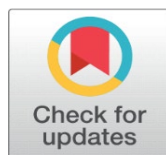


ROLE OF RAJYA SABHA IN FEDERAL SCHEME

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DOI

[10.29121/shodhkosh.v5.i5.2024.5347](https://doi.org/10.29121/shodhkosh.v5.i5.2024.5347)

Funding: This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

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ABSTRACT

The Rajya Sabha, also known as the Council of States, is an essential component of India's bicameral legislative system. Constituted under Article 79 of the Constitution, it functions as the upper house of Parliament, intended to counterbalance the expedited legislative procedure of the Lok Sabha with more meticulous consideration. The Government of India Act of 1919 initiated bicameralism in India, but it did not explicitly provide representation for independent states. The Constituent Assembly conceived the Rajya Sabha to facilitate substantial deliberation on legislation and prevent impulsive judgments from the Lok Sabha. As a permanent institution, the Rajya Sabha possesses substantial authority. The Parliament can enact resolutions, granting it the power to legislate on subjects listed in the State List, typically reserved for specific state legislatures. Furthermore, it provides a vital function in the establishment of All India Services and possesses equivalent power to the Lok Sabha in the process of amending the Constitution. The significance of the Rajya Sabha becomes especially apparent during times of crises and in issues concerning state representation, as it serves as a counterbalance between the executive power of the central government and the interests of individual states. This legislative body exemplifies the federal concept by guaranteeing the inclusion of regional viewpoints in the formulation of national policies, thereby enhancing India's integrity and unity. Because of its legislative authority, its capacity to advocate for state interests highlights its significance in safeguarding the Indian democracy's federal framework. Essentially, the Rajya Sabha plays a crucial role in preserving the equilibrium between the central and state authorities, thus safeguarding the federal nature of India.

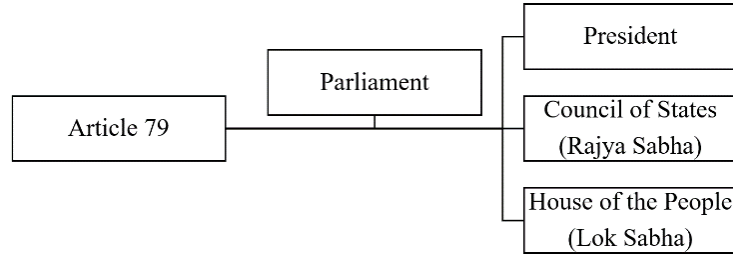
Keywords: Rajya Sabha, Federalism, Bicameralism, Legislative Power, Constitutional Amendments

1. INTRODUCTION

The Indian Parliament, constituted under Article 79 of the Constitution, represents the pinnacle of the nation's legislative framework, embodying the democratic ethos and federal structure of the country. It consists of the President, the Lok Sabha (House of the People), and the Rajya Sabha (Council of States). The Rajya Sabha, often referred to as the Upper House or the Second Chamber¹, holds a unique and vital position within this framework. Its role extends beyond

¹Jafar Sharif-Emami, 'The Concept and Relevance of Second Chambers' in S. S. Bhalerao, Secretary-General, Rajya Sabha (eds), The Second Chamber Its Role in Modern Legislatures, (1st, National, 1977).

mere legislative functions, serving as a crucial institution that ensures the representation of states, providing a platform for sober deliberation, and acting as a balancing force in the federal structure of India.



The concept of bicameralism in India, which led to the creation of the Rajya Sabha, can be traced back to the colonial era, particularly to the Government of India Act of 1919. This Act introduced the idea of a bicameral legislature, establishing the Council of States, which later evolved into the Rajya Sabha. However, the original intention behind its creation was not to represent the states or provinces, but rather to function as an advisory body, complementing the legislative process dominated by the directly elected representatives in the Lower House. The Constituent Assembly, during the framing of the Indian Constitution, recognized the need for a second chamber that could slow down the legislative process, ensuring that laws were not passed in haste due to temporary political pressures or populist sentiments. This decision was rooted in the belief that a bicameral legislature, with an Upper House like the Rajya Sabha, would enhance the quality of legislation and protect the interests of various states within the federal structure.

The Rajya Sabha, as envisioned by the framers of the Constitution, plays several critical roles² in the governance of India. First and foremost, it acts as a representative body for the states, ensuring that their voices are heard in the national legislative process. This is particularly significant in a diverse and pluralistic country like India, where the interests and concerns of states can vary significantly due to differences in language, culture, and socio-economic conditions. By representing the states, the Rajya Sabha serves as a bridge between the central government and the regional entities, fostering a sense of unity and cooperation within the federal structure. Moreover, the Rajya Sabha serves as a forum for more deliberate and reflective debate on legislative matters. Unlike the Lok Sabha, which is directly elected by the people and thus more susceptible to populist pressures, the Rajya Sabha is composed of members who are often more experienced and have a broader perspective on national issues. This composition allows the Rajya Sabha to scrutinize legislation passed by the Lok Sabha more thoroughly, ensuring that laws are not enacted in a hasty or ill-considered manner. This role as a "revising chamber" is crucial in a democratic setup, as it helps to temper the more immediate and sometimes volatile reactions of the Lower House, providing a counterbalance that is essential for stable and effective governance.

