



Separation of Powers

The relationship between
Parliament, the Judiciary
and the Government



PLUS ▶

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Commonwealth Youth Parliament

November 6-10, 2016
Victoria, British Columbia, Canada

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P8



- Network with young people from across the Commonwealth
- Opportunity to experience life in the parliamentary spotlight and experience the 'real-life' workings of Parliaments and Legislatures
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Commonwealth Parliamentary Association (CPA)

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STATEMENT OF PURPOSE

The Commonwealth Parliamentary Association (CPA) exists to connect, develop, promote and support Parliamentarians and their staff to identify benchmarks of good governance, and implement the enduring values of the Commonwealth.

Calendar of Forthcoming Events

Confirmed at 5 August 2016

2016

July

- | | |
|---------------|---|
| 10 to 14 July | 47 th Presiding Officers' and Clerks' Conference - Nuku'alofa, Tonga |
| 22 to 30 July | 41 st CPA Caribbean, Americas and the Atlantic Regional Conference - Nassau, The Bahamas |

August

- | | |
|-----------------|---|
| 17 to 27 August | 47 th CPA Africa Regional Conference - Balaclava, Mauritius |
| 21 to 25 August | CPA Parliamentary Staff Development Workshop for the Caribbean, Americas and the Atlantic Region - St George's, Grenada |

November

- | | |
|------------------|--|
| 6 to 10 November | 8 th Commonwealth Youth Parliament - British Columbia, Canada |
|------------------|--|

To be confirmed: The date and venue for the 62nd Commonwealth Parliamentary Conference will be published on the CPA website www.cpahq.org when confirmed.

The publication of a Calendar of Commonwealth Parliamentary Association (CPA) events is a service intended to foster the exchange of events and activities between Regions and Branches and the encouragement of new ideas and participation. Further information may be obtained from the Branches concerned or the CPA Secretariat. Branch Secretaries are requested to send notice of the main CPA events and conferences to hq.sec@cpahq.org in advance of the publication deadline to ensure the Calendar is accurate.

Further information can also be found at www.cpahq.org or by emailing hq.sec@cpahq.org.



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Secretariat, Suite 700,
Westminster House,
7 Millbank, London
SW1P 3JA, United Kingdom
Tel: +44 (0)20 7799 1460
Fax: +44 (0)20 7222 6073
Email: hq.sec@cpahq.org
www.cpahq.org

Mr Akbar Khan
Secretary-General

Mr Jeffrey Hyland
Editor, *The Parliamentarian*
editor@cpahq.org

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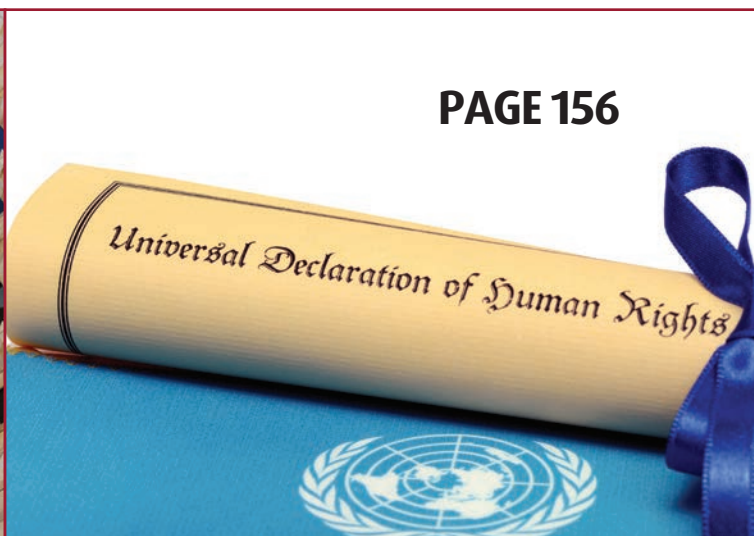
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Contributors

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SEPARATION OF POWERS AND THE RELATIONSHIP BETWEEN PARLIAMENT, THE JUDICIARY AND THE EXECUTIVE

The Editor's Note

From the *Commonwealth Latimer House Principles on the Accountability of and the Relationship between the Three Branches of Government* through to the *Commonwealth Charter*, ensuring the Separation of Powers between Parliament, the Judiciary and the Executive has been an enduring theme of the Commonwealth for many years.

The *Commonwealth Latimer House Principles* have proved to be an effective framework for upholding the Commonwealth's fundamental values on the Separation of Powers, as set out in the 2013 Commonwealth Charter.

This issue of *The Parliamentarian* examines this relationship between Parliament, the Judiciary and the Executive and we have received an excellent response from our Members keen to share their experiences of this key issue in their Parliaments and jurisdictions.

This issue features articles by experts in the legal field about the Separation of Powers. **Mr Karim A. A. Khan, QC** is a Barrister who has worked in many Commonwealth jurisdictions and **Dr Karen Brewer** is the Secretary-General of the Commonwealth Magistrates' and Judges' Association (CMJA).

The Secretary-General of the Commonwealth Parliamentary Association (CPA), **Mr Akbar Khan** shares his views on the Separation of Powers for this publication.

The Separation of Powers in one of the largest democracies in the Commonwealth is examined by **Shri P.P. Chaudhary MP** (Lok Sabha, India) from an India Federal point of view with another view from the state level in India from **Pradeep Kumar Dubey** (Uttar Pradesh Legislative Assembly, India).

This is contrasted with the Separation of Powers in some of the smallest states within the Commonwealth and the CPA. Lawyer **Simon Ross** is the Deputy Greffier (Guernsey) and looks at the Separation of Powers in Small Jurisdictions and beyond. A joint article by **Nick Arculus**, Crown Counsel; **Clare Faulds**, Senior Magistrate; and **Idah Lorato Motsamai**, Legislative Drafter (Falkland Islands) scrutinises the practicalities and challenges of the Separation of Powers in the Falkland Islands in the South Atlantic.



Jeffrey Hyland, Editor
The Parliamentarian,
Commonwealth
Parliamentary Association

Hon. Elise Archer MP, Speaker of the House of Assembly (Tasmania) brings us an interesting experience from her jurisdiction regarding the prevention of political interference in judicial appointments. This issue also features an account by **Vivek K. Agnihotri** (Rajya Sabha, India) of the recent impeachment of several judges in the Indian Judicial System.

In an examination of the relationship between Parliament and the Executive, **Shri Satya Narayana Sahu** (Rajya Sabha, India) looks at the Rajya Sabha's decision to amend the Motion of Thanks on the President's Address for a historic fifth time.

This issue of *The Parliamentarian* also features a number of articles on gender and the work of the Commonwealth Women Parliamentarians (CWP).

The Chairperson of the CPA Executive Committee, **Hon. Dr Shirin Sharmin Chaudhury MP** (Bangladesh) shares her speech given at the inaugural 'Women Legislators: Building Resurgent India' Conference which took place in March 2016 in New Delhi, India. This issue also features a report of the conference on Women Legislators by **Dr D. Bhalla** (Lok Sabha Secretariat, India).

Rt Hon. Rebecca Kadaga, MP (Uganda) in her 'View' for *The Parliamentarian* as Chairperson of the Commonwealth Women Parliamentarians, writes about the Separation of Powers and the work of the CWP globally for this issue.

The outgoing Lord Speaker of the UK Parliament's Upper House, the House of Lords, **Baroness D'Souza** (United Kingdom) shares her reflections on Women's Empowerment and **Dr Roberta Blackman-Woods MP** (United Kingdom) outlines the positive actions for Women Parliamentarians in the Commonwealth. We also feature a report from **Susan Duffy** (Scottish Parliament) about the launch of the *Women in Leadership Programme* in Scotland.

Amongst the many other topics featured in this issue: **Hon. Yasmin Ratansi MP** (Canada) is the new Chair of the Commonwealth Parliamentary Association in Canada and gives us her view of the CPA from Canada.



Her Majesty Queen Elizabeth II, Head of the Commonwealth and Patron of the Commonwealth Parliamentary Association (CPA) attends the Commonwealth Day 2016 reception at Marlborough House in March 2016 and meets former CPA Chairperson, Rt Hon. Sir Alan Haselhurst MP amongst the many guests. image credit: Commonwealth Secretariat.

Hon. Tonio Fenech MP (Malta) writes about Malta's experience in the three waves of the world financial crisis.

Kabir Hashim MP (Sri Lanka) reports on the work of the *Global Parliamentarians Forum for Evaluation* and its impact on the work of Parliamentarians around the world.

Rt Hon. Ann Clwyd MP (United Kingdom) is the Chair of the All-Party Parliamentary Human Rights Group and gives readers an interesting account of the work of an All-Party Parliamentary Group (APPG) in the UK Parliament.

Parliamentary Clerk **Craig James** (British Columbia, Canada) discusses the strengthening and emergency preparedness for citizens and Legislatures using the example of the CPA-World Bank's Parliamentary Study Group on responses to National Crises.

This issue also features a report of the *2016 Montreal Symposium*

of *Parliamentary Training Institutes* where a Global Network of Parliamentary Training Institutes was formed to include the Commonwealth Parliamentary Association.

Commonwealth Day 2016 took place on 14 March this year and many CPA Branches and Members took part in events to mark this special day. This issue features many of the reports of CPA events and activities from Commonwealth Day including the events in London with Her Majesty Queen Elizabeth II, Head of the Commonwealth and Patron of the CPA.

The *Parliamentary Report* section in this issue includes parliamentary and legislative news from Canada (Federal and British Columbia), Uganda, India, New Zealand, United Kingdom and Australia.

As always, we look forward to hearing your feedback and comments on this issue of *The Parliamentarian* and the issues of concern to Parliamentarians across the Commonwealth.

Jeffrey Hyland
Editor, *The Parliamentarian*
 editor@cpahq.org



WOMEN LEGISLATORS

View from the Chairperson of the CPA Executive Committee

Speech by Hon. Dr Shirin Sharmin Chaudhury, MP, Chairperson of the CPA Executive Committee and Speaker of the Bangladesh Parliament at the inaugural Women Legislators: Building Resurgent India Conference in New Delhi, India which took place in March 2016

"It is indeed a great honour for me to join the National Women's Legislators Conference in New Delhi, India, the first of its kind organized to bring together Honourable women Members of Parliament and women Members of State Legislatures from all over India to celebrate their role in nation building. **Women Legislators: Building Resurgent India** aims to focus on the potential of women legislators to effectuate positive strides in the socio-economic development of their nation as agents of change.

It gives me a great deal of pride and a very special sense of empowerment just to be able to be present in this hall and to take part in this unique event with women Members of Parliament and women Members of State Legislators of India.

I would like to congratulate the Hon. Speaker of Lok Sabha, Her Excellency Sumitra Mahajan, for organizing this conference in celebrating the upcoming International Women's Day. I would like to congratulate and extend my warm felicitation to the distinguished panelists, Dr. Najma Heptullah and Sushma Swaraj who are icons of women at the high echelons of the political arena and to everyone present here this afternoon.

The presence of women Members of Parliament demonstrates 'Women's Power' - their power as effective representatives of social change, echoing the voices of women in the corridors of power. We gather here today in this unique platform at a time when *"women hold up half the sky."*

Each one of us stand here with our inner strength, dignity and courage inherent in every woman that radiates a beacon of powerful light penetrating darkness. Women legislators can play a catalyst role as change-makers in the development process within their communities, societies and nations.

South Asia always takes pride in women's political leadership. This region has had the proud privilege to have women leaders as Heads of Government, Heads of State and Speakers of Parliament. At present Bangladesh demonstrates women's leadership with the Hon. Prime Minister, Sheikh Hasina; the Leader of the Opposition, Rowshan Ershad and the Speaker of Parliament.

India has had women Prime Ministers including the late Indira Gandhi, a woman President and two female Speakers. At present, the Speaker in Nepal is a woman. Sri Lanka has had women as both Prime Minister and President. This reinforces our commitment to contribute to nation building.



Hon. Dr Shirin Sharmin Chaudhury, MP, Chairperson of the CPA Executive Committee and Speaker of the Bangladesh Parliament.

Women Members of Parliament are demonstrating their leadership in all spheres of social, economic and political development. They are actively taking part in the decision-making process, in legislating laws, in speaking out for upholding women's and children's rights and in the formulation of policies.

Evidence shows women's political leadership has contributed to development of social policy; helped in solving problems through their special traits, expertise and experience; enhanced delivery of social services; improved working conditions in the health sector; in educating children, particularly girls; and in the prevention of violence etc. The fact that women Parliamentarians have made huge differences through their role is apparent in many parts of the world. In Rwanda, women's experience as mothers has been central not just to their motivation, but also their

performance as Parliamentarians.

As a Member of Parliament in Rwanda states: *"We are mothers ...and mothers are characterized by tenderness, love and care towards their children. Women in Parliament act according to this nature and thus 'the more women in Parliament, the better it is for children.'"*²

Motherhood prepared women Parliamentarians to better understand, analyse and act on the problems of children. Women have a natural tendency to care for children and this is an asset for legislators. Women Parliamentarians are role models to children and to girls. Women Parliamentarians in many parts of the globe have been able to effectuate a major breakthrough in perception and mindset.

*"There is a change in people's thinking pattern. Women now play an active role in leadership as people are starting to accept them - Women as capable."*³

Women legislators have also made an impact in policy outcomes related to children. Women Parliamentarians have made significant achievements for children, women and family legislation, gender sensitive budgeting etc.

What women legislators can do:

- They can help other women develop their political skills. They can help in removing the obstacles to facilitate more women to be elected directly through the election process. They can help them raise funds for women candidates, broaden its membership base, expand networks, and take joint initiatives to strengthen their capacity to teach and train candidates.
- They can help other women acquire the tools necessary for political participation to create their own space and firm base.
- They can create opportunities for women around them from different backgrounds to converge and to achieve the common goals that contribute to the well-being of their societies.
- They can work together through women's caucuses to improve the overall living conditions of people, particularly of women, to give them better bargaining capacity to bring substantial changes in their lives and to transform their communities.



Right: The President of India Shri Pranab Mukherjee (centre); Vice-President Shri Mohammad Hamid Ansari (second from left); Prime Minister Shri Narendra Modi (second from right); Lok Sabha Speaker Smt. Sumitra Mahajan (far left); and Speaker of Bangladesh Parliament and Chairperson of the CPA Executive Committee, Hon. Dr Shirin Sharmin Chaudhury MP (far right) at the Inaugural National Conference of Women Legislators on the theme of *Women Legislators: Building Resurgent India* on 5 March 2016, New Delhi, India.



- They must work to meet the critical challenges of being able to exert their authority, to be able to assume their position and to be fully recognised as political actors.
- They can find ways to bring about substantive changes in inherent power dynamics and patterns of inequality to bridge the gap.
- They must develop themselves, acquire skills and be equipped with tools to economically empower them.
- They can interact and share among themselves, share best practices, identify impediments and barriers to achieving the goals and find solutions.
- They can work to address feminisation of poverty, create opportunity to increase labour force participation of women; they can build skills development, income generating training, create access to finance and access to markets.
- They can set up institutions through appropriate law and policies so that it does not breed inequality but eliminates discrimination.

Please let me conclude with a few quotations:

*"Women bring a different way of thinking, a cooperative spirit, patience, a gift of reading people, empathy, networking, abilities, negotiating skills, drive to nurture family, children, and caregiver."*⁴

*"If ever the world sees a time when women shall come together purely and simply for the benefit of mankind, it will be a power such as the world has never known."*⁵

*"The process of change has already begun. Let us all open our hearts and join in accelerating this process in creating a more equitable and inclusive world."*⁶

References:

- ¹ *Half the Sky, How to Change the World*, Nicholas D. Kristof and Sheryl WuDunn.
- ² Thacienne Dusabeyezu, Member of Parliament, Rwanda. *Rwanda: The Impact of Women Legislators on Policy Outcomes Affecting Children and Families*, Elizabeth Powley.
- ³ Liberate Kayitesi, Member of Parliament, Interview Spring 2006. *Rwanda: The Impact of Women Legislators on Policy Outcomes Affecting Children and Families*, Elizabeth Powley.
- ⁴ *The Natural Leadership Talents of Women*, Helen E. Fisher, Chapter 8. *Enlightened Power, How Women are Transforming the Practice of Leadership*, Linda Coughlin, Ellen Wingard, Keith Hollihan, Editors, Page 133.
- ⁵ Quote by poet Mathew Arnold, *The Natural Leadership Talents of Women*, Helen E. Fisher, Chapter 8. *Enlightened Power, How Women are Transforming the Practice of Leadership*, Linda Coughlin, Ellen Wingard, Keith Hollihan, Editors, Page 140.
- ⁶ Ref. Footnote 2 Page xxiv.

Please turn to page 162 for a full report from the conference.



Left: The Chairperson of the CPA Executive Committee, Hon. Dr Shirin Sharmin Chaudhury, MP, Speaker of the Parliament of Bangladesh also attended the 44th Plenary Session of the Inter-Parliamentary Assembly of the CIS Member Nations in St Petersburg, Russia to discuss cooperation between the Commonwealth Parliamentary Association and the CIS nations. The CPA Chairperson is pictured meeting with Valentina Matviyenko, Chair of the Federation Council. Image: Ministry of Foreign Affairs, Russia.



SEPARATION OF POWERS AND THE RELATIONSHIP BETWEEN PARLIAMENT AND THE JUDICIARY

View from the Commonwealth Women Parliamentarians (CWP) Chairperson

Dear Readers of *The Parliamentarian*,

As I write this article and as I continue to share with you on the different global aspects of our time, I am engulfed with huge emotion and reflection. This is so because of the timing of this particular issue of *The Parliamentarian*.

At a personal level, the emotion comes with the realisation that the end of my current term as CWP Chairperson is fast approaching. As we prepare for the 62nd Commonwealth Parliamentary Conference (CPC) this year, this article presents me the opportunity not only to engage with you on the theme of this issue of *The Parliamentarian* which is 'Separation of Powers and the relationship between Parliament and the Judiciary', but also to reflect on my time of my stewardship of CWP and the massive, massive inroads we have made together.

During the past three or so years of my term as Chairperson of the Commonwealth Women Parliamentarians (CWP), it has been a whirlwind experience and this has been so because of the enormous task that we undertook and we continue to execute. At the 1989 plenary CPA conference, our founders resolved to continue to discuss ways to increase female representation in Parliament and work towards the mainstreaming of gender considerations in all CPA activities and programmes. This is the core of our task and it is this undertaking that has guided our activities during the last three years. We have intensified advocacy for women rights and empowerment throughout all the branches of the CPA. In some areas like Seychelles, new branches of the CWP have been opened during my term and we are proud of this unique achievement. We were also able to formulate a strategic plan which is crucial cog for guiding our activities. In so doing we have traversed most of the CPA regions organising workshops, seminars, conferences and high level dialogues all in the quest of inspiring women's political emancipation. Obviously we would not have achieved so much without the invaluable support of the CPA Secretariat and the Executive Committee. I am grateful to Rt Hon. Sir Alan Haselhurst MP and the current Chairperson, Hon. Dr Shirin Sharmin Chaudhury MP.

I cannot give a full narrative of what has transpired during my term of office in this article. At an opportune time later in the year, I shall surely produce a detailed report of the same. Our dear readers, all I can say is that during my term so far, I have met some wonderful



**Rt Hon. Rebecca Kadaga, MP
Chairperson of the
Commonwealth Women
Parliamentarians and Speaker
of the Parliament of Uganda**

people from all the regions of the CPA, some wonderful women and women leaders; as well as some truly wonderful colleagues. I am happy to report that the CWP family is expanding by the day and that our work continues to assist hundreds of women within the Commonwealth.

