

CHAPTER—22

Resolutions

Most of the business in Parliament is transacted by means of motions. After a matter has been discussed, the motion is put to the vote of the House, which is technically known as putting the question. “The decision which the putting of the question has thus elicited turns the motion into a resolution of order.”¹ Every question, when agreed to, becomes either an order or of a resolution of the House. By its resolutions, the House declares its own opinions and purposes.²

Any member may, subject to the rules, move a resolution in the Rajya Sabha relating to a matter of general public interest.³ Resolutions may be categorised as: (i) private members’ resolutions, *i.e.* resolutions which are moved by a member, other than a Minister on an allotted day; (ii) Government resolutions, *i.e.* resolutions which are moved by Ministers; and (iii) statutory resolutions *i.e.* resolutions which are moved in pursuance of a provision contained in the Constitution or an Act of Parliament.

A. Private members’ resolutions

Notice and draw of lot

Unless the Chairman otherwise directs, not less than two and a half hours of a sitting on Friday are allotted for private members’ business.⁴ Alternate Fridays are allotted for resolutions and Bills. A private member, *i.e.*, a member other than a Minister⁵ who wishes to move a resolution on a day allotted for private members’ resolutions has to give a notice to that effect at least two days before the date of draw of lot.⁶

Until the Fifty-fifth Session (1966), the procedure was that members used to give notices of resolutions for allotted days within the prescribed time and those resolutions which were admitted were notified in the Bulletin and balloted with a view to selecting five of them for inclusion in the list of business for allotted days during the session. The present procedure was put in operation with effect from that Session.⁷ Rule 154 was, however, amended only later, on the recommendation of the Rules Committee to incorporate the new practice.⁸

The names of all members from whom such notices are received are drawn by lot for the allotted day⁹ and those members who secure the first five places therein are eligible to give notice of one resolution each within ten days of the draw of lot.¹⁰ A separate draw of lot is held for each allotted day. The date and time for holding the draw of lot are notified in Parliamentary Bulletin Part-II before the commencement of a session. In accordance with the practice the names of members who would be eligible to give a resolution are ordinarily balloted twenty-one days in advance of the allotted day. However, if the time gap between the date of issue of the summons and the allotted day is less than twenty-one days, the date of draw of lot is advanced.

For instance, the 80th Session commenced on 8 May 1972 and the summons to members were issued on 18 April 1972. The date of draw of lot was fixed on 25 April 1972, instead of 21 April 1972, *i.e.*, a week after the issue of summons for allotted day on 12 May 1972.¹¹

Form

A resolution may be in the form of a declaration of opinion by the House or in such other form as the Chairman may consider appropriate,¹² such as, in the form of expression of concern on a situation,¹³ urging reversal, change, review, reformulation of a policy,¹⁴ urging for a legislation or Constitution amendment¹⁵ or drawing urgent attention to a matter of public interest¹⁶ or making appeal to international community on a subject,¹⁷ and so on.

Conditions of admissibility

In order that a resolution may be admissible, it should (i) be clearly and precisely expressed;¹⁸ (ii) raise substantially one definite issue;¹⁹ (iii) not contain arguments, inferences, ironical expressions, imputations, or defamatory statements;²⁰ (iv) not refer to the conduct or character of persons except in their official or public capacity;²¹ and (v) not relate to any matter which is under adjudication by a court of law having jurisdiction in any part of India.²²

A member gave notice of a resolution calling upon Government to revoke Proclamations issued under article 356 of the Constitution imposing President's rule in nine States, on 17 February 1980. It was brought to the notice of the Chairman that a number of petitions were pending in High Courts challenging the Proclamations. The Chairman heard leaders of various groups and other members including the Leader of the House in his Chamber. The Chairman declined to admit the resolution and held, *inter alia*, as under:

It is unlikely that the resolution will not entail detailed discussion of the self-same matters in the House. Although a resolution of

this type does not approve or disapprove the Presidential Proclamation, it will cover the same grounds as the petitions. Apart from the fact that by itself the resolution, if passed, will not affect the normal procedure which the Constitution contemplates, it is obviously a peg to bring into discussion in the House the grounds on which the petitions are based. This is precisely the substance of the matter under sub-rule (v) of rule 157 which the House itself has framed as a matter of comity between itself and the courts. To admit the resolution will be to breach the comity created.²³

A resolution under the administrative jurisdiction of the Presiding Officer is also not admitted. However, there have been instances when resolutions of general nature though ultimately or indirectly may come within such jurisdiction have been admitted and moved.

A resolution was moved and discussed regarding the need for a law to regulate recruitment, promotion and conditions of service for all categories of Government employees, including employees of Parliament. The resolution was, however, withdrawn by the leave of the House.²⁴

Another resolution moved was regarding televising the proceedings of Parliament. The resolution was eventually withdrawn. However, Government assured that the issues and problems involved in the proposal would be placed before the General Purposes Committee of each House.²⁵

After a resolution has been moved in the House, no resolution or amendment raising substantially the same question can be moved within one year from the date of the moving of the earlier resolution.²⁶ If a resolution has been withdrawn or is deemed to be withdrawn with the leave of the House, no resolution raising substantially the same question can be moved during the same session.²⁷ A resolution should not also raise a question substantially identical with the one on which the House has already given a decision in the same session.²⁸

The Chairman decides whether a resolution or a part thereof is or is not admissible under the rules and may disallow a resolution or a part thereof when in his opinion it does not comply with the rules.²⁹ If on scrutiny, the notice of the resolution given by a member is found to be inadmissible, the member concerned is asked to give another one. The admitted resolutions are first notified in a Parliamentary Bulletin Part-II and thereafter included in the list of business in the order of the draw of lot. A copy each of the admitted resolutions is forwarded to the Ministry of Parliamentary Affairs for onward transmission to the concerned Ministries.

Resumption of adjourned debate on private members' resolutions

When the debate on a private members' resolution is adjourned *sine die*, the mover of the resolution may, if he wishes to proceed with such resolution on a subsequent day allotted for private members' resolutions, give notice for resumption of the adjourned debate and on receipt of such notice, such a resolution has precedence over other resolutions set down for that day.³⁰

When on a motion being carried, the debate on a private member's resolution is adjourned to the next day allotted for private members' resolutions in the same or next session, it is not set down for further discussion unless it has gained priority in the draw of lot.³¹ Accordingly, unless a motion is moved or the House agrees by consensus, the resolution which remains inconclusive is not automatically carried forward to the next session. The discussion remains inconclusive and the resolution lapses at the end of that session.

There have been a few instances when on a motion moved and adopted, the discussion on a private member's resolution has been carried to the next session to be taken up as the first item on the first day allotted to the private members' resolutions. The two instances are of early fifties³² and the other two instances took place more than four decades later.³³ However, during the period between 2001 and 2014, there have been as many as fifteen occasions when private members' resolutions had been carried over to the next session.³⁴

When a resolution has been moved in the House, one of the following contingencies may arise: it may be adopted, it may be negatived, it may be withdrawn, it may be talked out (*i.e.*, remain inconclusively discussed without being adopted, negatived or withdrawn), or the debate thereon may be adjourned to be resumed later.

Admitted resolutions

The list of business for a day allotted for private members' resolutions generally contains five resolutions in the names of members who are successful in the draw of lot, in addition to a part-discussed resolution, if any.³⁵ However, if all members securing places in the draw of lot do not submit their resolutions the list of business may contain less than five resolutions.³⁶ The resolutions are put down in the list of business in the order in which the names of members appear in the result of the draw of lot. A resolution which remains part-discussed at the end of the day has precedence over all other resolutions set down for the next allotted day

in the same session.³⁷ If a resolution set down in the list of business for a day is not taken up on that day, it is treated as withdrawn and is not set down for discussion on any subsequent day during the session,³⁸ unless it is given again by a member securing a place in the draw of lot for that day in that session.

Allotment of time

The last two and a half hours of a sitting on every alternate Friday in the session are allotted for the discussion of private members' resolutions. The Chairman may, in consultation with the Leader of the House, allot any day other than a Friday for the purpose. If there is no sitting of the House on a Friday, the Chairman may direct that two and a half hours on any other day in the week may be allotted for private members' resolutions.³⁹ The time may also be shifted due to exigencies of the business.

Time limit for resolutions

The Business Advisory Committee is empowered to recommend the time that should be allocated for the discussion of private members' resolutions.

On many occasions, the Business Advisory Committee has, while allotting two and a half hours for a resolution or without doing so, recommended that the discussion on a resolution should be concluded the same day.⁴⁰

On an occasion, a member moved a resolution on 7 March 1969, regarding diplomatic recognition to German Democratic Republic. The resolution was discussed on 21 March 1969 also but remained inconclusive. The mover of the resolution moved a motion "that the time for the debate on the resolution be extended." The motion was negatived by a division and the resolution lapsed at the end of the session.⁴¹

The General Purposes Committee in its meeting held on 28 April 2008 decided that the time limit of two hours for discussion on a private member's resolution should be strictly adhered to. It was also recommended by the Committee that a private member's resolution taken up on a day should be disposed of on the same day.