In addition to its legislative functions, the Rajya Sabha also holds significant powers in the area of constitutional amendments. Article 368 of the Indian Constitution stipulates that no amendment can be passed without the approval of both Houses of Parliament, including the Rajya Sabha. This provision places the Rajya Sabha in a unique position of authority, as it has the power to influence changes to the Constitution itself. This power is not merely symbolic; it represents the Rajya Sabha's role as a guardian of the Constitution, ensuring that any alterations to the nation's foundational document are made with due consideration and consensus. This function is especially important in a federal system, where changes to the Constitution can have profound implications for the distribution of power between the central government and the states. The Rajya Sabha's role is further emphasized during times of national emergency. Under the provisions of the Constitution, particularly Article 352, Article 356, and Article 360, the Rajya Sabha plays a critical role in the declaration and continuation of emergencies in the country. In cases where the Lok Sabha is dissolved, the Rajya Sabha becomes the sole legislative body, capable of approving executive actions and ensuring that governance continues uninterrupted. This power underscores the importance of the Rajya Sabha in maintaining the stability and continuity of government during periods of crisis, reinforcing its status as a permanent and indispensable component of the Indian legislative system.

² K.K Shah, 'The Second Chamber: It's Place in Parliamentary Democracy' in S. S. Bhale Rao, Secretary-General, Rajya Sabha (eds), *The Second Chamber Its Role in Modern Legislatures*, (1st, National, 1977).

Another significant aspect of the Rajya Sabha's role in the federal scheme is its power to legislate on matters listed in the State List under Article 249 of the Constitution. The Article 249 allows the Rajya Sabha to pass a resolution, by a two-thirds majority, enabling Parliament to legislate on matters that are otherwise within the exclusive jurisdiction of the states. This provision highlights the Rajya Sabha's ability to transcend regional interests and focus on national priorities when necessary, demonstrating its capacity to act in the broader interest of the country as a whole. The power to create All India Services under Article 312 is another extraordinary function of the Rajya Sabha, further cementing its role in the governance of the nation.

In terms of its composition and electoral process³, the Rajya Sabha is designed to reflect the federal character of India. Its members are elected by the elected members of the State Legislative Assemblies, ensuring that the states have a direct say in the selection of their representatives in the Upper House. This indirect method of election distinguishes the Rajya Sabha from the Lok Sabha and helps to insulate it from direct populist pressures, allowing it to function as a more deliberative and reflective body. The structure of the Rajya Sabha, therefore, reinforces the federal principle by ensuring that the interests of the states are adequately represented at the national level. The Rajya Sabha also embodies the pluralism and diversity of India, serving as a microcosm of the nation's varied cultural, linguistic, and regional identities. This pluralistic character is reflected in the diverse backgrounds of its members, who bring a wide range of perspectives to the legislative process. The Rajya Sabha's ability to balance the direct aspirations expressed in the Lok Sabha with the more considered views of the states is a testament to its role as a stabilizing force in the Indian polity. Nevertheless, the Rajya Sabha is not just a legislative body; it is a vital institution that upholds the federal structure of India, represents the states within the Union, and ensures that the nation's legislative process is thoughtful, balanced, and inclusive. Its unique powers and functions make it an essential component of India's democracy, providing stability, continuity, and a platform for diverse voices in the governance of the country. As India continues to evolve, the Rajya Sabha will remain a cornerstone of its federal and democratic framework, embodying the principles of unity in diversity that define the nation.

2. HISTORICAL GENESIS

The Second Chamber in India got statutory recognition⁴ under the Government of India Act, 1919, which was passed by the Imperial Parliament, and the nomenclature given was the 'Council of State'. Therefore, it was not founded on the notion that it should accurately represent the constituent units. However, they adopted this bicameralism as a kind of legislative structuring where laws required to be passed by the two Houses, i.e., Lok Sabha and Rajya Sabha.

3. CONSTITUENT ASSEMBLY DEBATE: REASONS EXPRESSED

The Constituent Assembly debated in detail the relevance of the Upper House, and they were of the opinion that Rajya Sabha would play a significant role in containing the emotions⁵ that might have played a role in passing legislation. The emotion could have prompted the Lower House, a house directly representing the people, to pass a law in a hasty manner. The Upper House's slow movement could potentially act as a checkmating mechanism. The second point of significance is that the proposal is for the Upper House to be a permanent body, whereas the Lower House is not, as it is dissolved or reconstituted with each election. Furthermore, it is essential for the advancement of the nation, as this power and body can intervene when necessary or in accordance with the constitutional mandate.