We have also continued to advocate for increased women representation in Parliaments, the Judiciary, and in Cabinet and local governments within the Commonwealth. However, I must concede that we are still grappling with some really low percentages particularly in the Pacific and Caribbean regions. Fortunately, there are strategies in place to reverse this trend. Lest I deviate too much, let me delve into the theme of the Journal.

I would like to thank the Editorial team of *The Parliamentarian* who coined the theme; 'Separation of powers and the relationship between Parliament and the Judiciary' because as a Parliamentarian myself, this is a subject matter I find pertinent in true democratic governance.

The term '*trias politica*' or '*separation of powers*' which was coined by Charles-Louis de Secondat, baron de La Brède et de Montesquieu, an 18th century French social and political philosopher has become one of the major pillars and doctrines of modern democratic governance so much so that it should even be considered sacred in my opinion. Quite simply, separation of powers entails the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another. The intent is to prevent the concentration of power and provide for checks and balances. These checks and balances are so vital in building our democracies and must therefore be observed.

The traditional characterizations of the powers of the branches of government are:

- The legislative branch is responsible for enacting the laws of the state and appropriating the money necessary to operate the government.
- The executive branch is responsible for implementing and administering the public policy enacted and funded by the legislative branch.
- The judicial branch is responsible for interpreting the constitution and laws and applying their interpretations to controversies brought before it.

Today's theme concentrates on the relationship between



Parliament and the Judiciary and I intend to keep it within those limits. We must give due credence to this special relationship because one branch makes the laws and the other is responsible for interpreting them and passing judgments. There is therefore critical need for symbiosis and mutual respect between the Parliament and the Judiciary. Ultimately, this makes for a very delicate and volatile relationship.

Constructive relationships between the two arms of government - the legislature and the judiciary - is essential to the effective maintenance of the constitution and the rule of law. In recent years, the character of this relationship has changed significantly, both because of changes in governance and because of wider societal change.

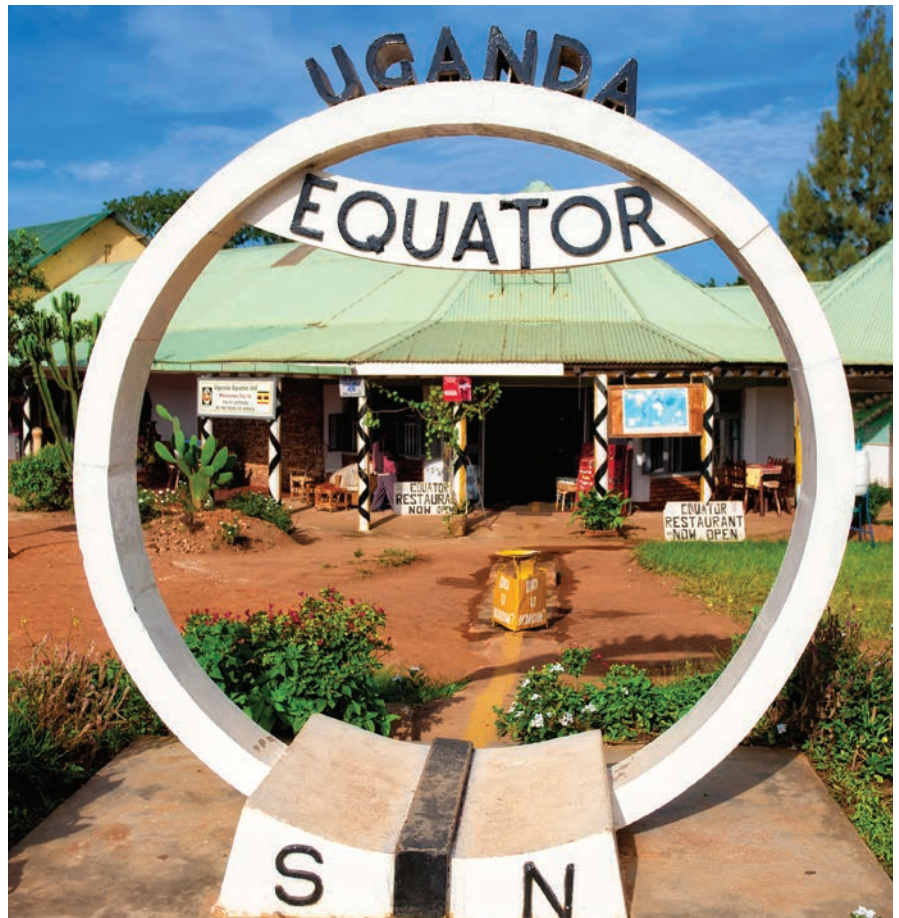
The other constitutional principle of central importance in governing the relationship between the Judiciary and Parliament is that of the '*independence of the Judiciary*' and the '*independence of Parliament*'. This does not and should not mean that the Judiciary and Parliament have to be isolated from each other or the other branches of the State. Nor does it mean that both organs - individually and collectively - need to be insulated from scrutiny, general accountability for their role or properly made public criticisms of conduct inside or outside the courtroom and the plenary. In my long experience as a Parliamentarian, the accountability of MPs is to those who elected them i.e the citizenry. The Judiciary on the other hand must bear accountability for decisions reached and judgments made.

In my opinion, the key to harmonious relations between the Parliament and the Judiciary is ensuring that both organs do not violate the independence of either organ in the first place. To achieve this, there is apparent need for either organ to fully understand the parameters of its own mandate while at the same time recognizing the interdependence nature of their work.

In the same vein, it is imperative that just as MPs ought to demonstrate restraint in commenting on the Judiciary, so judges should avoid becoming inappropriately involved in public debates about legislative procedure, government policy, matters of political controversy or individual politicians.

I believe that it is possible to put in place measures of ensuring a permanent harmonious relationship between these two organs of the state. Effective channels of communication between the Parliament and the Judiciary are vital to ensure that the impact of legislation or legislative proposals upon the administration of justice is fully understood at an early stage to avoid contradiction at a later stage.

Furthermore, concerns amongst the Judiciary about particular legislative proposals can be conveyed through formal responses to consultation between the two organs for purposes of achieving consensus. It is also important; especially for the countries within the Commonwealth; to assign responsibility to a parliamentary committee to verify that bills are in conformity with the constitution, to reduce the risk of legislation being struck down by the courts at a later stage. In my Parliament (Uganda), we have one such committee



Above: Equator sign in Uganda. Uganda is one of the few countries in the world where the imaginary line that divides the Earth into two halves passes.

– the committee on Legal and Parliamentary Affairs whose cardinal mandate among others is to oversee the activities and programmes of some judicial institutions. In addition, there is need to provide support to build the capacity of parliamentary committees to carry out this function.

I have always argued that it is imperative to establish an independent office of the Attorney-General who can give an opinion on issues of conflict and play an intermediary role between parliament and the courts. This is something I tried to initiate in my Parliament although it didn't come to fruition. Suffice to say that the Attorney-General is not trusted as an independent player in all countries.

It is also vital that we avoid political interference in the appointment of judges, including from the executive branch of government. This would require therefore that we consider the creation of Judicial Councils or Judicial Service Commissions, whose members would be nominated by Parliament, the Judiciary and the Executive, to oversee the administration and effective working of the justice system while respecting the independence of judges. There is also a need develop a code or principles governing relations between Parliament and the courts as well as establishing a mediation body to monitor and advise on the application of these principles.

Dear Readers, let me stop here and wish you a happy reading.



SEPARATION OF POWERS

View from the 7th CPA Secretary-General

Commonwealth Charter 2013: Separation of Powers – “We recognise the importance of maintaining the integrity of the roles of the Legislature, Executive and Judiciary. These are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and adherence to good governance.”

In 2003, the Commonwealth Heads of Government recognized the work of the Commonwealth Parliamentary Association together with three Commonwealth partner legal organisations - the Commonwealth Legal Education Association, the Commonwealth Lawyers Association and the Commonwealth Magistrates and Judges Association – and the Commonwealth Secretariat in developing guidelines on the separation of powers and the Heads of Government endorsed the Commonwealth Latimer House Principles on the Accountability of and the Relationship between the Three Branches of Government.

The Commonwealth Latimer House Principles have proved to be an effective framework for upholding the Commonwealth's fundamental values on the Separation of Powers, as set out in the 2013 Commonwealth Charter above.

The application of the Commonwealth Latimer House Principles has helped to uphold the rule of law, democracy and good governance globally across the Commonwealth and beyond.

For Parliamentarians, one of the key tenets of the Commonwealth Latimer House Principles is on the Independence of Parliamentarians (Objective III):

(a) Parliamentarians must be able to carry out their legislative and constitutional functions in accordance with the Constitution, free from unlawful interference.

(b) Criminal and defamation laws should not be used to restrict legitimate criticism of Parliament; the offence of contempt of parliament should be narrowly drawn and reporting of the proceedings of parliament should not be unduly restricted by narrow application of the defence of qualified privilege.

The rights of Parliamentarians to be independent, which has evolved into the modern day parliamentary privilege, derives from the UK Parliament's Article 9 of the Bill of Rights 1688 which provides “That the Freedom of Speech and Debates or Proceedings in Parlyement ought not to be impeached or questioned in any court or place out of Parlyement.”

Outside of Parliament, Parliamentarians are bound by the same laws that restrict certain speech that all citizens are bound by such as certain hate speech, or speech that is defamatory. However, parliamentary privilege in some Commonwealth jurisdictions protects Parliamentarians from what is said in Parliament. The overarching reason for the creation of the Bill of Rights 1688 was to allow politicians and the institution of Parliament to operate without interference from outside forces, and



**Mr Akbar Khan
Secretary-General of
the Commonwealth
Parliamentary Association**

to uphold the notion that parliament is the only body able to create laws, rather than another entity. That is not to say that parliamentary privilege has not been challenged in some arenas.

The Clerk of the Queensland Parliament, Mr Neil Laurie recently gave a defence of the principle of parliamentary privilege in the *Brisbane Times* newspaper (01/06/2016): “Freedom of speech only protects members’ statements and documents against places ‘outside of parliament’. That is, courts, tribunals, etc. Members are subject to regulation under parliamentary law by the Speaker and accountable to the Parliament itself for the content of speeches. There are a vast array of impediments within parliamentary law and practice to statements made by members: sub judice, that is the prohibition on mentioning matters

before the criminal courts (mentioned by Harrison); the rule prohibiting un-parliamentary language; the prohibition on reflections upon the judiciary and the Governor; and the rule allowing members who feel (subjective test) that another member has personally reflected upon them to seek a withdrawal of the remarks.

Furthermore, members who make statements or table documents that are deliberately misleading run the risk of a complaint by another member and being referred to the Ethics Committee. A member found to at fault of such a charge risks a range of penalties. In practice, this process often leads to members making withdrawals and apologies for inaccuracies or clarifying or qualifying previously made statements well before an Ethics investigation.”

The Latimer House Principles also provide distinct guidelines on several areas including Parliament and the Judiciary; preserving judicial independence through judicial autonomy and funding; Women in parliament; Judicial and parliamentary ethics; Executive accountability; and the law-making process.

Judge Pierre Olivier, Supreme Court of Appeal: Bloemfontein (Advocate, 2000) said: “The successful implementation of these Principles calls for a commitment, made in the utmost good faith, of the relevant national institutions, in particular, the executive, parliament and the judiciary, to the essential principles of good governance, fundamental human rights and the rule of law, including the independence of the judiciary, so that the legitimate aspirations of all the peoples of the Commonwealth should be met. Each institution must exercise responsibility and restraint in the exercise of power within its own constitutional sphere so as not to encroach on the legitimate discharge of constitutional functions by the other institutions.

It is recognised that the special circumstances of small and/or under-resourced jurisdictions may require adaptation of these Guidelines. It is recognised that redress of gender imbalance is essential to accomplish full and equal rights in society and to achieve true human rights. Merit and the capacity to perform public office regardless of disability should be the criteria of eligibility for appointment or election.”

The Commonwealth Parliamentary Association (CPA) Photo Gallery



Above, above right and right: The 27th Commonwealth Parliamentary Seminar was hosted by the CPA Queensland Branch at the Parliament of Queensland in Brisbane, Australia from 5 to 11 June 2016. The CPA Seminar was officially opened by His Excellency Hon. Paul de Jersey AC, the Governor of Queensland. The Speaker of the Legislative Assembly of Queensland, Hon. Peter Wellington MP and Mr Akbar Khan, Secretary-General of CPA both gave speeches of welcome at the opening ceremony which also featured an indigenous welcome to Australia. Ahead of the CPA Parliamentary Seminar, the Secretary-General visited the Parliament of Queensland at the invitation of the Speaker of the Legislative Assembly and together they visited three local schools in Brisbane as part of the CPA Roadshows tour with local Members of Parliament. The Secretary-General also met with the CPA Queensland Branch Executive Committee and delivered a lecture to the Queensland Branch of the United Nations Association. During his visit to Australia, the CPA Secretary-General, Mr Akbar Khan also visited Canberra to meet with the Speaker of the ACT Legislative Assembly, Vicki Dunne MLA (pictured left).

Above right: The CPA was represented at the Patron's Lunch, a celebration of Her Majesty The Queen's 90th birthday and her many patronages including as Patron of the CPA, by the Vice-Chairperson of the CPA Executive Committee, Hon. Shirley Osborne MLA, Speaker of the Legislative Assembly of Montserrat; HE Joyce Kikafunda, High Commissioner for Uganda in London (representing the CWP Chairperson); the CPA Secretary-General, Mr Akbar Khan and members of the CPA Secretariat.

For the Commonwealth Parliamentary Association, the Latimer House Principles have helped to provide a framework for specific aspects of the Recommended Benchmarks for Democratic Legislatures and the Recommended Benchmarks for Codes of Conduct applying to Parliamentarians in relation to the rule of law and the separation of powers and the Latimer House Principles continue to be widely used in the development of parliamentary and political systems in the Commonwealth today.

In recent years, there have been a number of examples in the Commonwealth where the careful balance in the relationship between the three branches of government that helps embed democracy has been put at risk through dominant or egregious executive action. Such action poses a serious threat to democracy for all states, but especially for fragile states where the small democratic gains risk falling back.

As Secretary General, the observance of the Latimer House

Principles underpin and secure all the democratic values of the 2013 Commonwealth Charter that as citizens in the Commonwealth we value and cherish. There remains a lot of work to do for all of us concerned with embedding a democratic culture across the Commonwealth. I am therefore delighted that this edition of *The Parliamentarian* focuses on this very important subject with contributions received from around the Commonwealth. I encourage Members to read of the experiences of different jurisdictions in the Separation of Powers in this issue of *The Parliamentarian*.

Akbar Khan
7th Secretary-General
Commonwealth Parliamentary Association (CPA)

The Commonwealth Parliamentary Association (CPA) Photo Gallery



Left: The Secretary-General of the CPA, Mr Akbar Khan received Acting High Commissioner of Sri Lanka in London, Sugeeshwara Gunaratna at the CPA Secretariat.



Left and below left: The Secretary-General, Mr Akbar Khan welcomed the Speaker of the Parliament of Guyana, Hon. Dr Barton U.A. Scotland, C.C.H, MP and the Clerk of the Parliament of Guyana, Mr Sherlock Ewart Isaacs together with a delegation of parliamentary staff to the CPA Secretariat in London.



Below: The Secretary-General of the CPA, Mr Akbar Khan met with Hon. Don Harwin MLC, President of the Legislative Council from the New South Wales Parliament in Australia and Joint President of the New South Wales Branch of the CPA during a visit to the CPA Secretariat in London.



Top right and above: The Executive Committee of the CPA Mid-Year Meetings were held from 27 to 29 April 2016 in London, United Kingdom. The CPA Chairperson, Hon. Dr Shirin Sharmin Chaudhury MP, Speaker of the Parliament of Bangladesh chaired the CPA Executive Committee meetings with the Executive Committee Members representing the nine regions of the CPA – Africa; Asia; Australia; British Islands & Mediterranean; Canada; Caribbean, Americas & Atlantic; India; Pacific; and South East Asia.

Below: The Secretary-General, Mr Akbar Khan received the Speaker of the House of Commons of the Canadian Federal Parliament, Hon. Geoff Regan PC MP at the CPA Secretariat in London. The Speaker was accompanied by Hon. Andrew Leslie PC MP, Chief Government Whip (Whip of the Liberal Party); Mr Gordon Brown MP, Chief Opposition Whip (Whip of the Conservative Party of Canada); Ms Marjolaine Boutin-Sweet MP (Whip of the New Democratic Party).





Above and above right: The CPA Secretary-General, Mr Akbar Khan visited the CPA Montserrat Branch from 27-29 March 2016. During the visit, the Secretary-General met a number of dignitaries including the Premier Donaldson Romeo (above right) and the Speaker of the Montserrat Legislative Assembly and Vice-Chairperson of the CPA Executive Committee, Hon. Shirley Osborne MLA. The Secretary-General's visit included a CPA Roadshow held in Montserrat with students from Montserrat and Antigua.

Right: The Secretary-General of the Commonwealth Parliamentary Association (CPA), Mr Akbar Khan met with Ambassador Irwin LaRocque, Secretary-General of the Caribbean Community (CARICOM) during his visit to the Caribbean region.



Above, above right and below: The CPA Post-Election Seminar for the Parliament of Guyana took place in Georgetown from 30 March to 1 April 2016. The Seminar was opened by the First Vice President and Prime Minister of Guyana, Hon. Moses V. Nagamootoo, JP, MP; the Speaker of the Parliament of Guyana, Hon. Dr Barton U.A. Scotland, C.C.H, MP and Mr Akbar Khan, CPA Secretary-General. It was the first visit of the Secretary-General to the country of his birth since assuming the role. During his visit the CPA Secretary-General also delivered a CPA Roadshow to increase young people's awareness of parliament and democracy at the University of Guyana together with two Ministers of State and two Members from the Opposition.



The Commonwealth Parliamentary Association (CPA) Photo Gallery



Left, below left and below: The CPA Parliamentary Staff Development Workshop for the Asia and South-East Asia Regions took place in Islamabad, Pakistan, hosted by the Parliament of Pakistan from 4 to 7 May 2016. The CPA Secretary-General Mr Akbar Khan attended the Workshop during a Branch visit to CPA Pakistan. During his visit, the CPA Secretary-General met HE

Mamnoon Hussain, President of Pakistan; Senator Hon. Mian Raza Rabbani, Chairman of the Senate of Pakistan at Parliament House as well as other dignitaries. The Secretary-General also delivered a CPA Roadshow for young people at the National University of Modern Languages (NUML) in Islamabad, Pakistan accompanied by Senator Mushahid Hussain Sayed, Chairman, Senate Standing Committee on Defence.



Left and below left: At the invitation of the Speaker of the People's Majlis, Hon. Abdullah Maseeh Mohamed MP, the CPA Secretary-General, Mr Akbar Khan visited the CPA Maldives Branch.

During the visit, the Secretary-General met with the Speaker as well as H.E. Ms Dunya Maumoon, Foreign Minister of the Maldives amongst many other dignitaries.



Below: The CPA Secretary-General, Mr Akbar Khan visited the CPA Mauritius Branch and delivered a CPA Roadshow on Parliament and the Commonwealth to the University of Technology Mauritius.

