on a state matter. Sometimes, when the rules stand in the way and there is strong view emerging in the House, that the matter should be discussed, the discussion has taken place in the House by changing or suitably modifying the language of the notice. Issues pertaining to States of wider public interest have been discussed in the House in the past.

14. The Group observes that if certain issues such as matters concerning corruption, etc. lie in the exclusive domain of States and if Parliament wants to express its concern over them, it has always found a way or mechanism to discuss those matters.

15. Generally, the House does not discuss the conduct of Governors and Speakers. The Group felt that the conduct of constitutional functionaries such as Governors *per se* may not be discussed but the House can discuss their conduct in discharge of their constitutional obligations.

16. With regard to State Legislatures, the Group, after thoughtful deliberation came to the conclusion that even matters pertaining to State Legislatures can be discussed in Rajya Sabha after the Chairman ascertains the sense of the House.

17. The Group has also noticed that many a time members do not want to raise a discussion, they simply want to draw the attention of the House to a particular matter. It is the considered opinion of the Group that in such cases members may be allowed to mention those matters.

18. The Group observes that if there was something contrary to what has been specifically provided in the rules, the matter still can be discussed by amending the language of the notice or replacing words in the notice. Where there is consensus, the matter may be allowed to be discussed even if it is a state matter. Ultimately, the House is supreme.

19. The Group decides to present its report to the Chairman.

20. According to the Group the Chairman, if he so desires, can have a meeting of

leaders of political parties and groups to inform them about the views of the Group.

(Pranab Mukherjee)

Convenor of the Group

Appendices Appendix I

Brief Note on permissibility of raising matters pertaining to State Government and State Legislatures in the Council of States

I. Rules framed by the Council of States under Article 118(1) of the Constitution are for regulating "its procedures and conduct of business".

II. On a perusal of the Rules, the business of the House (the Council of States) consists of:

- (a) transaction of Government Business ("which shall have precedence"-Rule 23) and
- (b) transaction of private members business (Rule 24).

III. Transaction of **Government Business** is under the following broad heads:

(1) By LEGISLATION- dealt with in Chapter IX;

(2) By Business in Committees-viz. Committee of Privileges (Chapter XIV), Committee on Subordinate Legislation (Chapter XVII), Committee on Government Assurances (Chapter XVIIIA) Committee of Papers Laid on the Table of the House (Chapter XVIIIB), House Committee (Chapter XVIIIC); Department Related Parliamentary Standing Committees (Chapter XXII), and General Purposes Committees (Chapter XXIII).

(3) General- OTHER BUSINESS-raised by a Member in the following maner and through the following channels (and by reference to the following specific rules):

(A) **By Notice of a Question:** Chapter VII (Rules 38 to 59) to be addressed to a Minister-right of Members to ask a question is governed by several conditions including the following:

- (1) it shall not relate to a matter which is not primarily the concern of the Government of India (Rule 47(2)(viii); and
- (2) it shall not relate to a matter with which a minister is not officially connected.

(B) By Notice for Half-an-hour Discussion ('on a matter of sufficient public importance'): which has been the subject of a recent question in the Council and the answer to which needs elucidation on a matter of fact: Chapter VIII Rule 60

(C) By presenting a Petition (including a petition on 'any matter of general public interest') Chapter X (Rules 137-153): to be submitted to the Council with the consent of the Chairman in accordance with these rules:

Petitions may relate to any matter of general public interest provided it is not one (inter alia) "which raises matter which are not primarily the concern of the Government of India".

(D) By giving notice to move a resolution relating to a matter of general public interest-(Chapter XI-Rules 154 to 166)

Any Member may move a Resolution relating to a matter of general public interest; some conditions of admissibility are prescribed (Rule 157) but they do not require that notice of a resolution may not include matters which are not primarily the concern of the Government of India.

A resolution may be in the form of a declaration of Opinion by the Council of States or in such other form as the Chairman may consider appropriate (Rule 155)

(E) By giving notice of a Motion for discussion of a matter of general public interest (Chapter XII Rule 167) a motion is admissible only with the consent of the Chairman and conditions of admissibility include the following "it shall not relate to a matter which is not primarily a concern of the Government of India" (Rule 169 XIII) and "it shall not relate to a matter with which a Minister is not officially concerned" (Rule 169 XV)

(F) By giving Notice of Short Duration Discussion (Chapter XIII Rules 176 to 179) for raising discussion on a matter of urgent public importance specifying clearly and precisely the *matter* to be raised, accompanied by an explanatory note stating reasons for raising discussion on the matter in question (Rule 176): there is no restriction on subject-matter.

Note: Chairman is to decide on admissibility of the Notice after calling for information from the Member who has given notice and from the Minister as he may consider necessary to satisfy himself that the *matter is urgent* and of *sufficient public importance* to be raised in the Council at an early date. There is to be no formal Motion before the Council, nor voting in a Short Duration Discussion (Rule 178).

(G) By calling attention to any matter of urgent of public importance: (Chapter XIV Rule 180). There is no restriction on subject matter.

(H) *By giving Notice of Special Mention on a matter of public importance* (Rule 180A in Chapter XIV) Conditions of eligibility include the following viz. "that it shall not refer to matter which is not primarily the concern of the Government of India" (Rule 180B in Chapter XIV added in May 2000)¹.