Constituent Assembly advanced three reasons in support of Upper House		
<i>Hasty legislation is passed by the Lower House may be checkmated by the go-slow movement of the Upper House</i>	<i>Upper House is a permanent body, while the Lower House is not</i>	<i>Necessary in the interests of the progress of this country</i>

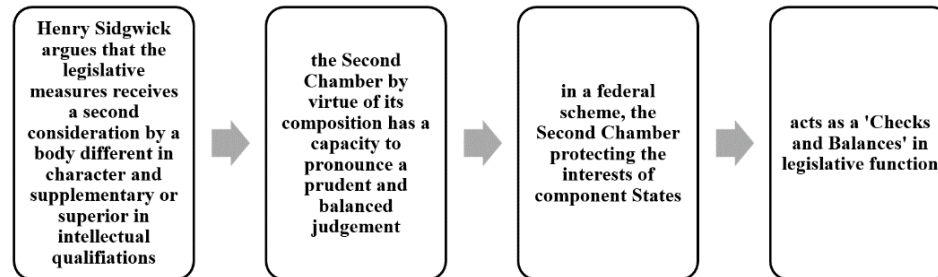
³ M.V. Venkatappa, 'The Need and Role of Second Chambers in Parliamentary Democracy' in S. S. Bhalerao, Secretary-General, Rajya Sabha (eds), The Second Chamber Its Role in Modern Legislatures, (1st, National, 1977).

⁴ M. Chalapathi Rau, 'Second Chambers in Parliamentary Democracy' in S. S. Bhalerao, Secretary-General, Rajya Sabha (eds), The Second Chamber Its Role in Modern Legislatures, (1st, National, 1977).

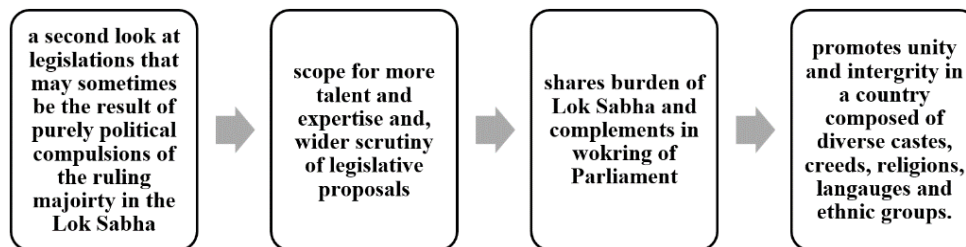
⁵ B.R. Bhagat, 'Rajya Sabha-The Kind of Second Chamber India Requires' in S. S. Bhalerao, Secretary-General, Rajya Sabha (eds), The Second Chamber Its Role in Modern Legislatures, (1st, National, 1977).

RAJYA SABHA: JUSTIFICATION

It plays a crucial role in thoroughly reevaluating a legislative proposal that originates from the Lok Sabha. It plays an important role in giving a second consideration to a body that is different in character and supplementary or superior in intellectual qualification. Therefore, it is suggested that the Rajya Sabha should be managed by qualified and educated individuals, not always viewed from a partition perspective, thereby enabling it to make prudent and balanced decisions. Significantly, the Rajya Sabha, as a representative body of the state, would also consider the state's interests when reviewing the legislative proposals passed by the Lok Sabha. Overall, it would act as a check and balance in the legislative functioning, as revisiting the legislative proposal is desirable to filter out purely political considerations for passing legislation.



As I previously mentioned, the presence of educated and knowledgeable individuals in the Upper House can lead to a more comprehensive discussion on the proposals passed by the Lok Sabha, thereby ensuring a better outcome. Furthermore, it shares the burden of Lok Sabha and complements Parliament's work. Because it represents the voice of the states, it promotes unity and integrity. States with distinct cultural, ethnic, or linguistic identities are given a platform to voice their concerns at the Union level.



4. RAJYA SABHA: CONSTITUENT POWER

The Rajya Sabha holds coequal⁶ power with the Lok Sabha in matters of constitutional amendment. No Constitutional Amendment Bill can be passed without the approval of Rajya Sabha, and it is also suggested that a Constitutional Amendment Bill can be introduced also in Rajya Sabha, as it is not always in Lok Sabha. Further, there is no provision for a joint sitting of both houses to resolve a deadlock on the Constitutional Amendment Bill. What you see in the case of an ordinary bill is a provision on joint sitting, and going by the numerical calculations, such joint sitting will always give an upper hand to the party that has a majority in Lok Sabha, or the ruling party. So, this very provision, no denial, positions Rajya Sabha in a very prominent place and makes it an equal partner on the matter of amendment of the Constitution.