Below: The 4th CPA Parliamentary Staff Development Workshop for the Pacific Region took place in Fiji, hosted by the Parliament of Fiji from 16 to 18 May 2016. The CPA Workshop was opened with an official welcome by the Speaker of the Fiji Parliament, Hon. Dr Jiko Fatefehi Luveni. The CPA Pacific Regional Secretariat was represented by Ms Suze Jones, Clerk Assistant (House), New Zealand and the CPA Australia Regional Secretariat was represented by Mr Ray Purdey, Clerk of the Legislative Assembly, Victoria, Australia.





Above and above right: The 46th British Islands and Mediterranean Regional Annual Conference was hosted by the States of Jersey and the CPA Jersey Branch from 15 to 18 May 2016. The Secretary-General of the CPA, Mr Akbar Khan attended the conference which was officially opened by the Bailiff of Jersey, Mr. William Bailhache, Presiding Officer of the States Assembly. During his visit to Jersey, the CPA Secretary-General also visited Jersey College for Girls to deliver a CPA Roadshow on Parliament and the Commonwealth accompanied by Jersey Education Minister Deputy Rod Bryans.



Right: The CPA Post-Election Seminar for the Parliament of Samoa took place in Apia, Samoa from 10 to 11 May 2016, hosted by the CPA Samoa Branch. The Seminar was opened by the Speaker of the Parliament of Samoa, Hon. Le'aupepe Toleafoa Fa'afisi. The Keynote Address was delivered by the Prime Minister of Samoa, Hon. Tuilaepa Auelua Fatialofa Lolofietele Lupesoliai Dr Sailele Malielegai.



Below right: The Secretary-General of the CPA, Mr Akbar Khan, together with the Vice-Chairperson of the CPA Executive Committee, Hon. Shirley M. Osborne, MLA, Speaker of the Montserrat Legislative Assembly welcomed a delegation from UKOTA (UK Overseas Territories Association) to the CPA Secretariat in London, UK. The delegation represented the Falkland Islands, British Virgin Islands, Bermuda, Cayman Islands, St Helena, Tristan da Cunha, Turks & Caicos Islands and Montserrat.



Right: The Secretary-General of the CPA, Mr Akbar Khan welcomed the Vice-Chairperson of the CPA Executive Committee, Hon. Shirley M. Osborne, MLA, Speaker of the Montserrat Legislative Assembly to the CPA Secretariat in London, UK.



Right: The CPA Africa Region and the Society of Clerks-at-the-Table (SOCATT) Africa Region held the 2016 SOCATT Africa Region Professional Development Seminar in Accra, Ghana, hosted by the Parliament of Ghana in May 2016. The seminar was officially opened by Rt Hon. Edward K. Doe Adjaho, Speaker of the Parliament of Ghana.



Commonwealth Day 2016

CPA Photo Gallery



Commonwealth Parliamentary Association (CPA) marks Commonwealth Day 2016

The Commonwealth Parliamentary Association (CPA) marked Commonwealth Day 2016 both in London at the CPA Secretariat and across the CPA regions and branches.

Her Majesty Queen Elizabeth II, Head of the Commonwealth and Patron of the Commonwealth Parliamentary Association attended celebrations in London to mark Commonwealth Day 2016 and went to one of the largest multi-faith celebration services in Westminster Abbey along with Hon. Dr Shirin Sharmin Chaudhury, MP, Chairperson of the CPA Executive Committee and Speaker of the Parliament of Bangladesh accompanied by Mr Akbar Khan, Secretary-General of the Commonwealth Parliamentary Association (CPA), Commonwealth High Commissioners, the Commonwealth Secretary-General and dignitaries from around the Commonwealth as well as senior politicians and 1,000 school children.

Also attending the service were 40 young people from across the Commonwealth who attended the CPA Commonwealth Day Youth Programme on the theme of 'An Inclusive Commonwealth'. The young people were representing the following CPA Branches: Ghana, Nigeria, Zambia, Pakistan, Sri Lanka, New South Wales, Alderney, Falkland Islands, Isle of Man, Jersey, Malta, St Helena, UK, Wales, Bermuda, Cayman Islands, Trinidad and Tobago, Turks and Caicos, New Zealand and Malaysia.

The CPA Youth Programme included the following: a tour of the UK Houses of Parliament; a presentation by Ms Peggy McLennan, Guyana Acting High Commissioner on 'What does the work of a High Commissioner or UK Representative involve?'; a presentation by Dr Roberta Blackman-Woods MP and Mr Ian Liddell-Grainger MP, two UK Members of Parliament on the work that they do in Parliament; an address on 'An Inclusive Commonwealth' by Vijay Krishnarayan, Director of the Commonwealth Foundation; and the presentation of their certificates by Mr Akbar Khan, Secretary-General of the CPA.

A number of CPA Branches marked Commonwealth Day in their Parliaments and Commonwealth Parliamentarians attended a number of events connected to the celebrations.

During the evening of Commonwealth Day 2016, Her Majesty Queen Elizabeth II, Head of the Commonwealth and Patron of the Commonwealth Parliamentary Association met Hon. Dr Shirin Sharmin Chaudhury, MP, Chairperson of the CPA Executive Committee and Speaker of the Parliament of Bangladesh and Mr Akbar Khan, Secretary-General of the CPA at the Commonwealth Secretary-General's Commonwealth Day 2016 reception at Marlborough House, London, UK (image credit: Commonwealth Secretariat).

Commonwealth Day has been celebrated around the Commonwealth on the second Monday in March every year since the 1970s.





CPA Nevis Branch

The Nevis Island Branch of the Commonwealth Parliamentary Association held a Youth Parliament event in Nevis on 14 March 2016 to commemorate Commonwealth Day 2016. In keeping with this year's theme of *'An Inclusive Commonwealth'*, the Youth Parliamentarians were engaged in a Mock Sitting where a new phase type debate was introduced. President of the Nevis Island Assembly, Hon. Farrel Smithen, commended the members of the Nevis Branch Youth Parliamentary Association for their performance at a mock sitting at the Nevis Island Assembly. He said it was important to stage mock youth parliamentary sittings which affords young people some exposure to parliament and

what goes on when the actual Assembly is in session.

Hon. Farrel Smithen said during the youth parliamentary sitting, the participants were allowed to deviate from the normal practice and posed questions in wide range of pertinent areas such as finance, water, public works, agriculture, health, community affairs, tourism, national security electricity, youth and sports, education and immigration. He explained that although it was not a normal occurrence in the Nevis Island Assembly, the strategy was used in the mock sitting, to get the participants to investigate the current situations in the political arena and exposing them to practical situations in Nevis.

At the end of the sitting, some of the participants expressed satisfaction with being part of the Association. Ms. Sabrina Orr, who served as the President of the Assembly at the mock parliamentary sitting, said her participation has helped with developing her self-esteem and public speaking skills. She also said she was impressed by the presentations made by both sides of the House given the limited time they had to prepare. Delecia Burke, who served as Minister of Government, said her participation has provided her with a greater awareness. She said she now has greater respect for those in authority particularly for her teachers and her school. She also expressed interest in participating in future parliamentary activities.

CPA Jamaica Branch

In keeping with the theme of *'An Inclusive Commonwealth'*, the event held in observance of Commonwealth Day 2016 by the CPA Jamaica Branch created a space in which guests could recognize the challenges faced by persons with disabilities and the opportunities for their advancement, while highlighting their achievements and fostering dialogue between persons with and without disabilities. Students and teachers from Hope Valley Experimental School, a primary school that has been established specifically to create an integrated learning environment for students with disabilities, were specially invited to the event as well as students and teachers from secondary schools, Members of the Diplomatic Corps, Parliamentarians, staff of the Houses of Parliament and members of the media.

Young people at the event actively participated in the formal components of the programme by saying the opening prayer and delivering the Commonwealth Day 2016 messages of Her Majesty Queen Elizabeth II, the Prime Minister of Jamaica, Hon. Andrew Holness MP and Hon. Portia Simpson Miller MP, Leader of the Opposition. Miss Jasmin Deen from the Salvation Army School for the Blind delivered the Prime Minister's Message using Job Access with Speech (JAWS) software. The newly elected Speaker of the House of Representatives, Hon. Peamel Charles MP highlighted the core values of the Commonwealth Parliamentary Association and explained how

Inclusivity for Persons with Disabilities. In it she spoke about the link between the Commonwealth core values and the advancement of persons with disabilities and explained how the barriers faced by persons with disabilities could be overcome.



Senator Floyd Morris, former President of the Senate and Jamaica's first Parliamentarian who is blind, opened the Info-Rap Session by relating his life story. He detailed the difficulties he faced as an adolescent with a disability in rural Jamaica in the last century. He explained how his commitment to continuing his education put him on the path to achieving his potential. Senator Morris' presentation served as the catalyst for a lively discussion which explored the means of empowering people with disabilities through legislation, policies and programmes. The young people present appeared to be particularly concerned with the opportunities for higher education for persons with disabilities.

The Jamaica Council for Persons with Disabilities mounted an exhibit on opportunities for persons with disabilities. The Houses of Parliament's display looked at the Commonwealth, the CPA and the Jamaican Parliament. Material distributed was universally accessible being produced in print, Braille and digital formats. The Parliament's exhibit was further enhanced by cultural material donated by the High Commission for the Republic of South Africa. Guests were entertained by the Salvation Army School for the Blind Choir, who did a lively performance of a medley of songs, and Ms. Antoinette Aiken, who did a Jamaican Sign Language interpretation of the song *'They Don't Know'* by reggae artiste Chronixx.



the CPA contributed to promoting greater parliamentary democracy. Mrs Christine Hendricks, Executive Director of the Jamaica Council for Persons with Disabilities, made an informative and uplifting presentation on the Path to Greater

Commonwealth Day 2016

CPA Photo Gallery



CPA Zambia Branch

The CPA Zambia Branch commemorated Commonwealth Day 2016 on 31 March 2016 at the Parliament Buildings in Lusaka. The Branch was not able to commemorate the official date itself due to other commitments on the Parliamentary calendar. The CPA Zambia Branch continues to promote youth participation in its legislative activities through the use of Commonwealth Day celebrations in order to expose young people to the challenges that affect the country and also to provide a forum for young people to discuss issues that affect them and the country as a whole. To celebrate Commonwealth Day 2016, the CPA Zambia Branch invited one secondary school from each of Lusaka's constituencies and

each school selected ten pupils to participate in the Commonwealth Day activities under the theme of *'An Inclusive Commonwealth'*. All of the seven constituencies were represented and a total of 70 pupils participated in the programme. Activities included a poetry competition for young people to prepare and present poems about Zambia's Democracy and its involvement in the Commonwealth. The poetry competition was designed to inspire young people to acquire knowledge about Zambia's democratisation process and to participate in those processes. Prizes were awarded for the best poetry and all participants received a pencil case, a 2016 Parliamentary diary and a certificate of participation.

The President of the CPA Zambia Branch, Rt. Hon Justice Dr. Patrick Matibini, SC, MP and Speaker of the Parliament of Zambia, officially opened the Commonwealth Day 2016 programme at Parliament Buildings and those in attendance included Members of the Executive Committee, senior members of staff of the National Assembly and representatives from the Ministry of General Education, who helped to co-ordinate the event. The President of the CPA Zambia Branch gave the official opening speech to mark the beginning of the Commonwealth Day 2016 celebrations. In the afternoon, the participants undertook an educational tour of the Parliament Buildings where they were taken to the main Chambers and a question and answer session about the history and operations of the Zambian Parliament was held.



CPA Rwanda Branch

The CPA Rwanda Branch held an event for young people on 16 March 2016 in celebration of Commonwealth Day 2016 and recognising this year's theme of *'An Inclusive Commonwealth'*. The Commonwealth Day event brought together young people

from various higher learning institutions (public & private) across the country to the Parliamentary Buildings in Kigali, Rwanda. In her opening remarks, the Speaker of the Chamber of Deputies, Rt Hon. Mukabalisa Donatille reminded the young participants that as national parliaments and as individual representatives of the people, we are driven by our belief in democracy. She further added: *"we understand democracy as both a set of values and as a system of institutions that puts those values into practice. We understand that there is no single model of democracy. A country's institutions evolve from its particular history, culture and traditions. Equally, we unequivocally reaffirm that the principles of democracy are universal."*

The one-day Commonwealth programme included a presentation by Ambassador Gideon Kayinamura on The Commonwealth and the Commonwealth Parliamentary Association and its role in enhancing

democracy, rule of law and the freedoms of association, expression and organization. Participants also engaged in a discussion led by Hon. Jean Philbert Nsengimana, Minister of Youth and ICT on the role of young citizens in promoting regional integration with discussions centring on how young people could be the core of development through creation of opportunities and in the acquisition of skills in order to have a competitive edge in the global economy. A number of guests attended the Commonwealth Day 2016 event including HE William Gelling, High Commissioner from the United Kingdom; HE John Mwangemi, High Commissioner from Kenya; HE G.N.Twala, High Commissioner from South Africa; Mr. Ali Siwa, Minister Counsellor, High Commission of Tanzania; Ms. Anna Kansime, Deputy Chief of Mission, High Commission of Uganda.





CPA Falkland Islands Branch

The programme of events for Commonwealth Day 2016 for the Falkland Islands began with the ceremonial raising of the

Commonwealth Flag at both the Falkland Islands Community School and also on Victory Green, a main area of open space in Stanley with local media in attendance. The Commonwealth affirmation was also read to the infant school students who were present at the flag raising and the

Speaker of the Legislative Assembly and HE the Governor of the Falkland Islands answered questions from the students about the Commonwealth. The school continued the theme throughout the day in their classes.

Later in the morning, the Falkland Islands Commonwealth Youth Assembly sat in the Legislative Assembly chamber to debate the issue of same-sex marriage. The eight young members of the Youth Assembly supported by Members of the House skilfully debated the issue. The motion, proposed by Community School student Ezme Butler, was passed unanimously, voting in favour of amending marriage legislation to allow for same-sex marriage (something which is already on the legislative drafting agenda for the Islands). In the afternoon, Her Majesty Queen Elizabeth II's Commonwealth Day 2016 Message was broadcast by local radio and TV media. In addition, Members of the Legislative Assembly led a small group of young students around the partially complete Commonwealth Walkway in the capital of the Falkland Islands, Stanley in partnership with the Outdoor Trust.

CPA Nigeria Branch

The CPA Nigeria Branch observed the Annual Commonwealth Day celebration on 14 March 2016 at the School for Young Internally Displaced Persons located at the IDP Camp, Kuchingoro, Airport Road, Abuja. The Speaker of the House of Representatives, Rt. Hon. Yakubu Dogara was represented at the event by the Chairperson of the House of Representatives, Committee on Inter-Parliamentary Relations, Hon. Samuel Ikon. Five hundred pupils of two temporary Schools located in Area 1, Garki and Kuchingoro, Internally Displaced Persons Camps, participated in the celebration.

The opening ceremony began with a welcome address, delivered by Dr. Rabi A. Audu, on behalf of the Clerk to the National Assembly, Alh. Salisu Abubakar Maikasuwa. Queen Elizabeth II's Commonwealth Day 2016 message was also delivered by Hon. Samuel Ikon, on behalf of the Hon. Speaker of the House of Representatives. The 2016 Commonwealth Day celebration by the National Assembly was particularly unique as it was celebrated for the first time, outside the premises of the National Assembly. The Chairman of the Board of Trustees of the School, Pastor Emmanuel Bello thanked the National Assembly for the gesture and stated that the event would have a profound impact on the activities of his organization. He said that his organization is running the school on



charity as a way of reassuring the children that the society they live in is a responsive one and thus, keep alive their dreams of a better future. He also asked Members to assist in addressing some of the challenges facing the smooth running of the school including the provision of a permanent school structure; school uniforms, feeding and washroom facilities for the children. The Nigeria CPA Branch recommended a follow-up visit to the school. The delegation from the National Assembly donated a large number of items to the school including school sandals, school bags, customized exercise books and food and drinks.

CPA Northern Ireland Branch

This year's Commonwealth Day celebrations at the Northern Ireland Assembly on 10 March, used the global theme of 'An Inclusive Commonwealth' to highlight the importance of cultural inclusivity in Northern Ireland and the role that female leaders have to play. The event, which takes place each year in the Parliament Buildings, is hosted by the Speaker of the Northern Ireland Assembly and President of the Commonwealth Parliamentary Association (CPA) Northern Ireland Branch. This year, Commonwealth Day was part of a week of events on encouraging female participation and representation. Speakers at the event were women from different parts of the Commonwealth, all sharing their own experiences of the importance of women in improving the lives of all citizens, both in Northern Ireland and around the globe. Music, dance, and culture from across the Commonwealth were also showcased with performers from Africa, Asian, the Caribbean, the Pacific and local schools.

Highlights of the event were a haka by Anthony Levao and Eleazar Taufa, two Royal School Dungannon pupils who hail from New Zealand; a performance on the drums by African native and Northern Ireland resident, Wilson Magwere; and an Australian didgeridoo performance by Terry

McDonald. ArtsEkta, a local organisation which promotes education and ethnic arts to promote integration and inclusion, provided a dazzling dance display from India. Rounding off the performances was a choir from Abercorn Primary School whose song Seek Ye First ended a colourful and successful evening.

The event was greatly enjoyed by a receptive audience of Assembly Members, representatives of Commonwealth countries, women's groups and young people. As the new Assembly mandate begins, the CPA Northern Ireland Branch is looking forward to an enthusiastic response from the Assembly members and a year of exciting events.





SEPARATION OF POWERS IN THE COMMONWEALTH: A LEGAL PERSPECTIVE



Karim A. A. Khan, QC is a Barrister who was called to the English Bar in 1992 and became a Queen's Counsel in 2011. Karim is a member of Temple Garden Chambers, Temple, London and specialises in all areas of public international law, international criminal and international human rights law where he acts for States and individuals. He has previously worked as a Senior Crown Prosecutor in London and at the Law Commission of England and Wales. From 1997-2000 he was a Legal Advisor in the Office of the Prosecutor in the United Nations International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR).

The 'separation of powers' is a principle of constitutional law under which the three branches of government, the executive, legislature and judiciary, are kept separate to prevent abuse of power. The concept is also known, more colloquially, as the system of "checks and balances", whereby each branch of government is invested with certain powers and responsibilities which define not only the work of each branch, but circumscribe and limit the authority of other branches. Pursuant to the doctrine of the separation of powers, each branch of government is functionally independent from the other and no individual should possess powers that span more than one branch of government.¹

As this article will show, however, the practice is not as clear cut as some theorists would contend. The necessities of good government have resulted in certain lines being blurred and certain flexibility engineered into certain constitutional models. This is not to eviscerate the principle of the separation of powers - which is a central tenet of good governance - it is simply an acknowledgement that the spirit of the rule is more important than form alone.

Montesquieu, heralded by some as the first theorist to urge a tripartite division of power,² surmised that in order to safeguard political liberty, the same person or the same body or institution should not exercise

the following three powers: *"that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals."*³

Montesquieu warns that *"there is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression."*⁴

The purpose of the notion is that the several constituent parts of the government may *"by their mutual relations, be the means of keeping each other in their proper places"*⁵ thus, operating as a system of 'checks and balances'.

The reality is that the United Kingdom's system of government does not conform strictly to a formal notion of separation of powers. According to Walter Bagehot, there is a close union and nearly complete fusion of the executive and legislative powers. Indeed, he famously applauded that system as the *"efficient secret"* of the British constitution.⁶

The members of the executive are drawn from the legislature. Until recent years, there has also been a fusion of sorts between the judicial and the legislative branches of government. Historically, judges could be elected as MPs and in certain circumstances, serve as members of the Cabinet.⁷

Furthermore, the highest court in the United Kingdom was a committee of the House of Lords, the second chamber of the UK Parliament.⁸

In other countries such as the United States of America, where, unlike the United Kingdom, there is a single written constitutional document, a more formal doctrine of separation of powers is adhered to. The legislature, i.e. the Senate and House of Representatives, is separate from the executive, i.e. the President and members of the Cabinet.