IV. On a reading of the above Rules it appears to be clear that:

(1) In the course of transaction of Government Business (i.e. business of the Government of India) Members are entitled to raise matters

(i) by giving Notice of QUESTIONS (Rules 38-39, Chapter VII) and Notice for *Half-an-hour Discussion* (Rule 60 Chapter VIII) on a matter which has been the subject of a recent question.

(ii) by presenting PETITIONS (Rule 135, Chapter X)

(iii) by giving Notice of MOTION FOR DISCUSSION OF A MATTER OF GENERAL PUBLIC INTEREST (Rule 167 Chapter XIII)

(iv) by giving Notice TO MENTION A MATTER OF PUBLIC IMPORTANCE (Rule 180A, B and C in Chapter XIV)

in all these cases members are specifically precluded from raising or referring to matters "not primarily the concern of the Government of India". In other words there is no scope for any discretion: if it is a matter not primarily the concern of the Government of India (e.g. if it is a matter pertaining to or of concern to a State Legislature) the Rule Book prohibits of the channels (through which business can be transacted) that are prescribed in Chapter VII, Chapter X, Chapter XII and Rule 180A in Chapter XIV : Members cannot under the Rules raise these matters through these avenues or channels.

(2) But there are other channels through which the business of the House may be transacted viz.

(i) by the Member giving Notice to move a resolution "*relating to a matter of general public interest*" (under Chapter XI):

(ii) by the Member giving Notice of a short duration discussion "*on a matter of urgent public importance*" (under Chapter XIII)

(iii) by the member raising (with previous permission of the Chairman) "*any matter of urgent public importance*" (under Rule 180 Chapter XIV)

When such *matters* are raised by a Member through the above avenues or channels, the constraint "not to raise matters which are not primarily the concern of the Government of India" do not apply.

(3) the above interpretation is justified by a well known maxim: *expressio unius est exclusio alterius*" (the express mention of one thing implies the exclusion of another): known for short as the *expressio unius* principle, it is applied where a statutory proposition might have covered a number of matters but in fact mentions only some them. Unless these are mentioned merely as examples or for greater caution, the rest are taken to be excluded: (Bennion: *Statutory Interpretation*, 4th Edition, page 107. The maxim has been repeatedly applied by our Supreme Court:

"Mention of one thing implies the exclusion of another. When certain persons or things are specified in a law an intention to exclude all others from its operation may be inferred. When mention has been made only of 'orders', the inference would be that preparation of confirmation of scheme and repartition are excluded. Again, *ex praecedentibus et consequentibus optima fit interpretatio*, the best interpretation is made from the context." (See *Gram Panchayat vs. Dir.*" Consolidation of Holdings: 1989 Supp(2) SCC 465).

The *expressio unius* principle would squarely apply in a Notice given under Chapter XI-Rules 154 to 166, where some conditions of eligibility (Rule 157) are expressly prescribed: but unlike in Chapter VII (Questions) and Chapter X (Petitions) and Chapter XI (Notice of Motion) these conditions do not include the prohibition with respect to matters which are not primarily the concern of the Government of India. Similarly, in Chapter XIII (Short Duration Discussion)

admissibility (Rule 177) is to be decided with reference to whether or not the matter raised for discussion is or is not of urgent public importance no other condition of eligibility is prescribed. And in Chapter XIV Rule 180 (Calling Attention) there is no condition of eligibility the only pre-condition is that it is a matter of *urgent public importance*: even if it is, it can only be raised by previous permission of the Chairman.

(4) Constitutionally, the Council of States is a body constituted of representatives of the States with allocation of separate seats to each State and Union Territory as provided in the Fourth Schedule of the Constitution (See Article 180). Since India is a Union of States and Union Territories and every part of the territory of India is within one or more State and Union Territory there is no question of "trenching" on State jurisdiction in the "Council of States". Structurally the Council of States is different from the Lok Sabha. In the Lok Sabha the people of each State elect their representatives through Parliamentary constituencies in the State to the Lok Sabha and through Assembly constituencies in the same State to the State Legislature; on the other hand the Council of States is a body constitutionally composed of representatives of all State Legislatures:

(5) Under the Lok Sabha Rules, Petitions may be presented or submitted to the House with the consent of the Speaker on any matter of general public interest provided that it is not one *inter alia* "which should ordinarily be raised in a State Legislature" (an expression used for avoidance of a conflict of jurisdictions): no such specific restriction is to be found in any of the Rajya Sabha Rules. The two standard text books by M/s. Shakdar and Kaul and by Mr. Kashyap have assimilated the rulings of the Speaker of the Lok Sabha and a few rulings of the Chairman of the Rajya Sabha: with respect to the raising of State Government matters of matters pertaining to the State legislatures. It is submitted that these rulings by Speakers of the Lok Sabha based on avoidance of conflict of "sovereign" authorities or conflict of jurisdictions-cannot be extended to or applied to the Rajya Sabha: the two Houses of Parliament are differently constituted; one by direct elections like the Lok Sabha, the other by indirect elections. The Council of States is elected by State Legislatures, and State matters are therefore not alien to the Council of States unless particular provisions so restrict the subject-matter under the relevant rules invoked by the Member.

(6) The over-riding consideration when issues on matters concerning State Government and/or State Legislatures are raised in the Council of States under Chapter XI or Chapter XIII or under Rule 180 of Chapter XIV) is whether or not the matter raised is one of general public interest or urgent public importance-once the Chairman is satisfied that it is, the fact that it pertains only to a particular State is of no consequence when the matter is brought in the Council of States. A matter may be of "general public interest" or "urgent public importance" even if it primarily concerns a State or State Government or State Legislature.