The Rajya Sabha has asserted the existence of these constituent power instances. For instance, the **125th Constitutional Amendment Bill 2019** proposes to amend Article 280, enabling the Finance Commission to recommend

⁶ Jaisukhlal Hathi, 'Rajya Sabha: Position under the Constitution, its Powers and Functions' in S. S. Bhalerao, Secretary-General, Rajya Sabha (eds), *The Second Chamber Its Role in Modern Legislatures*, (1st, National, 1977).

measures needed to augment the consolidated fund of the states to supplement resources of the Sixth Schedule, such as autonomous councils, village councils, and municipal councils, and also to amend the Sixth Schedule to the Constitution. The bill has been referred to the standing committee. The Rajya Sabha introduced the **120th Constitutional Amendment Bill 2013**, which proposed the introduction of NJAC, and the **119th Constitutional Amendment Bill 2013**, which aimed to implement the agreement between India and Bangladesh. Therefore, it asserts that coequal power positioning also applies to these constitutional provisions.

5. RAJYA SABHA: LEGISLATIVE POWER

The Rajya Sabha and Lok Sabha appear to maintain⁷ equal legislative power, with the exception of the Money Bill and Finance Bill [Article 107 (1)]. A bill is deemed to have passed only when it has been agreed to be by both houses and truly reflects the significance of Rajya Sabha [Article 107(2)]. It also stipulates that if a bill remains unpassed by the Lok Sabha, it will not expire upon the dissolution of the Lok Sabha due to the permanent nature of the Rajya Sabha and the ongoing status of the bill [Article 107(3)]. Therefore, this measure minimizes the transaction cost associated with passing a bill. The Rajya Sabha also introduced and passed several significant bills, including the Consumer Protection Bill, 2019, the Aadhar (Targeted Delivery of Financial and Other Subsidies, Benefits, and Services) Bill of 2016, and the Rights of Persons with Disabilities Bill, 2016.

6. RAJYA SABHA: EXTRAORDINARY POWER

Rajya Sabha also has got an extraordinary⁸ power in terms of legislative actions as well as check and balance over executive actions. The first extraordinary power is the Rajya Sabha's ability to pass a resolution that authorizes Parliament to enact laws on the state list. This provision establishes a true representative character, that is, the state's representation. The creation of All India Services falls under the exclusive jurisdiction of the Rajya Sabha, which must pass a resolution to that effect. During an emergency when the Lok Sabha is dissolved, the Rajya Sabha has the authority to pass a resolution that will take effect. However, this resolution must be presented to the newly constituted Lok Sabha. Therefore, the extraordinary power of the Rajya Sabha has an impact on the Central-State relationship. *For instance, a resolution passed by the Rajya Sabha empowers Parliament to enact laws related to the State List.* Technically, we assume that when the Rajya Sabha passes such a resolution, it represents the opinions of the constituent units and the states. However, we are aware that in India, the representation of the states in the Rajya Sabha is asymmetrical.

7. POWER TO LEGISLATE ON STATE LIST

The constitution includes specific provisions allowing for intervention by the Parliament in matters pertaining to State Legislature. As an embodiment of the federal principle⁹, the Rajya Sabha has been assigned to allow the Parliament to intervene. Article 249 provides that, if the Rajya Sabha adopts a resolution by a majority of not less than two-thirds of the Members present and voting, stating 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. Parliament will assume power to make laws for the whole or any part of the territory of India in respect of that subject.

It implies that the Parliament can only assume jurisdiction when a resolution is passed by two-thirds of the Rajya Sabha members who are present and voting. The resolution must specify the specific matter listed in the State List, for which the Parliament is authorized to legislate in the national interest. Thus, it says a resolution passed under Article 249(1) remains in force for a period not exceeding one year or extended for a period not extending one year by a fresh resolution. This means that a law passed under Article 249(1) in relation to a resolution cease to have effect six months after the resolution ceases to be enforced. Therefore, this timeline clearly indicates that such a resolution should not be used as a tool to undermine the legislative authority of the states. It should only be viewed as a temporary measure to

⁷ Savita Ben, 'The Rajya Sabha-The Upper House of Indian Parliament' in S. S. Bhalerao, Secretary-General, Rajya Sabha (eds), The Second Chamber Its Role in Modern Legislatures, (1st, National, 1977).

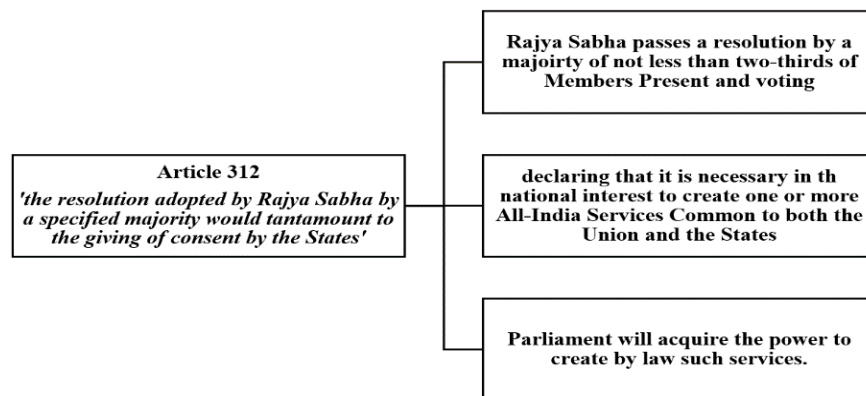
⁸ Sudarshan Agarwal, 'The Working of the Committees of the Rajya Sabha' in S. S. Bhalerao, Secretary-General, Rajya Sabha (eds), The Second Chamber Its Role in Modern Legislatures, (1st, National, 1977).