There have, however, been two significant reforms in the United Kingdom in recent years which have moved towards cementing a more formal separation of powers.

First, the Supreme Court was established, which separates the House of Lords hitherto judicial function from Parliament. Second, there has been a modification of the powers of the Lord Chancellor; he has been removed from his triple-hatted function as head of the judiciary, member of the executive and, as speaker of the House of Lords and 'Law Lord', as a member of the legislature.⁹

The previous position was a quirk of British constitutional history. Viewed as quaint and harmless to some, it was anathema to others. The symbolism of the change represented by updating the constitutional position was perhaps as important and the substantive changes the reforms ushered in. At the very least, it



can hardly be argued that the previous system headed by great Lord Chancellors of the recent past - like Lord Hailsham of Marylebone and Lord Mackay of Clashfern – and many others, resulted in significant iniquities or was devoid of certain advantages either.¹⁰

Similarly, the new Supreme Court seems “neater”, but one would hard pushed to argue that the Judicial Committee of the House of Lords had ever felt circumscribed in its deliberations or determinations because they were members of the House of Lords and could take part in debates and help inform discourse on important matters of legislation or during special committee deliberations.

Be that as it may, change came in the form of the Constitutional Reform Act 2005. The Lord Chancellor’s office has been modified to the extent that he is no longer a judge and neither does he exercise any judicial functions.¹¹ For example, the following previous functions of the Lord Chancellor have now been transferred to the Lord Chief Justice: ‘the authorisation and assignment of judges, allocation of work and the distribution of business within the same level of the court system’ and ‘the nomination of judges to deal with specific areas of business and to fill judicial leadership posts such as the Presiding Judges.’¹² The 2005 Act ultimately imposes a duty on Ministers of the Crown and the Lord Chancellor to uphold the independence of the judiciary.¹³

The 2005 Act also created the Supreme Court of the United Kingdom and made provisions for the transfer of the appellate jurisdiction of the House of Lords to the Supreme Court and the devolution jurisdiction of the Judicial Committee of the Privy Council.¹⁴ The 2005 Act also restricted the right of the House of Lords to sit and vote



for so long as they hold full time judicial office.¹⁵ Thus, Justices of the Supreme Court are not permitted to sit in the House of Lords.

The United Kingdom system has nonetheless historically placed value upon the core motivation *behind* the separation of powers doctrine. As stated by Lord Diplock in *Duport*

Steels v Sirs, “it cannot be too strongly emphasised that the British constitution, though largely unwritten, is firmly based upon the separation of powers; Parliament makes the laws, the judiciary interpret them.”¹⁶

Despite the recent reforms in the UK and, as is evident from the select case law explored in relation to certain

Above: The Royal Courts of Justice, London, United Kingdom.

Commonwealth countries below, the separation of powers is often not ‘strict’ in nature. There remains a divergence of approaches to how the doctrine is applied in practice. Often, various overlaps and interactions between the judicial and



SEPARATION OF POWERS IN THE COMMONWEALTH: A LEGAL PERSPECTIVE

legislative or executive branches of government remain features of various national constitutional arrangements.

Case studies: Seychelles

The division of powers between the legislature and judiciary has been explored in the Seychelles in relation to matters of mandatory sentencing. The Supreme Court of the Seychelles held that the separation of powers is not strict in nature, and the Attorney General, a senior government official, did not infringe this concept by imposing mandatory minimum sentences for various crimes.

In *Ponoo v Attorney General*,¹⁷ Ponoo argued that certain mandatory sentencing rules breached the principle of independence of the judiciary protected under Articles 1 and 119(2) of the Constitution. The Supreme Court held that the separation of powers “has never and maybe will never be absolute, as practical considerations dictate that there must exist certain interdependence and interactions amongst the three arms of government for the checks and balances envisaged by this same principle to function.” According to the Supreme Court, most political systems applied a ‘diluted form’ of this doctrine rather than a strict interpretation. The Seychelles Constitution thus did not mandate a system of absolute non-interference by the legislature in the affairs of the judiciary. Article 119(2) of the Constitution provided for the independence of the judiciary with the caveat that the judiciary was subject to the Constitution and other laws. The judiciary were thus subject to legally enacted laws except where the laws in question were themselves unconstitutional and void.

*Simeon v Attorney General*¹⁸ was another case dealing with mandatory minimum sentences. The court relied upon the South

African jurisprudence to hold that the nature of a checks and balances system mandated that there was an intrusion of one branch of government into the domain of another in order to prevent the branches of government from usurping power from one another. It is thus a ‘partial’ rather than a complete separation of powers.¹⁹ The court cited cases from Mauritius, the United Kingdom and Ireland to hold that the separation of powers under the Seychelles constitution just like other liberal democratic societies is not strict, rather, “it embodies a system of checks and balances designed to prevent an overconcentration of power in any one arm of government; it anticipates the necessary or unavoidable intrusion of one branch on the terrain of another; this engenders interaction, but does so in a way which avoids diffusing power so completely that government is unable to take timely measures in the public interest.” The court endorsed jurisprudence from Mauritius which stated that mandatory sentencing is a ‘twilight zone’ within which the sovereignty of both the legislature and judiciary to act within their respective domain must be acknowledged and respected.

Case study: Kenya

When it comes to Kenya, of particular interest is the apparent power of the Kenyan Courts to bring about a dissolution of the Kenyan parliament in cases of a failure by parliament to enact certain specified legislation. Section 261 of chapter 18 of the 2010 Kenyan Constitution provides that the Kenyan Parliament must enact the legislation listed in the schedule thereto within certain time periods specified therein. Subsection 2 and 3 permit the National Assembly by two-thirds majority to delay enactment

by a maximum of one year in ‘exceptional circumstances’. If Parliament does not act within such time limits, subsection 5 permits ‘any person’ to petition the High Court, and the Court has the power under subsection 7 to ‘advise the President to dissolve Parliament’ and consequently, ‘the President shall dissolve parliament.’

The Kenyan Parliament has invoked Article 261(2) and (3) on a number of occasions and in relation to a variety of different legislative issues.²⁰ Recently, on 18 August 2015, Parliament invoked Article 261(2) for a period of 12 months from 27 August 2015 for a number of legislative issues.²¹

The Kenyan courts have not been reticent in relation to Chapter 18. The Kenyan High Court has held that Article 261(5) and (6) permit Parliament, as a State organ, to be sued in its own name.²² Recently, the High Court held that the Attorney General (AG) in consultation with the Commission on the Implementation of the Constitution (CIC) were under a constitutional duty to prepare legislation to effect the gender equity rule and ordered that they must do so within 40 days of the judgment.²³ The Court further held that should Parliament fail to act, a citizen of Kenya could invoke the provisions of Article 261(5)-(7).

Case study: South Africa

In South Africa, the Courts have shown themselves willing to review government policy, in particular, with regards to budgetary matters. The Constitution of South Africa is particularly innovative, in that it explicitly enumerates judicially enforceable socio-economic rights.

The case of *Minister of Health and Others v Treatment Action Campaign and Others*

(No 2)²⁴ concerned a petition by Treatment Action Campaign that, contrary to a government policy, an anti-retroviral drug ‘nevirapine’ be made available at all state hospitals and clinics under the right to ‘health care’ in article 27 and 28 of the Constitution. The South African Constitutional Court held that ‘when it is appropriate to do so, courts may – and if need be must – use their wide powers to make orders that affect policy as well as legislation.’²⁵ These powers included ‘mandatory and structural interdicts.’ The court stressed that policy should be flexible and “court orders concerning policy choices made by the executive should therefore not be formulated in ways that preclude the executive from making... legitimate choices.” The court considered the budgetary implications of making the drug available on a wider basis and held that “with the additional funds that are now to be available, it should be possible to address any problems of financial incapacity that might previously have existed.” Thus, the court held that the government policy on the provision of the drug in question was inconsistent with the Constitution. The Court made a detailed order on the steps the government was to take henceforth in order to reverse the government policy.

Conclusion

As is evident from the few cases referenced above, the separation of powers is often not applied rigidly in Commonwealth countries. Rather, courts in various Commonwealth countries often permit interactions between the different branches of government in order to ensure a full functioning of the checks and balances system. Indeed, ‘intrusions’ between the branches often serve to buttress accountability among the various pillars of government and uphold



constitutionally protected rights, as demonstrated by a growing trend of heightened judicial scrutiny of legislative and executive actions or inactions.

As noted by James Madison, an effective notion of the separation of powers does *not* necessitate that the branches of government “ought to have no partial agency in, or no control over, the acts of each other.” Rather, the fundamental principles of a free constitution are subverted “where the whole power of one department is exercised by the same hands which possess the whole power of another department.”²⁶

From this vantage point, the system of checks and balances is preserved where the branches of government are ultimately obedient to a higher constitutional law. The spirit underlying this latter objective is, perhaps, more elusive than the formalities of structure chosen under various national constitutional models.

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⁹ Constitutional Reform Act 2005, Explanatory Notes, http://www.legislation.gov.uk/ukpga/2005/4/pdfs/ukpgaen_20050004_en.pdf

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¹⁰ Lord Woolf, as Master of the Rolls (and shortly before his appointment as Lord Chief Justice) was categorical in the advantages that he perceived as flowing from the prevailing position: “As a member of the cabinet, he (the Lord Chancellor) can act as an advocate on behalf of the courts and the justice system. He can explain to his colleagues in the cabinet the proper significance of a decision which they regard as being distasteful in consequence of an application for judicial review. He can, as a member of the Government, ensure that the courts are properly resourced. On the other hand, on behalf of the Government he can explain to the judiciary the realities of the political situation and the constraints on the resources which they must inevitably accept. As long as the Lord Chancellor is punctilious in keeping his separate roles distinct, the separation of powers is not undermined and the justice system benefits immeasurably. The justice system is better served by having the head of the judiciary at the centre of government than it would be by having its interests represented by a minister of justice who would lack these other roles. (H. Woolf, “Judicial Review – the tensions between the executive and the judiciary” (1998) 114 Law Quarterly Review 579)

¹¹ Constitutional Reform Act 2005, Explanatory Notes,

page 1 http://www.legislation.gov.uk/ukpga/2005/4/pdfs/ukpgaen_20050004_en.pdf

¹² Constitutional Reform Act 2005, Explanatory Notes, para 37.

¹³ Constitutional Reform Act 2005, Explanatory Notes, para 401.

¹⁴ Constitutional Reform Act 2005, Explanatory Notes, para 58.

¹⁵ Constitutional Reform Act 2005, Explanatory Notes, para 62.

¹⁶ Duport Steels Ltd v Sirs [1980] 1 WLR 142.

¹⁷ (2010) SLR 361, 16 November 2010.

¹⁸ (2010) SLR 280, 28 September 2010.

¹⁹ Re Certification of the Constitution of the Republic of South Africa (1996) ZACC 26, at para 109.

²⁰ For instance the National Land Commission Bill 2011 and the Land Bill 2012, Commission for the Implementation of the Constitution, Quarterly Report for the period January to March 2012. *Both acts were subsequently enacted into law in 2012. On 19 August 2014, the Kenyan Parliament invoked Article 261(3)(b) in relation to a variety of legislative issues for a period of 9 months.*

²¹ Eleventh Parliament, Third Session, No. 83, The National Assembly Votes and Proceedings, 18 August 2015.

²² Commission for the Implementation of the Constitution v Parliament of Kenya & 5 others [2013] eKLR, Petition No. 454 of 2012, 7 February 2013, para 40 and 41.

²³ Centre for Rights Education & Awareness (CREAW) v Attorney General & another [2015] eKLR, Petition No. 182 of 2015, 26 June 2015, at para 113(c).

²⁴ [2002] ZACC 15; 2002 (5) SA 721.

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The views expressed in this article are the personal views of the author.

“Rather, courts in various Commonwealth countries often permit interactions between the different branches of government in order to ensure a full functioning of the checks and balances system. Indeed, ‘intrusions’ between the branches often serve to buttress accountability among the various pillars of government and uphold constitutionally protected rights, as demonstrated by a growing trend of heightened judicial scrutiny of legislative and executive actions or inactions.”



DOCTRINE OF THE SEPARATION OF POWERS: RELATIONSHIP BETWEEN PARLIAMENT AND THE JUDICIARY IN INDIA



Shri P.P. Chaudhary MP of the Lok Sabha, India Parliament, is Senior Advocate of Supreme and High Court of India. He was elected as an MP from the Pali Constituency of Rajasthan. Currently, he is the Chair of the Joint Parliamentary Committee of Offices of Profit and also Chair of Fellowship Committee, Lok Sabha. He is a Member of the CPA Executive Committee from the CPA India Region. Shri Chaudhary, is also a Member of Standing Committee on Personnel, Public Grievances, Law and Justice and six other committees.

I. Introduction

In contemporary times the idea of the democratic nation state has evolved into one based upon three main institutions - the legislative or law-making arm, the Executive or Government and the Judiciary; with a fourth being the media and press. These institutions interact in the processes of national vision setting, direction, implementation and growth. While their interrelatedness is seen as different in each nation, as a matter of practice or depending upon the level of development and depth of democracy, the lack of a vibrant arm of any of them makes evident the failure of the nation as a whole in serving its people.

In a democratic set up, the legitimacy of every constitutional institution, be it the Legislature, the Executive or the Judiciary, must be traced to the will and consent of the people, directly or indirectly. This holds for all tiers of the nation, be it at the Federal Level, the State Level or at the level of the local, urban and other authorities. The bearers to public offices in all other institutions in the country are appointed either by an executive authority that is accountable to the people or by a mechanism involving the Executive and Legislature by law. No institution in a democracy is entitled under the constitutional provisions nor should be allowed to abrogate to itself any power or

appoint its own office bearers save as stated in the nation's Constitution which governs them and the laws thereto.

II. Separation of Powers – Origin and Meaning

India is not only the largest working parliamentary democracy in the world but also has the distinction of having the longest written Constitution that not only lays down the structure and functions of various organs but clearly demarcates the role and functions of every organ of the state thereby establishing the norms for their inter-relationship and smooth functioning within the democratic edifice.

While the Constitution of India does not explicitly denote the theory of separation of powers in its text, there has been created a manner wherein the theory in itself holds without requiring its annotation. The debates in the Constituent Assembly that deliberated the post-independence setup for India and the framers of the Constitution hence ensured that the spirit of separation of powers was inherent in India, whereas the theory need not be written.

This is seen at the Federal level and mirrored at the State levels through an independent judiciary, a bicameral or unicameral legislature consisting of the people's direct and/or indirect representatives and an executive formed out of such

representatives and answerable to the legislature. Hence, creating a holistic and cohesive system of checks and balances for a functioning, effective and impartial democracy that has stood the tests of time for close to 70 years now.

This is enshrined in the Preamble which in turn ensures the achievement of the objectives of justice, liberty and equality to the citizens of India and promotes fraternity, unity and integrity of the nation. The Preamble also highlights the kind of polity and society as envisaged by the Constitutional framers of India. Profound analysis of parliamentary democracy underpins the fact that the powers of the different arms of democracy must be balanced in a way that none should get credence over the other. On the same principle, none of the organs can derelict any of the essential functions endowed upon and to them under the Constitution. The difficulties resulting from the divided powers are great but the consequences of concentrating power are disastrous as singular power corrupts and leads to authoritarianism. Therefore, it seems of paramount importance that an effective system on the basis of doctrine of '*Separation of Powers*' should continue to operate so as to meet the needs of democratic society in the best possible manner, and at the same time evolving with



the times as the nation and its democratic construct changes.

Hence achieving the ideals of Aristotle as elucidated in his book '*Politics*' and as furthered by the writings of Baron de Montesquieu, that, "*There are three elements in each constitution in respect of which every serious lawgiver must look for what is advantageous to it; if these are well arranged, the constitution is bound to be well arranged, and the differences in constitution are bound to correspond to the differences between each of these three elements.*" (Aristotle).

This is further elaborated upon by Montesquieu wherein he states that, the '*valour*' resides not in concentrating but in renouncing and abandoning the absolute dominance and creating an unhindered and balanced flow of power bestowed by the supreme authority. It is an act of striking

the balance between power and responsibility and ruling out the possibility of abuse. Montesquieu envisioned this '*valour*' in the scheme of separation of powers amongst the Legislature, Executive and Judiciary when he first enshrined the doctrine in his book *De L'Esprit des Lois* (The Spirit of Laws). He emphasized that when the power of these three organs is integrated in one single body, it would amount to disorder and chaos and seize all liberties that may be exercised by them in their own right.

Parliamentary democracy underpins the fact that the powers of the three pillars of a democracy must be balanced in a way that none should get credence over the other and each should act within the pre-determined framework under the Constitution. Thus, while examining the doctrine of Separation of Powers it is important to deduce that

there are three branches of the state machinery, namely legislative, executive and judicial and that each branch must be limited to its own sphere strictly and should not be allowed to trespass upon the sphere allotted to any other branch. As neatly stated in the doctrine found in the Massachusetts Declaration of Rights, 1780: "*In the Government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them. The Executive shall never exercise the legislative and judicial powers, or either of them. The Judiciary shall never exercise the legislative and executive powers, or either of them. To the end, it may be a Government of Laws and not of man.*"

Thus, drawing from the doctrine, it is rational to infer that determination of disputes and adjudication of questions of fact or law is beyond the sphere of

Above: India's national Parliament building.

legislature. Similarly, law making is out of the purview of the judiciary. If the judiciary assumes legislative or executive functions, such an assumption would be void, not on any theoretical basis but on the general principle that a court cannot exercise powers not conferred on it by law.

III. Three Organs of the State in India

Adopting the federal structure with strong centralizing tendency, the Constitution of India distinctly provides the broad framework of the three organs of the state, namely, the legislature, the executive and the judiciary both at the union level as well as the state level. Thus, the main task of the legislature is to make laws, that of the executive is to implement the laws so made and lastly,



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the judiciary as the watchdog of the fundamental rights of the people, is vested with the task of interpretation of the laws that has been extended to the role of safeguarding the constitution as well. The role of the judiciary also extends to seeing as to whether the Parliament has legislative competence and whether due procedure as laid down by the Constitution has been followed while making the law.

IV. Relationship between Parliament and the Judiciary in India

There are two contentious positions on this relation: the first upholds the primacy of the Judiciary and the other, that of Parliament, charting a long drawn debate on the issue of Separation of Powers and supremacy between the two.

The period between 1950 (the year that the Constitution of India came into effect) and 1973 marks the period of the Parliament being the apex institution in India. In the Supreme Court case of *A.K.*

“Thus, the Indian Constitution while not recognizing the doctrine of separation of powers in its absolute rigidity but in its functions in the different branches of India’s democracy has demarcated and differentiated the organs of state in the spirit of separation of powers, essential in a democracy.”