No speech on a resolution can, except with the permission of the Chairman, exceed fifteen minutes in duration. However, the mover of a resolution, when moving it, and the Minister concerned when speaking for the first time, may speak for thirty minutes or for such longer time as the Chairman may permit.⁴² In order to ensure that the discussion on a resolution

is concluded within a stipulated time frame, the Chairman has issued direction on 2 May 1997 to the effect that the maximum time limit for discussion on a private member's resolution shall be two hours.⁴³

Moving of resolution

A member in whose name a resolution stands in the list of business, when called on, moves the resolution, unless he wishes to withdraw it, commencing his speech by formal motion in the terms appearing in the list of business.⁴⁴

A member may, with the permission of the Chairman, authorise any other member in whose name the same resolution stands lower in the list of business, to move it on his behalf and the member so authorised may move accordingly.⁴⁵

If a member, when called on to move a resolution is absent, any other member authorised by him in writing in this behalf may, with the permission of the Chairman, move the resolution standing in his name.⁴⁶

On an occasion, a member moved a resolution on behalf of another member. After the disposal of that resolution, he also moved his own resolution standing next to the previous resolution in the list of business.⁴⁷

Amendments

After a resolution has been moved, any member may, subject to the rules relating to resolutions, move an amendment to the resolution.⁴⁸ If notice of such amendment has not been given one day before the day on which the resolution is moved, any member may object to the moving of the amendment, and such objection prevails, unless the Chairman allows the amendments to be moved.⁴⁹ Lists of amendments of which notices have been received are circulated to members from time to time.⁵⁰

To a resolution regarding appointment of a Committee to inquire into conditions of literatures in various Indian languages as many as thirteen amendments were moved.⁵¹

On an occasion, a resolution was declared as adopted. However, objection was taken on the ground that the demand of some members for a division thereon was not conceded by the Chair. The House had to be adjourned for a while. After it reassembled, the Chair permitted the mover to move two amendments. Then the resolution, as amended, was adopted.⁵²

Scope of discussion and right of reply

The discussion on a resolution must be strictly relevant to and within the scope of the resolution.⁵³ The mover of the resolution has the right of reply. In the absence of the mover, the resolution is put to vote for taking a decision thereon.

On an occasion, in respect of a resolution regarding food situation in the country, the House granted permission to the concerned Minister not to intervene in the debate (due to the discussion on food situation proposed next week).⁵⁴

A resolution was discussed on a Friday inconclusively. After a fortnight, when the resolution was to be taken up for further consideration, a member informed that he had received a telegram from the mover for the withdrawal of the resolution in view of the reply of the Minister and that the mover had sent a telegram to the Secretariat also. However, the resolution was put to vote and negatived.⁵⁵

The discussion on a resolution moved on 10 March 2006 during 207th Session, was to resume on the next private members' day, *i.e.* 19 May 2006. But due to absence of the mover of the resolution, it was put to vote and negatived by the House.⁵⁶

During 218th Session, the discussion on the resolution moved on 26 November 2009 was to resume on 11 December 2009. But due to absence of the mover of the resolution, it was put to vote and negatived.⁵⁷

Putting and splitting of resolution

As already stated a resolution moved is either adopted, negatived, withdrawn, postponed or talked out. Any of the first three contingencies takes place when the Chair puts the resolution to the House at the end of discussion. When any resolution involving several points has been discussed, the Chairman may divide the resolution, and put each or any point separately to the vote, as he may think fit.⁵⁸ The Chairman may also amend the resolution factually before putting it to the House.

On 23 August 1954, the Chairman had announced the changed nomenclature of the Council of States as Rajya Sabha.⁵⁹ The Chair put a resolution which was under discussion from the previous session, with the amendments in the text of the resolution as follows:

- (i) For the beginning words of the original resolution, "This Council", the words substituted were "This House"; and
- (ii) the word "proposed" (military aid) was omitted.

The resolution was, however, negatived.⁶⁰

A copy of every resolution which has been adopted by the House is forwarded to the Minister concerned by the Secretariat.⁶¹

Withdrawal of resolution

A member in whose name a resolution stands in the list of business, may, when called on, withdraw the resolution in which case he confines himself to a mere statement to that effect.⁶²

A resolution regarding appointment of a Committee to go into the working of three Akademies was included in the list of business. The Minister of Education and Youth Affairs informed the House about Government's decision to appoint a Committee. In view of this, the member stated that he did not propose to move the resolution and the resolution was, therefore, not moved.⁶³

But if the resolution or an amendment thereto has been moved, the same cannot be withdrawn except by leave of the House.⁶⁴ The leave of the House is signified by the Chairman taking the pleasure of the House. If no one dissents, the leave is given, if any dissentient voice is heard, the Chairman puts the resolution for the decision of the House.⁶⁵

While replying to the debate on his resolution, a member asked for the leave of the House to withdraw it. The Deputy Chairman asked the House whether the mover had the leave. A member said 'No'. Thereafter, the resolution was put to the vote of the House and negatived.⁶⁶

Non-withdrawal of resolution

A member in whose name a resolution stands in the list of business and on which the discussion has concluded may, when called on, withdraw it with the permission of the House by a mere statement to that effect. However, if the mover of resolution refuses to withdraw his resolution, when called on to do so, the Chairman puts the resolution for decision of the House.

During 226th Session, the carried forward resolution regarding formation of a separate State of Telangana, moved on 4 May 2012 in 225th Session, was taken up for further discussion on 17 August 2012. The debate on the resolution concluded but the member refused to withdraw his resolution when called on to do so. The Chair, accordingly put the resolution to vote and the same was negatived.⁶⁷

Removal of a resolution from the list due to retirement of a member

A resolution of a member was discussed on 17 March 1972. The discussion was not concluded that day. The member retired on 2 April 1972. The resolution was included for the subsequent day *i.e.*, 7 April 1972. However, a revised list of business was issued to omit the resolution on the ground

that a resolution moved by a private member and pending in the House would lapse when the member concerned ceased to be a member of the House.⁶⁸ A similar occasion arose again when a resolution moved by a member on 8 March 2002, remained inconclusive after discussion on that day. The member retired on 9 April 2002. On the same analogy as mentioned above, the resolution was treated as lapsed⁶⁹ and notified in Parliamentary Bulletin Part-II dated 11 April 2002.

Private members' resolutions adopted

Since 1952, a number of resolutions have been discussed. Some of the resolutions which have been adopted are as follows:

Prohibiting exhibition of undesirable films, moved by Shrimati Lilavati Munshi⁷⁰ (Cinematograph Act was amended in 1959); enfranchisement of displaced persons from Pakistan, moved by Shri B.C. Ghose⁷¹ (Citizenship Act was amended in 1955); widening the scope of NCC/ACC, moved by Dr. (Shrimati) Seeta Parmanand;⁷² giving preference to Indian owned/controlled advertising agencies for advertisements by Railways, Government companies, etc., moved by Shrimati Violet Alva;⁷³ full mechanisation of coal and ore port on the West Bank of lower Hooghly, moved by Prof. Humayun Kabir;⁷⁴ appeal to governments in world to suspend nuclear tests, moved by Shri Mulka Govinda Reddy;⁷⁵ appointment of a committee to enquire into procedures for sanctioning exhibition of films, moved by Shri S.B. Bobdey⁷⁶ (Khosla Committee); abolition of privy purses and privileges of ex-rulers, moved by Shri Banka Behary Das⁷⁷ (Constitution Amendment Bill for the purpose fell in the Rajya Sabha; later it was re-introduced and passed); advertisement to Indian owned/controlled advertising agencies moved by Shri Joachim Alva⁷⁸ (this was in furtherance of the earlier resolution moved by Shrimati Violet Alva); improvement of urban slums, moved by Shrimati Monika Das;⁷⁹ appealing to world community to stop blood-shed in Afghanistan, moved by Shri Chaturanan Mishra;⁸⁰ atrocities on women, moved by Shri Viren J. Shah.⁸¹

The discussion need not be reopened after the mover of a private member's resolution had replied to the discussion. On 24 March 1995, after the discussion on a private member's resolution regarding measures for tackling increasing crimes in the country, particularly against women, the mover of the resolution, Shri Viren J. Shah replied to the debate. Soon after that, Shri V. Narayanasamy rose to speak on the resolution. But the Vice-Chairman said that the member could not make a speech after the resolution had been replied to. Even as the member insisted on speaking, the Vice-Chairman said that it was not the convention of the House to reopen discussion at the time of putting the resolution to vote. But the

member insisted on his right to speak and referred to rules 154-166. Ruling out his argument, the Vice-Chairman observed:

I have already ruled...that after the mover of the resolution has replied I have not allowed..I will not allow anybody. No rule permits me to reopen the issue. The rule is clear.⁸²

