COMMONWEALTH PARLIAMENTARY ASSOCIATION

22ND COMMONWEALTH PARLIAMENTARY SEMINAR
NEW DELHI, INDIA

24-29 NOVEMBER, 2011

AGENDA: **"THE ROLE OF THE PRESIDING OFFICER, THE PARLIAMENTARY STAFF AND THE STANDING ORDERS"**

(SESSION NO. 3)

FRIDAY, 25 NOVEMBER 2011

CHAIR - **Mr. Jairam Seemungal, M.P. and Deputy Speaker, Trinidad and Tobago**

PRESENTER - **Mr. S. Bal Shekar, Additional Secretary, Lok Sabha**

Mr. Craig Asbjorn Bauman, MP, New South Wales/Australia,

PARLIAMENT OF INDIA
NEW DELHI

At the outset, the Chairperson, Mr. Jairam Seemungal, M.P. and Deputy Speaker, Trinidad and Tobago welcomed the delegates to the 3rd Session of the Conference. Introducing the two Speakers / Presenters, Mr. S. Bal Shekar, Additional Secretary, Lok Sabha and Mr. Craig Asbjorn Bauman, MP, New South Wales/Australia, the Chairperson *inter-alia* highlighted the pivotal position the Speaker or the Presiding Officer occupies in a Parliamentary Democracy. The Chairperson, at first, called upon Mr. Bal Sekhar to make his presentation.

2. Thanking the Chair for giving him the opportunity to share his insights and views on the topic, "The role of the Presiding Officer, the Parliamentary Staff and the Standing Orders", Mr. Bal Shekar stated that the Speaker was essentially an apolitical person, with 'neutrality in approach' as the defining trait. Mr. Bal Shekar went on to add that India had a tradition of electing its Speaker as well as Deputy Speaker unanimously on the basis of consensus amongst parties.

3. Speaking specifically on the role of the Speaker in the Indian context, Mr. Bal Shekar pointed out that to a large extent, the powers and duties of the Speaker were laid down in the Constitution; and the importance, prestige and authority of Speaker have been widely recognized in the Standing Orders, or the Rules of Procedure and Conduct of Business in Lok Sabha as well as the 'Directions' and Parliamentary Conventions. Elaborating on the role of Speaker, Mr. Bal Shekar pointed out that the Speaker decides on the admissibility of Notices and other issues relating to regulating discussions in the House -

managing the time of the House for various items of business was the key role played by the Speaker. He also added that in India, there were 37 parties and the mechanism of convening the meetings of leaders of parties by the Speaker served as the principal means for arriving at a consensus on contentious issues.

4.   Mr. Bal Shekar specifically highlighted the judicial powers exercised by the Speaker under the Anti Defection Law in terms of which the Speaker acts as the final arbiter.

5.   As for the Parliamentary staff, Mr. Bal Shekar highlighted the fact that the officers and the staff which supports Parliament and its Members were as neutral and non partisan as the Speaker; and the recruitment or Standing Order pertaining to the Parliamentary staff as well was modeled on the pattern of that of the House of Commons, where the Executive had no role to play in the appointment process of the staff.

6.   Following the presentation, the Chair opened the floor for the question/answer session.

7.   Mr. Boltumelo Joy Matshose, MP representing Limpopo/South Africa wanted to know as to who recommends the name of the candidate for Speakership i.e. the ruling party or the opposition, to which, Mr. Bal Shekar replied by stating that the party with the majority strength in the House proposes a panel of names informally and consensus was arrived at by way of consultations.

8.   Mr. Rana Tanveer Ahmad Nasir, MPA representing Punjab Province/ Pakistan queried on whether India had a tradition of not fielding any candidate in

the Speaker's constituency, in response to which Mr. Bal Shekar informed that India did not follow the concept of 'Once a Speaker, always a Speaker' and that parties were free to field candidates in the constituency which the Speaker represents.

9. Mr. Parm Gill, MP representing Canada questioned on whether a system of secret or open ballot was followed in electing the Speaker, and whether Members were not free to contest the election to the Post. In this regard, Mr. Bal Shekar responded by stating that all questions or issues including that of the election of the Speaker were decided by the House through the means of open ballot/division, and that the system did not provide space for frivolous candidatures.

10. Mr. Harry Kalaba, MP representing Zambia posed a query on the term of the Speaker, and whether the whips of the 37 parties in India were not free to approach the Speaker to break the impasse currently facing the Indian Parliament. In this regard, Mr. Bal Shekar informed that the term of the Speaker was co-terminus with that of the Lok Sabha, i.e. five years; and while the whips of parties were free to meet the Speaker, it was the mechanism of 'leaders meetings' that was used for breaking dead locks between the ruling and opposition parties.

