

BILLS

AMENDING

1. Bills: Amending Bills: Scope of amendments: When an amending Bill is taken up, members can move amendments only to those sections or articles that are sought to be amended by the Bill

On 11 September 1956, while the Constitution (Seventh Amendment) Bill, 1956 was under consideration, Shri Jaspat Roy Kapoor moved certain amendments to amend articles 29, 30 and 35 of the Constitution, which were not proposed to be amended by the Bill. Dr. R. B. Gour asked whether any article, which was not under amendment in the Bill itself, could be sought to be amended.

The Deputy Chairman, ruling the amendments out of order, said:

The Bill does not seek to amend either article 30 or article 35, and they are in the chapter on Fundamental Rights. The hon'ble member can only move an amendment to the articles that are sought to be amended by the Constitution (Amendment) Bill.

Later, on the same day, during the clause by clause consideration of the Bill, Shri Kapoor raised the same point again and said that a similar amendment was allowed to be discussed in the House of the People.

The Deputy Chairman said:

Anyway, the convention in this House has been not to allow amendments to a section which is not being sought to be amended by the Government.

When Shri Kapoor wanted to know whether the convention in the Council was different from the convention in the House of the People, the Deputy Chairman said, "Yes; in certain cases".

(R.S. deb. dt. 11.9.1956, Cols. 4150-53 and 4177-78)

2. Bills: Amending Bills: Scope of discussion: Even though an amending Bill seeks to amend only a clause of a sub-section of a section of the original Act, the whole section becomes open for discussion

On 1 October 1955, when the clause by clause consideration of the Chartered Accountants (Amendment) Bill, 1955 was taken up, Shri V. K. Dhage moved an amendment to clause (iv) of sub-section (1) of section 4 of the Chartered Accountants Act. The Minister of Revenue and Civil Expenditure, Shri M.C. Shah, submitted that Shri Dhage's amendment was not in order as only clause (v) of sub-section (1) of section 4 of the original Act was before the House and not sub-section (1) as a whole.

The Deputy Chairman ruled:

I think the whole section is open to discussion, not only the particular clause that you are amending.

(R.S. deb. dt. 1.10.1955, Cols. 5517-18)

AMENDMENTS

3. Bills: Amendments: Amendments can be allowed to be moved to Bills at shorter notice in exceptional cases at the Chair's discretion

On 18 November 1957, during the clause by clause consideration of the Indian Nursing Council (Amendment) Bill, 1957, Dr. R. B. Gour submitted that certain amendments to clause (4) of which he had given notice before 10.30 a.m. on that day had not been circulated to members. The Vice-Chairman said that since the amendments were tabled only at 12.15 p.m., they could not be circulated to members. Pandit Algu Rai Shastri objected to those amendments being taken up as they had not been circulated in time.

On 19 November 1957, the Chairman, clarifying the position on the subject, observed:

I should like to mention that according to our Rules, notice of an amendment to a Bill should be given one day before the date on which the Bill is to be considered. Where such notice has not been given, it is open to any member in the House to object to the moving of such amendment and the objection shall prevail unless the Chairman allows the amendment to be moved. The right to object to the moving of an amendment at shorter notice has been given specifically for the purpose of enabling the members to consider the amendment clearly, diligently and dispassionately. Obviously, it will not be possible to expect that in every case of an amendment received at short notice, there will be time for the Secretary to circulate it before the question comes up for consideration by the House. A discretion has been vested in the Chair to allow an amendment to be moved at shorter notice inspite of an objection, but this discretion is intended to be exercised only in exceptional cases, such as an amendment to remove a lacuna or which is of a technical or drafting nature. Where copies of a Bill have been circulated in advance, there should be no difficulty for members to table amendments in time. Ordinarily, therefore, the Chair will not exercise its right of allowing an amendment received at short notice to be moved even if one member objects to its moving. What we are doing in this particular case ought not to be taken as a precedent.

(R.S. deb. dt. 18.11.1957, Cols. 164-69; 19.11.1957, Cols. 245-46)

4. Bills: Amendments: Negative amendments are not in order

Shri C. D. Pande moved an amendment seeking to delete a clause of the Constitution (Twenty-fourth Amendment) Bill, 1971, and sought to speak on his amendment. Shri Rajnarain supported him.

The Chairman ruled:

Amendment no.1 is out of order because you want deletion of the clause... You can vote against it... It is out of order. It is a negative amendment. You vote against the clause. It is not an amendment at all.

(R.S. deb. dt. 11.8.1971, Cols. 239-40)

5. Bills: Amendments: An amendment seeking reference of a Bill to the Select Committee, given without the names of the members of the Committee, cannot be moved

On 25 January 1980, when the Constitution (Forty-fifth Amendment) Bill, 1980 was taken up for consideration, Shri Buddha Priya Maurya wanted to move an amendment for referring the Bill to the Select Committee, but he had not given the names of the members of the Select Committee. The Deputy Chairman asked Shri Maurya to give the names of members of the Select Committee, but he did not give the names at that time.

The Deputy Chairman then observed:

The motion will be incomplete without the names. It is a technical point. But it is there.

Shri Buddha Priya Maurya could not, therefore, move the amendment for referring the Bill to the Select Committee.

(R.S. deb. dt. 25.1.1980, Cols. 70-71)

6. Bills: Amendments: Amendment to a motion need not be admitted if the motion itself has been changed

On 2 March 1982, when the motion to refer the Industrial Finance Corporation (Amendment) Bill, 1982 to a Joint Select Committee was adopted, Shri Jagdish Prasad Mathur wanted to know the action taken on his motion on that very Bill. When the Vice-Chairman drew his attention to the fact that the Bill had already been referred to the Joint Select Committee as stated in his motion, Shri Mathur argued that both motions were basically different since the persons in the adopted motion were not the same as enlisted in his motion. The member's contention was that though his motion was accepted by the Government, but his motion and the Government motion were not absolutely identical and so his motion should be taken up for consideration.

After prolonged arguments, the Vice-Chairman, dismissing the contention of Shri Mathur, observed:

According to the supplementary list of business, the original motion was changed. Your amendment was to the original motion. So it cannot be taken into consideration.

(R.S. deb. dt. 2.3.1982, Cols. 295-303)

7. Bills: Amendments: Discussion on the Constitution (Amendment) Bill should not be turned into a general debate on the Constitution

On 2 August 1985, the House was discussing the Constitution (Amendment) Bill, 1982 (to amend articles 102, 103, 191 and 192). While speaking on the Bill, Shri Kalpnath Rai talked about the importance of the Constitution and the values attached to it while taking oath of office. There were some interruptions leading to an observation by Shri Sankar Prasad Mitra that even Judges of the Supreme Court, after taking oath to the Constitution, allege in law seminars and law conferences that under the present Constitution socialism would never be achieved. Shri Mitra called upon Shri Rai to persuade the Union Law Minister to take some action against those Judges.

At this the Vice-Chairman observed:

Your observation is as much not relevant to the subject as he is telling. Now, I may be pardoned for drawing the attention of the House to say that we are discussing a Bill to amend articles 102, 103, 191 and 192 which relate to defections. We are not having a general debate on the Constitution or socialism. However, if it is the pleasure of the House to discuss anything under the sun because there is nothing better to do, it is up to you.

(R.S. deb. dt. 2.8.1985, Col. 246)

8. Bills: Amendments: Members cannot speak on the amendments, if the amendments are not moved formally

On 25 February 1987, Shri Ghulam Rasool Matto wanted a ruling from the Chair through a point of order during the discussion on the Motion of Thanks on the President's Address. He wanted to know whether those members who had moved the amendments to the Motion of Thanks and were not present in the House had any right to speak.

The Vice-Chairman ruled:

When the amendments are not moved formally, they don't have the right to speak on those amendments. But they can speak on the main motion, surely.

(R.S. deb. dt. 25.2.1987, Col. 282)

9. Bills: Amendments: Amendments are moved during clause by clause consideration of a Bill

On 26 November 1987, when the Constitution (Fifty-sixth Amendment) Bill, 1988 was taken up for discussion, Shri Aladi Aruna and Shri Nirmal Chatterjee sought the permission of the Chair for moving the amendments. Reminding the members of the procedure of the House, the Deputy Chairman observed:

Amendments will be moved when we take up clause by clause consideration of the Bill. That is the usual procedure. This is general discussion stage.

Then the amendments will be moved at the time of passing of the clauses of the Bill.

(R.S. deb. dt. 26.11.1987, Col. 147)

10. Bills: Amendments: Corrigenda to a Bill are not amendments

The Minister of Law, Justice and Company Affairs, Shri Ram Jethmalani, moved an amendment to the Code of Civil Procedure (Amendment) Bill, 1997 with too many corrigenda. Shri H. Hanumanthappa sought Chair's direction regarding the procedure to incorporate the corrigenda to a Bill introduced long back in 1997. The Deputy Chairman while maintaining that corrigenda are not in the form of amendments, directed:

...in future when a Bill is introduced, it should be read properly and proper corrections should be made. When it is printed at the Government Printing Press, they should be very careful about it. When legislations are passed by this House, they should not go by default that words are missing or brackets are missing because they can change the entire meaning of the whole sentence or the whole clause.