B. Government resolutions

There are no separate rules regulating the procedure for Government resolutions. Government resolutions are distinguished from private members' resolutions in some important respects. A notice for a resolution given by a member of the Government, *i.e.*, a Minister comes under the category of Government resolutions. They are not subject to the procedure of draw of lot unlike private members' resolutions. No period of notice as such has been prescribed for Government resolutions though in actual practice Ministers give notice of their resolutions much in advance of the dates on which the resolutions are proposed to be taken up for discussion in the House. Besides, private members' resolutions are taken up only on fixed days and at fixed hours as per the rules. Government resolutions can be taken up on any day allotted for Government business. Barring these special features, Government resolutions are generally subject to the same rules as the private members' resolutions. After a notice for resolution, is given by a Minister, and admitted by the Chairman, it is published in the Parliamentary Bulletin under the heading Government resolution. The time for discussion of a Government resolution is recommended by the Business Advisory Committee and the date therefore is fixed in consultation with the Leader of the House.⁸³ The resolution may be moved by the Minister in whose name it stands or in his absence by any other Minister on his behalf. A Government resolution may be discussed along with the consideration of a Government Bill⁸⁴ or any other item [For instance, resolution on Railway Convention Committee's report is discussed along with Railway Budget or Appropriation (Railways) Bill].⁸⁵

A Government resolution takes precedence over a motion moved by a member as far as voting is concerned, even if both have been discussed together. On 26 April 1989 while discussing a statutory resolution regarding approval of President's Rule in Karnataka and also the motion recommending recall of Governor of Karnataka together, the Deputy Chairman put the resolution to vote first. On objection, the Deputy Chairman ruled:

The resolution and the motion were discussed together but the resolution was moved by the Government. So it has to be voted first and the motion was for a different thing and not the same thing.⁸⁶

Government resolutions are generally for the following purposes:

(i) *Resolutions for approving international treaties, conventions or agreements*

Under the Constitution, the Government of India has power to enter into treaties and agreements with foreign countries and implement any treaty, etc.⁸⁷ It is not constitutionally incumbent on the Government of India to obtain approval of Parliament before a treaty or an international agreement is ratified by Government. This is left to be regulated by Parliament by law.⁸⁸ Legislation would be required to give effect to a treaty in the following cases:

- (a) where it provides for money to a foreign power⁸⁹ which must be withdrawn from the Consolidated Fund of India;
- (b) where the treaty affects the justiciable rights of a citizen of India;⁹⁰
- (c) where it requires the taking of property, life or liberty of a citizen or the imposition of a tax, which can be done only by legislation.⁹¹

Outside these exceptional cases, it is competent for the Executive to enter into treaties. An amendment of the Constitution itself would be necessary to cede Indian territory to a foreign State, by reason of article 1 of the Constitution.⁹²

Occasionally, however, Ministers table resolutions for the purpose of getting parliamentary approval of international agreements and conventions or their ratification by the Government of India. There have been instances of conventions or treaties having been approved by Parliament by Government resolutions. For instance, Berne Convention for the protection of literary and artistic Works;⁹³ Hague Convention on protection of cultural property in the event of armed conflict;⁹⁴ and Universal Copyright Convention⁹⁵ were approved by Parliament by passing resolutions, whereas the Tashkent Declaration was discussed on a Government motion which was adopted with an amendment approving the stand of the Government in the matter.⁹⁶ The Treaty of Peace, Friendship and Co-operation between India and USSR was discussed on a motion on a statement made by the Government in the matter earlier.⁹⁷

(ii) *Resolutions declaring or approving certain policies of the Government*

A Government resolution may seek to record approval of the House to an act or policy of the Government. On many occasions such resolutions are brought forward, discussed and adopted in the Rajya Sabha.

A resolution was moved by the Prime Minister, Shri Jawaharlal Nehru, for the approval of the House to the principles, objectives and

programmes of development contained in the First and Second Five Year Plans;⁹⁸ resolutions have also been moved for the approval of Language Policy,⁹⁹ National Health Policy,¹⁰⁰ National Policy on Education and programme of action thereon,¹⁰¹ National Housing Policy,¹⁰² Agriculture Policy,¹⁰³ and creation of a Central Road Fund,¹⁰⁴ etc.

Similarly, resolutions expressing reaction of the Government towards incidents of national, international and humanitarian significance have also been brought forward before the House and adopted.

After Chinese aggression, a resolution was moved on 8 November 1962 and adopted on 13 November 1962, expressing determination of the people to drive out the aggressor from the sacred soil of India.¹⁰⁵ A resolution was moved by the Minister of State in the Ministry of External Affairs condemning and denouncing South Africa's apartheid policies, which was adopted.¹⁰⁶ Similarly, the Leader of the House and Minister of External Affairs moved a Government resolution on 2 March 2001, condemning the intent of the *Taliban* in Afghanistan to destroy two thousand year old statues of Buddha and the Buddhist shrines in Bamiyan which was unanimously adopted by the House.¹⁰⁷ A Government resolution expressing concern and anguish over the storming of the estate and precincts of the State legislature of Orissa by a mob of persons allegedly belonging to the VHP and the Bajrang Dal, and condemning the incident was moved on 18 March 2002, which was adopted.¹⁰⁸ During 228th Session, on 15 March 2013, the House unanimously adopted the resolution regarding rejection of resolution passed by Pakistan's National Assembly on 14 March 2013 and rejected any interference in the internal affairs of India. The House also reiterated that the State of Jammu and Kashmir including the territory under illegal occupation of Pakistan is and shall always be an integral part of India.¹⁰⁹

(iii) *Resolutions approving recommendations of Committees*

Sometimes resolutions are brought forward by the Government for approval of the House to the recommendations contained in the reports of certain committees. For example, the recommendations of the Railway Convention Committee are invariably approved by a resolution brought forward by the Minister of Railways.

C. **Statutory resolutions**

Resolutions tabled in pursuance of a provision in the Constitution or an Act of Parliament are termed statutory resolutions. Either a Minister or a private member may give notice for such resolutions. The terms of the statutes themselves lay down whether a particular action thereunder should

be taken by means of a motion or resolution. If it is required to be taken by a motion, then it is a statutory motion; if the statute provides for moving of a resolution for a particular matter, it is termed a statutory resolution. Certain enactments expressly require the Government to bring forward a resolution within a specified period of time.

Under the Customs Tariff Act, 1975, the Central Government has to seek approval of Parliament for a notification regarding increase in protective duty, by a resolution moved within a period of fifteen days beginning with the day on which the notification is laid on the Table of Parliament.¹¹⁰

Under the Official Languages Act, 1963, a resolution for the constitution of a Committee was brought before Parliament, after ten years from the date on which Section 3 of the Act came into force¹¹¹ (Section 3 of the Act came into force on 26 January 1965, and the resolution was moved and adopted in the House on 24 July 1975).¹¹²

The mover of a resolution should be present in the House when it is being discussed. On 10 December 1974, the mover of a statutory resolution seeking disapproval of the Maintenance of Internal Security (Amendment) Ordinance was not present when the resolution seeking approval of the House on the Ordinance was being discussed. The Vice-Chairman observed:

I cannot restrain myself from observing that the mover of the resolution is not present here nor anyone who appended their names to the resolution is present here. As the Opposition wants the Ministers to be present, when somebody moves a resolution, he should also be present to hear the debate.¹¹³

There is no particular period for moving a statutory resolution unless the Constitution or the Act of Parliament under which it is tabled so prescribes. For instance, articles 61, 67, 90 and 94 of the Constitution provide for at least 14 days' notice of the intention to move resolutions for removal of the President, Vice-President, Deputy Chairman, Rajya Sabha and Speaker and Deputy Speaker, Lok Sabha, respectively. After a statutory resolution is admitted, it is published in the Parliamentary Bulletin Part-II under the heading 'Statutory Resolution', for information of the members. It is not subject to draw of lot, even if a notice is given by a private member. Time for its discussion is provided by the Government from the time allocated for Government business. This is done on the recommendation of the Business Advisory Committee. Statutory resolutions which are moved under the Constitution or Acts of Parliament are mentioned below:

Resolutions under the Constitution

The Constitution provides for resolutions to be moved in either House of Parliament for the impeachment of the President¹¹⁴ and in the Council of States for the removal of the Vice-President¹¹⁵ and removal of the Deputy Chairman of Rajya Sabha.¹¹⁶ No occasions have so far arisen for moving such resolutions. Besides these, resolutions can also be moved for disapproval of Ordinances promulgated by the President,¹¹⁷ legislation by Parliament with respect to any matter enumerated in the State List,¹¹⁸ creation of All-India Services,¹¹⁹ approval of Proclamation of Emergency,¹²⁰ Proclamation in case of failure of constitutional machinery in a State,¹²¹ and Proclamation in case of Financial Emergency.¹²²

(a) Resolution for disapproval of an Ordinance (article 123)

As per the practice, a member is entitled to give notice of such a resolution as soon as an Ordinance is promulgated, irrespective of the fact whether the summons for a session has been issued or not. However, the admitted resolution is published in the Parliamentary Bulletin Part-II a few days in advance of the commencement of a session. All the notices are admitted and arranged in point of time of their receipt in the names of the members from whom they are received.