⁹ B.G. Gujar, 'Impact of Committees on Legislative Process in the Rajya Sabha' in S. S. Bhalerao, Secretary-General, Rajya Sabha (eds), The Second Chamber Its Role in Modern Legislatures, (1st, National, 1977).

address a situation, and ultimately, the state will be asked to legislate on such subject matters. Thus, Article 249 of the Indian Constitution achieves a good balance. In 1951, the Rajya Sabha passed a resolution on Entry 27 of List II, which deals with the production of goods. The Rajya Sabha's procedural checks and balances necessitate the presence and voting of two-thirds of its members. Therefore, the Rajya Sabha's procedural checks and balances, which necessitate the presence of two-thirds of members present and voting, do not merely simplify the process, but also guard against the Parliament abusing its power to usurp the state legislature's authority. Therefore, when paracism prevails and regional interests take center stage, the parliament has the necessary provisions to intervene in the larger public or national interest.

8. CREATION OF ALL INDIA SERVICES

Article 312 empowers the Rajya Sabha to enact a resolution on the creation¹⁰ of new services, known as All-India Services. The resolution affirms the nation's best interest in establishing one or more All-India Services that both the Union and the States share. In India, the absence of a parallel democracy results in the existence of a central bureaucracy and a state bureaucracy. Article 312, on the other hand, proposes the creation of a united service for both the Union and the States. Parliament can achieve this by having the Rajya Sabha pass a resolution. Consequently, the Parliament will obtain the authority to establish such services by legislation [*Section 2A of the All-India Services Act, 1951*]. There are professional services established specifically for this purpose, commonly referred to as Indian Administrative Service or Indian Police Services. Specifically, this resolution was adopted on December 6th, 1961, to integrate sudden services into the scope of All India Services. Upon examination, it is evident that the Indian Engineering Service, the Indian Medical and Health Service, and the Indian Forest Service were proposed to be included in the scope of the All-India Services. However, this All-India Service ultimately included only the Indian Forest Service. On March 30th, 1965, the house adopted a resolution to establish the Indian Agricultural Service and the Indian Education Service, falling under the category of unimplemented measures.



9. POWER DURING THE EMERGENCY

During emergencies, the Rajya Sabha plays a very important role because it enjoys equal power in terms of legislative functioning¹¹, whether it's Money Bills or Financial Bills. In addition to enacting laws, the Rajya Sabha possesses a significant amount of authority to monitor the actions of political executives. This includes imposing restrictions on the executive, specifically mandating that the house must approve any action taken by the government. So, such approval requires authorization also from the Upper House. It says that when Lok Sabha is dissolved, then such resolution needs to be passed by Rajya Sabha. Rajya Sabha becomes a pertinent institution for approving such action taken by the government. So, the proclamation of emergencies under Article 352, Article 356, and Article 360 sustenance of the Rajya Sabha, *for example, in 1977, the Rajya Sabha had to be specifically convened for a brief session to extend the*

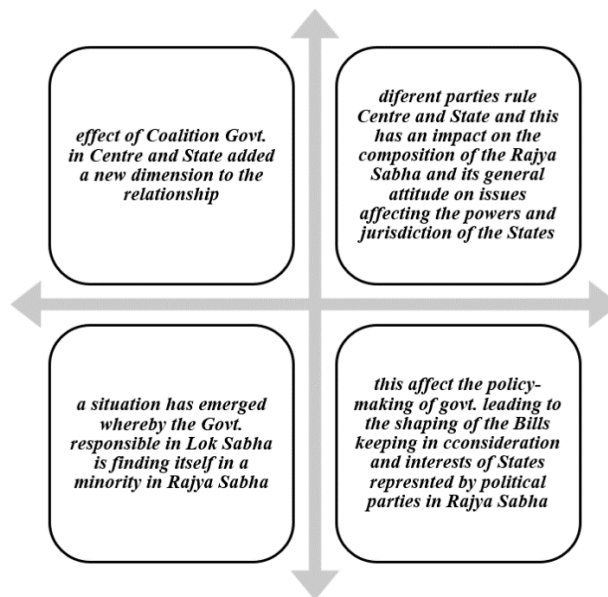
¹⁰ T.N. Singh, 'My Experiences in the Functioning of the Public Accounts Committees of Rajya Sabha' in S. S. Bhalerao, Secretary-General, Rajya Sabha (eds), *The Second Chamber Its Role in Modern Legislatures*, (1st, National, 1977).