(R.S. deb. dt. 29.11.1999, pp. 152-53)

11. Bills: Amendments: Ordinarily period of notice of amendment to a Bill is one day

On 30 November 2000, the Companies (Amendment) Bill, 2000 as passed by Lok Sabha was taken into consideration. Shri Md. Salim drew the attention of the House regarding a notice of amendment given by him. He also stated that nowhere in rule 95 it is mentioned that one or two days be given but still the notice was not circulated. Shri Nilotpal Basu submitted that there were umpteen precedents in the House where amendments had been submitted just before the Minister started moving the Bill and they had been accepted and circulated.

At this point, the Vice-Chairman said:

For your information, I will read the provision about notice of amendments to Bill. Under the Rules of Procedure, the ordinary period of notice of amendment to a Bill which is to be considered, including an amendment to refer the Bill to Joint Committee is one day. So, there is a rule.

(R.S. deb. dt. 30.11.2000, pp. 88-89)

12. Bills: Amendments: Chair: Chair can allow amendments if notices are given before the consideration stage of the Bill

On 10 December 1971, when Shri Chitta Basu wanted to move an amendment to the Companies (Amendment) Bill, 1967, Shri Niranjan Varma rose on a point of order and drew the attention of the Chair to rule 95 of the Rules of Procedure and Conduct of Business in Rajya Sabha, wherein it is stated that if notice of an amendment has not been given one day before

the day on which the Bill is to be considered, any member may object to the moving of the amendment, and such objection shall prevail, unless the Chairman allows the amendment to be moved.

Thereupon, the Deputy Chairman observed:

That is a different thing. Amendments can also be allowed by the Chair if the notice is given before the consideration stage comes.

(R.S. deb. dt. 10.12.1971, Col. 44)

13. Bills: Amendments: Expiring Laws Continuance Bill: Amendments seeking to amend the parent Act when a Bill merely seeks to continue the life of the Act, are out of order

When the Preventive Detention (Amendment) Bill, 1954 was being discussed in the House, Shri Bhupesh Gupta moved certain amendments to it seeking to amend the provisions of the principal Act. He contended that when undertaking legislation to extend the life of a measure, in exceptional cases, the parent Act can be gone into and the provisions of the parent Act could be considered.

The Deputy Chairman ruled those amendments out of order and observed:

The Bill seeks to continue the Preventive Detention Act, 1950, and comes within the category of what is known as an Expiring Laws Continuance Bill. It is a well established practice in the House of Commons of the United Kingdom that where a Bill is brought to continue an expiring law, it would not be competent to move any amendments seeking to amend the provisions of the Act proposed to be continued.

(R.S. deb. dt. 18.12.1954, Cols. 2657-60)

14. Bills: Amendments: Expiring Laws Continuance Bill: Amendments seeking to amend the parent Act when a Bill merely seeks to continue the life of the Act, are out of order

Shri Bhupesh Gupta sought to move an amendment to the Preventive Detention (Continuance) Bill, 1957, which was ruled out of order by the Deputy Chairman. Shri Gupta wanted to know the reason.

Thereupon, the Deputy Chairman said:

The Bill seeks only to continue the Preventive Detention Act. So, no amendment can be made to the main Act. There has also been already a ruling in this House. I am reading the ruling:

The Bill seeks to continue the Preventive Detention Act, 1950, and comes within the category of what is known as an Expiring Laws Continuance Bill. It is a well established practice in the House of Commons of the United Kingdom that where a Bill is brought to continue an expiring law, it

would not be competent to move any amendments seeking to amend the provisions of the Act proposed to be continued. It is laid down in May's Parliamentary Practice, 15th Edition, pages 532-33 that the amendments which may be moved to an Expiring Laws Continuance Bill are subject to the following limitations:

- (1) An amendment is outside the scope of the Bill if it seeks to amend the provisions of the Act proposed to be continued or to make permanent such Act or to include in the Bill a statute which has already ceased to have effect; and
- (2) An amendment may be moved to the operative clause of the Bill to alter the date to which the Act is to be continued.

(R.S. deb. dt. 20.12.1957, Cols. 3452-53)

15. Bills: Amendments: Expiring Laws Continuance Bill: Amendments seeking to amend the parent Act when a Bill merely seeks to continue the life of the Act, are out of order

When the Requisitioning and Acquisition of Immovable Property (Amendment) Bill, 1958, seeking to extend the life of the parent Act for another six years was under consideration, Shri Kishen Chand submitted that the Bill should not be treated as an Expiring Laws Continuance Bill but as merely an Amendment Bill so that the House would be enabled to consider all the sections of the parent Act. He was supported by Shri Amolakh Chand.

The Deputy Minister of Works, Housing and Supply, Shri Anil K. Chanda, who was piloting the Bill, submitted that in the House of the People also there had been a ruling by the Speaker that in regard to Bills which sought to continue expiring laws, any amendment to the substantive provisions of the parent Act would be out of order.

The Chairman observed:

We have done a similar thing with regard to the Preventive Detention Act, and the Chair ruled then that—

The Bill seeks to continue the Preventive Detention Act, 1950, and comes within the category of what is known as an Expiring Laws Continuance Bill. It is a well established practice in the House of Commons of the United Kingdom that where a Bill is brought to continue an expiring law, it would not be competent to move any amendments seeking to amend the provisions of the Act proposed to be continued. It is laid down in May's Parliamentary Practice, 15th Edition, pp. 532-33 that the amendments, which may be moved to an Expiring Laws Continuance Bill, are subject to the following limitations:

- (1) An amendment is outside the scope of the Bill if it seeks to amend the provisions of the Act proposed to be continued or to make permanent such Act or to include in the Bill a statute which has already ceased to have effect; and

- (2) An amendment may be moved to the operative clause of the Bill to alter the date to which the Act is to be continued.

(R.S. deb. dt. 18. 2.1958, Cols. 780-84)

APPROPRIATION

16. Bills: Appropriation Bills: When an Appropriation Bill is under discussion, members can refer only to the items mentioned in the demands contained in it

On 14 March 1955, when the Andhra Appropriation Bill, 1955, was being discussed, Shri V. Venkataramana spoke about education and educational institutions, subjects not covered by the items in the demands.

The Deputy Chairman ruled:

Mr. Ramana, this is not a general discussion. You have to refer only to the items mentioned in the supplementary demands. Whatever items are mentioned there, you can deal with those points only.

(R.S. deb. dt. 14.3.1955, Col. 1850)

17. Bills: Appropriation Bills: During discussions on an Appropriation Bill, if other Ministers want to intervene, they must do so before the Minister in-charge of the Bill replies to the debate

After the Deputy Minister of Finance, Shri B. R. Bhagat had replied to the debate on the Appropriation Bill, 1958, the Deputy Minister of External Affairs, Shrimati Lakshmi Menon stood up to supplement some of the information given by the Deputy Minister of Finance and also to answer some other points raised by members in connection with her own Ministry.

The Deputy Chairman said:

Normally, other Ministers must speak before the Finance Minister. This is a special case.

(R.S. deb. dt. 27.2.1958, Cols. 1731-32)

FINANCE

18. Bills: Finance Bills: Recommendation of the President is necessary for moving any amendment to any Finance Bill seeking to vary any tax or duty in which the States are interested

On 28 April 1961, Shri N. M. Lingam sought to move an amendment to clause (iv) of the Finance Bill, 1961, to amend section 7 of the Indian Income-Tax Act, 1922, extending the exemption then available to the Government servants in respect of their gratuities, to employees in the private sector also. The Finance Minister, Shri Morarji R. Desai, pointed out that the amendment could not be moved as an amendment of that nature required the prior consent of the President. The Deputy Chairman said that in his opinion the consent of the President was not necessary.

The amendment was, however, negated by the House.

Reverting to this question, the Deputy Chairman observed on 1 May 1961:

On Friday, April 28, 1961, Shri N. M. Lingam moved an amendment to clause (iv) of the Finance Bill, 1961, with a view to amend section 7 of the Indian Income-Tax Act, 1922, extending the exemption at present available to Government servants in respect of their gratuities, to employees in the private sector also. The Finance Minister, speaking on the amendment, pointed out that this was an amendment which could not be moved because it was *ultra vires* – in the sense that it required the prior consent of the President, but as this was only for consideration, he was not objecting to a discussion. The Finance Minister, however, did not specify the article of the Constitution under which such prior consent was required. Shri Lingam differed from the view expressed by the Finance Minister that the amendment required prior recommendation of the President.

Before the amendment was put to vote, Shri Bhupesh Gupta wanted to know from me whether the recommendation of the President was necessary for moving the amendment. I said at that time “I do not think the consent of the President is necessary.” In saying this I had in mind article 117 of the Constitution. Under the proviso to clause (1) of article 117 no recommendation is required under that clause for the moving of an amendment making provision for the reduction or abolition of any tax.