Generally, a notice given by a member for a statutory resolution for disapproving an Ordinance and the Government Bill replacing such an Ordinance are discussed together.

On an occasion, after a lengthy procedural discussion, the House agreed to take up a disapproval resolution regarding Maintenance of Internal Security Ordinance, 1971, and the related Bill, separately.¹²³

Names of all members from whom notices are received are included in the list of business. The resolution is moved first and then the Minister concerned moves for the consideration of the related Bill and thereafter, a combined discussion takes place on both. At the end of the discussion, generally the mover of the resolution replies first and then the concerned Minister. The resolution is then put to vote first, because if the resolution is adopted, it means disapproval of the Ordinance and the Bill automatically falls through. If the resolution is negatived, the motion for consideration of the Bill is then put to vote and further stages of the Bill are proceeded with.

On an occasion, resolution for the disapproval of the Code of Criminal Procedure (Amendment) Ordinance, 1991, was adopted by a casting vote of the Vice-Chairman and no further proceedings were taken on the related Bill which was also discussed along with the resolution.¹²⁴

However, on an earlier occasion, Rajya Sabha discussed together a resolution disapproving the Banking Service Commission (Repeal) Ordinance, 1977, moved by a member and the motion for consideration of the related Bill as passed by Lok Sabha moved by the concerned Minister. The resolution was adopted. This would have the effect of rejection of the motion. But the motion was also put separately and rejected.¹²⁵ Later, a joint sitting of both Houses was held to pass the Bill.

Similarly, Rajya Sabha discussed together a resolution disapproving the Prevention of Terrorism (Second) Ordinance, 2001, moved by a member and the motion for consideration of the related Bill as passed by Lok Sabha moved by the concerned Minister. The resolution was adopted. This would have the effect of rejection of the motion. But the motion was also put separately and rejected.¹²⁶ Therefore, a joint sitting of both Houses was held on 26 March 2002, and the Bill was passed.

(b) Resolution for legislation by Parliament on a State subject (article 249)

Chapter 1 has already traced the background of article 249 which confers on the Rajya Sabha a special power in the matter of passing a resolution for legislation by Parliament with respect to a matter enumerated in the State List. That article provides that if the Rajya Sabha declares by resolution supported by not less than two-thirds of the members of the House 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 is 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.¹²⁷ Such a resolution remains in force for a period not exceeding one year as may be specified therein. However, the Rajya Sabha may pass successive resolutions for the continuance in force of the original resolution, but each such resolution has a limited duration of one year only.¹²⁸ A law made by Parliament by virtue of the powers conferred on it by the resolution ceases to have effect on the expiration of six months after the resolution ceases to be in force, except in respect of things done or omitted to be done before the expiration of the said period.¹²⁹

Article 249 was first invoked in 1950 for the effective control of 'black-marketing' by the Provisional Parliament which passed a resolution on 12 August 1950. The Rajya Sabha passed the following resolution with requisite majority on 22 July 1952:

Whereas the Provisional Parliament declared by resolution passed on the 12 August 1950, in pursuance of clause (1) of article 249 of the

Constitution as then in force (which resolution is hereinafter referred to as the said resolution) that it was necessary in the national interest that the Provisional Parliament should for a period of one year from the 15 August 1950, make laws with respect to the following matters enumerated in the State List, namely:

- (i) Trade and commerce within the State subject to the provisions of Entry 33 of List-III; and
- (ii) Production, supply and distribution of goods subject to the provisions of Entry 33 of List-III;

And whereas by another resolution passed by the Provisional Parliament on the 7 June 1951, the said resolution was continued in force for a further period of one year from the 15 August 1951;

And whereas it is necessary in the national interest that Parliament should for a further period of one year from the 15 August 1952, continue to have power to make laws with respect to the matters aforesaid;

This Council do resolve, in pursuance of the proviso to clause (2) of the said article, that it approves the continuance in force of the said resolution for a further period of one year from the date on which it would, but for this resolution, cease to be in force.¹³⁰

The Provisional Parliament enacted the Essential Supplies (Temporary Powers) Amendment Act, 1950, and the Supply and Prices of Goods Act, 1950 in pursuance of the resolution.

Again in 1951, the Provisional Parliament passed the following resolution:

Whereas for the better management and disposal of certain evacuee property, it is necessary to make laws providing for the separation of the interests of evacuees from those of non-evacuees, and such laws may, *inter alia*, relate in certain matters enumerated in the State List;

This House do resolve in pursuance of article 249 of the Constitution, as adopted by the President under article 392 thereof present in force, that it is necessary in the national interest and as at that Parliament should, for a period of one year from the 15 June 1951, make laws with respect to the following matters enumerated in Entries 18 and 30 of the State List namely:

Rights in or over land; transfer and alienation of agricultural land; money-lending and money-lenders and relief of agricultural indebtedness.¹³¹

Pursuant to the resolution, the Provisional Parliament enacted the Evacuee Interest (Separation) Act, 1951, to resolve the problem relating to rehabilitation and settlement of displaced persons from Pakistan.

After nearly 35 years during which this article remained dormant, it was invoked again in August 1986. On 13 August 1986, Rajya Sabha passed, with the requisite majority, the following resolution:

Whereas the situation in Punjab and other areas in the north-west borders of India has become extremely grave due to infiltration from across the north-western borders and unabated terrorist activities in the border areas;

This House, therefore, do resolve, in pursuance of article 249 of the Constitution, that it is necessary in the national interest that Parliament should, for a period of one year from 12 August 1986, make laws with respect to the following matters, namely :

Public order (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power) [Entry 1 of List-II—State List];

Police (including railway and village police) subject to the provisions of Entry 2A of List-1 [Entry 2 of List-II—State List];

Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions (Entry 4 of List-II—State List);

Offences against laws with respect to any of the matters in this List (Entry 64 of List-II—State List);

Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List (Entry 65 of List-II—State List);

Fees in respect of any of the matters in this List, but not including fees taken in any court (Entry 66 of List II—State List).¹³²

No legislation, however, was passed by Parliament, in pursuance of the above resolution.

Views of Sarkaria Commission on article 249

In the context of Centre-State relations, the Sarkaria Commission had an occasion to consider a suggestion for deletion of this article. The Commission, however, observed:

There are three in-built safeguards against the misuse of the power conferred by this article. The first is that Parliament can assume

jurisdiction only when two-thirds of the members of the Rajya Sabha present and voting pass a resolution to that effect. Secondly, the resolution is required to specify the matter enumerated in the State List, with respect to which Parliament is being authorised to legislate in the national interest. Some Entries in List-II comprise a cluster of several matters. It is, therefore, open to the Rajya Sabha to limit the resolution specifically with respect to any one of those matters (which may even be a particular aspect of a matter) in an Entry. Thirdly, a resolution passed under clause (1) of the article remains in force for a period not exceeding one year as may be specified therein unless extended for a further period not exceeding one year by a fresh resolution. A law passed in pursuance of clause (1) ceases to have effect on the expiry of six months after the resolution has ceased to be in force. It is true that these safeguards are not fool-proof. But the basic fact that, in any case, the power is to be exercised by Parliament which consists of the representatives of the people from all the States, is itself a guarantee against its misuse. There is no allegation that, when this power was exercised in 1950-51 to pass the aforesaid temporary statutes, it worked to the disadvantage of the States or the interests of their people. In the recent case, power was conferred on Parliament to legislate with respect to certain matters in the State List to meet a situation on the north-western border, which, according to Rajya Sabha resolution under article 249, was “extremely grave.”

The article provides a simple and speedy method for effective handling, at the national level, of urgent problems of an extraordinary nature which temporarily assume national significance. The article may also be availed of in a situation in which speed is the essence of the matter, and invocation of the emergency Provisions in articles 352 and 356 is not considered necessary or expedient. Compared with article 249, the procedure provided in article 252 is very cumbersome and time-consuming. It cannot, therefore, be reasonably said that article 252 provides an equally efficacious or a better alternative to article 249. On the basis of evidence before us, therefore, it is not possible to say that this extraordinary power has been misused. It has been exercised with due restraint in extraordinary situations for temporary periods which have not been indefinitely extended by successive resolutions.¹³³

(c) Resolution for creation of an All-India Service (article 312)

If Rajya Sabha declares by a resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest to do so, Parliament may by law provide for the creation of one or more all-India services common to the Union and States.¹³⁴ Under this article Rajya Sabha adopted a resolution on 6 December 1961, for the creation of Indian Service of Engineers, Indian Forest Service

and Indian Medical and Health Service.¹³⁵ Pursuant to this resolution, Parliament amended the All-India Services Act, 1951, to incorporate these services in the statute. Again on 30 March 1965, Rajya Sabha passed a resolution for the creation of the Indian Agricultural Service and the Indian Educational Service.¹³⁶