¹¹ B.N. Banerjee, 'The Rayja Sabha- It's Role in Social and Economic Fields during 1952-76' in S. S. Bhalerao, Secretary-General, Rajya Sabha (eds), *The Second Chamber Its Role in Modern Legislatures*, (1st, National, 1977).

president's rule in Tamil Nadu and Nagaland. The law clearly stipulates that both houses must approve either of these proclamations within the prescribed period. Therefore, the Rajya Sabha's approval holds equal significance. However, if the Lok Sabha issues a proclamation during its dissolution, the Rajya Sabha will take this resolution into consideration. Once the Lok Sabha is constituted, it returns to the Lok Sabha to obtain the necessary approval, as stipulated in [proviso to Article 352(4), proviso to Article 356(3), and proviso to Article 360(2)].

10. LOK SABHA-RAJYA SABHA: RELATIONS

In the relationship between Lok Sabha and Rajya Sabha, bicameralism has been one of the most important features of the parliamentary democratic process in this country. The Constitution treats the two houses equally except on the Money Bill matter, which says that Lok Sabha shall have a kind of *soul preview*. Therefore, if a Money Bill reaches the Rajya Sabha and fails to pass within the designated timeframe, we presume that both houses have approved it. They complement each other in their core function of deliberating and holding the government accountable. So, both Houses have developed a distinct status and functional identity; they work simultaneously, collaborating rather than in conflict and operating in harmony. Both Houses have a very smooth relationship; for instance, *"the Rajya Sabha discussed a resolution disapproving the prevention of terrorism, the second ordinance 2001, and the motion for consideration of the related bill passed by the Lok Sabha, which was moved by the concerned Minister. Although the adoption of the resolution could have led to the motion's rejection, the concerned Minister separately presented and rejected the motion. Therefore, both houses held a joint sitting and passed the bill"*. This suggests that the Rajya Sabha's opinion held some weight, even though they technically presented it as a separate proposal for voting.



Moreover, in 1954, there was an attempt to abolish the Rajya Sabha, leading to the introduction of 73 resolutions in the Lok Sabha. However, these resolutions were unsuccessful. Furthermore, the years 1971, 1972, 1975, and 1981 saw the initiation of a proposal to abolish Rajya Sabha through private member Bills¹². Primarily, when it was seen as an unnecessary house creating a kind of bottleneck or not needed, it was not truly representing the states, but then the very rejection of this proposal highlights and signifies how significant the position of Rajya Sabha is in the parliamentary democracy in India and for maintaining healthier Central State relations.

So, when you look at the relations during coalition government, it becomes very effective because different parties' rule at the center and the state, and this has an impact on the composition of the Rajya Sabha, where you find that the party that is ruling at the center may not have a majority in the Rajya Sabha, and this affects the policy-making of the

¹² D.L. Sen Gupta, 'Private Member's Bill- An Enigma' in S. S. Bhalerao, Secretary-General, Rajya Sabha (eds), *The Second Chamber Its Role in Modern Legislatures*, (1st, National, 1977).

government, leading to the shaping of the Bills. The government constructively considers the broader interest of the state. A situation has arisen where the responsible government finds itself in a minority within the Rajya Sabha. Therefore, greater coordination and improved floor management are necessary to include more political parties in the government's legislative measures.

11. FEDERAL SCHEME AND RAJYA SABHA

The Federalist scheme¹³ is significant because the Rajya Sabha fulfills or represents the aspirations of the states within the federal structure. It is an integral and indispensable constituent unit of the Constitution's federal backbone. We cannot resolve potential differences between the two houses of Parliament by simply ignoring the Rajya Sabha. As I said, the amendment bill does not have any provision for joint sitting. So, the government has to take Rajya Sabha into confidence in order to pass the important Amendment Bill. Therefore, it is crucial to acknowledge the effectiveness of Rajya Sabha and ensure that Lok Sabha cannot undermine it. Both houses play a very important role in strengthening Central-State relations. This is a crucial structural principle¹⁴. According to the Indian Constitution, The Rajya Sabha, one of the houses of Parliament, is dependent on the states. Rajya Sabha is elected by the State Legislative Assembly, every parliamentary proposal gets the approval of the state indirectly, though indirectly, in the form of the voices coming out from Rajya Sabha. The significance lies in the fact that while Rajya Sabha members indirectly elect themselves from the state legislature, this indirect election also serves as a positive representation of the center. After the 44th Constitution amendment to Article 352, the approval of the Rajya Sabha relating to the Declaration of Proclamation of Emergency has become a kind of separate, you know, requirement. That's something that again provides prominence to the Rajya Sabha, particularly on an issue where the center tries to change the character of the government by making it unitary, then approval of the upper chamber is required.