Gopalan v. State of Madras, it was held that the constitution does not recognize the absolute supremacy of the judiciary over the legislative authority in all respects. Further, in the case of *Shankari Prasad v. Union of India*, the Supreme Court set aside the appeal against the First Amendment that amended Fundamental Rights of the Citizens and abolished certain landholdings such as the Zamindar’s and held that there was a clear distinction between ordinary law made in the exercise of legislative power and constitutional law made in the exercise of constituent power, as specified in Article 368 (Power of Parliament to amend any provision of the Constitution and procedure therefor). In *Golak Nath’s* case, the issues that had been smoldering in this relation came to be heard for the first time and the court held that Article 368 could not override the specific provisions of Article 13(2) and that the Parliament could not take away or abridge the fundamental rights mentioned therein through an ordinary law; hence necessitating a constitutional amendment to alter or void the fundamental rights that the citizenry of India are endowed with save under a state of emergency provisions.

Eventually the *Keshwanand Bharati* case serves as a watershed in the relationship between the Parliament and the Judiciary wherein the Supreme Court upheld the power of the Parliament to amend the Constitution while announcing the doctrine of ‘Basic Structure of the Constitution’ and saving its power to review those amendments at the same time. The Court adjudicated that while Parliament has ‘wide’ legislative and Constitutional powers, it did not have the power to destroy or emasculate the basic elements, structure or fundamental features of the constitution.

The judgment enunciated that: 1) The supremacy of the constitution; 2) A republican and democratic form of government; 3) The secular character of the Constitution; 4) Maintenance of separation of powers; 5) The federal character of the Constitution; 6) The mandate to build a welfare state contained in the Directive Principles of State Policy of the Constitution; 7) Maintenance of unity and integrity of India; and that 8) The sovereignty of the country, were beyond parliamentary amendment through the constitutional mechanism as they constituted the basic structure and the essence of the Indian Constitution and the nation as envisioned by the framers of the Constitution.

This principle was used even recently to hold unconstitutional the 100th amendment to the constitution that would have changed the manner of judicial appointments through the ‘National Judicial Appointments Commission’ in the nation by using it to ensure that the principle of separation of powers between parliament, executive and the judiciary was maintained, safeguarding against a loaded judiciary appointed by the executive as was attempted during the period of emergency in India in the 1970s. Similarly, in *Indira Gandhi v. Raj Narain*, the Supreme Court set aside the 39th amendment (placed the election of the President, the Vice President, the Prime Minister and the Speaker of the Lok Sabha beyond the scrutiny of Indian courts) to the Constitution of India as it violated the basic structure of the constitution, as all citizens even those elected to govern and head government are equal before the law.

Thus, it is to be noted that the period from 1977-2007 is the period of judicial activism triggered in part by attempts to weaken the judiciary during the period of emergency prior to 1977

by the Executive and through Constitutional amendments by the Legislature to tilt it in their favor. Hence, from the primacy of the Parliament, the pendulum swung towards the judiciary. The court reasserted the limits of authority of the Parliament as formulated in the *Keshwanand Bharati* and *Minerva Mills* cases and it upheld the limitations on the Parliament’s power to amend the constitution subject to the Basic Structure Doctrine. Moreover in *Waman Rao’s* case, the Court declared that any amendment to the Constitution after *Keshwanand Bharati*, which included laws placed in the Ninth schedule (making them beyond judicial scrutiny), would have to be tested by reference to the doctrine of Basic Structure necessarily. Thereafter, in *J.R. Coelho v. State of Tamil Nadu*, the court reiterated its stand and at present, the trend suggests the re-articulation of the relationship between the two with all three arms attempting to rework and re-establish a working relationship between the judiciary on one hand and the legislative and executive branches on the other, through the instruments of judgments, laws, constitutional amendments and executive acts and policies endowed upon each of them respectively.

V. Conclusion

Thus, the Indian Constitution while not recognizing the doctrine of separation of powers in its absolute rigidity but in its functions in the different branches of India’s democracy has demarcated and differentiated the organs of state in the spirit of separation of powers, essential in a democracy. It cannot be construed that the Parliament and Judiciary in India have always been in confrontation as the Parliament enjoys the authority to amend the Constitution and the Judiciary has the authority to measure the amendments against the



Right: The High Court in Mumbai is one of oldest High Courts of India.

Constitutional scheme and as the conscience keeper of the framers of the Constitution. Therefore, India's three democratic arms and specifically the Parliament and Judiciary possess an excellent working relationship which has in turn, worked for the institutionalization of social, economic as well as political democracy and parity.

While the Judiciary advanced the doctrine of basic structure of the constitution, it also rallied to protect the amending powers of the Parliament. Thus, the current position with respect to the relationship between the Parliament and the Judiciary in India is crystal clear that the Parliament has the power to amend "*any provision*" of the Constitution but while doing so the basic structure of the Constitution should remain unaffected. Hence, in India the judiciary assists the Parliament to pursue the social, economic and political goals as surmised in the Preamble of the Constitution thereby making it vibrant and ever responsive to the needs of the individuals and society at large.

A living and breathing text that fosters the shouldering of different responsibilities as well as allows for the separation of powers, allowing for democratic values to continuously evolve. It is this uniqueness that allows for the Legislative, Executive and Judicial arms of the nation to work independently, in coordination and to constantly develop and evolve their relationships. Hence being seen as a role model for Constitutional framers and writers the world over, setting high benchmarks of quality, equality, responsiveness, foresightedness and flexibility to follow and incorporate in their existing texts or in new ones that follow.





SEPARATION OF POWERS IN SMALL JURISDICTIONS AND BEYOND: A VIEW FROM GUERNSEY



Simon Ross is Deputy Greffier in Guernsey. Simon Ross studied Art History at London University. He then spent three years in Peshawar, Pakistan working as a teacher before going on to St. Stephen's House, Oxford to train for the Anglican priesthood. He joined the States of Guernsey Assembly in 2000, was called to the Bar by the Middle Temple in 2007 and became the Clerk Assistant of the States in 2011. He has been closely associated with the CPA for sixteen years and in February 2016 went to Islamabad to help deliver the CPA Parliamentary Staff Development Workshop.

The idea that the major institutions of the state should be functionally independent and that no individual should have powers that span these offices, although conceived in the interests of good governance and constitutional tranquillity has been a potent force for tension within parliaments and legislatures ever since Montesquieu first crystallised its principles in *De L'Esprit des Loix*.

As far back as the American War of Independence, one of the chief complaints of the American revolutionaries was that the United Kingdom's Act of Settlement of 1701 did not extend its attempts at the separation of powers to the colonies and that while in the United Kingdom a judge held office under the Crown during good behaviour and could only be removed by joint address to the Lords and Commons, judges in the thirteen colonies were appointed for limited terms by Colonial Governors acting on behalf of the Crown and could be dismissed if they made decisions of which the Governor disapproved.

The secession of the thirteen Colonies had a profound effect on how people since then have thought about constitutional arrangements not least because the American colonists, in attempting to explain the decision to rebel against British rule, were among the first to ask

in a technical sense "*What is a constitution for?*"

If a time-travelling delegation from almost any of the Thirteen Colonies were to attend a modern Commonwealth Parliamentary Conference then it would be as sub-sovereign attendees of the Small Branches' part of the conference. It is often a feature of Commonwealth and pre-Commonwealth constitutional development that important moments begin at the fringes and work their way towards the centre.

The Channel Islands, in particular the Crown Dependency of Guernsey, was sixteen years ago at the heart of one of these moments which had important consequences for the development of the separation of powers in the United Kingdom and beyond. The Channel Islands have a history of legislating for themselves and developing their own customary law that stretches back to the early middle ages. Until 2000, the Islands would, in legal terms, have been best known beyond their shores for their connection to the pre-revolutionary customary laws of Normandy and their development of Trust Law. Since that date Guernsey is, in legal and parliamentary terms, likely to be best known for the European Court of Human Rights Ruling in *McGonnell v the United Kingdom*.¹

Mr McGonnell had wanted to convert a flower packing shed into residential accommodation but was refused permission to do so under Guernsey's development plans. In 1995 Mr McGonnell, who had taken up residence in the shed, appealed to the Guernsey courts where his appeal was dismissed. The presiding judge was the Bailiff of Guernsey who five years previously as Deputy Bailiff and Deputy Presiding Officer, had presided over the Island's parliament when the development plans had been debated. In Guernsey, as in Jersey, the Chief Justice, called the Bailiff, is also the Presiding Officer of the Assembly.

Mr McGonnell took his case to Strasbourg. On 8 February 2000, the European Court of Human Rights gave judgment and found there to be a breach of Article 6 of the European Convention on Human Rights, the article that protects the right to a fair trial. Bias was not alleged but the Court felt that Mr McGonnell had been given legitimate grounds for fearing that the Chief Justice may have been influenced by his earlier participation as Presiding Officer in the Assembly's adoption of the planning provisions. The Court did not point to anything wrong with the dual roles vested in the single office of Bailiff but did require that when sitting in a judicial capacity, the Bailiff should remind litigants where



appropriate of the dual role.

It would be too much to say that the case of McGonnell from the small jurisdiction of Guernsey was exclusively responsible for bringing to an end the 1400 year old great office of state that was the position of the United Kingdom's Lord Chancellor but it was certainly powerfully influential and Lord Irvine of Lairg's reply to a parliamentary question shortly after the decision that *"The position of the Lord Chancellor is unaffected by this case"*¹² was somewhat wide of the mark. Lord Irvine's subsequent clarification in the light of McGonnell that *"the Lord Chancellor would never sit (as a judge) in any case concerning legislation in the passage of which he has been concerned"*¹³ was more prophetic. It is certainly the case that McGonnell acted as one of the

spurs to the Blair government's reforms of the UK constitution in the early 2000s. Until 2005 the office of Lord Chancellor rose far above the principles of separation of powers. As head of the judiciary in England and Wales, Speaker of the House of Lords, Cabinet Minister and Law Lord, the Lord Chancellor's responsibilities branched into functions of the executive, judiciary and parliament. After 2005 and the coming onto the statute books of the Constitutional Reform Act 2005,

"Parliamentarians from small jurisdictions will be familiar with the flexibility and degree of 'multi-tasking' that are required of officials in a mini state."



the Lord Chief Justice took on the role as Head of the Judiciary and the House of Lords elected its own Speaker.

In 2009, as a development arising naturally out of the post McGonnell landscape the legal function of the House of Lords was separated from the legislative function and the Supreme Court was created but not before Lord McCluskey QC had commented *"a good deal of nonsense is spoken about the separation of powers...for a 135 years or so serving judges have always played an important part in the deliberations of this House. They seldom vote."*¹⁴

It is one of the interesting features of the McGonnell case that whilst the Channel Islands can have been said to be instrumental through it in reshaping the British Constitution, the Islands themselves were less affected.

Parliamentarians from small jurisdictions will be familiar with the flexibility and degree of 'multi-tasking' that are required of officials in a mini state. In

both Guernsey and Jersey, for the time being at least, the role of the Bailiff goes on much as before. The McGonnell ruling itself said that the European Convention did not require member states to comply *"with any theoretical constitutional concepts."*

The Chief Justice and his Deputy in both Islands continue to preside in the assembly and to sit in court whilst at the same time taking care not to sit in cases in respect of which they had a role during the legislative process. (At the time of writing there is a proposition however pending before the Jersey States seeking the replacement of the Bailiff with a Speaker elected by the Assembly.)

The Latimer House Principles, which the CPA played such an important part in developing, are a yardstick against which assemblies and legislatures can measure themselves. These principles launched in 2004 are an attempt to establish basic rules for the interaction between

Above: The Royal Court in Guernsey has existed on its present site in St Peter Port since the early 1800s and today caters for a very wide range of activity, including criminal and civil court proceedings, meetings of Guernsey's parliament, civic receptions and ceremonial occasions, marriage ceremonies, archiving and research and the registration of births, deaths, marriages and property conveyances.

parliament, the executive and the judiciary in democratic societies and set out in some detail the consensus arrived at by representatives of the three branches of government in the Commonwealth on how each of their national institutions should interrelate when exercising their institutional responsibilities. They are there to enable legislatures to ask themselves the questions; how well do we observe the separation of powers? Does our executive respect the freedom of the



SEPARATION OF POWERS IN SMALL JURISDICTIONS AND BEYOND: A VIEW FROM GUERNSEY



“The separation of powers is an evolving, interlinked constitutional issue. Decisions in one small jurisdiction on the separation of powers can affect the entrenched constitutional arrangements of another much larger one.”

Above: The Royal Court in Guernsey.

legislature and the judiciary to discharge their responsibilities? The great strength of the Latimer House Principles, however, lies in their ability to go beyond the pure doctrine of the separation of powers and in the words of the then Commonwealth Secretary-General Kamallesh Sharma to *“recognise the complex and interlocking network of relations between the legislature, the executive and the judiciary.”*¹⁶

In ancient customary law, jurisdictions such as those

found in the Channel Islands, the executive, judiciary and legislature are closely entwined, so closely entwined that in Guernsey the legislature is also the executive. In the United Kingdom ninety five salaried ministers sit in the House of Commons. It might appear at first glance that both these systems are a long way from the separation of powers envisioned by the principles of Latimer House but in both Guernsey and the UK the presence of the executive within the legislature can also allow for rigorous scrutiny of that executive. Integration of the executive and legislature in this way can provide stability and efficiency in the operation of government, balancing abstract concerns about an over mighty executive with a pragmatic desire to make the constitution work.

Similarly the advent of the Human Rights Act, which has changed the relationship between the judiciary and the legislature, has brought about a situation which at first glance does not sit comfortably with a pure interpretation of the separation of powers. Since the advent of the Act, judges can declare a statute to be incompatible with the Convention on Human Rights and the Government is required to rectify the situation. However the system works and it works in much the same way as the system of judges in the Channel Islands both sitting and presiding does, by the exercise of

partnership and restraint on the part of the parties.

Does the Separation of Powers work in practice and are the Latimer House Principles still relevant today? The separation of powers is an evolving, interlinked constitutional issue. Decisions in one small jurisdiction on the separation of powers can affect the entrenched constitutional arrangements of another much larger one as McGonnell demonstrates. In fact, it demonstrates the assemblies of the Commonwealth, in spite of their diversity and different origins are constituent parts of a single living organism. Used properly the Latimer House Principles can operate as a frame work accommodating that diversity, allowing for the flourishing of the separation of powers and at the same time enabling assemblies, both small sub sovereign ones and large national and federal ones, to develop in sometimes subtle and complex ways, the practical arrangements needed to keep judiciary, legislature and executive distinct but also fair, efficient and accountable.

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- ² Lords Hansard; Written Answers 23rd February 2000: Column WA31.
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- ⁴ HL Deb col 1030 8 March 2004
- ⁵ Commonwealth(Latimer House) Principles; Commonwealth Secretariat; Foreword, Kamallesh Sharma, July 2008.



THE PRACTICALITIES AND CHALLENGES OF SEPARATION OF POWERS BETWEEN PARLIAMENT AND THE JUDICIARY IN THE FALKLAND ISLANDS

Nick Arculus is the Crown Counsel for the Government of the Falkland Islands and provides legal advice and counsel to all departments.

Clare Faulds is the sole resident Judge in the Falkland Islands and as Senior Magistrate, Mrs Faulds also acts as Acting Judge in the Supreme Court and holds office as Senior Magistrate for South Georgia and South Sandwich Islands and British Antarctic Territory.

Idah Lorato Motsamai is Legislative Drafter in the Attorney General's Chambers of the Falkland Islands having previously worked for the Attorney General's Chambers of the Botswana Government.

The doctrine of the separation of powers is observed in the Falkland Islands along the lines of the Westminster model but with a number of augmentations, exceptions and with additional safeguards resulting from the constitutional settlement inherent to British Overseas Territory status.

The doctrine is a constitutive feature of most democracies and provides, along Montesquieu's model, that government is divided into three branches: the executive, the legislature and the judicature. Each, notionally separate from the other, must carry out its functions free from interference.

In the Falkland Islands Constitution¹ resides the detail that supports the doctrine and emulates the UK's settlement. The main offices in which the distinct authorities are vested and the powers which may be exercised (and not exercised) by the office holders are prescribed by the Constitution.

Context

In general one must bear in mind the societal context in which role fusion is more prevalent in micro polities than larger systems. Hairdresser may be travel agents; legal secretaries may be customs officers; planning officers as soldiers; housing officers, auxiliary policemen

and dance masters. Within the public service the range of officers' responsibilities rests upon the broad shoulders of the pioneer. In this environment of function and role-sharing one might expect to find constitutional separation of powers compromised through resource shortage. In fact, and especially given this context, the strength of the doctrine is arguably more in evidence in the Falkland Islands than in many larger countries.

The Legislature

An authority, the Legislative Assembly, is established under the Constitution. The power to make the laws, commonly conferred on the legislature in other jurisdictions is, however, conferred on the Governor.² Further powers are reserved to the Westminster Parliament to make law for the peace, order and good government of the Falkland Islands on behalf of Her Majesty The Queen. There are practical limitations on the power of the Legislative Assembly and in this sense the assembly is not supreme. Parliamentary supremacy is displaced by 7,000 miles. The Westminster Parliament may, but seldom does, impose legislation directly to the Falkland Islands.³

Legislation passed by the

Legislative Assembly may be blocked by the executive, by the British Government or by the courts of either jurisdiction if deemed to be contrary to good governance or 'repugnant' to any Westminster statute. Similarly, the Governor may propose legislation and enact it with or without the approval of the Legislative Assembly (subject to reporting obligations).⁴

In practice the Legislative Assembly make the laws of the Overseas Territory subject to the following checks:

- the Governor has reserved power to assent or refrain from assenting to the laws - in addition to his power under section 55 to propose that any Bill be deemed to have been passed by the Legislative Assembly; and,
- the Secretary of State having the power of disallowance.

To accept the strength of the criticism of the efficacy of these legacy colonial powers is to mistake the venom of the shaft for the vigour of the bow for these powers have been deliberately retained by the UK and have been exercised in other Overseas Territories in recent memory. From a governance perspective, far from disturbing traditional separation



THE SEPARATION OF POWERS IN THE FALKLAND ISLANDS



Above: Gilbert House is the building in Stanley, Falkland Islands, where the Legislative Assembly of the Falkland Islands meets. Images copyright: Falkland Islands Government.

of power theory, they may be seen as additional constitutional safeguards against the abuse of power by the legislature or executive.

The Controls on Executive Power

The executive function is also conferred on the Governor under Chapter V of the Constitution. The legal power of the Governor as executive is also nuanced. In administering powers directly applied from Westminster, the Governor exercises his powers in accordance with the internal regime of each statute and of the UK Executive (for it cannot be overlooked that the Governor, while head of the Falkland Islands Government, is also a member of the UK diplomatic service and subject to policy direction of the UK Executive).⁵

The Constitution also perpetuated an Executive

Council with whom the Governor is obliged to consult. The Executive Council under the Constitution is an advisory body to the Governor whose executive authority is limited *de jure* only by the Westminster Parliament. The Governor may, if he or she chooses, dispense with or ignore the advice of Executive Council in accordance with the Constitution. *De facto*, Governors appear to have accepted significant constraints by the Executive Council in the exercise of executive power. This convention is, however, just that. It is presumed by the authors that the democratically elected members of the Westminster Parliament having, as a body, fought for control of executive government are opposed to allowing even themselves to exercise untrammelled executive control over the Falkland Islands. It would be understandable for them to feel that, in the face of the democratic mandate of the Falkland Islanders' elected representatives, such control is a bill of rights, a civil war, a European Convention Human Rights and a Constitutional Order too late. This *de facto*

acceptance of the role to be played by Executive Council in the exercise of executive power upsets the operation of the doctrine of the separation of powers and in practice leads to a fusion of the legislature (from whom Executive Council membership is comprised) with the notionally discrete executive control vested in the Governor.