Incidentally, it may be mentioned that a private member had also given notice of a statutory resolution under article 312 for the creation of the above mentioned Services (save the Indian Agricultural Service) as also the Indian Judicial Service. The resolution was admitted during two sessions but could not come up for discussion.¹³⁷

(d) Resolution for approval of Proclamation of Emergency (article 352)

If the President is satisfied that a grave emergency exists whereby the security of India or any part of the territory thereof is threatened whether by war or external aggression or armed rebellion he may by Proclamation make a declaration to that effect in respect of the whole of India, or of such part of the territory thereof as may be specified in the Proclamation.¹³⁸ Every Proclamation has to be laid before each House of Parliament and, except in the case of a Proclamation revoking a previous Proclamation, ceases to operate at the expiration of one month unless before the expiration of that period, it has been approved by resolutions of both Houses of Parliament.¹³⁹

If Lok Sabha is dissolved during the time of issue of the Proclamation or within one month thereof and Rajya Sabha approves the Proclamation by a resolution in the meantime, the Proclamation survives until thirty days from the date of the first sitting of Lok Sabha after its reconstitution.¹⁴⁰ The Lok Sabha can approve the Proclamation within thirty days by a resolution. A Proclamation so approved shall, unless revoked ceases to operate at the expiration of a period of six months from the passing of the second of the resolutions approving the Proclamation.¹⁴¹ If and so often as a resolution approving the continuance in force of such a Proclamation is passed by both the Houses, the Proclamation, unless revoked, continues in force for a further period of six months.¹⁴² If the dissolution of Lok Sabha takes place during any such period of six months, the Rajya Sabha can pass a resolution and thus the Proclamation can be continued until the Lok Sabha passes a resolution approving the Proclamation within thirty days from the first sitting after its reconstitution.¹⁴³ Thus, Rajya Sabha has been given special power in respect of approval of a Proclamation during the dissolution of Lok Sabha.

A resolution approving the Proclamation or its further continuance is required to be passed by either House of Parliament by a majority of the

total membership of that House and by a majority of not less than two-thirds of the members of the House present and voting.¹⁴⁴

Article 352 has been substantially amended by the Constitution (Forty-fourth) Amendment Act, 1978. Among other things, the amendment provides that the Proclamation has to be approved within a period of one month (instead of two months originally provided in the Constitution) by resolutions of both Houses of Parliament and that such resolutions have to be passed by a special majority as mentioned above (instead of a simple majority as stipulated before). It has also been provided that for the continuance in force of the Proclamation of Emergency, approval by resolutions of both the Houses is required every six months. Another significant provision made is that power has been given to the Lok Sabha to disapprove a Proclamation of Emergency; and one-tenth members of that House may also by a notice requisition a special sitting of the Lok Sabha for considering the continuance of a Proclamation of Emergency.

There have been three occasions when Proclamations of Emergency were issued under article 352. The Proclamation issued on 26 October 1962 was laid on the Table of both Houses of Parliament on 8 November 1962. It was approved by resolutions of the Rajya Sabha and the Lok Sabha on 13 and 14 November 1962, respectively. The Proclamation issued on 3 December 1971, was laid on the Table of both Houses of Parliament on 4 December 1971. It was approved by resolutions passed by the Rajya Sabha and the Lok Sabha on the same day. The Proclamation issued on 25 June 1975, was laid on the Table of both Houses of Parliament on 21 July 1975. It was approved by the Rajya Sabha on 22 July 1975 and by the Lok Sabha on 23 July 1975.

- (e) Resolution for approval of Proclamation on failure of constitutional machinery in a State (article 356)

Laying of the Proclamation

If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution, the President may issue a Proclamation assuming to himself all or any of the functions of the Government of the State and to make other incidental and consequential provisions for the purpose.¹⁴⁵ Any such Proclamation may be revoked or varied by a subsequent Proclamation.¹⁴⁶ Every Proclamation has to be laid before each House of Parliament.¹⁴⁷

When the Proclamation under article 356 in relation to Orissa was being placed on the Table, some members raised an objection that the

Proclamation could not be laid on the Table since it had lapsed. Thereupon the Chairman ruled:

...the Constitution requires every Proclamation to be laid on the Table of the House. What is its validity, when will it expire, these are matters which cannot be discussed at this stage. So far as laying it on the Table is concerned, that is the requirement of the Constitution and no one can challenge it.¹⁴⁸

While laying a Proclamation on the Table, there is no requirement to lay a copy of the Governor's report, where the President has acted on such report.

When the Minister of Home Affairs laid on the Table a copy of the Proclamation in respect of Kerala, a demand was made, on a point of order, that the Governor's report should be laid on the Table along with the Proclamation. The Chairman observed that—

- (a) as per the Home Minister's statement, there was no constitutional obligation to lay on the Table the documents on which the Proclamation was based;
- (b) the Minister would give adequate information relevant to the topic; and
- (c) Parliament was supreme but bound by the rules it itself had made; there were several rules which stated that the documents of a secret nature whose publication was not consistent with public interest need not be placed.

The Chairman, therefore, stated that he could not compel the Minister to place a document on the Table of the House when he felt that its publication was not consistent with public interest.¹⁴⁹

Again, on a later occasion, on a point of order, that the Governor's report should be laid on the Table along with the Proclamation, the Chair ruled that if the Government wished to place it on the Table, he had no objection. But he would not direct the Government to place it on the Table of the House because, in his view, the law did not require it to be put on the Table.¹⁵⁰

During the resolution regarding extension of President's rule in Punjab, a demand was made for laying of Governor's report on the Table. However, the matter was not pursued in the absence of any precedent.¹⁵¹

As per the practice, the Governor's report is ordinarily laid on the Table, along with the initial Proclamation; although, on a few occasions, a summary of the report has only been laid instead of the full report.¹⁵²

Approval of Proclamation

A Proclamation, unless revoked earlier by the President, ceases to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both the Houses of Parliament.¹⁵³

If any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued when the Lok Sabha is dissolved or the dissolution of the Lok Sabha takes place during the period of two months, and if the Rajya Sabha approves the Proclamation by a resolution but the Lok Sabha has not done so before the expiration of that period, the Proclamation ceases to operate at the expiration of thirty days from the date on which the Lok Sabha first sits after its reconstitution, unless before the expiration of that period, Lok Sabha also passes a resolution approving the Proclamation.¹⁵⁴

Under this provision, the Rajya Sabha held special sessions on two occasions – first, to approve the continuance in force of the Proclamation in respect of Tamil Nadu and Nagaland and second, to approve the Proclamation in respect of Haryana. On both the occasions, the Lok Sabha was under dissolution.¹⁵⁵

The form of the resolution is: That this House approves the Proclamation issued by the President on...(date), under article 356 of the Constitution, in relation to the State of...(name).¹⁵⁶

The form of the resolution continuing the Proclamation is: That this House approves the continuance in force of the Proclamation issued by the President on...(date), under article 356 of the Constitution, in relation to the State of...(name) for a further period of six months with effect from the...(date).¹⁵⁷

Amendments to resolution

There is no provision to give conditional approval to the Proclamation.

On an occasion, when a member wanted to move an amendment to a resolution in respect of the Proclamation in relation to West Bengal that “While so approving, the House directs the Government to hold mid-term election not later than June,” it was ruled out of order by the Chair as beyond the scope, with the observation, “You can either approve this resolution or reject it, but you cannot expand it.”¹⁵⁸

However, amendments have been admitted and moved to the resolution approving the Proclamation in the Rajya Sabha so as to attach

some condition to the resolution or express an opinion, or limit its duration. Some of the instances of amendments which have been moved are:

To the resolution approving the Proclamation (i) in respect of PEPSU, amendments were moved that, at the end of the resolution, the following be added, namely, “but regrets the delegation of these functions to the Rajpramukh of PEPSU;” “but enjoins the Government to hold general elections in the State within three months from now;¹⁵⁹ (ii) in respect of Andhra, amendments were moved for substitution of the word “approves”, with the words “considers unwarranted;” a substitute resolution was also moved that “this House having considered the President’s Proclamation is of the opinion that sufficient efforts should have been made by the Governor of Andhra to call upon the Leader of the Opposition in Andhra Assembly to form a Government before the President assumed to himself all the functions of the Governor of Andhra¹⁶⁰ (the amendments were negatived); (iii) in respect of Punjab a member moved an amendment to limit the continuance of a Proclamation “upto the 31 December 1989” (instead of six months);¹⁶¹ on another occasion, a member sought to add a paragraph at the end of the resolution: “That this House further resolves that the general elections to the Punjab Assembly be held not later than the 1 January 1991;¹⁶² (iv) in respect of Jammu and Kashmir, a member moved an amendment: “That the House further resolves that no steps be taken to revive the State Legislative Assembly or to hold fresh elections till current terrorist activities are fully curbed;¹⁶³ another member moved an amendment to the effect that the elections to the Assembly be held before November 1, 1990;¹⁶⁴ another amendment sought to restrict the period of Proclamation to three months¹⁶⁵ (instead of six months); yet another amendment wanted a paragraph to be added to the resolution that “the election to the Jammu and Kashmir Legislative Assembly as well as to the six seats in the Lok Sabha from that State shall be held within four months.”¹⁶⁶