The president holds the executive power of the Union, with the Electoral College, both Houses of Parliament, and members of the legislative assembly and state legislature all having substantial voting power to elect the president. The Rajya Sabha's inclusion significantly boosts this power, as the state's legislative assembly elects its members, giving them a prominent and significant voice in the Federalist scheme of the Indian constitution.

12. RAJYA SABHA: PLURALISM OF THE NATION

Rajya Sabha also reflects pluralism. In the *Justice Puttaswamy (Retd.) v. Union of India*¹⁵ ruling, the court asserts that the Rajya Sabha's institutional structure mirrors the nation's pluralism and the diversity of language and culture perception and interest. The Rajya Sabha, as an institution, strikes a balance between the direct aspirations expressed in the Lok Sabha's Lower House and the state's representation in the Upper House, reflecting the federal character of the Rajya Sabha. The Rajya Sabha, as an institution, follows the architecture of the constitution, which is a federal bicameralism. It is not merely a bicameralism legislature, a clear and noticeable departure from the India Act 1919's governance scheme. Therefore, one must interpret the Rajya Sabha's role in the Central State relationship within the broader framework of the 1950 constitution, which established a new India. This indicates that the nomenclature refers to a Council of States, deliberately omitting the term 'senate' to emphasize the Council of States' federal significance.

13. RAJYA SABHA: PRE-KULDIP NAYYAR

This judgment¹⁶ has played a significant role in redesigning and restructuring Rajya Sabha. Prior to the kuldip judgment, prior to the amendment made in 2003, there was a requirement of domicile to contest election in the Rajya Sabha, and there was a system of open ballots, which was introduced now. These amendments were made in Section 3, Section 59, Section 94, and Section 128 of the Representation of People Act 1951. The 2003 Amendment eliminated the

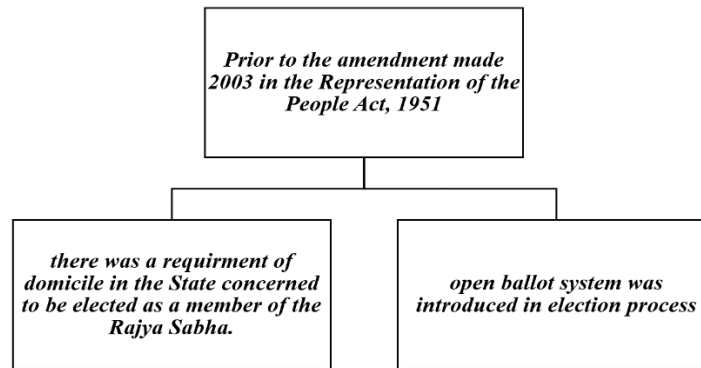
¹³ Leela Damodara Menon, 'The Rajya Sabha as I know it' in S. S. Bhalerao, Secretary-General, Rajya Sabha (eds), *The Second Chamber Its Role in Modern Legislatures*, (1st, National, 1977).

¹⁴ M.S. Oberoi, 'The Role of the Rajya Sabha in Decision Making and Policy-Formulation' in S. S. Bhalerao, Secretary-General, Rajya Sabha (eds), *The Second Chamber Its Role in Modern Legislatures*, (1st, National, 1977).

¹⁵ (2019) 1 SCC 1

¹⁶ Kuldip Nayar vs Union of India, AIR 2006 SC 3127

domicile requirement in Section 3. Sections 29, Section 54, and Section 129 provided for the open ballot system during the voting in Rajya Sabha.



14. RAJYA SABHA: POST KULDIP NAYYAR

Following the challenge to Kuldip Nayar's Provisions, which contradicted the Federal Constitution, the court unequivocally declared that the Federal principle is a fundamental structured doctrine. However, the Court subsequently validated the changes made to the representation of the people. Court has said that removal of domicile as a criterion does not affect the federal principle.

It says that no part of federal principle that the representation of a state must belong to that State.

if the Constitution had intended that the "representatives" of the State must be the residents of the State, such a provision would have been expressly made, absence of such express requirement, the requirement of residence or any other nexus as a matter of qualification cannot be read into Article 80 or Article 84.

The legislative competence of the Parliament traceable from Article 246 read with Articles 84 and Article 327 and Entry 72 of the List I of the Schedule VII of the Constitution.

The word 'representative of the States' refers to members of Rajya Sabha and do not import any further concept or requirement of residence in the State being represented.

15. RAJYA SABHA: FEDERAL APPROACH

with regard to introduction of open ballot system the court said –

No requirement of having election of Rajya Sabha by a secret ballot under Article 80.

If the Constitution thought fit to introduce the secret ballot, the same would have been provided, as in case of Article 55(3) and Article 66(1).

In the case of direct elections, member are chosen directly by popular vote which is not the case under indirect elections. Therefore, it cannot be said that the concept of open ballot would defeat the attainment of free and fair elections.

Rule 39AA of the Conduct of Elections Rules 1951 protects the vote as well as MLA from disqualification of the MLA votes according to his conscience.