The amendment was ultimately put to the House and was rejected.

Subsequently, however, another article of the Constitution, namely, article 274, was brought to my notice. Under clause (1) of that article, prior recommendation of the President is required for the moving of an amendment which varies any tax or duty in which States are interested. The amendment of Shri Lingam sought to provide exemption from income-tax in respect of the gratuities paid to employees in the private sector and thus it could be held that the amendment sought to vary the income-tax which was a tax in which States were interested as the net proceeds thereof were distributable to the States. In this view clause (1) of article 274 would be attracted to this amendment thereby requiring the prior recommendation of the President and I accordingly take this opportunity of revising the opinion previously expressed by me.

The amendment has, however, been rejected by the House and no further action is necessary.

(R.S. deb. dt. 28.4.1961, Cols. 1273-78; 1.5.1961, Cols. 1403-04)

19. Bills: Finance Bills: Circulation of Finance Bill before its formal introduction in Lok Sabha is not leakage, and is not the concern of Rajya Sabha

On 2 March 1970, Shri Bhupesh Gupta and a few other members raised a point that copies of the Finance Bill were circulated long before it was actually introduced in Lok Sabha on 28 February, and that amounted to a virtual leakage of the Budget.

After examining the facts and circumstances of the case, the Chairman ruled on 12 March 1970:

The Finance Bill is introduced in Lok Sabha and will be formally laid on the Table of Rajya Sabha only after it is passed by that House. No question of leakage of the Budget is involved as the taxation proposals contained in Part B of the Budget had been known to the members of Lok Sabha during the Budget speech and the Budget papers were distributed after that speech... We in Rajya Sabha are not concerned with the question of circulation of the Finance Bill before its formal introduction in Lok Sabha. This is a matter for Lok Sabha.

(R.S. deb. dt. 12.3.1970, Cols. 105-07)

20. Bills: Finance Bills: In the absence of the Minister of Finance any other Minister in the Ministry of Finance must be present in the House during discussion on the Budget

On 4 August 1971, Shri Mahavir Tyagi rising on a point of order stated that when the Finance Bill was being discussed, the Finance Minister himself or his Deputy must always be there in the House. The Minister of State in the Department of Parliamentary Affairs, Shri Om Mehta, pointed out that the Minister of State in the Ministry of Finance, Shri Ganesh* was there all the time and at that moment he might have gone out only for a couple of minutes. Shri Mehta said that in the absence of Shri Ganesh, he was taking notes. Shri Mahavir Tyagi stated that if it became the convention, then the House would lose all its dignity. He was of the view that Shri Ganesh could have asked some other Minister from his Ministry to remain present in the House.

The Deputy Chairman observed:

The Deputy Minister should be present in the House for such exigencies.

(R.S. deb. dt. 4.8.1971, Cols. 150-51)

GENERAL

21. Bills: A new Bill can be taken up for consideration with the consent of the House when the discussion on the Bill previously taken up had not been concluded

Shri T. V. Kamalashwamy objected to the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Bill, 1952, being taken up when the Prevention of Corruption (Second Amendment) Bill, 1952 had already been moved in the House the previous day. In fact, the Minister in-charge of the Bill had not even concluded his speech moving the Bill for consideration and the Deputy Chairman had announced that the debate on the Bill would continue the next day. While it was agreed that the passing of the Essential Goods (Declaration and Regulation of Tax on Sale or

* Shri K. R. Ganesh.

Purchase) Bill, 1952 was urgent, Shri B. C. Ghose objected to the procedure saying that "a Minister having begun his speech should he not finish his speech and also would it be in order at this stage for another Bill to be brought before the House".

The Chairman ruled:

His was a technical point. The other Bill was moved and the Minister actually started his speech. The point is whether it is right for us to go back on the order of business already arranged. But the House is supreme and with the consent of the House we may make a change in the order of business but it should not be a precedent.

(R.S. deb. dt. 2.8.1952, Cols. 2681-83)

22. Bills: The House should not pass a Bill knowing that there are obvious mistakes in it

When the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Amendment Bill, 1953 was being discussed, several members pointed out many mistakes in the Bill. Raising a point of order, Shri B. C. Ghose asked whether it was desirable to pass the Bill without those mistakes being rectified.

The Chairman ruled:

If we know that there are mistakes, I do not think it is right for us to pass the Bill knowing that they are there.

(R.S. deb. dt. 20.4.1953, Cols. 3322-28)

23. Bills: The question whether a particular Bill is *ultra vires* the Constitution will be decided by courts

On 7 December 1965, after the Minister of Steel and Mines, Shri N. Sanjiva Reddy, had moved that the Metal Corporation of India (Acquisition of Undertaking) Bill, 1965 be taken into consideration, Shri Mulka Govinda Reddy rising on a point of order, said that the Ordinance sought to be replaced by the Bill had been challenged in the Punjab High Court in a writ petition and asked whether it was proper for the Council to discuss the Bill when its very provisions were being challenged in the courts. Shri N. Sanjiva Reddy said that if the Bill was against the Constitution, the courts had the power to quash it.

The Chairman said:

That has been our position. We do not take legal decisions here. We leave it to the courts to interpret a law.

(R.S. deb. dt. 7.12.1965, Cols. 4077-78)

24. Bills: Parent Acts and other relevant material referred to in the 'Statement of Objects and Reasons' need only be made available in the Parliament Library

On 31 May 1972, when the Constitution (Twenty-ninth Amendment) Bill, 1972, as passed by Lok Sabha was sought to be moved in the House, Shri Mahavir Tyagi raised a point of order that it had been the convention that an extract of whatever was proposed to be amended was always given in the amending Bill. The House was being asked to amend the Constitution so as to include in the Schedule certain Acts passed by the Kerala State Government. It had also been mentioned in the Statement of Objects and Reasons that certain provisions of the Kerala Act had been struck down by the High Court. Shri Tyagi said that members had no means of getting an idea of the Acts that were sought to be included in the Schedule or of the provisions that had been struck down by the High Court and the grounds thereof. The member further said that he had been informed that the relevant material was available in the Library. He, however, emphasised that copies of precise note on the subject be provided to members enabling them to make up their minds about the Bill before the House.

The Deputy Chairman ruled:

I have to say this that our practice has been that whenever there is an amending Bill, the Act itself is made available in the Library and the amending Bill, as passed by Lok Sabha and as introduced in Lok Sabha is circulated to the members. That has been circulated to the hon'ble members of this House. The hon'ble members were free to go and see the original Act in the Library. In addition to that, if any hon'ble member wanted a copy of this original Act, he could have asked the Secretariat and a copy would have been supplied. ...All these materials are available in the Library.

(R.S. deb. dt. 31.5.1972, Cols. 195-99)

25. Bills: Member in-charge of a Bill cannot be compelled to move the motion that 'the Bill be passed'

On 11 April 1977, the Minister of Home Affairs, Shri Charan Singh, moved the Government of Union Territories (Amendment) Bill, 1977, for consideration. During the clause by clause consideration of the Bill, an amendment moved by Shri Sankar Ghose, a member of the Opposition, was adopted after the House divided. After the second reading, the Minister concerned refused to proceed with the Bill further. Several members of the Opposition protested and said that the Bill was then the property of the House and that the Minister was obliged to move the motion that 'the Bill be passed'.

After some discussion on this aspect, the Vice-Chairman ruled:

Now, under rule 71 read with the rule 126 of the Rules of Procedure and Conduct of Business, the member in-charge of the Bill has to move the

motion that the Bill be passed. There is nothing in our Rules which empowers the Chair to compel the member in-charge to move the passing motion. As the member in-charge is not moving the said motion, nothing further can be done. We now pass on to the next item in the list of business.

(R.S. deb. dt. 11.4.1977, Cols. 201-21)

26. Bills: Doubts about the legality of a Bill need not to preclude the House from proceeding with its consideration

On 2 May 1979, when the Minister of State in the Ministry of Finance, Shri Satish Agarwal, began moving for consideration the Finance Bill, 1979, as passed by Lok Sabha, Shri Sankar Ghose raised an objection that the Bill was beyond the legislative competence of Parliament. He questioned the legality of the Bill and said he opposed its consideration.

Overruling the objection, the Deputy Chairman observed:

Now as regards the point of order regarding legality, the short point before us at this stage is whether according to the Rules and the Constitution, we can proceed with the consideration of the Bill not whether it is illegal or legal. That is for the courts or other bodies to decide at the proper time... So, whether it is a point of order or objection of the hon'ble member, I do not think it is well taken. There is nothing in the Rules or in the Constitution that precludes us from considering this Bill, the Finance Bill, at this stage. Therefore, the Minister may kindly move it for consideration.