Disapproval of resolution

A resolution seeking disapproval of the Proclamation is also inadmissible as there is no provision under article 356 for such a resolution. The House, if it desires, can vote down the resolution for the approval of the Proclamation. As observed by the Chairman in a ruling:

As is well-known, the Constitution itself makes a difference between Ordinance and Proclamation. Under article 123, Ordinances may be subjected to disapproval resolutions but no corresponding provision is made under article 356. A motion disapproving could not, therefore, be admitted.¹⁶⁷

On an occasion, when a set of papers regarding the Proclamation issued under article 356 of the Constitution in relation to the State of

Jammu and Kashmir, was laid on the Table of the House, a member pleaded that just as a statutory resolution seeking approval of such a Proclamation in relation to a State was brought by the Government, members should also have a right to move a resolution for disapproval of the Proclamation. The member, therefore, requested the Chairman to “examine this possibility that hereafter a member of the House also should have an opportunity, and an opportunity by right, to raise the matter so that it should not be left to the executive entirely at their free will”. The Chairman ruled that if the Government did not want to get the Proclamation approved, they need not move the resolution and if they did not move the resolution the Proclamation lapsed. Therefore, there was nothing for discussion. It was only when the Proclamation was continued that there was something for discussion in the House.¹⁶⁸

Motion for revocation of Proclamation

In view of the constitutional provision, therefore, a notice of a resolution for disapproval of a Proclamation, is not admitted. However, a member may give notice of a motion recommending to the President to revoke the Proclamation. Such motions have been admitted on the ground that the Constitution itself contemplates the revocation of a Proclamation by the President.¹⁶⁹

On an occasion, a motion was also admitted regarding revocation of a Proclamation in respect of West Bengal before the Proclamation was laid on the Table.¹⁷⁰

Earlier there used to be a practice to include in the list of business motions for revocation of Proclamations for discussion along with the related Government resolutions for their approval. Sometimes, even cognate matters were also listed for a combined discussion. The following are some such important instances:

A motion for revocation of the Proclamation in respect of Bihar was admitted¹⁷¹ and included in the list of business along with Government resolution seeking approval of the Proclamation¹⁷² (The member who had given notice of the motion was, however, not present); a motion for revocation of the Proclamation in respect of Rajasthan was discussed along with the Government resolution on the subject;¹⁷³ a motion regarding revocation of the Proclamation in respect of West Bengal was discussed along with Government resolution approving the Proclamation;¹⁷⁴ a motion disapproving the action of the Governor of Karnataka and recommending his recall was discussed along with the statutory resolution approving the Proclamation in respect of Karnataka (The resolution was adopted and the motion was negatived);¹⁷⁵ a motion for revocation of the Proclamation in respect of Tamil Nadu

was listed along with the Government resolution approving the Proclamation thereon¹⁷⁶ (the motion was not moved as the opposition had walked out); and an omnibus motion recommending to the President to revoke the Proclamations in relation to nine States was discussed along with nine resolutions for approval of the Proclamations (the motion was negated and the resolutions were adopted).¹⁷⁷

Following the above mentioned practice, when the motions recommending revocation of the Proclamations in respect of Uttar Pradesh, Madhya Pradesh, Rajasthan and Himachal Pradesh were listed for discussion along with the resolutions for their approval on 21 December 1992, objection was taken by some members to this practice. After the adoption of the resolutions, the Chair did not put the motions to the House declaring that they became infructuous.¹⁷⁸

In this context, incidentally, some unusual precedents may also be mentioned:

On an occasion, along with the Government resolution approving the Proclamation in respect of Haryana, a member gave the notice for the following motion which was also discussed:

“That this House condemns the unconstitutional action by the Governor of West Bengal in dismissing the United Front Government in that State and illegally installing a Government headed by Dr. P.C. Ghosh, and thus brutally trampling under feet the system of parliamentary democracy.”

The resolution was adopted and the motion was negative.¹⁷⁹

Once a member raised an interesting question of privilege. He referred to an item in the list of business of the Lok Sabha regarding the introduction of the Andhra State Legislature (Delegation of Powers) Bill, 1954, in that House. The member contended that the notice had been issued even before the President's Proclamation had been discussed and approved by the Rajya Sabha. He submitted that as anticipating the decision of the Rajya Sabha on the President's Proclamation amounted to a violation of the Constitution and a breach of the privilege of the House, the matter should be referred to the Committee of Privileges. The Chairman gave the following ruling:

Every Proclamation issued under clause (1) of article 356 has to be approved by both Houses of Parliament, but the Bill in question is sought to be introduced in the Lok Sabha in pursuance of the provision contained in article 357(1). This article says: “Whereby a Proclamation issued under clause (1) of article 356...”—it does not say, “Whereby a Proclamation issued by the President and

approved by the two Houses.” It merely says: “Whereby a Proclamation issued under clause (1) of article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent for Parliament to confer on the President the power of the Legislature of the State to make laws etc.” It will be seen from this article that the approval of the Proclamation by Parliament is not a necessary prerequisite to the conferring of the legislative power on the President. This is further apparent from the fact that a Proclamation may remain in force under article 356(3) of the Constitution for two months even without the approval by Parliament. The Proclamation was issued on November 15, and so till January 15, it can be held in force even without the approval of Parliament, and the right to confer power to legislate may be exercised even though the approval of the Legislature to the Proclamation has not been obtained during this period. Thus there is no violation of the Constitution when this Bill is proposed to be introduced in Parliament even before the approval of the Proclamation by both Houses. All the same, it may be argued that though it is legal, it may not be expedient, and a convention could be set up. It may be said that it will be constitutionally more appropriate to wait until the Proclamation has been approved and then introduce the Bill contemplated. I do not think that even of this constitutional propriety there has been a violation.

I sent for the notice of the Lok Sabha. It does not specify the hour when it is to be introduced. It is out of consideration for the resolution approving the Proclamation to be passed by this House that the hour has not been specified. So, what the Home Minister proposes to do is to move for leave to introduce the Bill today in the fond hope and expectation that he had that our House would get the resolution through as soon as possible and not have a very long and elaborate discussion. But we always take a long time. All the same, he has not specified the hour when it is to be introduced there.

Therefore, I feel that the motion for the introduction of the Bill included in the list of business of the Lok Sabha does not involve any disrespect to the Rajya Sabha, and there is no violation of the Constitution and no violation of any propriety in the matter. He merely waits for the passing of the resolution approving the Proclamation in this House before introducing the Bill in the other House and so no question of privilege is involved.¹⁸⁰

On an occasion, a point of order was raised whether the Supplementary Demands for Grants for a State could be laid on the Table before the Proclamation in respect thereof was approved by Parliament. The Vice-Chairman held that as soon as a

Proclamation was issued, power was assumed for all the functions of the State Government, unless within the period of two months that Proclamation was not approved by Parliament. The Supplementary Demands for Grants were thereafter laid on the Table.¹⁸¹

Maximum duration of a Proclamation

A Proclamation approved by both Houses of Parliament unless revoked, ceases to operate on the expiration of a period of six months from the date of issue of the Proclamation. However, if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation, unless revoked, continues in force for a further period of six months from the date on which it would otherwise have ceased to operate but no such Proclamation can in any case remain in force for more than three years.¹⁸² If the dissolution of the Lok Sabha takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation is passed by the Rajya Sabha during the said period, the Proclamation ceases to operate at the expiration of thirty days from the date on which the Lok Sabha first sits after its reconstitution unless before the expiration of the said period of thirty days, a resolution approving the continuance in force of the Proclamation has also been passed by the Lok Sabha.¹⁸³

However, a resolution with respect to the continuance in force of a Proclamation beyond the expiration of one year from the date of its issue cannot be passed by either House of Parliament unless a Proclamation of Emergency is in operation in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and the Election Commission certifies that the continuance in force of the Proclamation approved during the period specified in such resolution is necessary on account of difficulties in holding general election to the Legislative Assembly of the State concerned.¹⁸⁴

Delegation of Powers

Approval of a Proclamation by both Houses of Parliament is generally followed by an Act of Parliament delegating certain powers to the President including power to make laws for the State concerned. Such an Act also provides that before making any law for the State, the President should, whenever he considers it practicable to do so, consult a parliamentary committee constituted for the purpose. Such a committee may include members of both Houses of Parliament belonging to that State. Such laws, called the President's Acts, are required to be laid before both Houses of

Parliament and Parliament is empowered to modify the same within a period of thirty days after they are so laid.

Several members had given notice of a motion seeking to disapprove the West Bengal (Prevention of Violent Activities) Act, 1970, a copy of which was laid on the Table of the House on 23 November 1970, under section 3(3) of the West Bengal State Legislature (Delegation of Powers) Act, 1970. The motion was admitted in the form of a resolution for repeal of the Act.¹⁸⁵ It was discussed and negatived on 17 December 1970.