The impugned amendment removes the evil of corruption and ensure purity of election principle.

16. CONCLUSION

The Rajya Sabha, as the Upper House of India's Parliament, plays a critical role in upholding the federal structure enshrined in the Indian Constitution. It not only represents the states within the Union but also acts as a balancing mechanism that ensures the voices of different regions, cultures, and interests are integrated into the national legislative process. As a permanent body, unlike the Lok Sabha, which is subject to dissolution every five years, the Rajya Sabha is designed to provide stability and continuity in governance. Its unique powers and functions in legislative, constituent,

and emergency matters underscore its importance in India's democratic framework. The historical genesis of the Rajya Sabha is rooted in the Government of India Act of 1919, which first introduced the concept of a bicameral legislature in India. While the initial idea behind the creation of the "Council of States" was not to provide a platform for states' voices, the Constituent Assembly later recognized its importance in preventing hasty decisions that could arise in a directly elected house like the Lok Sabha. The Rajya Sabha, therefore, was conceived as a deliberative body capable of providing a "checkmating mechanism" to contain populist sentiments that might lead to imprudent legislation. It serves as a forum where considered and more refined debates can take place, led by individuals often chosen for their experience, wisdom, and expertise. One of the most critical roles of the Rajya Sabha is its coequal power with the Lok Sabha on constitutional amendments. No amendment can be passed without its approval, which places the Rajya Sabha in a unique position of authority to safeguard the Constitution against unilateral changes by a transient majority in the Lok Sabha. This balance of power is crucial to maintaining the federal structure of India, as any constitutional amendment affecting the states requires careful consideration by the representatives of those states. Moreover, the Rajya Sabha has the exclusive right to authorize the Parliament to legislate on matters enumerated in the State List, which further underlines its role as a guardian of federal principles. The legislative powers of the Rajya Sabha are almost on par with the Lok Sabha, except in the case of Money Bills, which the Lok Sabha exclusively controls. However, its role in passing ordinary legislation is equally significant. It provides a second review of legislation passed by the Lok Sabha, ensuring that laws are passed after thorough scrutiny, taking into account diverse perspectives that reflect India's pluralism. This function is critical in preventing the passage of laws based solely on majoritarian views and in promoting a more inclusive approach to governance. The Rajya Sabha also wields extraordinary powers in situations of national importance, such as emergencies. Under Article 249 of the Constitution, it can pass a resolution empowering the Parliament to legislate on matters in the State List if it is deemed necessary in the national interest. This power is a testament to the Rajya Sabha's ability to rise above narrow regional concerns and address issues that are vital to the country's integrity and unity. Similarly, during emergencies, when the Lok Sabha may be dissolved, the Rajya Sabha becomes the sole representative body capable of ensuring that executive actions remain under legislative oversight. In terms of executive accountability, the Rajya Sabha plays a complementary role to the Lok Sabha in holding the government accountable for its policies and actions. The presence of the Rajya Sabha helps in creating a comprehensive system of checks and balances, ensuring that the central government does not overstep its authority, particularly concerning state autonomy and rights. This is particularly significant during coalition governments, where different political parties may control the central and state governments. In such scenarios, the Rajya Sabha acts as a forum for negotiation and compromise, facilitating broader consensus in the law-making process. The Rajya Sabha's composition and electoral process further reflect its federal character. Members are elected by the elected members of State Legislative Assemblies through a single transferable vote, ensuring representation based on the population and political composition of each state. This method of indirect election ensures that the Upper House remains insulated from direct populist pressures, allowing it to function as a deliberative body that can provide mature and statesmanlike contributions to national policymaking. Furthermore, the Rajya Sabha represents the pluralism of the nation, reflecting its diversity in language, culture, and regional interests. This pluralistic character was reaffirmed in the *Justice K.S. Puttaswamy (Retd.) v. Union of India* ruling, where the court highlighted the role of the Rajya Sabha in balancing the direct aspirations expressed in the Lok Sabha with the more considered perspectives brought forward by the states' representatives. The Rajya Sabha, therefore, serves as a bridge between the people and the states, enhancing the democratic fabric of India by accommodating the country's rich diversity. Additionally, the Rajya Sabha's role in the federal scheme is indispensable for maintaining the equilibrium between the central government and the states. It embodies the federal spirit of the Constitution by ensuring that no single entity—be it the central government or a dominant state—can unilaterally impose its will on the entire country. The Rajya Sabha's functions in legislative scrutiny, constitutional amendments, and emergency provisions provide the necessary checks and balances that are vital for a robust and functional democracy. It also symbolizes India's commitment to pluralism, inclusivity, and cooperative federalism, making it a cornerstone of India's parliamentary democracy. As India continues to evolve as a nation, the Rajya Sabha will remain a critical institution in ensuring that this evolution is marked by balance, stability, and adherence to constitutional principles.