(R.S. deb. dt. 2.5.1979, Cols. 207-16)

27. Bills: Business Advisory Committee: Usual practice is to consider only those Bills which have been recommended by the Business Advisory Committee

On 16 September 1981, when the Merchant Shipping (Amendment) Bill, 1981 was being taken up for consideration, Shri Narasingha Prasad Nanda raised a point of order that in the Business Advisory Committee the Government listed the Bills which were to be taken up and the Bill was not registered by the Business Advisory Committee. He pleaded that for the future it should not be treated as a precedent and that Bills for which time was not allotted by the Business Advisory Committee, should not be allowed to be considered by the House at all.

The Deputy Chairman observed:

The usual practice is that only the Bills for which time is allotted by the Business Advisory Committee, come in. I think the Government will take care of that in future.

(R.S. deb. dt. 16.9.1981, Cols. 437-38)

28. Bills: Chair: The Chair not to decide the constitutionality of a particular Bill, it is to be decided by the House

During the course of a discussion on the Women's and Children's

Institutions Licensing Bill, 1956, Shri P. S. Rajagopal Naidu, rising on a point of order, said that the Bill did not come within the legislative competence of Parliament as the subject of the Bill was entirely within the purview of State Governments as it fell under item 32 of List II of the Seventh Schedule of the Constitution. The Deputy Chairman was of the view that it might come under item 28 of the Concurrent List 'Charities and charitable institutions'. Shri Naidu submitted that it would not come under that item as the word 'charitable' did not occur anywhere in the Bill. The Deputy Chairman said that it was not necessary and that in the case of the All India Spinners' Association, even though there was no word as 'charitable' anywhere in it, the courts had held that it was a charitable institution. Shri Naidu maintained his stand by saying that it could not come under item 28 of List III as the entire Bill was concerned only with licensing institutions and did not concern itself with how such institutions should be governed.

The Deputy Chairman said:

Now I do not want to take the responsibility of giving a ruling, because there is a ruling already. On 9 September 1947, during the discussion over a particular Bill, a point was raised whether the Bill was *ultra vires*. Mr. Speaker observed that the usual practice with the Chair was not to take upon itself the responsibility of deciding whether any particular Bill was *ultra vires* or not to kill any Bill on that ground. So, I leave it to the House to decide whether it is *ultra vires* or not.

The motion for consideration of the Bill was then adopted.

(R.S. deb. dt. 14.12.1956, Cols. 2489-97)

29. Bills: Chair: The Chair not to decide the constitutionality of a particular Bill, it is to be decided by the House

On 4 September 1959, when Shri Bhupesh Gupta moved the Representation of the People (Amendment) Bill, 1959, which sought to provide for recall of the elected members of the House of the People and of the State Assemblies. The Minister of Law, Shri A. K. Sen, rising on a point of order, submitted that Parliament was not competent to entertain the Bill because under the Indian Constitution the composition of Parliament and State Assemblies was fixed and that to provide for recall, there had to be an amendment to the Constitution. Shri Bhupesh Gupta, however, argued that Parliament was perfectly competent to add to the disqualifications for membership of Parliament or of a State Legislature under the Representation of the People Act itself and that through the Bill, he was only trying to add one more disqualification to the list.

Shri P. N. Saprú said that if the Bill was accepted, the basic structure of the Constitution would undergo a complete change and that by passing a Bill of that character the Council could not change the very basic concept

of the Constitution. He submitted that the Bill should be dropped on the ground that it sought to amend the Constitution.

Shri Amolakh Chand argued that the Bill was *ultra vires* the Constitution because it also sought to invest the Election Commission with certain powers which it did not enjoy under the Constitution.

Shri Santosh Kumar Basu said that Shri Bhupesh Gupta was only trying to enumerate a disqualification for membership of Parliament subsequent to the elections and as such it was open to Parliament to add it to the list of disqualifications. He, however, felt that the Election Commission should not be charged with that additional duty and responsibility and if this additional duty was sought to be imposed, this could be done by an amendment to the Constitution.

Shri Jaspat Roy Kapoor also supported the point of order raised by the Law Minister. At the end of a long discussion, the Deputy Chairman observed:

Shri Bhupesh Gupta has introduced a Bill for amending the Representation of the People Act, 1951. The Law Minister raised a point of order that the Bill is *ultra vires* of the Constitution as it indirectly seeks to amend the Constitution by introducing a provision for recall under the guise of disqualification under the Representation of the People Act. This objection was not taken at the introduction stage. But I still feel that there is a strong force in the objection raised by the Law Minister and it may amount to an amendment to the Constitution. But the Chair has never taken the responsibility of deciding the *ultra vires* or otherwise of a Bill. There have been several decisions of the Chair in this connection. In fact, on 23 April 1951, when an objection was taken in the Provisional Parliament to the Forward Contracts (Regulation Bill), that it was *ultra vires* of the Constitution, the Speaker observed:

The position which I had made clear was that the question of *ultra vires* will not be decided by the Chair, but that it may be left to the House. If it comes to the conclusion that it is *ultra vires*, the House may reject the Bill. If the House accepts the Bill for consideration, then the party aggrieved has his remedy in the Supreme Court or other courts. Therefore, I said it was no use going in detail into questions of constitutional niceties, because after all these are things which can best be argued by lawyers, and it is not proper to take the time of the House over these long discussion of niceties.

Again in 1953, when the constitutionality of the Legislative Assembly (Prevention of Disqualification) Bill, was raised, it has been observed:

In all these matters, the Speaker has never taken upon himself the responsibility of deciding the point of order whether it is constitutional or otherwise. It is for the House to take this also into consideration in voting down the Bill or accepting it.

Under the circumstances, I leave it to the House to accept or not to accept the Bill.

30. Bills: Chair: Constitutional validity: The Chair does not decide the constitutional validity of a Bill; House decides it

On 11 May 1963, when the Deputy Minister in the Ministry of Finance, Shri B. R. Bhagat, was to move the Compulsory Deposit Scheme Bill, 1963 for consideration, Shri Bhupesh Gupta contended that the Bill could not be taken into consideration as it contravened certain provisions of the Constitution. It infringed a citizen's right to dispose of his property as he likes and that the House could not proceed on the basis of a mere assertion of the Attorney-General that the restrictions sought to be imposed by the Bill were reasonable.

Diwan Chaman Lall said that as a state of emergency had been declared, the House was competent to decide the fate of article 19 of the Constitution.

After hearing all sections of the Council, the Chairman said:

I thank the hon'ble members for the assistance they have given me in coming to a conclusion. *Prima facie* I think we can go on with the discussion, but I do not wish to give any ruling, because in the Central Legislature it has been the accepted practice for the Chair not to take upon itself the responsibility of deciding whether the House has the legislative competence to entertain a Bill or whether a Bill is *ultra vires*. When any such question is raised, the usual practice has been to leave the matter for the decision of the House. The main reason for the adoption of this course is that a question relating to the legislative competence of the House or the constitutionality of the proposed legislation often involves much difficulty and complexity and it is the function of the courts and ultimately of the Supreme Court to decide such a question. The Presiding Officer should not arrogate to himself the functions of the court, specially as he has not the facilities or the material on which to come to a satisfactory decision. It is the sole privilege and duty of the House to decide every question that arises on a motion moved by a member. So, if the matter is left to the House to decide, the House may reject the Bill, if it is of the view that the Bill is *ultra vires*. If, however, the House accepts the Bill, the party aggrieved will still have the remedy in the courts and ultimately in the Supreme Court. This question came before the Central Legislature on various occasions and the accepted practice has been as stated by me.

(R.S. deb. dt. 11.5.1963, Cols. 3128-51)

31. Bills: Chair: The Chair not to decide the constitutionality of a particular Bill, it is to be decided by the House

On 30 August 1965, after the Minister of Planning, Shri B. R. Bhagat, moved that the Gold (Control) Bill, 1965, as passed by Lok Sabha be taken into consideration, Shri Vimalkumar Mannalalji Chordia rising on a point of order, contended that as the provisions of the Bill were *ultra vires* the Constitution, the Bill should not be taken up for consideration in the Council. Shri B. R. Bhagat pointed out that the Bill was only replacing an existing Ordinance which had the approval of Parliament and that nobody had taken up in any court the issue of its provisions being unconstitutional.

Shri G. Murahari said that as a doubt had then been raised about the constitutional validity of the provisions of the Bill, the Chair should give ruling on the point raised by Shri Chordia.

The Chairman said:

In view of the established convention of Parliament, I refuse to enter into a discussion of the clauses being *ultra vires* the Constitution. There is another place for determining that. I, therefore, allow the discussion to proceed.

(R.S. deb. dt. 30.8.1965, Cols. 1921-24)

32. Bills: Chair: The Chair not to decide the constitutionality of a particular Bill, it is to be decided by the House

Shri Banka Behary Das, Shri Bhupesh Gupta and some other members raised the point that Parliament was not competent to enact the Central Industrial Security Force Bill, 1966, as the force sought to be created under it was in the nature of a police force, "police" being a State subject under List II of the Seventh Schedule of the Constitution.

The Deputy Chairman ruled:

It does not arise at this stage at all. If anything is unconstitutional, it goes to the court of law.