The Lok Sabha adopted a resolution amending the Kerala University (Amendment) Act, 1966, on 12 April 1966 and the Rajya Sabha concurred with the resolution on 12 May 1966.¹⁸⁶

A Proclamation declares that the powers of the Legislature of the State would be exercisable by or under the authority of Parliament. On account of this declaration, Parliament gets jurisdiction to pass Appropriation Bills for the withdrawal of moneys from the Consolidated Fund of the State concerned, and the papers which are required to be laid before the State Legislature are instead laid before Parliament.

Appropriation of money out of Consolidated Fund by Ordinance

For the appropriation of money for a State Administration which has been taken over by the President under a Proclamation issued by him, the Budget for that State, according to the existing practice, is not certified by Ordinance, the underlying principle being that no money can be spent out of the Consolidated Fund without the sanction of Parliament. Hence, if a contingency arises for passing an Appropriation Bill regarding such a State and the Rajya Sabha is not in session, the House might be required to be specially summoned for the purpose.

Rajya Sabha was summoned at short notice for its 33rd Session on 27 March 1961, for the purpose of Orissa Budget and related Bills consequent upon the imposition of the President's Rule in that State. The matter regarding calling the session at short notice was raised in the House on that day. The Minister of Law explained that one of the reasons was that the Budget for the State had to be prepared and printed and in the meantime the Rajya Sabha adjourned. There was an early precedent when the President had passed by Ordinance the Budget when the President's Rule was imposed in Travancore-Cochin in 1956. The view then taken was that though the Rajya Sabha was not in session, the Budget could be certified by Ordinance. The view later taken by the Government was that not a single pie should be spent from the Consolidated Fund without the sanction of Parliament. Hence the Rajya Sabha was called at short notice.¹⁸⁷

(f) Resolution for approval of Proclamation of Financial Emergency (article 360)

If the President is satisfied that a situation has arisen whereby the financial stability or credit of India or of any part thereof is threatened, he may, by Proclamation make a declaration of financial emergency.¹⁸⁸ A Proclamation so issued shall be laid before each House of Parliament and may be revoked or varied by a subsequent Proclamation. It shall cease to operate at the expiration of two months, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament. The Proclamation approved by Parliament shall be in operation until it is revoked by the President.¹⁸⁹ A Proclamation issued subsequently by the President revoking or varying the Proclamation of financial emergency in operation is not, however, required under the Constitution to be laid before each House of Parliament.

As in the case of Proclamations under articles 352 and 356, a Proclamation under article 360 could also be approved by the Rajya Sabha while the Lok Sabha is under dissolution and thus extend the life of the Proclamation.¹⁹⁰

Resolutions under Acts of Parliament

Certain statutes provide that the rules or notifications made thereunder must be approved by resolutions of Parliament within a specified period and these rules have effect, in such modified form or cease to have effect, as Parliament may by virtue of the resolutions direct.

Under Customs Tariff Act, 1975, Central Government's Notification regarding levying of export duty on goods is required to be approved by both Houses of Parliament.¹⁹¹ Accordingly, resolutions have been passed by the Rajya Sabha approving the notifications.¹⁹²

Under the Salaries and Allowances of Ministers Act, 1952, draft rules made thereunder, after the amendment made in the Act in 1977 are required to be approved by Parliament before they come into force.¹⁹³

Under this provision resolutions have been brought before the House for approval of draft of Ministers (Allowances, Medical Treatment and other Privileges) Amendment Rules.¹⁹⁴

Under the Central Excise Tariff Act, 1985, Government resolution is required to be approved for increasing the basic excise duty leviable on certain commodities.¹⁹⁵

When a State is under President's Rule, statutory resolutions are brought forward for certain purposes. For instance, Government resolutions were moved and adopted to accord approval for fixing maximum amount of loan which the concerned State Electricity Boards might have¹⁹⁶ under the Electricity (Supply) Act, 1948.¹⁹⁷

Effect or force of resolutions

In respect of a resolution tabled in pursuance of a provision of the Constitution or a statute of Parliament, the precise phraseology and the words used therein are the deciding factor for the Government whether to implement the resolution or not. As regards a resolution moved by a private member, as may be seen from the private members' resolutions mentioned earlier, some have been implemented but many may not have been so implemented. In this context as well as in the context of a motion adopted by the Rajya Sabha on 10 August 1978, in regard to appointment of a Committee to go into allegations of corruption against family members of certain Ministers, a question had arisen as to the effect of such a resolution. From this point of view, resolutions may be divided into three categories, namely, resolutions which have the statutory effect; resolutions which the House adopts in the matter of control over its own proceedings; and resolutions which are mere expressions of opinion of the House.

The Statutory resolutions are moved under the Constitution or a statute of Parliament and have a binding effect since adopting such resolutions attract in law the consequences mentioned in the statutory provisions. Besides there are resolutions which are adopted by the House in relation to its proceedings and are something like law, which cannot be disobeyed as such. For instance, a resolution committing a contemner for breach of privilege. In this category also falls the resolution adopted by the Rajya Sabha on 15 November 1976, expelling a member from the House.

A large number of resolutions, however, fall into the category of expressions of opinion. As to the purpose and effect of such resolutions, it is stated that "they are generally used to test the feeling of the House with regard to proposals which are still indefinite or ahead of public opinion".¹⁹⁸ A constitutional authority has observed: "Private Members' Motions...enable the opinion of the House to be taken. The 'opinion' need not be representative,...they are thus of some value though the value is not great".¹⁹⁹

Under the Constitution, the Rajya Sabha has no power of passing a vote of censure or no-confidence in the Government. On 17 August 1978, when, in the context of the motion adopted by the House on 10 August 1978, some members pressed for the implementation of the motion, the Chairman observed that the motion was a recommendation addressed to the Government and that the question of appointment of a Committee would depend on which of the two alternatives mentioned in the motion was acceptable to the Government.

In the circumstances a resolution adopted against the Government may have such force or effect as the Government itself may prefer to accept morally or politically in terms of its response to the opinion expressed by the House in such a resolution.

NOTES AND REFERENCES

1. G.F.M. Campion, *An introduction to the Procedure of House of Commons*, 3rd Edn., London, Macmillan & Co. Ltd., 1958, p.172.
2. Erskine May, *Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 24th Edn., p. 424.
3. R. 156.
4. R. 24.
5. R. 2(1).
6. R. 154.
7. See, for instance, Bn. (II), 20.10.1965, 3.11.1965 and 17.11.1965 for admitted lists of resolutions and Bn. (II), 21.10.1965, 4.11.1965 and 18.11.1965 for result of ballot of resolutions during the 54th Session, see also Bn. (II), 19.2.1966 for result of ballot of resolutions for the first allotted day *i.e.*, 25.2.1966 during the 55th Session.
8. 2 Rpt., COR (adopted on 24.12.1981; and brought into effect from 15.1.1982).
9. R. 26.
10. R. 541.
11. Bn. (II), 18.4.1972.
12. R. 155.
13. LoB, 5.8.1994, 28.4.1995 and 25.8.1995.
14. *Ibid.*, 30.3.1990, 25.5.1990, 6.3.1992 and 19.3.1993.
15. *Ibid.*, 22.4.1994, 19.8.1994, 16.12.1994, 28.4.1995 and 26.5.1995.
16. *Ibid.*, 16.12.1994.
17. *Ibid.*, 24.8.1990.
18. R. 157(i).
19. R. 157(ii).
20. R. 157(iii).
21. R. 157(iv).
22. R. 157(v).
23. R.S. Deb., 13.3.1980, c. 124-29.
24. Bn. (I), 6.5.1983.
25. *Ibid.*, 29.12.1989.
26. R. 165(i).
27. R. 165(ii).
28. R. 228.
29. R. 158.
30. R. 28(2).
31. R. 28(1).
32. C.S. Deb., 30.4.1954, c. 4776; and R.S. Deb., 10.12.1954, c. 1486.
33. R.S. Deb., 6.5.1994, c. 443; 5.8.1994, c. 407; 19.8.1994, c. 363; 24.3.1995, c. 543; 10.12.1999, c. 249; 20.4.2000, c. 197-245; and 5.5.2000, c. 235-53.
34. *Ibid.*, 31.8.2001, p. 451; 26.08.2004, p. 239; 10.12.2004, p. 280; 16.12.2005, pp. 283-85; 19.5.2006, p. 327; 18.8.2006, p. 347; 24.7.2009, p. 259; 11.12.2009, p. 266; 7.5.2010, p. 242; 21.8.2010, p. 74; 4.3.2011, p. 363; 18.5.2012, p. 319; 21.2.2014, p. 347; 14.12.2012, p. 347; 19.12.2014, p. 370.
35. R. 29(4).
36. LoB for 24.2.1994, 25.8.1995, 7.5.1993 (3 Resolutions) and 8.5.1992 (4 Resolutions).