It is beyond the scope of this article to consider the broader relationship of Overseas Territories and their (qualified) constitutional autonomy from the British State. Any powers which are reserved to Britain are effectively the result of the choice of the people of the Falkland Islands to consent to this continuing relationship with Britain. From the Statute of Westminster onwards successive British Governments have been reluctant to legislate for Overseas Territories or to exercise direct control over territories with local Assemblies and appear to regard doing so as a nuclear option to be used only as a last resort. It is sufficient in the context of an analysis of the Constitution to state that the reserved federative powers of the British state are benign and

more than compensate for a lack of a stricter practical separation of the executive and legislature in the Falkland Islands. Thus, the legislature and executive are legally and constitutionally separate but in convention and practice are fused.

The Independent Judicial Arm and the Transnational Approach

The defining characteristic of the Constitution, like that of the British model, is the rule of law. The separation of powers doctrine requires an accountable relationship between the judiciary and the legislature. Relations between these limbs should be governed by respect for the legislature's primacy in law-making and for the judiciary's responsibility for the interpretation and application of legislature-made laws. Both limbs should fulfil their respective but critical roles in the promotion of the rule of law in a complementary and constructive manner.

Micro-polities sometimes struggle to find an effective balance between these limbs. Attempts to ensure laws are accessible to citizens often generate codes and administrative tests, sentencing guidelines and cross-limb committees aimed at interpreting, democratising and applying law in a way which threatens an erosion of the judicial function. Similarly, delegation to the Courts to set their own fees and prescribe rules (in the absence of legislation) are outside the traditional role of the judicial limb.

Leaving aside some administrative minutiae, it has to be recognised that in the Falkland Islands, the judicial power is not (as elsewhere) the weakest of the three limbs of government power. Whereas the UK courts accept the superiority of the Westminster parliament and the supremacy of the legislative limb, in the Falkland



Islands the balance is inverted.

There is an apparent conflict to this in Chapter VIII of the Constitution which prescribes that all judicial appointments are made by the Governor and in the reliance on the local courts on funding from an appropriation vote from the legislature administered by the public servants of the Falkland Islands Government. However, on account of the federative reserved powers of the UK, any action by the legislature or executive to interfere with the administration of justice or oust the power of the courts, if not blocked by the Governor, would almost certainly lead to censure from the UK and the imposition of corrective measures as necessary.

The authors refrain from examining the question of whether the Falkland Island's judicial branch is in this way subject to the Westminster executive or legislature in a manner inimitable to the doctrine of the separation of powers. Certainly, directly implemented Westminster legislation cannot

be challenged in the local or UK courts although Orders in Council can be reviewed judicially (*Bancoult (No 1)* [2000] EWHC).

At present the Falkland Islands judiciary enjoys those constituent parts of full judicial independence: secure tenure and secure remuneration, both issues being reserved to the Governor's discretion (free from the control of the Legislative Assembly). There are numerous uncomfortable instances where local legislation prescribes judicial functions to the executive or public officers but all of these (even where the Ordinance suggests otherwise) are justiciable under the Constitution. Even an independence constitution would be unlikely to alter the status enjoyed at present by the Judicial Committee of the Privy Council as the ultimate appellate court. British Overseas Territories and many independent countries formerly of colony or dominion status

electing so to be are subject to the jurisdiction of the Privy Council and all lower courts are subject to its jurisprudence. Privy Council case law (*Hinds v R* (1977), *Liyange v R* (1967)) shows an absolute faith in the certainties of the separation of judicial power from legislative or executive control. So the doctrine is entrenched in the Falkland Islands.

The product of having a truly independent uppermost court (the Privy Council not being subject to the supremacy of the Westminster Parliament in the same way as the Supreme Court of England and Wales) is that there are simply no mechanisms available to the Falkland Islands Government (short of acceded UDI) to enable it to over-reach the jurisdiction of the Privy Council.

Conclusion: A partially fused Executive and Legislature and an independent Judiciary

For all the manifest practical difficulties facing domestic

lawyers on the Islands - lack of legal certainty being the most obvious and unsettling with references in certain statutes purporting to give judicial powers to the executive to the exclusion of the courts being another - the practical and theoretical state is happily one of absolute judicial independence both under the Constitution and in the political realm beyond.

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- ¹ Falkland Islands Constitution Order, UKSI (SI 2008/2846)
- ² section 37 provides for the Legislature to advise on and consent to the laws made by the Governor.
- ³ article 11 of the Constitution Order.
- ⁴ Section 55
- ⁵ Alternative constructions of this relationship are advanced by the Foreign Office and the Privy Council which though practically effective in application secure their foundation on a carousel of feathery hats.





PREVENTING POLITICAL INTERFERENCE WITH JUDICIAL APPOINTMENTS: THE TASMANIA EXPERIENCE



Hon. Elise Archer MP is the Speaker of the House of Assembly at the Parliament of Tasmania, Australia. She was elected to the Tasmanian House of Assembly in March 2010. After the March 2014 State election, Hon. Elise Archer was named as the Government Nominee for the Speaker of the House of Assembly, and was formally elected by the House on 6 May 2014.

In many Commonwealth countries there has been concern regarding the independence of judicial appointments and the impact on perceptions (or actuality) of political interference on the separation of powers central to our system of government. Three models for judicial appointments that are commonly used in such jurisdictions are generally agreed.

Models for judicial selection

In most major common law countries, judges are appointed by the Executive. However, the selection process varies across jurisdictions, and even within jurisdictions. In broad terms, the models include:

- *Executive makes a selection after conducting a consultation process, which may be formal or informal;*
- *Executive makes a selection after receiving advice from an advisory panel convened by the Executive;*
- *Executive makes a selection after receiving recommendations from an independent appointments commission.”¹*

The majority of Australian jurisdictions use one of the first two models. Generally there is little focus on the process used for judicial appointment in a jurisdiction until something goes

wrong. This was certainly true in Tasmania, where although there have been disagreements over the person appointed, the process was not usually a matter of controversy.

Tasmania used the first model for many years but, following a discussion paper released in 1999², guidelines for judicial appointments were released in 2002.³ However, as will be illustrated in the case study to follow, either these guidelines were ineffective or were not adequately implemented.

The Commonwealth has also focussed on the issue of judicial appointments with the Latimer House Principles having a section dedicated to the best practice in the appointment of judges.

*1. Judicial appointments
Jurisdictions should have an appropriate independent process in place for judicial appointments. Where no independent system already exists, appointments should be made by a judicial services commission (established by the Constitution or by statute) or by an appropriate officer of state acting on the recommendation of such a commission.... The appointment process, whether or not involving an appropriately constituted and representative judicial services commission, should be designed to guarantee the quality and independence*

of mind of those selected for appointment at all levels of the judiciary.”⁴

The preferred approach espoused in this document is the third model of appointment outlined above.

However, the overarching guiding principle is that the appointment must be free from interference by other sectors of government, transparent and trusted by the community.

Events that occurred in Tasmania in 2007-08 provide a useful case study of the consequences of interfering with a proper process for judicial appointment.

On 22 August 2007, it was announced that Glenn Hay would be appointed as a magistrate to the Tasmanian Magistrates Court to replace Magistrate Roger Willee.⁵

This began a series of events

“The Commonwealth has also focussed on the issue of judicial appointments with the Latimer House Principles having a section dedicated to the best practice in the appointment of judges.”



surrounding this appointment that resulted eventually in the resignation of the Attorney-General and Deputy Premier Steven Kons MP and played a part in the later resignation of the then Premier Paul Lennon. These events clearly chronicle an example of inappropriate political interference in the process of a judicial appointment.

Key to these events was a whistleblower in Mr Kons office providing shredded documents from that office to a Member of Parliament. These showed that the appointment of Mr Simon Cooper had been agreed and appointment documents prepared but these were shredded and another person was appointed as a magistrate.⁶

Initially Mr Kons denied the existence of an appointment document, but when the shredded document was produced in Parliament by Kim Booth MP, who had

reassembled it, Mr Kons suggested the change was entirely his choice:

*"On examining the relevant qualifications, I concluded that Mr Hay's experience of serving as a temporary magistrate, along with his significant experience as a legal practitioner, made him the best person to become the next magistrate. Having made this decision, I communicated it to the Secretary of the Department of Justice."*⁷

There is not sufficient space in this paper to cover all the events that followed the disclosure that there had been political interference in the judicial appointment, so only the most relevant events are included.

The events began with the Premier's office insisting that Mr Cooper be the nominee for the vacant magistrate's position:

"I do not recall the date, but when it was time to nominate a person to Cabinet for the

*Magistrates position, I was getting the clear message from the Premier's Office that Mr Cooper was to be the nominee..."*⁸

The Secretary to the Department of Premier and Cabinet later instructed Mr Kons to replace Mr Cooper with Mr Hay as the person to be appointed to the vacant position:

*"On the morning of Wednesday 8th August 2007, I was advised that the person who was to be appointed as a Magistrate had changed from Simon Cooper to Glenn Hay. I cannot recall how this information was communicated to me. ... based on the advice I was provided, I changed the name from Simon Cooper to Glenn Hay and also changed the work history summary. Although the original document for the nomination of Mr Simon Cooper had been originally saved, I did not retain that saved document."*⁹ P. 47, (Hutton, Statutory Declaration 1 2008, 5)⁹

Above: The Parliament building in Tasmania, Australia.

The political imperatives driving the change have never been completely teased out, however Mr Kons gave the following commentary in his evidence to a Parliamentary Committee:

"Although I cannot confirm the reason why he [Mr Cooper] was preferred as the nominee, I can only speculate on the matter. My belief is that Mr Cooper made some comments in his capacity as Acting Executive Commissioner of the RPDC that placed the government in a potentially difficult position. For example, I was aware that he sent a letter to the Premier over concerns about the deficiencies in the Gunns Pulp Mill application." P. 51, (Kons, Statutory Declaration 2008, 3)¹⁰

Mr Kons then shredded the original document appointing



“Independent Commissions are part of the UK and Canadian judicial appointment process. They are often proposed as a solution to political interference in the process. However, they are also viewed as providing potential different biases to the appointment process that can lead to other issues in relation to the objectives of providing a judiciary that reflects the diversity of the State or Country.”

Mr Cooper as described in his evidence:

“After the phone conversation was terminated, I took the Cabinet Minute relating to Mr Cooper to the office shredder and shredded it. The reason I did this was because I was told to and I knew a new one would be prepared.” p. 47, (Kons, Statutory Declaration 2008, 5)

The events above so shocked the Tasmanian community that trust in the government evaporated. When Paul Lennon resigned as Premier, his replacement, David Bartlett, felt compelled to act in an attempt to re-earn the trust of the Tasmanian people. He quickly released his ‘Ten Point Plan to Strengthen Trust’ which laid out a series of reforms designed to strengthen democratic institutions and trust in our democracy. The third point in the plan was a promise to develop an independent and effective protocol for judicial appointments.

3. *Approved Protocols and Rules for Judicial Appointments to be released soon by the Attorney-General. The new*

*protocols have been subject to scrutiny by the profession and other stakeholders, including the opposition parties.*¹¹

The outcome of this process was the ‘Protocol for Judicial Appointments’ released in 2009.

“Supreme Court Vacancy

- *A representative of a professional legal body chosen by the Attorney General.*
- *Secretary of the Department of Justice or their nominee.*
- *Attorney-General’s nominee.*
- Magistrates Court Vacancy*
- *Chief Magistrate or their nominee.*
- *Secretary of the Department of Justice or their nominee.*
- *Attorney-General’s nominee.”*¹²

In addition, expressions of interest are called for and the vacancy must be advertised.

In 2015, the protocol was reviewed and a few minor alterations made. The 2015 protocol are the current arrangements governing judicial appointments in Tasmania.

There has not yet been any indication that the current protocols are not working or lack

Above: Launceston on the Tamar River, Tasmania, Australia.

general support but a model more closely resembling that recommended in the Latimer House Principles is worth using as a benchmark for judicial appointments in Tasmania.

Independent Commissions are part of the UK and Canadian judicial appointment process. They are often proposed as a solution to political interference in the process. However, they are also viewed as providing potential different biases to the appointment process that can lead to other issues in relation to the objectives of providing a judiciary that reflects the diversity of the State or Country.

“Another, more major reform, would be to establish an independent Judicial Appointments Commission, along the lines of the commissions or committees that have been set up in the United Kingdom and Canada. Several commentators in Australia have supported this option although there has also



been some opposition to this proposal on grounds, including: the costs involved; the argument that well-informed politicians are much more likely to make better decisions than a group of lawyers; and also on the basis of criticisms of the performance of UK Judicial Appointments Commission.¹³

Since 2009 and the political fall-out from 'shredder gate', there have been appointments to the Supreme Court and the Magistrates Courts without any controversy. Whether this is due to the presence of the protocol or fear of the political consequences of interfering with judicial appointment engendered by the fallout from 'shredder gate' is difficult to establish. However,

the presence of a clear and open protocol does provide a degree of comfort in the process of judicial appointments.

Whether the current protocol would be enhanced or the establishment of an independent commission as envisaged in the Latimer House Principles would enhance the process of judicial appointment in Tasmania is unclear. These concerns are particularly relevant in a smaller jurisdiction such as Tasmania where resourcing of such a body may be problematic in the light of other demands on limited resources.

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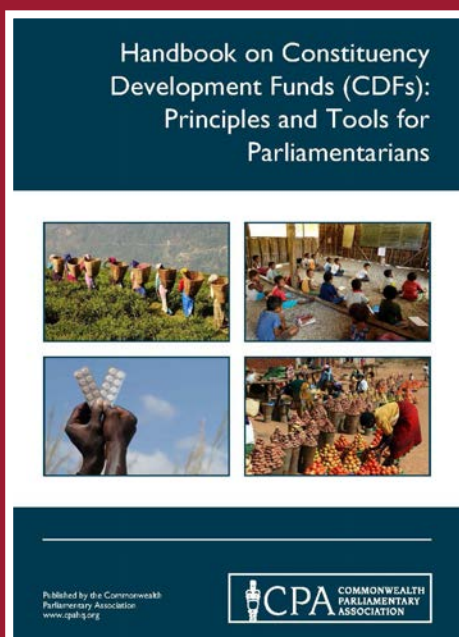
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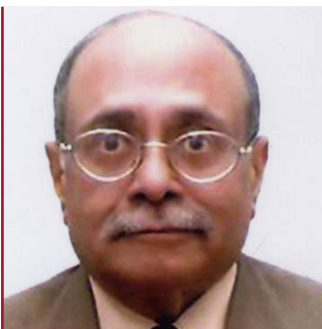
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The Commonwealth Parliamentary Association (CPA) produces a number of toolkits and booklets for Parliamentarians and Parliamentary staff including the *Recommended Benchmarks for Codes of Conduct for Members of Parliament* and the *Handbook on Constituency Development Funds (CDFs): Principles and Tools for Parliamentarians*.





IMPEACHMENT OF A JUDGE OF THE HIGHER JUDICIARY: THE INDIAN PRAXIS



Vivek K. Agnihotri is a former Secretary-General, Rajya Sabha, Parliament of India.

The article reflects the personal views of the author.

The impeachment of a judge of a High Court of India is in the news. According to a Bulletin issued by the Rajya Sabha Secretariat on 17 March 2015, the Chairman of Rajya Sabha admitted the following motion received from Ms. Wansuk Syiem and 57 other MPs of the Rajya Sabha relating to a judge of the High Court of the State of Madhya Pradesh State, India: *"This House resolves that an address be presented to the President for removal from office of Justice S.K. Gangele of the High Court of Madhya Pradesh on the following three grounds of misconduct:*

(i). Sexual harassment of a woman Additional District and Sessions Judge of Gwalior while being a sitting judge of the Gwalior bench of the High Court of Madhya Pradesh;

(ii). Victimisation of the said Additional District and Sessions Judge for not submitting to his illegal and immoral demands, including, but not limited to, transferring her from Gwalior to Sidhi; and

(iii). Misusing his position as the Administrative Judge of the High Court of Madhya Pradesh to use the subordinate judiciary to victimize the said Additional

District and Sessions Judge."

Thereafter, on 15 April 2015, another Bulletin was put out informing that a notification had been issued regarding the constitution of a Committee by the Chairman, Rajya Sabha for the purpose of making an investigation into the grounds on which the removal of Shri Justice S.K. Gangele had been sought. The Committee consists of three Members – all of them senior judges in India. The Report of the Inquiry Committee is awaited.

Impeachment of a judge is not a singularity, but is still a rarity in India. However, in recent times, it has happened three times in fairly quick succession (2009, 2010 and 2015). Justice V. Ramaswami, Justice of the Supreme Court of India was the first judge, since coming into force of the Constitution of independent India, against whom impeachment proceedings were initiated in 1991. The other two judges to face impeachment proceedings were Justice Soumitra Sen of Calcutta High Court (2009), and Justice P. D. Dinakaran, the Chief Justice of the Karnataka High Court (2010). But it needs to be noted that the Constitution

of India, which lays down the procedure for removal of the judges of the Supreme Court and the High Courts, does not mention the word 'impeachment' anywhere.

In the case of Justice V. Ramaswami, the motion moved in the Lok Sabha (Lower House of Indian Parliament) failed in 1993, since it did not get the requisite majority of two-thirds of a majority of members of that House present and voting. In the case of Justice Soumitra Sen, the judge submitted his resignation to the President on 1 September 2011, after the motion for his removal had been adopted by the Rajya Sabha but before it could be taken up for consideration in the Lok Sabha. As far as Justice P. D. Dinakaran is concerned, he resigned in July 2011, before the Inquiry Committee constituted to look into the allegations levelled against him could complete its work.

What then is the procedure for the removal of a judge of the Supreme Court or a High Court in India?

Article 124 of the Constitution of India *inter alia* provides as follows:

Clause (4): "A Judge of the



Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity."

Clause (5): "Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4)."

As regards the Judges of the High Courts, Article 217 (1) (b) provides:

"A Judge may be removed from his office by the President in the manner provided in clause (4) of Article 124 for the removal of a Judge of the Supreme Court."

Further, in pursuance of clause (5) of article 124, the Parliament passed the Judges (Inquiry) Act, 1968, which was

followed up with the Judges (Inquiry) Rules, 1969 by the Government.

In consonance with the statutory provisions mentioned above, in simple terms, the procedure for removal of a judge, either of the Supreme Court or the High Court, normally comprises the following steps:

(1) A notice of motion for removal the judge is given by Members of Parliament (at least 50 in case of the Rajya Sabha and 100 in case of the Lok Sabha).

(2) If the Motion is admitted by the Presiding Officer (Chairman / Speaker) of the concerned House, a three member Inquiry Committee is constituted in consultation with the Chief Justice of India (in respect of the serving members of the Higher Judiciary), comprising a judge of the Supreme Court and a Chief Justice of High Court and an eminent jurist nominated by the Presiding Officer (the Chairman of Rajya Sabha or the Speaker of the Lok Sabha, as the case may be).

(3) The Committee prepares the draft charges, a draft statement of grounds (imputations) and communicates them to the impugned judge.

(4) The Committee issues a statutory notice to the impugned judge to appear before it either in person or through an advocate.

(5) After giving the impugned judge an opportunity to present his / her case, the Committee prepares and presents its Inquiry Report, along with copies of the evidence tendered before it, to the concerned Presiding Officer.

(6) Copy of the Report is laid on the table of the two Houses, simultaneously.

(7) A copy of the Report, along with all other documents, is forwarded to the impugned judge seeking his reply thereon.

(8) A reply is received from the impugned judge.

(9) The impugned judge is invited to appear first before the House, the Members of which had given the motion for his removal.