(R.S. deb. dt. 1.6.1967, Cols. 1740-42)

33. Bills: Introduction: Members not to speak on the Bill at the introduction stage

On 24 March 1972, when the Constitution (Amendment) Bill, 1972 (to amend article 12) was sought to be introduced by Shri K. Chandrasekharan, Shri Joachim Alva wanted to say a few words about the Bill.

The Deputy Chairman observed on this:

It is only the introductory stage. Unless you want to raise any objection or a point of order regarding introduction of the Bill, he should be allowed to introduce it. You will not be allowed to say anything at this stage.

(R.S. deb. dt. 24.3.1972, Col. 104)

34. Bills: Introduction: No speeches to be made at the introduction stage

On 30 January 1976, after moving for leave to introduce the Workers' Education Scheme Bill, 1976, Shri Jagan Nath Bhardwaj wanted to make a speech on the Bill. The Chairman told him that he could not make a speech at that time. Even then Shri Bhardwaj insisted on having only two minutes.

The Chairman then observed:

It is not allowed. Why do you again do something which is against the procedure?

(R.S. deb. dt. 30.1.1976, Col. 100)

35. Bills: Introduction: No assurance can be given by a Minister at the time of introduction of a Bill

On 5 May 1989, at the time of introduction of the Assam University Bill, 1989, Shrimati Bijoya Chakravarty made an objection and sought an assurance from the Minister of State for Education and Culture for the establishment of another university in the northern part of Assam. Rejecting the objection of the member, the Deputy Chairman made the following observation:

When the Bill comes up for discussion, the Minister will give you an assurance. You should know the procedure. At the time of introduction of the Bill no assurance can be given. There is a procedure at the time of the introduction of the Bill. You have made your point. But the Minister will give you assurance when the Bill comes for discussion.

(R.S. deb. dt. 5.5.1989, Cols. 322-25)

36. Bills: Introduction: The introduction of a Bill cannot be opposed by a member unless he has given it in writing to the Chairman

On 27 March 1990, after the Home Minister sought leave of the House to introduce the Constitution (Sixty-fourth Amendment) Bill, 1990, Shri Subramanian Swamy was permitted by the Chair to oppose the introduction of the Bill. No sooner did Shri Subramanian Swamy conclude than Shri Pawan Kumar Bansal wanted to speak for a minute. Refusing permission to speak, the Deputy Chairman said that according to Kaul and Shakdher, anybody wanting to oppose the introduction of a Bill should give it in writing to the Chairman and since Shri Subramanian Swamy had given it in writing he was allowed to oppose the introduction of the Bill. But the member argued that Kaul and Shakdher came only after the Rules and hence, he be allowed to speak.

Disallowing him the Deputy Chairman observed:

Anyone who wants to oppose the introduction of a Bill should give it in writing to the Chairman... I am not allowing you... It is up to the discretion of the Chair.

(R.S. deb. dt. 27.3.1990, Cols. 239-41)

37. Bills: Introduction: Members not to speak at the introduction stage

On 15 December 2000, the Minister of Law, Justice and Company Affairs, Shri Arun Jaitley sought permission to introduce a Bill to amend the Indian Divorce Act, 1869. Immediately, Shri Eduardo Faleiro stated that he

had given a notice to oppose the Bill at the introduction stage. The Deputy Chairman, said that normally in principle, Bills were allowed to be introduced and once they were introduced, at the time of the discussion objections were raised but since the member was pleading, she was permitting him. Shri Eduardo Faleiro began to speak in detail on the issue.

The Deputy Chairman maintained:

You cannot make a speech when the Bill is not introduced.

However, when Shri Faleiro insisted on opposing the Bill, the Minister of Parliamentary Affairs, Shri Pramod Mahajan remarked that in the name of opposing a Bill at the introduction stage, normally the legislative competence of the House to make a legislation is talked about. He welcomed suggestions from Shri Faleiro for the Government to improve upon the Bill and requested that it should not be treated as a discussion at the introduction level.

But when Shri Faleiro insisted on continuing, the Deputy Chairman said:

You can, in your full right, either support a Bill or oppose a Bill, but the procedure is, at the time of introduction, you can oppose it when I put it, "The question is: That leave be granted to introduce a Bill..."

(R.S. deb. dt. 15.12.2000, pp. 43-46)

38. Bills: Lapsing: Pending Bills in Rajya Sabha do not lapse upon dissolution of other House

On 3 December 1991, Shri Som Pal raised a point of order that the Bill which was to be discussed on that day had been circulated in the name of Shri K. P. Unnikrishnan, who was a predecessor to the then Minister of State (Independent Charge) of the Ministry of Surface Transport, Shri Jagdish Tytler.

On this, the Vice-Chairman observed:

The position is like this – I must clarify it to the House. The hon'ble member came here and pointed out that the Bill that was circulated is in the name of Shri K. P. Unnikrishnan who is neither the Minister nor a representative of the Government. But the position does appear – just got it ascertained from the office – that this Bill was introduced by Mr. K. P. Unnikrishnan, as a Minister, on 5 September 1990. Thereafter it became the property of this House. Under the Rules, all those Bills which are the property of the House can be taken up by this House and the successor Government, it does appear, has no impediment in taking up these Bills for consideration and moving the same for consideration. Constitutional continuity is thus maintained. I have also ascertained that the pending Bills in Rajya Sabha do not lapse upon the dissolution of the other House. So, I think, Som Palji will be satisfied that Mr. Minister is entitled to move this motion, to pilot the Bill.

(R.S. deb. dt. 3.12.1991, Cols. 274-75)

39. Bills: Lapsing: A Bill lapses after dissolution of the House of the People

During the discussion on the Patents (Amendment) Bill, 1998, members raised the question of continuance of the Bill after dissolution of the House of the People.

The Chairman made the following observations:

According to article 107(5) of the Constitution: "A Bill which is pending in the House of the People, or which having been passed by the House of the People is pending in the Council of States, shall, subject to the provisions of article 108, lapse on the dissolution of the House of the People".

(R.S. deb. dt. 22.12.1998, Cols. 271-88)

40. Bills: Motion for consideration: Objection to motion for consideration of a Bill as passed by Lok Sabha, in connection with the required forty-eight hours notice, legislative competence and the subject-matter of the Bill being *sub judice* can be overruled by the Chair

On 8 May 1986, when the Law Minister, Shri Asoke Kumar Sen moved a motion for consideration of the Muslim Women (Protection of Rights on Divorce) Bill, 1986, as passed by Lok Sabha, the members raised objections to the motion on the following grounds:

- (a) that forty-eight hours' notice had not been given,
- (b) that the Hindi version of the Bill had not been circulated to the members,
- (c) that the House had no competence to legislate upon the subject-matter of the Bill, and
- (d) that the subject-matter of the Bill was *sub judice*.

The Chairman observed:

I now proceed to give my ruling. The technical objection that 48 hours' notice was not given is not valid because rule 123 provides that the Chair can waive that rule. It says: On the day on which the motion for consideration is set down in the list of business which shall, unless the Chair otherwise directs, be not less than two days. The Chair has otherwise directed in pursuance of the decision of the Business Advisory Committee. Therefore, the objection has no validity.

The second objection that the Hindi version of the Bill has not been circulated is also incorrect because in the papers circulated today by the Rajya Sabha Secretariat, I find that both English and Hindi versions of the Bill have been circulated.

The main objection is that the House has no competence to legislate upon this Bill. It is a well established precedent in both Houses of Parliament that

the Chair does not give a ruling on the vires of a legislation. It does not go into the question whether the legislation is *ultra vires* or *intra vires*. It is for the court to decide. This is borne by all the decisions given after the Constitution has been introduced. In accordance with the same principle, I am not deciding whether the Bill is *intra vires* or *ultra vires*. The House has heard the objections and it is open to the members to come to the conclusions on the basis of the arguments advanced on both sides. So far as the Chair is concerned, the Chair rules that it is not for the Chair to give a decision on this, that the Bill is within the competence of the Legislature to consider.

The third objection which was raised was that it is *sub judice*, therefore, it cannot be brought before the House. This is not valid, because this is a sovereign body and it has the power to legislate on any matter – whether it is pending in a court or not. Therefore, this objection is also over-ruled. I therefore, give the ruling that the Minister will proceed with the Bill and make his speech in support of the motion.

(R.S. deb. dt. 8.5.1986, Cols. 221-81)

41. Bills: Passage of Bill in Lok Sabha: Message from Lok Sabha alone is sufficient for the Bill being taken up in Rajya Sabha

On 4 September 1970, when the Constitution (Twenty-fourth Amendment) Bill, 1970, was about to be moved by the Prime Minister, on a point of order, Shri Jagdish Prasad Mathur said that it was not clear that the Bill had been passed by Lok Sabha with the requisite majority as laid down by the Constitution since the Speaker had first said that it had got 336 votes, then revised it to 331 and later said that he was still examining as to exactly how many votes had been secured in favour of the Bill. As such, as long as the matter was under examination it could not be deemed to have been passed by Lok Sabha and, therefore, it could not be taken up in Rajya Sabha. There was a lot of discussion on this point after which the Chairman ruled:

I am not accepting this point. I overrule this point of order. I have received a message from Lok Sabha that the Bill has been passed by Lok Sabha. That is enough for me... I understand that the Speaker has said that the result would not be affected by it.