37. R. 27, *Proviso*.
38. R. 163(3).
39. R. 24.
40. BAC mts., 24.2.1982, 8.3.1982, 9.7.1982, 7.10.1982, 23.2.1983, 23.7.1985 and 21.2.1986.
41. R.S. Deb., 21.3.1969, c. 5345-49.
42. R. 161.
43. Bn. (II), 2.5.1997.
44. R. 159(1).
45. R. 159(2).
46. R. 159(3). For instances, see C.S. Deb., 11.9.1953, c. 1956; R.S. Deb., 4.3.1955, c. 1214; 4.5.1956, c. 1259; 14.2.1958, c. 495; 19.2.1965, c. 312; and 16.2.1968, c. 777.
47. C.S. Deb., 26.2.1954, c. 1139 and 1247.
48. R. 160(1).
49. R. 160(2).
50. R. 160(3).
51. C.S. Deb., 26.2.1953, c. 1299-1302.
52. R.S. Deb., 24.3.1995, c. 539.
53. R. 162.
54. R.S. Deb., 3.12.1965, c. 3652.
55. *Ibid.*, 26.5.1972, c. 98.
56. F. No. RS 06/01/2006-L.
57. F. No. RS 06/03/2009-L.
58. R. 164.
59. R.S. Deb., 23.8.1954, c. 36-37.
60. *Ibid.*, 27.8.1954, c. 668.
61. R. 166.
62. R. 163(1).
63. Bn. (I), 14.8.1969.
64. R. 163(2).
65. R. 229(2).
66. R.S. Deb., 22.11.1963, c. 885.
67. F. No. RS 06/02/2012-L.
68. LoB, 7.4.1972; Revised LoB 7.4.1972.
69. F. No. RS 6(1)/2002-L.
70. Bn. (I), 10.12.1954.
71. *Ibid.*, 4.3.1955.
72. *Ibid.*, 16.9.1955.
73. *Ibid.*, 4.5.1956.
74. *Ibid.*, 7.12.1956.
75. *Ibid.*, 24.5.1957.
76. *Ibid.*, 7.5.1965.
77. *Ibid.*, 19.12.1969.
78. *Ibid.*, 13.3.1970.
79. *Ibid.*, 11.12.1981.
80. *Ibid.*, 24.8.1990.
81. *Ibid.*, 24.3.1995.
82. R.S. Deb., 24.3.1995, c. 525-27.
83. R. 33(1)(a).
84. Bn. (I), 19.12.1967.
85. *Ibid.*, 18.3.1987; 29.3.1989.
86. R.S. Deb., 26.4.1989, c. 199-200.
87. Union List (List I) of Seventh Schedule, entries 13 and 14.

88. Art. 253.
89. *Jagan Nath Sathu v. Union of India*, AIR 1960 SC 625.
90. *Nirmal v. Union of India*, AIR 1959 Cal. 506; *Maganbhai v. Union of India*, AIR 1969 SC 783.
91. D.D. Basu, *Shorter Constitution of India*, 2006, 13th Edn., pp. 1174-75.
92. *Re. Berubari Union*, AIR 1960 SC 845.
93. Bn. (I), 7.8.1952.
94. *Ibid.*, 6.9.1957.
95. *Ibid.*, 13.9.1957.
96. *Ibid.*, 22.2.1966.
97. *Ibid.*, 14.8.1971.
98. *Ibid.*, 18.12.1952, 7.9.1956.
99. *Ibid.*, 22.12.1967.
100. *Ibid.*, 4.8.1983.
101. *Ibid.*, 13.5.1986 and 22.8.1986.
102. *Ibid.*, 9.8.1994.
103. *Ibid.*, 3.8.1995.
104. *Ibid.*, 1.4.1976; 13.5.1988.
105. *Ibid.*, 13.11.1962.
106. *Ibid.*, 20.8.1985.
107. *Ibid.*, 2.3.2001.
108. *Ibid.*, 18.3.2001.
109. *Ibid.*, 15.3.2013.
110. Customs Tariff Act, 1975, s. 7(3).
111. Official Languages Act, 1963, s. 4(1).
112. Bn. (I), 24.7.1975.
113. R.S. Deb., 10.12.1974, c. 248.
114. Art. 61.
115. Art. 67.
116. Art. 90.
117. Art. 123.
118. Art. 249.
119. Art. 312.
120. Art. 352.
121. Art. 356.
122. Art. 360.
123. Bn. (I), 23.6.1971 and 24.6.1971. For procedural discussion, see R.S. Deb., 23.6.1971, c. 45-97.
124. *Ibid.*, 5.8.1991.
125. *Ibid.*, 8.12.1977.
126. *Ibid.*, 21.3.2002.
127. Art. 249(1).
128. Art. 249(2).
129. Art. 249(3).
130. C.S. Deb., 18.7.1952, c. 1481-92; and 22.7.1952, c. 1628-86.
131. Prov. Parliament, Bn. (I), 5.6.1951.
132. Bn. (I), 13.8.1986.
133. Report of Sarkaria Commission on Centre-State Relations, para. 2.25.09-10.
134. Art. 312.
135. R.S. Deb., 6.12.1961, c. 1301-05.
136. Bn. (I), 30.3.1965.
137. Bn. (II), 8.9.1961 and 30.10.1961.
138. Art. 352(1).
139. Art. 352(4).

140. Art. 352(4), *Proviso*.
141. Art. 352(5).
142. *Ibid.*, 1st *Proviso*.
143. *Ibid.*, 2nd *Proviso*.
144. Art. 352(6).
145. Art. 356(1).
146. Art. 356(2).
147. Art. 356(3).
148. R.S. Deb., 23.3.1971, c. 20-27.
149. *Ibid.*, 10.8.1959, c. 83-97.
150. *Ibid.*, 12.11.1973, c. 127-30.
151. *Ibid.*, 9.11.1987, c. 223-28.
152. *Ibid.*, 18.8.1959, c. 972; 24.3.1965, c. 4429; and 20.3.1967, c. 126.
153. Art. 356(3).
154. *Ibid.*, *Proviso*.
155. 99th Session (28.2.1977 and 1.3.1977); and 158th Session (3.6.1991 and 4.6.1991).
156. In the early years the resolution used to be worded rather elaborately: see C.S. Deb., 25.3.1953, c. 2156; and R.S. Deb., 29.11.1954, c. 193.
157. For early form of resolution, see C.S. Deb., 15.9.1953, c. 2437; and R.S. Deb., 7.9.1956, c. 3697.
158. R.S. Deb., 12.3.1968, c. 4306-07.
159. C.S. Deb., 25.3.1953, c. 2156.
160. R.S. Deb., 29.11.1954, c. 201.
161. *Ibid.*, 12.10.1989, c. 102.
162. *Ibid.*, 5.10.1990, c. 88.
163. *Ibid.*, 23.8.1990, c. 315.
164. *Ibid.*, c. 314.
165. *Ibid.*, 26.8.1991, c. 180.
166. *Ibid.*, 25.2.1992, c. 264.
167. *Ibid.*, 13.3.1980, c. 124-29.
168. *Ibid.*, 4.11.1986, c. 213-15.
169. For instances, see Bn. (II), 1.3.1968, 4.5.1968, 22.7.1969, 5.3.1973 and 6.3.1980.
170. Bn. (II), 12.7.1971.
171. *Ibid.*, 22.7.1969.
172. LoB, 21.8.1969.
173. R.S. Deb., 3.4.1967, c. 1937-2020; and 4.4.1967, c. 2107-20.
174. Bn. (I), 21.7.1971.
175. *Ibid.*, 25.4.1989 and 26.4.1989.
176. LoB, 26.2.1991.
177. Bn. (I), 27.3.1980.
178. R.S. Deb., 21.12.1992, c. 438.
179. Bn. (I), 22.11.1967 and 27.11.1967.
180. R.S. Deb., 30.11.1954, c. 348-52.
181. *Ibid.*, 15.12.1981, c. 229-35.
182. Art. 356(4).
183. *Ibid.*, *Proviso*.
184. Art. 356(5).
185. Bn. (II), 28.11.1970.
186. L.S. Deb., 12.4.1966, c. 10626-655; R.S. Deb., 12.5.1966, c. 1261-73.
187. R.S. Deb., 27.3.1961, c. 9.
188. Art. 360(1).
189. Art. 360(2).
190. *Ibid.*, *Proviso*.
191. Customs Tariff Act, 1975, ss. 7 and 8.

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192. Bn. (I), 28.11.1978.
 193. Salaries and Allowances of Ministers Act, 1952, s. 11(2).
 194. Bn. (I), 7.5.1986, 20.3.1987, 6.9.1990 and 17.8.1995.
 195. *Ibid.*, 3.9.1990.
 196. *Ibid.*, 11.3.1991 and 26.8.1993.
 197. Electricity (Supply) Act, 1948, s. 65(3).
 198. G.F.M. Campion, *op. cit.* p. 109.
 199. Ivor Jennings, *Parliament*, 2nd Edn. 1957, pp. 363-64.