(10) With the approval of the concerned Presiding Officer, a Bulletin is issued by the

Above: Karnataka High Court in Bangalore, India.

secretariat regarding admittance of motion for consideration of the Report of the Enquiry Committee.

(11) The motion is included in the List of Business of the House.

(12) The House considers the motion and the Address to the President prepared in pursuance of Clause (4) of Article 124 of the Constitution of India.

(13) The motion and the Address is either adopted or rejected by the House.

(14) If the motion and the Address are carried in the first House, they are *mutatis mutandis* considered for adoption by the other House.

(15) The removal of the judge, in the form of the Address, is recommended to the President of India, if it is adopted by both the Houses with the requisite majority of the total membership of the House and by a majority of not less than two thirds of the members of



IMPEACHMENT OF A JUDGE OF THE HIGHER JUDICIARY: THE INDIAN PRAXIS

that House present and voting. The procedure is similar to the adoption of an amendment to the Constitution of India.

At present, there is no specific law to govern investigation of complaints of misconduct and incapacity against the judges of the Supreme Court and the High Courts, except for the Constitutional provisions aforementioned as well as the Act and the Rules framed thereunder. Complaints received by the government against the higher judiciary are simply forwarded to the Chief Justice of the Supreme Court for appropriate action. In 2010, however, the previous government had proposed a Judicial Standards and Accountability Bill, which was passed by the Lok Sabha in 2012. In the Rajya Sabha some amendments to it were proposed; but the Bill lapsed on dissolution of the Lok Sabha on completion of its term in 2014. The salient features of the Bill were:

- It required the judges to declare their assets, prescribed judicial standards, and attempted to establish processes for removal of judges of the Supreme Court and High Courts.
- Judges were required to declare their assets and liabilities, and also that of their spouse and children.
- The Bill sought to establish the National Judicial Oversight Committee, the Complaints Scrutiny Panel and an Investigation Committee. Any person could make a complaint against a judge to the Oversight Committee on grounds of 'misbehaviour'.
- A motion for removal of a judge on grounds of misbehaviour could also be moved in Parliament. Such a motion would have been

referred for further inquiry to the Oversight Committee.

- Complaints and inquiries against judges would have been confidential and frivolous complaints were to be penalised.
- The Oversight Committee could issue advisories or warnings to the impugned judges, and also recommend their removal to the President.

The new government that has assumed office in 2014 proposes to revive the Bill, but is treading cautiously in view of the controversy created in respect of the National Judicial Appointments Commission (NJAC for short) Act, 2014.

A spate of cases of so-called impeachment of judges in recent times has led to doubts being raised against the robustness of the existing system of selection and appointment of justices of the High Court and the Supreme Court, popularly known as the 'Collegium System', which appoints judges to the nation's constitutional courts, under which the Chief Justice of India and a forum of four senior-most judges of the Supreme Court recommend appointments and transfers of judges.

This System had its genesis in three judgments of the Supreme Court which are collectively known as the 'Three Judges Cases', viz. (1) *S. P. Gupta versus Union of India - 1981* (also known as the Judges' Transfer case); (2) *Supreme Court Advocates-on Record Association versus Union of*

India, 1993; and (3) *In re Special Reference 1 of 1998*. The Third Judges Case of 1998 was not actually a case but an opinion rendered by the Supreme Court of India responding to a question of law regarding the Collegium System, raised by the then President of India K. R. Narayanan, in July 1998 under his constitutional power to consult the Supreme Court (Article 143). The Collegium System has been in use since the judgment in the Second Judges Case was delivered in 1993. Over the course of the three cases, the court evolved and further refined the principle of judicial independence to mean that no other branch of the state - including the legislature and the executive - would have any say in the appointment of judges. Further, in January 2013, the court dismissed as without *locus standi*, public interest litigation filed by an NGO (Suraz India Trust) that sought to challenge the Collegium System of appointment of superior judiciary.

In July 2013, the then Chief Justice of India spoke against any attempts to change the Collegium System.

However, it must be noted that there is no mention of the Collegium either in the original

Above: Andhra Pradesh High Court, India.

Constitution of India or in its subsequent amendments. Although the creation of the Collegium System was viewed as controversial by legal scholars and jurists outside India, her citizens, the Parliament and the Executive did little to replace it. The Union Government has since criticised it saying that it has created an *imperium in imperio* (empire within an empire) within the Supreme Court.

Several considerations, buttressed no doubt by a succession of cases of misdemeanor on the part of certain judges perhaps, led to amendment of the Constitution of India through the ninety-ninth constitutional amendment, namely the Constitution (Ninety-Ninth Amendment) Act, 2014 and passage of the National Judicial Appointments Commission (NJAC) Act, 2014 to regulate the functions of the National Judicial Appointments Commission, and on their ratification by 16 of the state legislatures in India, and subsequent assent by the President of India on 31 December 2014. The NJAC





Act and the Constitutional Amendment Act came into force with effect from 13 April 2015. The NJAC consists of six members — the Chief Justice of India, the two senior most judges of the Supreme Court, the Law Minister, and two '*eminent persons*'. These eminent persons are to be nominated for a three-year term by a committee consisting of the Chief Justice, the Prime Minister, and the Leader of the Opposition in the Lok Sabha, and are not eligible for re-nomination. The judiciary representatives in the NJAC - the Chief Justice and two senior-most judges – can veto any name proposed for appointment to a judicial post if they do not approve of it. Once a proposal is vetoed, it cannot be revived. At the same time, the judges require the support of other members of the Commission to get a name through. The NJAC would have replaced the Collegium System for the appointment of judges.

However, on 16 October 2015 the Supreme Court upheld the Collegium System and struck down the NJAC as unconstitutional after hearing the petitions filed by several persons and bodies, with Supreme Court Advocates on Record Association being the first and lead petitioner. By a majority opinion of 4:1, the Supreme Court of India struck down the constitutional amendment and the NJAC Act, thereby restoring the two-decade old Collegium System of '*judges appointing judges*' to higher judiciary. The Supreme Court declared that NJAC is tantamount to encroachment on the autonomy of the judiciary by the executive, which amounts to tampering with the Constitution of India under which the Parliament of India is not empowered to change its Basic Structure. However, the Supreme Court acknowledged that the Collegium System of judges appointing judges is

lacking in transparency and credibility, which requires rectification / improvement by the Judiciary.

On 3 November, 2015 the Supreme Court pronounced that it is open to bringing greater transparency in the Collegium System within the following existing four parameters:

- How the Collegium can be made more transparent?
- The fixing of the eligibility criteria for a person to be considered suitable for appointment as a judge.
- A process to receive and deal with complaints against judges without compromising on judicial independence.
- Debate on whether a separate secretariat is required, and if so, it's functioning, composition and powers.

Following an invitation from the Supreme Court of India to the general public to send proposals to improve the 'opaque' Collegium System, a large number of suggestions were received for reforming the system. Taking note of the suggestions received from various quarters, a five Judge Bench of the Supreme Court directed the Government of India, through the Attorney General, to prepare the draft of a revised Memorandum of Procedure (MoP), which would prescribe the guidelines for the Supreme Court Collegium in appointment of judges to the High Courts and the Supreme Court. The Government has prepared the draft MoP which under consideration of the judiciary.

The Constitution of India upholds the independence of the judiciary by ensuring a security of tenure. That is why, as mentioned above, a judge of the Supreme Court or the High Court cannot be removed from office except through an

elaborate procedures prescribed by the Constitution, the Judges (Inquiry) Act, 1968 and the Rules framed thereunder. Moreover, the Parliament is not empowered to discuss the conduct of any judge of the Supreme Court or the High Court in the discharge of his duties except in terms of the procedure prescribed for his removal. The higher judiciary has adequately protected not only against the vagaries of Parliament but also of the executive through a system of appointment of the judges by a committee of their own brethren. But it does not provide for their accountability as is the case in several Western democracies. There is no mechanism at present to make judges accountable or to evaluate their performance. While judicial independence is indeed a part of the basic structure of the Constitution, it cannot be the ultimate goal of the judicial system *per se*.

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“The Constitution of India upholds the independence of the judiciary by ensuring a security of tenure. That is why, as mentioned above, a judge of the Supreme Court or the High Court cannot be removed from office except through an elaborate procedures prescribed by the Constitution, the Judges (Inquiry) Act, 1968 and the Rules framed thereunder.”

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THE SEPARATION OF POWERS AND THE RELATIONSHIP BETWEEN PARLIAMENT AND THE JUDICIARY: AN EXPERT'S VIEW



Dr Karen Brewer is the Secretary-General of the Commonwealth Magistrates' and Judges' Association (CMJA) since 1998, having previously worked as International Relations Officer at the Law Society of England and Wales. She has written and spoken on the separation of powers, judicial independence and women's rights. She is the Secretary of the Commonwealth Latimer House Working Group (1998-present) which advances the implementation of the Commonwealth (Latimer House) Principles.

The following article expresses the views of the author and does not necessarily reflect the views of the Commonwealth Magistrates' and Judges' Association.

Introduction

Commonwealth Heads of Government have committed their countries to the protection and promotion of democracy, democratic processes and institutions which reflect national circumstances, the rule of law, judicial independence and just and honest government.¹

These commitments refined in the Commonwealth (Latimer House) Principles ("CLHP")² were re-iterated in the Commonwealth Charter of 2013 which recognises the importance of maintaining the integrity of the roles of the Legislature, Executive and Judiciary as the guarantors in their respective spheres of the rule of law. This is a pre-requisite for the effective separation of powers. Thus Parliament is expected to make laws, the Executive to enforce the laws and the Judiciary to adjudicate on conflicts that might arise when the laws are deemed to have been transgressed.

The shared legacy of the common law emphasises the rule of law and procedural safeguards secured through an independent judiciary³ and an Executive accountable to Parliament.

The CLHP provide that:

(a) Relations between parliament and the judiciary should be governed by respect for parliament's primary responsibility for law making on the one hand and for the

judiciary's responsibility for the interpretation and application of the law on the other hand.

(b) Judiciaries and parliaments should fulfill their respective but critical roles in the promotion of the rule of law in a complementary and constructive manner.

The restraint with which these powers are exercised is often the key to harmonious relations between Parliament and the Judiciary. Problems, however, do arise in the Commonwealth. These usually manifest themselves in two ways:

- when the Judiciary seems to engage in areas which are seen to come under parliamentary sovereignty or privilege,
- when Parliamentarians try to impose authority over the Judiciary and compromise judicial independence.

Parliamentary Sovereignty and Parliamentary Privilege

The Legislature is the democratically elected forum for political debate and formulation of political policies which are then converted into legislation. The judiciary is responsible for impartial reasoned findings in relation to specific facts and taking into account constitutional provisions and the common law. However, both parliament and the judiciary share a common responsibility to ensure the accountability of

the executive.

Parliamentary sovereignty means that "Parliament has, under the English constitution, the right to make any law whatever; and further, that no person or body is recognised by the law of England as having a right to override or set aside legislation of Parliament."⁴

This principle, put forward in the 18th century, was exported across the Commonwealth. However, the principle has come under some scrutiny when it is powerless to protect the people if Parliaments are used to rubber stamp unjust laws put forward by an oppressive Executive. Parliaments have also come under criticism recently for passing legislation in reaction to popular or social pressure.

Written constitutions in the Commonwealth generally confer on judges the power to strike down legislation which is deemed incompatible with the constitution as the supreme law and to ensure that Parliaments do not abuse their rights. This has led to criticism of judges becoming law-makers and the rise of judicial activism has been blamed for impacting too much on the delicate balance of powers. Critics say that courts do not have the right to alter public policy as judges are not representatives of the will of the people but parliamentary sovereignty is not an absolute, especially with written constitutions setting out the



duties and limits on the role of parliament.

Some Parliamentarians have called for judges to appear before them to be held in contempt of parliament. The Speaker of the Bahamas recently reminded the House of Assembly that judges of the Supreme Court enjoyed immunity in the execution of their duties as well: *"I believe this would be a gross violation of the doctrine of separation of powers for a judge to be called before Parliament to explain their actions in the execution of their duties."*¹⁶

The CLHP states that *"Criminal and Defamation laws should not be used to restrict legitimate criticism of Parliament; the offence of contempt of parliament should be narrowly drawn and reporting of the proceedings of parliament should not be unduly restricted by narrow application of the defence of qualified privilege."*¹⁶

The concept of parliamentary privilege grants Parliamentarians certain immunities so that they can exercise their duties and responsibilities without interference from outside the Legislature. It includes the right to freedom of speech and the right of Parliament to regulate its own affairs and that of its Members without interference, especially from the Courts. It was enshrined in England in the Bill of Rights of 1689 and the right has been exported to other Commonwealth jurisdictions. It does not however include the right to unduly criticize a judge in the exercise of his/her judicial functions. The judiciary has however, been called on increasingly to deal with issues which relate to procedures in Parliament. Commonwealth politicians often seize the courts through election petitions when they are unhappy with election results or when they have been excluded from



Parliament for floor-crossing and the judiciary have had to deal with such issues. Some Parliamentarians have also been arrested for corruption, bribery or abuse of expenses, criminal charges which do not fall under parliamentary privilege and the judiciary has had to deal with such cases.

The CPA's Benchmarks for Democratic Legislatures state in Article 10 that:

"10.1.1 Legislators should maintain high standards of accountability, transparency and responsibility in the conduct of all public and parliamentary matters."

10.1.2 The Legislature shall approve and enforce a code of conduct, including rules on conflicts of interest and the acceptance of gifts."

10.1.3 Legislatures shall require legislators to fully and publicly disclose their financial assets and business interests."

The implementation of such principles in the Commonwealth is paramount to ensuring that the rule of law prevails.

Maintaining Judicial Independence and Integrity

*"The rule of law is the bedrock of a democratic society..... And if the rule of law is to be upheld it is essential that there should be an independent judiciary."*¹⁷

The rule of law requires judicial officers⁸ to decide matters before them in accordance with their assessment of the facts and their understanding of the law, free from any improper influences, inducements or pressures, direct or indirect, from any quarter or for whatever reason.

Lord Phillips deplored the increasing tendency to challenge the mandate of the judge. *"Some say that our decisions are not legitimate, because we have not been elected. It is claimed that judges are not accountable for their decisions. Such comments are not helpful and stem from a misunderstanding of the role of judges."*

As Sir Jack Beatson QC, FBA pointed out: *"The judges*

*are not free to do what they wish. They are subject to the laws as enacted by Parliament. The independence of the judiciary is thus... not a privilege of the judges themselves....It is necessary for the public in a democratic state. It is necessary to ensure that people are able to live securely, and that their liberty is safeguarded and only interfered with when the law permits it. It is necessary for all of us, but perhaps particularly so for those who espouse unpopular causes or upset the powerful."*¹⁸

Accountability

In her report to the UN Human Rights Council of April 2014, the former Special Rapporteur on the Independence of Judges and Lawyers, Mrs Gabriella Knauth, states that *"Judges must... be accountable for their actions and conduct, so that the public can have full confidence in the ability of the judiciary to carry out its functions independently and impartially."*¹⁰

Judges are, in fact, accountable in a number of



Above: The Royal Courts of Justice, London, United Kingdom.

ways. Parties or litigants have a right of appeal of decisions made by judicial officers if they are unhappy with a judgement. They can even appeal now, in some instances to regional courts or, for some still, to the Judicial Committee of the Privy Council. In addition, judges in most Commonwealth countries which follow the common law have to produce reasoned arguments for any decisions. Sir John Beatson argues that *"the duty to give reasons for decisions is a clear example of 'explanatory' accountability which assists transparency and scrutiny by the other branches of the state and the public."*

Judicial officers have to comply with ethical guidelines/codes for their conduct within and outside of court. Since 1998, the CMJA has been the repository of these guidelines/codes which are refined and amended on a regular basis. Judicial officers are also guided by the principles of independence and impartiality of their Oaths of Office they swear

to on appointment.

Finally, if Parliaments are really unhappy with decisions in court, they are free to legislate and reverse the effect of decisions. However, this has led to calls in some countries for parliaments to be more involved in the appointment and removal of judges.

Appointments and Removals

The CLHP calls for an independent and transparent appointments process. The Commonwealth has seen an increase in the establishment of independence judicial appointments mechanisms in the last 16 years. Many Commonwealth constitutions contain clauses relating to the establishment of such commissions, however, constitutional provisions are not always sufficiently detailed to ensure the independence of such commissions. In 2013, the CLA, CLEA and CMJA published a report entitled '*Judicial Appointments Commissions: A Clause for Constitutions*'.¹¹

This report put forward suggestions as to good practice in the establishment, composition and running of a Judicial

Appointments Commission.

The report provides a guide as to the composition of such a body which would ensure that there was no judicial or political majority to avoid the politicization of judicial officers or criticism of nepotism. If the rule of law is really to prevail, the individual citizen must be confident that the judge will apply the law to them without fear or favour, affection or ill-will.

Parliament does however have a role in ensuring that any legislation that implements the constitutional provisions relating to the judiciary is clear and concise and does not lead to confusion as to who has the authority to appoint or remove judicial officers and to ensure that the security of tenure of judicial officers is guaranteed so that they can fulfil their functions with integrity and independence.

Whilst constitutional provisions provide that the Legislature in many Commonwealth countries has the right to remove judicial officers, especially those at the higher level, judicial officers should only be removed from office for gross misconduct or incapacity to fulfil their functions,

and this only against a set of detailed criteria. The historic role of parliament in this process has been a source of tension between the two branches of government. It is unfortunate that there are increasingly too many examples in the Commonwealth where a compliant Legislature, or a ruling-party majority in Parliament, has led to undue pressure being exerted on the judiciary and to the removal of judicial officers without due process being followed. Legislatures have amended constitutional or legislative instruments which remove the right of the Head of the Judiciary to investigate (or appoint a tribunal to investigate) cases of misconduct or incapacity, though such provisions are still subject to judicial scrutiny. There have been examples too of impeachment processes against judicial officers which were deemed to be in the interest of the ruling party and in which the judge being impeached has been deprived of his/her right to a fair trial through the denial of legal representation, the introduction of trumped up charges or the denial of a right of appeal against the findings of the investigative tribunal. Judicial officers are human beings and have the same rights as every citizen to a fair hearing.

Resources

Like any other institution, the judiciary must be accountable for its spending. The allocation of resources however, has traditionally been undertaken through ministerial departments (Ministries of Justice or Finance). Thus the judiciary has not had control of its own budgets and in many instances this has led to a power play between the three organs of state and the misconception that the judiciary is just a ministerial department subject to the government's direction or the will of parliament



rather than the equal third pillar of democracy.

The CLHP - as well as the subsequent Plans of Action¹² - call on Commonwealth governments and parliaments to ensure that the judiciary has adequate resources and set out a number of practical steps to be taken by government. *"It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions."*¹³

Suitable and sustainable funding has to be provided to enable the judiciary to perform its functions to the highest of standards. Chronic underfunding can lead to delays and inefficiencies and in some cases strikes. Access to justice has suffered in a number of countries as a direct result. In 2000, the Chief Justices of the Commonwealth meeting at the CMJA's Triennial Conference in Edinburgh called for the Judiciaries to be given control of their own budgets. 16 years on, only a few Commonwealth jurisdictions have allowed the judiciary to take responsibility for their own budget and even then, access to justice can still be compromised if the other organs of power limit the allocation of structural (use of court houses), operational (use of IT or even basic provision of materials) or human resources (for example in not providing a living wage for the lower judiciary and judicial administrative staff).