(R.S. deb. dt. 4.9.1970, Cols. 33-43)

42. Bills: Referred to Joint Committee and dissolution of Lok Sabha: To be referred to a new Joint Committee if Lok Sabha is dissolved before the original Joint Committee completed its work

On 17 June 1980, there was a motion in the list of business in the name of the Minister of Education, Shri B. Shankaranand, for referring the Visva Bharati (Amendment) Bill, 1978 to a new Joint Committee consisting of 11 members from Rajya Sabha and 22 members from Lok Sabha. The Bill had earlier been referred, on a motion by Rajya Sabha, to the Joint Committee consisting of 11 members from Rajya Sabha and 22 members from Lok Sabha, but before the Joint Committee could complete its work, Lok Sabha had been dissolved.

When the Minister was called upon to move his motion, Shri Lal K. Advani raised a point of order objecting to the form of the motion. He said that the Joint Committee constituted earlier did not become defunct merely because the Lok Sabha had been dissolved. Even the motion sought to be moved by the Minister did not refer to the earlier Committee being wound up. In his view, the Committee continued to be in existence, though there were 22 vacancies caused by the dissolution of Lok Sabha. These vacancies, he contended, could be filled by making a recommendation to that effect to Lok Sabha. Supposing the Joint Committee had been constituted by Lok Sabha and all the 11 members of Rajya Sabha had retired together, the Committee, he said, would have continued to function and Lok Sabha would have merely made a recommendation to Rajya Sabha to fill those 11 vacancies. Even if there was a precedent for the procedure followed by the Government, it was a wrong precedent and it should be rectified, he submitted.

Shri Narasingha Prasad Nanda did not agree with the contention of Shri Advani. He said that the earlier Committee had become *functus officio* or non-existent in the eyes of law. A small limb or a fragment or a rump of the Committee could not represent the whole Committee, he contended and added, "the Committee ceases to exist because a limb by itself does not exist."

Shri Nageshwar Prasad Shahi and Shri Shiv Chandra Jha supported the contention of Shri Advani. Shri Shahi said, "The Committee constituted on a Bill initiated in this House upon which the Joint Select Committee is formed does not die and it does exist and starts functioning as soon as Lok Sabha comes into existence and sends its representatives to the Committee".

Shri Jha said the earlier Committee did not cease to exist or become defunct and it would be better if merely the vacancies in that Committee were filled.

The Minister, Shri B. Shankaranand, pointed out that rule 72(3) of the Rules of Procedure and Conduct of Business in Rajya Sabha referred only to filling of casual vacancies in a Committee and said that the 22 vacancies caused by the dissolution of Lok Sabha could not be called 'casual vacancies'. He further stated that after the dissolution of Lok Sabha the Joint Select Committee ceased to be the Select Committee. Therefore, the Government was right in coming to the House with a motion for referring the Bill to a new Joint Committee.

The Vice-Chairman then observed:

I think this is a very important matter concerning the rights of this House and the rights of the other House and I would request the Chairman to take a view and discuss this matter and then give a ruling.

The consideration of the motion was deferred pending the Chairman's ruling, until 1 July 1980.

On 1 July 1980, the Chairman gave the following ruling:

Now I have to give a ruling on a matter which was raised the other day in the House.

On 17 June 1980, a motion for reference of the Visva Bharati (Amendment) Bill, 1978, to a Joint Committee of the Houses of Parliament was included in the list of business for that day, in the name of Shri B. Shankaranand, Minister of Education. When the Minister sought to move the motion, a point of order was raised by Shri Lal K. Advani objecting to the form of motion. The Vice-Chairman, who was in the Chair, deferred the consideration of the motion pending my ruling on the point of order.

The point for consideration is (i) whether the old Committee continues to exist notwithstanding the dissolution of Lok Sabha and, if so, whether Lok Sabha may only be requested by a motion to nominate 22 members to the already existing Joint Committee; or (ii) whether the form of motion included in the list of business for reference of the Visva Bharati (Amendment) Bill to a new Joint Committee is appropriate in the circumstances of the case.

I have gone through the proceedings of the House of that date as also the previous precedents on the subject. It appears to me that the practice of having a *de novo* motion for reference of a Bill to a Joint Committee in the event of dissolution of Lok Sabha subsequently, has become inveterate and we should follow it till a definite rule neutralizes the precedents. I have seen four precedents. Although there is much to be said in favour of the view expressed by Shri Advani, as the matter is not *res integra* and is covered by precedents, I rule that the precedents which are clear should be followed in the present case also and the House may proceed with the motion which is proposed by the Minister of Education for reference of the Bill to a new Joint Committee.

(R.S. deb. dt. 17.6.1980, Cols. 260-70; 1.7.1980, Cols. 123-24)

43. Bills: Third reading: During the third reading of a Bill, members should confine their arguments either in support or for rejection of the Bill

During the third reading of the Essential Commodities (Amendment) Bill, 1957, Shri Bhupesh Gupta, made some suggestions for implementing the provisions of the Bill. Diwan Chaman Lal, rising on a point of order, submitted that according to rule 96* of the Rules of Procedure, at the third reading a member should confine himself to the submission of arguments either in support of the Bill or for rejection of the Bill.

The Deputy Chairman said:

They were neither. He made suggestions for implementation... The rule says that in support of the Bill or in opposition to the Bill you can make some remarks, but the remarks that you made were neither. You made some suggestions regarding its implementation.

(R.S. deb. dt. 1.6.1957, Cols. 2728-33)

*Old rule

44. Bills: Transmitted from Lok Sabha: Chairman can waive two days' notice period required for taking into consideration Bills transmitted from Lok Sabha

On 4 February 1980, as soon as the House assembled, Shri Bhupesh Gupta objected to the inclusion of the Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Bill, 1980, in the list of business for the day, on the ground that under the Rules, two days' notice was necessary for taking up for consideration any Bill transmitted from Lok Sabha and two days' notice had not been given for the Bill in question.

Overruling the objection, the Chairman observed:

I will read the rule to the House. The rule says:

On the day on which the motion for consideration is set down in the list of business which shall, unless the Chairman otherwise directs, be not less than two days from the receipt of the notice, the member giving notice may move that the Bill be taken into consideration.

I can waive the two days' period and take it up today.

Shri Bhupesh Gupta, Shrimati Purabi Mukhopadhyay and Shri Mohammed Yunus Saleem submitted that the Chairman could waive it only with the consent of the House.

Thereupon, the Chairman observed:

Today, the difficulty is that it has already been included in the agenda for the day's business. Therefore, obviously it must have been done with my consent, and the consent has been given to move it today. I think if we proceed with the business, we will be able to finish much more than if we enter into debates.

(R.S. deb. dt. 4.2.1980, Cols. 1-5)

45. Bills: Transmitted from Lok Sabha: A Bill already passed/returned by Rajya Sabha cannot be taken up for discussion once again

On 22 May 1990, as soon as the House assembled after lunch, the Leader of the Opposition, Shri P. Shiv Shanker made a submission regarding the Appropriation (No. 2) Bill, 1990 and the Finance Bill, 1990 that were returned by the House in the pre-lunch sitting. While questioning the propriety of returning these two Money Bills without discussion, he submitted that a Bill could be passed or returned only after taking the sense of the House under rule 37. He further argued that because of the violation of the said rule, the returning of these two Bills became *ultra vires*. Hence, the Bills should be taken up for discussion afresh. As he was supported by some

members of the Opposition, Shri Kamal Morarka contended that the proceedings of the House could never be *ultra vires* and that could not be reopened in the House. Yet, some Opposition members kept demanding discussion on these two Bills.

Dismissing the arguments advanced by them, the Deputy Chairman observed:

No procedure has been violated...When I came to the Chair, I called for the papers to be laid on the Table of the House and I asked the concerned Ministers to do it...then I said, we will take up the legislative business, and I called for the legislative business to be taken up. After that the Minister moved. I said, anybody who wants to speak? Nobody came forward to speak. So, there is no violation of any law.

(R.S. deb. dt. 22.5.1990, Cols. 188-93)

JOINT/SELECT COMMITTEES

46. Bills: Joint Committees: When the motion for concurrence to the recommendation of Lok Sabha to join a Joint Committee is taken up –

- (i) Number of members should be proportionate to the strength of the different Houses;**
- (ii) Only very general remarks are to be made; and**
- (iii) The House commits itself to the principles of the Bill, if the motion is carried. Members, however, can discuss the principles, the implications, the details, clauses and so on when the Bill comes from Lok Sabha**

Shri B.C. Ghose said that the procedure to be followed in the establishment of Joint Committees should be first settled and that it should not be left to the House of the People to dictate to the Council the number of members to be appointed by the Council to the Joint Committee, also that in the motion of concurrence before the Council the authority which the Council was conferring on the Joint Committee should also be specifically stated.