11. Mr. N. Yogish Bhat, Deputy Speaker, Karnataka had three specific queries on whether (i) the Parliament could summon Judges, (ii) can discuss judgments or matters under adjudication and (iii) speeches of Members could be laid on the Table of the House. Responding to the queries, Mr. Bal Shekar

pointed out that in consonance with the established system of separation of powers under the Constitution, judges were not summoned by the Lok Sabha, except in cases involving impeachment proceedings. Similarly, matters under judicial adjudication were not taken up for discussion. As regards the third point raised, Mr. Bal Shekar informed that speeches that were not read out by Members could be tabled and treated as part of the proceedings of the House.

12.	On the issue of who chooses the Clerk of the House (Lok Sabha) raised by Dr. Maua Abeid Daftari, MP representing Tanzania, Mr. Bal Shekar informed that the appointment process of Clerk/Secretary General, Lok Sabha was the prerogative of the Speaker who follows the relevant Recruitment Order, which provides for consultation with the Leader of the House and the Leader of the Opposition in selecting the candidate.

13.	Following the question/answer session, the Chair called upon Mr. Craig Asbjorn Baumann, MP representing New South Wales/ Australia to make his presentation on the subject.

14.	Mr. Bauman commenced his presentation by quoting from Erskine May's Parliamentary Practice, which notes that the functions of the Speaker of the House of Commons can be demarcated into three main categories: First, the Speaker was the spokesman or representative of the House in its relations with the Crown, the House of Lords and other authorities and persons outside Parliament. Second, the Speaker presides over the debates of the House of Commons and enforces the observance of all rules for preserving order in its proceedings. Third, the Speaker has administrative responsibilities.

15.   The main issues highlighted in the presentation are delineated in brief as under:

(a)   The New South Wales Costitution Act 1902 describes the Speaker as the Legislative Assembly's 'independent and impartial representative'.

(b) In relation to presiding over debates, the Speaker's role was to maintain order.

(c)   A common element of power of Presiding Officers across the Commonwealth was the ability to exercise a casting vote when votes were equal.

(d)   In terms of a provision inserted in the Constitution Act in 2007, the Speaker can participate in debates and vote on any question when not presiding in the Chair.

(e) The Speaker, with the President of the Legislative Council, was responsible for the overall direction of the Parliament.

(f) The Speaker was the employer of all the staff of the Legislative Assembly.

(g) The role of the modern Clerk falls largely into two categories; First, the more traditional role of Adviser to the House, the Speaker, and other Members; and second, a role akin to that of CEO of a public sector Department.

(h) As Adviser to the House, the work done by the Clerk was of a procedural nature.   In relation to Parliamentary Procedure, the Clerk was responsible for ensuring that the House proceedings were recorded properly; assisting in the running of the House; advising the Speaker on

procedural matters; chairing the election of the Speaker; certifying bills passed by both Houses; and maintaining papers and documents of the House.

(i) The Clerk was also the head of the Department of Legislative Assembly in which role he provides advice to the Presiding Officer.

(j) An important requirement for all Parliamentary staff was impartiality. Parliamentary staff was required to provide apolitical, impartial advice to all the Members.

(k) The Clerk and other senior officers were supported by a number of staff.

(l) The Standing Orders of the NSW Legislative Assembly were re-written in plain English in 1992.

(m) In 2007, the Assembly adopted new Standing Orders that modernized the terminology and procedure for the passage of legislation.

(n) A number of provisions contained in older version of the Standing Orders were discarded on the grounds that they were archaic and had little or no relevance to the contemporary Legislative Assembly.

16. Following the presentation, the Chair opened the floor for questioning and further deliberation.

17. In reply to a question posed by Mr. Lucas Kipkosgei Cehpkitony representing Kenya on the deciding authority on the Business of the House, Mr. Baumann responded by stating that the time table for legislation was decided by the leader of the House/Cabinet. In response to yet another query, Mr.

Baumann informed that New South Wales had a two party system and the Speaker's candidature was decided by the larger party. He also added that in the absence of the Speaker, the Deputy Speaker presides over the House, and in the absence of both of them, the temporary Presiding Officers chair the sittings of the House.

18.   In the course of the deliberations, the Chair also raised the issue, whether the Commonwealth Parliamentary Association (CPA) was working towards standardizing the rules of procedures or Standing Orders across the countries of the Commonwealth.   Responding to the issue raised, Dr. William F. Shija, Secretary General, CPA informed the delegates that in 2005-06, the CPA had initiated the work towards standardizing various aspects of democratic procedures; and a list of 87 areas were demarcated as standards or rules. He also added that significant progress has been made by various chapters of the CPA in this regard and that in the years to come it may be possible to have a standardized list of bench marks across the countries of the Commonwealth.

Following the deliberations the meeting adjourned.