Shri P. Sundarayya said that before the Council agreed to serve on the Joint Committee, there should be a thorough discussion on the various provisions of the Bill.

Shri H.N. Kunzru said that the acceptance by the Council of the motion of concurrence should not debar the Council later on from questioning the principles of the Bill.

The Chairman ruled:

...pending a complete formulation of the principles which should govern the formation of these Select Committees, I pressed on the Government that, as far as possible, such Joint Committees should be set up forthwith without prejudice to the question of the framing of the rules of procedure in that regard. It is in accordance with this suggestion that this particular Joint Committee is sought to be established. The procedure adopted on this occasion does not bind us... Whether identical powers are to be given, whether the quorum should be a third, whether the numbers should be equal or... they should be proportionate to the strength of the different Houses, these are details which yet require to be considered.

The other question has been raised — whether it will be necessary for us to discuss the principles of the Bill before we concur in this particular motion. So far as that is concerned, we will have ample opportunities when the House of the People refers this Bill back to us to enter into complete detail, to consider whether an Act like this is necessary at all and whether particular details require to be modified or not — all these questions we will have at a later stage when the House of the People refers this matter to us. It will be most unfair to have a preview of the whole show at this stage... Therefore, I hope that a full discussion of the Bill is not necessary at this stage. I have seen, by references to the parliamentary practices of other countries, that when a motion for concurrence comes up, a few general remarks are made but the remarks are few and the remarks are general.

...when this motion is carried in this House, the House is undoubtedly committed to the principles. But members who serve on the Select Committee may, if they so desire, make their own reservations, open or otherwise... Any majority decision taken in this House is a decision of the House, and in that sense of the term it is binding. But several members in the other House have openly declared that the fact that they are serving on that Committee does not mean that they are committed to the principles of the Bill. So, the persons here who wish to serve on the Committee, may make those reservations themselves... When the Bill comes to us from the House of the People, we will beat liberty to discuss the principles, the implications, the details, the clauses and so on.

(R.S. deb. dt. 24.7.1952, Cols. 1859-81)

47. Bills: Joint/Select Committees: Members whose names have been proposed to serve on a Joint/Select Committee should not speak on the motion for reference of the Bill concerning Joint/Select Committee

When the motion for concurrence to the recommendation of Lok Sabha to join the Joint Committee of the Houses on the Untouchability (Offences) Bill, 1954 was taken up, Dr. B.R. Ambedkar, whose name was one of the names proposed for serving on the Joint Committee, said that it was impossible for him to remain silent during the discussion on that Bill, that he was aware of the convention that a member who was on a Select Committee should not speak or take part in the debate on the motion for reference to a Select Committee and that if that convention was to be rigidly followed in the House, he would like his name to be removed from the list of members to serve on the Committee.

The Deputy Chairman said:

Yes, it is a rigid one; we have been observing it... the convention we have observed in this House is that members on the Select Committee are not to speak on such a motion. On one or two occasions permission has been refused... and that is also the convention, I am told, in the other House. I had a talk with the Speaker also about it. A convention if departed from will cease to be a convention. So, it is for Dr. Ambedkar to choose whether he will speak on the floor of the House or be a member of the Select Committee... It is better that we follow healthy conventions and I see no reason to depart from that convention.

(R.S. deb. dt. 16.9.1954, Cols. 2417-21)

48. Bills: Joint/Select Committees: Members whose names have been proposed to serve on a Joint/Select Committee should not speak on the motion for reference of the Bill concerning the Joint/Select Committee

On 22 March 1955, when the motion for reference of the Hindu Succession Bill, 1954 to a Joint Committee of the Houses was under consideration, Shri P. S. Rajagopal Naidu whose name had been proposed for the Joint Committee, requested the Chairman to permit even those members who were on the Joint Committee to speak on the Bill, in view of its importance, in spite of the convention to the contrary.

The Chairman observed:

If we begin breaking the convention, the breaking will be the convention.

(R.S. deb. dt. 22.3.1955, Cols. 2734-35)

49. Bills: Joint/Select Committees: To move a motion in the Council for referring a financial Bill to a Select Committee of Rajya Sabha is in order if a motion for referring it to a Joint Committee of both Houses has not been moved in Lok Sabha

Shri H. D. Rajah moved a motion for referring the Life Insurance Corporation Bill, 1956 to a Select Committee of the Council, after the Finance Minister had moved his motion for taking the Bill into consideration.

The Finance Minister, Shri C. D. Deshmukh, rising on a point of order, said that the question of the possibility of referring the Bill to a Joint Committee was considered but in view of the proviso to rule 92* of the Rules of Procedure and Conduct of Business in Lok Sabha it was felt that the Life Insurance Corporation Bill could not be referred to a Joint Committee, because clause 37 of the Bill attracted the provisions of article 110 of the Constitution making it a financial Bill.

Shri B. C. Ghose submitted that article 110 of the Constitution did not say that a financial Bill could not be referred to a Joint Committee. He even

*Old rule

said that the Constitution did not say that a Money Bill as such should not be referred to a Joint Committee. So far as financial Bills were concerned, the powers of both the Houses were the same, except that they had to be introduced in the other House.

The Council had a right, as far as financial Bills were concerned, to disagree with the recommendations of Lok Sabha and if there was disagreement a joint sitting could be held.

The Deputy Chairman ruled:

So far as financial Bills are concerned, this House has got as much power as the other House has for referring them to a Select Committee, and our Rules also provide that, when there is no Joint Select Committee and the Bill has been referred to a Select Committee in the other House, this House has got power to refer it to a Select Committee of its own. There is no point of order, but, of course, the hon'ble Finance Minister may oppose the motion, and I will put it to the House.

(R.S. deb. dt. 28.5.1956, Cols. 3562-64)

50. Bills: Joint/Select Committees: Members' consent is presumed to have been taken, when notice of motion to refer a Bill to a Select Committee is given

On 7 December 1971, when the Constitution (Twenty-fifth Amendment) Bill, 1971, and the motion moved by Shri N. R. Muniswamy to refer the Bill to the Select Committee of Rajya Sabha members consisting of ten names, including that of Shri T. Chengalvaroyan, were being discussed, Shri Bhupesh Gupta wanted to know whether the consent of the persons including that of Shri T. Chengalvaroyan for inclusion of his name in the Select Committee had been obtained. Shri Bhupesh Gupta stated that the names could be included only on the basis of the consent given by members and sought to know whether the member had given such consent.

The Chairman observed:

Whenever a member gives notice of motion, we presume that he must have taken the consent... He (Shri Chengalvaroyan) has not said anything about this and, therefore, I presume that he has taken the consent.

(R.S. deb. dt. 7.12.1971, Cols. 19-20)

LEGISLATIVE COMPETENCE

51. Bills: Legislative competence: Bills introduced and taken up in the House must be within the legislative competence of Parliament

On 4 December 1953, when the Women's and Children's Institutions Licensing Bill, 1953, a private member's Bill was sought to be moved, the

Deputy Minister in the Ministry of Home Affairs, Shri B. N. Datar, pointed out that there was a doubt as to whether the Bill could come within the purview of Parliament as it was said to be applicable to all the States whereas Parliament could legislate only so far as Part C States were concerned. The mover of the Bill, Dr. (Shrimati) Seeta Parmanand said that the Bill would apply only to Part C States and then the other States might like to make suitable legislation on those lines. Some members, however, suggested that the omission of this point in the Bill that it would apply only to Part C States may be treated as a technical error which could be condoned and the Bill might be allowed to proceed with the necessary correction in it.

The Deputy Chairman ruled:

It is not a technical mistake. This Bill is made applicable to the whole of India. Parliament has got powers to pass such a law only for Part C States and even the Bill that has been introduced by the Government refers to Part C States*. I refuse to allow the Bill.

(R.S. deb. dt. 4.12.1953, Cols. 1277-86)

52. Bills: Legislative competence: A Bill can be opposed at the introduction stage only if the Bill initiated is outside the legislative competence of the Council

On 23 August 2007, when the Minister of Human Resource Development, Shri Arjun Singh introduced the Indira Gandhi National Tribal University Bill, 2007, Shri Shreegopal Vyas objected to the introduction of the Bill. The Deputy Chairman quoting Rule 67 of the Rules of Procedure and Conduct of Business in the Council of States, said:

At the introduction stage, it can be opposed only if the Council does not have the legislative competence to do so.

(R.S. deb. dt. 23.8.2007, p. 214)

53. Bills: Legislative competence: No ruling is needed on whether a Bill is constitutionally within the legislative competence of the House or not

On 23 January 1985, during the discussion on the General Insurance Business (Nationalisation) Amendment Bill, 1985, Shri Chaturanan Mishra

*Referring to another Bill introduced earlier by the Government.

raised a point of order. He said that the trade unions, the labour had the fundamental right of bargaining which was being denied by the Bill and that the Bill was in contravention of that fundamental right. Shri Syed Rahmat Ali sought a ruling on this point from the Chair.

The Vice-Chairman observed:

It is an accepted practice that the Chair does not give any ruling on a point of order raised whether a Bill is constitutionally within the legislative competence of the House or not... It is open to members to express their views in the matter and to press arguments for and against for the consideration of the House. The members may take this aspect into account in voting on the motion for consideration of the Bill. In view of this long standing practice, I do not want to propose to give any ruling on the points raised.

(R.S. deb. dt. 23.1.1985, Cols. 191-93)

MONEY BILLS

54. Bills: Money Bills: Certificate of Speaker that a particular Bill is a Money Bill is conclusive and final

On 29 April 1953, Shri P. S. Rajagopal Naidu, on a point of order, submitted that the Indian Income-Tax (Amendment) Bill, 1952, which had been certified by the Speaker as a Money Bill under article 110(4) of the Constitution, was not a Money Bill in as much as it contained, besides provisions dealing with the imposition, abolition, remission, alteration or regulation of any tax, provisions dealing with procedure, administration, etc. which could not be said to be incidental to the imposition, abolition, remission, alteration or regulation of any tax and requested the Chair to refer it back to the Speaker under article 110(3) of the Constitution. This stand was supported by Shri C. G. K. Reddy, Shri K. S. Hegde, Shri H. N. Kunzru, Shri B. C. Ghose and many other members. The Leader of the House, Shri C. C. Biswas, suggested that it might be that the Speaker's attention might not have been drawn to the point raised in the Council when the Bill was presented to him for his certificate and suggested that the Secretary might ascertain the position from the Secretary of the other House.

On 30 April 1953, the Chairman ruled out the point of order and observed:

Certain enquiries were made yesterday of the Secretary of the House of the People with regard to the discussions which took place here, and the following reply is received:

I write to say that the question of whether the Indian Income-Tax (Amendment) Bill, as passed by the House of the People was a Money Bill within the meaning of article 110 of the Constitution of India was raised by the Speaker himself and he took a decision which was later embodied in the certificate entered in the Bill.

The matter has been pending since yesterday. There was a good deal of discussion about it. Article 110(1) states what a Money Bill is. 110(2) states what a Money Bill is not. 110(3) says that, if a doubt arises, the decision taken by the Speaker of the House shall be final. This doubt may arise in different ways: first, in the House of the People when the Bill is initiated, the question may be raised: "Is it a Money Bill?" Or when a Bill is initiated in the Council of States according to Rule 162(2),* doubt may arise whether it is a Money Bill, and then the matter will have to be referred to the Speaker. Or, a doubt may arise within the Speaker's mind itself as now we are informed that a doubt had arisen in his mind, and then he decided that it was a Money Bill. The relevant article which governs this point is 110(4). When a Bill is transmitted to the Council, it is transmitted with a certificate by the Speaker who says that it is a Money Bill. In this particular matter, we are generally governed by the procedure in the British Parliament. There, it is put down in section 3 of the Parliament Act that a Money Bill, when it is sent up to the House of Lords, must be endorsed with the Speaker's certificate that it is a Money Bill. Such a certificate is conclusive for all purposes and is not to be questioned in any court of law. That is how the procedure is there which governs us.

(R.S. deb. dt. 29.4.1953, Cols. 4402-26; 30.4.1953, Cols. 4455-56)

55. Bills: Money Bills: When the question arises whether a Bill is Money Bill or not, reference has to be made to the Speaker whose decision shall be final

A private members' Bill — The Pensions Bill, 1977 — was sought to be introduced by Shri Vithal Gadgil on 17 March 1978. This was objected to by the Minister of State in the Ministry of Finance, Shri Satish Agarwal, on the ground that this was a Money Bill and, therefore, its introduction in Rajya Sabha could not be permitted under the Constitution as per the provisions of article 109 as well as the Rules of Procedure and Conduct of Business in Rajya Sabha. He further stated that if the Chair was in doubt as to whether this was a Money Bill or not, the matter could be referred to the Speaker.

There was a discussion on this and the Vice-Chairman then observed:

An objection had been raised that Shri Vithal Gadgil's Bill, viz., the Pensions Bill, 1977 is a Money Bill and hence it cannot be introduced in Rajya Sabha. I am aware that earlier a similar Bill, namely, the Pensions Bill, 1973 was introduced by him in Rajya Sabha on the 31st August, 1973 and that at the time no such objection was made for its introduction. However, the question whether the Bill is a Money Bill or not is not free from doubt. A reference will have, therefore, to be made to the Speaker of Lok Sabha under rule 186(8) of the Rajya Sabha Rules of Procedure according to which the decision of the Speaker in such cases shall be final in accordance with clause (3) of article 110 of the Constitution.

I order accordingly.

(R.S. deb. dt. 5.5.1978, Cols. 164-76)

*Old rule

56. Bills: Money Bills: The Pensions Bill, 1977 — Speaker's decision thereon

On 28 July 1978, after the Speaker's decision on the question whether the Pensions Bill, 1977, was a Money Bill or not, was received, the Deputy Chairman observed:

The House will recall that on 17 March 1978, Shri Vithal Gadgil had moved a motion for leave to introduce his Bill, namely, the Pensions Bill, 1977. An objection was raised to the effect that the Bill was a Money Bill and as such could not be introduced in Rajya Sabha. As the matter was not free from doubt, on 5 May 1978, the Chair had ruled that in accordance with the provision of rule 186(8) of Rajya Sabha Rules of Procedure, the Bill be referred to the Speaker of Lok Sabha for his decision.

I have now received the decision of the Speaker of the Lok Sabha in the following terms:

The Bill in question is a Money Bill. It comes within the scope of article 110(1) (e) read with article 110(1) (g) of the Constitution. Hence, I hold under article 110(3) that the Bill is a Money Bill.

In accordance with the provisions of article 109(1) of the Constitution, the Bill cannot, therefore, be introduced in Rajya Sabha.

(R.S. deb. dt. 28.7.1978, Cols. 190-91)

STATEMENT BY MINISTER

57. Bills: Statement by Minister: A Bill can be discussed without the Minister making a statement before motion for consideration

Some members raised the point that the Minister should make a speech before the motion for consideration of a Bill. One member said that the Government is introducing an important Bill without the Minister making a statement. So, the Bill cannot be discussed like that.

The Chairman observed:

As a matter of fact, I have said that the motion for consideration of the Bill and amendments thereto are now open for discussion together. So, the Minister need not reply now... Hon'ble members, the hon'ble Minister had moved that the motion for consideration of the Bill be taken up. He has already moved. No reply is required now, because it is according to the procedure we have drafted. He has moved the Bill. Then, you have moved the amendments. The discussion will take place now. He will reply and the voting on his motion and your amendments will come in the end.

(R.S. deb. dt. 22.12.1998, Cols. 324-25)

BUDGET

58. Budget: Standing Committees cannot change the Budget proposals

On 17 March 1997, during a discussion on the Railway Budget many members sought to know about several projects some of which had not figured in the Budget proposals for the year 1997-98. The Minister for Railways said that he would not wish to comment as the projects would be discussed at length in the Standing Committee on Railways after which it would come before the House. Some members asked if the Standing Committee on Railways had the authority to amend the Budget proposals by suggesting new projects and requested the Deputy Chairman to give her ruling.

The Deputy Chairman, thereupon ruled:

As far as a Standing Committee is concerned, it cannot change. It is only recommendatory in nature. It cannot change the Budget proposals which the Railway Minister has made.

(R.S. deb. dt. 17.3.1997, Cols. 271-76)

59. Budget: Discussion: Any point can be raised by any member during discussion on the General Budget

On 1 July 1980, while participating in the debate on the Budget (General), Shri Rameshwar Singh referred to certain alleged corrupt practices in the Assembly elections held recently. Shrimati Usha Malhotra questioned the propriety of making wild allegations during the debate on the Budget.

The Vice-Chairman observed:

The lady member must know that the scope of the Budget discussion is unlimited. A member can raise any point he likes.

(R.S. deb. dt. 1.7.1980, Cols. 213-16)

BULLETIN

60. Bulletin: Notification which is not required to be laid on the Table of the House should find a place in the Bulletin

Shri Era Sezhiyan wanted a ruling from the Chair on the point whether it was proper on the part of the Government to inform the public of the hike in postal rates through modification of the Indian Telegraph Rules, 1983 while the House was in session. The member said that either the Government could have come forward with a statement on the matter or could have laid the relevant information on the Table of the House. He further asked as to how the member would come to know about it.

The Vice-Chairman ruled as follows:

Mr. Sezhiyan is right in asking how the members would come to know about that. For that I have ruled that a mention in the Bulletin would serve the purpose.

(R.S. deb. dt. 1.3.1983, Cols. 244-51)