However, in most, control over finances remains in the hands of the Executive and this can severely impact on the good administration of justice. In addition, unless there is an independent mechanism for the establishment of public sector salaries and benefits (including those of judges and magistrates), there is a continued risk that the control of the judiciary over its budget may be curtailed and open it up to corruption from

outside influences.

At its Triennial Conference in Wellington, the CMJA General Assembly noted with concern, the continued lack of sufficient resources provided to the courts in many Commonwealth countries and recorded its disappointment pointing out that the provision of sufficient resources to the courts is a fundamental constitutional obligation of the Executive branch of government.

Conclusion

The Commonwealth (Latimer House) Principles called for judiciaries and parliaments to *"fulfill their respective but critical roles in the promotion of the rule of law in a complementary and constructive manner."*¹⁴

The Edinburgh Plan of Action noted that *"each new generation of government officers, parliamentarians, lawyers, judicial officers and members of civil society has to be alert to the imperatives of, and balance between, the independence and accountability of the judiciary, parliament and the executive..."*¹⁵

Most problems which arise in the Commonwealth derive from a continued lack of understanding of each institution's role in the governance process. The Edinburgh Plan of Action called for more regular awareness training, on appointment or election, of Parliamentarians, judicial officers and public servants on basic constitutional principles and the primary roles of each pillar of democracy in the constitutional process.

In 2013, the Commonwealth Secretariat commissioned the CLA, CLEA, CMJA and CPA to develop a Latimer House Toolkit to enhance the dialogue between the three pillars of democracy whilst not compromising their independence. Published in 2015, the four associations hope to assist the Commonwealth

Secretariat to roll out this toolkit in order to promote better respect between the three organs of the state in order to ensure that *"Each Commonwealth country's Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability."*

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- ⁴ "Introduction to the Study of Law and the Constitution", Prof A. V Dicey
- ⁵ <http://www.tribune242.com/news/2016/may/10/speaker-judges-should-not-be-called-parliament/>
- ⁶ Chapter III (b) – Independence of Parliamentarians.
- ⁷ Speech given at the Commonwealth Law Conference in 2007 by former Lord Chief Justice of England and Wales, Lord Phillips of Worth Matravers
- ⁸ i.e.: judges and magistrates
- ⁹ Speech given to Nottingham Trent University in September 2008 on "Judicial Independence and Accountability, Pressures and Opportunities"
- ¹⁰ Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. A/HRC/26/32.
- ¹¹ <http://cmja.org/downloads/latimerhouse/Judicial%20Appointments%20Commissions-%20CLA-CLEA-CMJA%20Report.pdf>
- ¹² Nairobi Plan of Action for Africa, 2005 and Edinburgh Plan

of Action on the Development, Promotion and Implementation of the Latimer House Principles, 2008

¹³ Article 7 UN Basic Principles on the Independence of Judges, 1985

¹⁴ Principle II (b)

¹⁵ Note (4) of the Edinburgh Plan of Action for the Development, Promotion and Implementation of the Commonwealth (Latimer House) Principles, 2008

"Most problems which arise in the Commonwealth derive from a continued lack of understanding of each institution's role in the governance process. The Edinburgh Plan of Action called for more regular awareness training, on appointment or election, of Parliamentarians, judicial officers and public servants on basic constitutional principles and the primary roles of each pillar of democracy in the constitutional process."



THE RELATIONSHIP BETWEEN PARLIAMENT AND THE JUDICIARY: VIEW FROM UTTAR PRADESH



Pradeep Kumar Dubey is Principal Secretary at the Uttar Pradesh Legislative Assembly in India. Mr Dubey was educated at Allahabad and Delhi Universities before joining the Judicial Service and working as a Judicial Magistrate and Munsif Magistrate/Civil Judge at Lucknow, Civil Courts. He was Legal Advisor to the Governor of Uttar Pradesh and Principal Secretary, Parliamentary Affairs before taking up his current position. Mr Dubey has organised many CPA and Presiding Officers and Secretaries Conferences in India.

The Parliament, the Executive and the Judiciary are the three main pillars of our democratic edifice. The Constitution of India defines powers, delimits jurisdictions and demarcates responsibilities of each organ. As regards the relationship between the Parliament and the Judiciary, both are under constitutional obligation not to encroach upon each other's jurisdiction.

Under the scheme of our Constitution, Parliament being the Supreme legislative body has been accorded the pre-eminent position in our polity. Several constitutional provisions amply demonstrate this. Reflecting the hopes and aspirations of the people, the Parliament, over the years, has truly become a people's institution par excellence. Being the supreme law-making body in the country, Parliament discusses, scrutinizes and amends the drafts of various legislations if necessary, and thereafter it puts the seal of approval, thereby legitimizing the legislative proposals formulated by the Executive.

The Constitution also accords an important place to the Judiciary, with the Supreme Court at the apex of the judicial system. The Supreme Court, in addition to being the final court of appeals - civil and criminal - has exclusive original jurisdiction in disputes between the Union and the States and between two or more States and is the ultimate

arbitrator in all matters involving the interpretation of the Constitution.

Thus, as per the Constitutional scheme, both Parliament and Judiciary are supreme in their respective spheres. Various constitutional provisions do not leave any scope for confrontation between the two organs of State. Indeed, the harmonization of the principles of Parliamentary Sovereignty and Judicial Review is a unique feature of India's Constitution.

While the Constitution has not recognised the doctrine of separation of powers in its absolute rigidity, the functions of the three organs of State - viz a viz the Legislature, the Judiciary and the Executive - have been sufficiently demarcated.

As observed by Raghava Rao J. :

'The powers of each one of the three organs have to be exercised as fundamentally subject to the provisions of the Constitution relating to that organ individually as well as to the provisions relating to other organs. It is the respect that is accorded by one organ of the State to the others that ensures that healthy working of the Constitution which is the acid test of its merits whatever the paper value of its provisions.'

Both Parliament and State Legislatures are sovereign within the limits assigned to them by the Constitution. The supremacy of the Legislature under a written Constitution, as observed by the

Supreme Court, is only within what is in its power but what is within its power and what is not, when any specific Act is challenged, it is for the Courts to say.

All legislations, whether Union, State or delegated, are subject to the doctrine of *ultra vires* and liable to judicial review. The scope of review is limited to see whether the legislation impugned falls within the periphery of the power conferred and whether it is in contravention of the Fundamental Rights guaranteed by the Constitution or of any other mandatory provision of the Constitution. The Courts are concerned only with interpreting the law and are not to enter upon a discussion as to what the law should be. The Legislature can amend laws to meet the lacunae or defects pointed out therein by the Courts, or legislate afresh to give effect to their original intentions and such amendments are accepted by the Court as valid law.

Some of the related articles in the Constitution of India are as follows:-

Article 121 - Restriction on discussion in Parliament:

No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided.



Article 122 - Courts not to inquire into proceedings of Parliament:

(1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or Member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

Article 211 - Restriction on discussion in the Legislature:

No discussion shall take place in the Legislature of a State with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties.

Article 212 - Court not to inquire into proceedings of

the Legislature:

(1) The validity of any proceedings in the Legislature of a State shall not be called into question on the grounds of any alleged irregularity of procedure.

(2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

Pt. Nehru, the first Prime Minister of India, intended that the Parliament of India should serve as a vehicle of social change and expected that the Judiciary would not create obstacles in this task. During the course of his speech in the Constituent Assembly on 10 September 1949, he said: "We will honour our pledge within limits. No Judge, no Supreme Court can make itself a third chamber. No

Supreme Court and no Judiciary can stand in Judgment over the sovereign will of Parliament representing the will of the entire community. If we go wrong here and there, it can point out."

However, it goes to the credit of Pt. Nehru that he firmly believed in the independence of the Judiciary. Intervening in the debates of the Constituent Assembly on the appointment of Judges, he said: "*It is important that these judges should not only be first rate, but should be acknowledged to be first in the country and of the highest integrity, if necessary, people who can stand up against the Executive and whoever may come in their way."*

It is vitally important in a democracy that individual judges and the Judiciary as a whole are impartial and independent of all external pressures and of each other so that those who appear before them and the wider

Above: The port city of Varanasi, Uttar Pradesh, India.

public can have confidence that their cases will be decided fairly and in accordance with the law. When carrying out their judicial function they must be free of any improper influence. Such influence could come from any number of sources. It could arise from improper pressure by the Executive or the Legislature, by individual litigants, particular pressure groups, the media, self-interest or other judges, in particular more senior judges.

It is vital that each judge is able to decide cases solely on the evidence presented in court by the parties and in accordance with the law. Only relevant facts and law should form the basis of a judge's decision. Only in this way can judges discharge their constitutional responsibility to provide fair and impartial justice.

Judicial independence does,



“Parliament is the master of its own functions and enjoys certain privileges so that it can discharge its parliamentary functions independently and without fear. It has powers to punish for its own contempt. No judicial proceedings exist for any speech made or vote given in the Parliament or any of its Committees.”

however, mean that judges must be free to exercise their judicial powers without interference from litigants, the State, the media or powerful individuals or entities, such as large companies. This is an important principle because judges often decide matters between the citizen and the state and between citizens and powerful entities. For example, it is clearly inappropriate for the judge in charge of a criminal trial against an individual citizen to be influenced by the state. It would be unacceptable for the judge to come under pressure to admit or not admit certain evidence, how to direct the jury or to pass a particular sentence. Decisions must be made on the basis of the facts of the case and the law alone.

Judicial independence is important whether the judge is dealing with a civil or a criminal case. Individuals involved in any kind of case before the courts need to be sure that the judge dealing with their case cannot be influenced by an outside party or by the judge's own personal interests, such as a fear of being sued for

defamation by litigants about whom the judge is required in the course of proceedings or judgment to make adverse comment. This requirement that judges be free from any improper influence also underpins the duty placed on them to declare personal interests in any case before it starts, to ensure that there is neither any bias or partiality, or any appearance of such.

In conclusion, it may be stated that in a democratic society, the Parliament is the supreme law making body of the country. The Parliament of India is the nerve centre of our polity. During the last sixty years, it has been witness to many ups and downs in the nation's life, but as an institution, it has sustained democracy in its purest form.

Parliament is the master of its own functions and enjoys certain privileges so that it can discharge its parliamentary functions independently and without fear. It has powers to punish for its own contempt. No judicial proceedings exist for any speech made or vote given in the Parliament or any of its

Above: Arch in Ayodhya, Uttar Pradesh, India.

Committees. Justices of the Court are not the architects of policy. They can nullify policies of the Executive if they are arbitrary and contrary to public interest. In a nation's life, vital domestic issues arise which need adjudication, which is the exclusive domain of the courts. No other limb of the State can surpass or usurp this power of the Judiciary. In order to maintain the independence of the Judiciary, the Parliament does not discuss the conduct of judges during its proceedings. In the final analysis, it may be said that the Parliament and the Judiciary both have followed the principle that neither of the three constitutionally separate organs of State can, according to the basic scheme of our Constitution today, leap outside the boundaries assigned, sphere or orbit of authority into that of others. This is the logical and natural meaning of the principle of supremacy of the Constitution.



PARLIAMENT AND THE EXECUTIVE

Challenges in the India Parliament: Rajya Sabha takes historical decision to amend the Motion of Thanks on President's Address for the fifth time



Shri Satya Narayana Sahu is Joint Secretary in the Rajya Sabha Secretariat. He served as an Officer on Special Duty to the late President of India, Shri K.R. Narayanan and as a Director in the Prime Minister's Office.

The views expressed are personal views of author and are not of the Rajya Sabha Secretariat.

Yet again history was created in the Rajya Sabha (Council of States), the Upper House of Indian Parliament, on 9 March 2016 when an amendment of the Leader of Opposition, Mr. Ghulam Nabi Azad to the Motion of Thanks on President's Address was adopted by the House. It is unusual in that for two consecutive years the Motion of Thanks for President's Address has been amended. In 2015, the Motion of Thanks was amended on the issue of 'black money'. It is not a usual happening in the annals of parliamentary democracy of our country. If the Motion of Thanks on President's Address is amended in the Lok Sabha (House of the People), the Lower House of the Indian Parliament, the Government would fall.

One may recall that the Prime Minister, Mr. Chandrashekhar resigned from office in March 1991 when he apprehended that the Motion of Thanks on President's Address would be amended in the Lok Sabha. The late Mr. R. Venkataraman, former President of India, in his memoirs "My Presidential Years" wrote that Prime Minister Chandrasekhar met him on 6 March 1991 when the Motion of Thanks on the President's address was being discussed in the Lok Sabha (House of the People) and was told that he did not want his Government to be defeated in the House following the failure of the adoption of

the said motion. Therefore, the adoption of the amendment to the Motion of Thanks on President's Address is of vital importance for the credibility of the Government.

Constitutional Provisions on the President's Address

It is well known that Article 87 of the Constitution of India deals with the Special Address by the President to both the Houses of Parliament assembled together for the purpose of informing Parliament of the causes of its summons at the commencement of the first session after each General Election to the Lok Sabha (House of the People) and at the commencement of the first session of each year. Such an Address of the President constitutes the policies and programmes of the Government and, therefore, it can be described as the manifesto of the Government.

This provision concerning the Address by the President to Parliament, as per Article 87 and informing Parliament of the causes of its summons, was incorporated into the Constitution of India following the Campion's book on the rules of the House of Commons. A peep into the debates of the Constituent Assembly reveals that Dr B. R. Ambedkar, Chairman of the Drafting Committee of the Constituent Assembly of India, while replying to the debate concerning the President's Address to

Parliament on 18 May 1949, stated that the adequate research on it led him to Campion's book which provided the vital information and procedure for the President's Address to Parliament.

While clause (1) of article 87 deals with the Special Address by the President, clause (2) prescribes that "Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address." Article 71 of the draft Constitution, corresponds to article 87 of the original Constitution. While Article 71 was being debated in the Constituent Assembly on 18 May 1949, one distinguished member Dr. P.S. Deshmukh participated in the discussion and stated that "There is no necessity for a provision in the Constitution by which time for discussion of the President's Speech would have compulsorily to be allotted."

The intent of the framers of the Constitution of India was that the matter concerning the span of time required to discuss the President's Address in Parliament should not be explicitly mentioned in the Constitution itself. Therefore, the Constitution does not allot time for the discussion on President's Address in both the Houses of Parliament and it allows both the Houses to make rules for this purpose.



Rules concerning Discussion on the Motion of Thanks on the President's Address

Accordingly, Rules 14 to 19 of the Rules of Procedure and Conduct of Business of Rajya Sabha deal with, among others, the President's Address, the scope of discussion on the Motion of Thanks on the President's Address and the amendments to be moved to such a motion. Once the President delivers such an Address, it is discussed in both Houses of Parliament and, as per Rule 18 of the Rules of Procedure and Conduct of Business in the Council of States, the Prime Minister or any other Minister of the

Government replies to the discussion of the Motion of Thanks on the President's Address in the Rajya Sabha.

First Amendment to the Motion of Thanks on the President's Address

The Parliament of India started functioning on 13 May 1952. From that year till 1979, the Motion of Thanks on the President's Address was never amended in the Council of States (Rajya Sabha). It happened for the first time in 1980 when Mr. Bhupesh Gupta's amendment concerning attempts to engineer defections in some State Assemblies and the arbitrary dissolutions of such Assemblies was adopted on 30 January 1980.

Other Amendments to the Motion of Thanks on the President's Address

In the history of parliamentary democracy, the Motion of Thanks on the President's Address was amended for the second time in 1989 when six amendments were adopted by the House. The first amendment referred to the failure on the part of the Union Government to mention Ram Janam Bhumi-Babri Masjid dispute in the President's Address and the measures proposed by the Government to resolve it. The second amendment was about the failure of the Union Government to avert destabilisation of State Governments. The third amendment was about the failure of the Union Government to amend the Constitution to

ensure the right to work as a fundamental right. The fourth amendment was dealing with the failure of the Union Government not to mention Indo-Sri Lanka accord and take measures for the safety and securities of Tamils in Sri Lanka and the devolution of powers to the North-Eastern provinces. The fifth amendment was about the failure of the Union Government to outline its stand on the Anandpur Saheb Resolution which threatened the unity and integrity of the country. And the sixth amendment was about the abject surrender of the Union Government to the demands of the anti-national secessionist forces in Jammu and Kashmir by releasing some terrorists in December 1989.

The Motion of Thanks on the President's Address was

Below: The procession of the President of India before the address to Parliament.





amended by Rajya Sabha for the third time on 12 March 2001 when the House adopted the amendment on the issue of the decision of the Government to sell a profit making public sector undertaking BALCO (Bharat Aluminum Company) to a private sector company whose track record of managing and running an aluminum manufacturing company was doubtful.

It is significant that almost 14 years later on 3 March 2015, the Motion of Thanks on the President's Address was amended by the Rajya Sabha when it adopted two amendments concerning 'black money'. It signified the importance and relevance of Rajya Sabha in our body polity and its meaningful role in holding the Government to account.

Amendment of the Motion of Thanks on the President's Address in 2016

Exactly a year and six days later, on 9 March 2016, the Rajya Sabha amended the Motion of Thanks on the President's Address by regretting that the address did not contain issues concerning the elections to the Panchayatiraj (Grassroots representative institutions) bodies. It may be mentioned that the governments in the States of Haryana and Rajasthan of the Indian Union are run by the same ruling party, Bharatiya Janata Party (BJP) which also runs the government at the centre.

"It signified the importance and relevance of Rajya Sabha in our body polity and its meaningful role in holding the Government to account."

Those two State Governments had passed legislation requiring that their citizens would be eligible to contest elections in Panchayat bodies who would fulfill prescribed educational qualifications and have toilet facilities in their homes. Such kind of legislations were considered by many as measures which effectively made the underprivileged sections of society ineligible to contest or stand for elections. Therefore, the Leader of the Opposition Mr. Ghulam Nabi Azad moved the following amendment to the President's Address:

"That at the end of the motion, the following may be added: 'But regret that the Address does not mention that the Government is committed to securing the fundamental right of all citizens to contest elections at all levels, including to Panchayats, to further strengthen the foundations of democracy which also forms part of the basic structure of the Constitution and is consistent with the spirit of the 73rd Amendment to the Constitution, intended to expand and encourage democratic participation of the poor and marginalized without imposing educational or any other limitation on the right to contest election.'"

The Leader of the House Mr. Arun Jaitley, who is also Minister for Finance, raised a point of order saying that the amendment could not be taken up in the House as it referred to a matter concerning State Legislatures and as per the rules for such matters dealing with State Subjects cannot be discussed in Parliament. Therefore, he argued that the Council of States (Rajya Sabha) has no jurisdiction on the subject matter of the States which is covered under the scope of the said amendment. However, the Deputy Chairman disallowed the objections by giving the following ruling.

"Now, prima facie, there is no mention of any State or any State Legislature in the amendment. It is only the concern of the Member who has moved the Motion. If there was a direct mention of any Legislature in the amendment, then, we could have considered it in a different way. It is a concern of a Member that certain things are not there in the President's Address. Of course, there is a valid explanation for why those things have not been included and why those things should not be there. There is a valid explanation. But that would be relevant when that issue is considered. It does not however prevent the Member, who moved the amendment, from expressing his views or putting it to vote. That is what my common sense tells me. Therefore, there is no harm in putting it to vote."

Effectively the Deputy Chairman stated that in the amendment moved by the Leader of the Opposition there was no reference to a particular State and, therefore, no objections against it could be sustained. Eventually the motion of amendment was put to vote and it received 94 votes in its favour and 61 votes against. The adoption of the said amendment constituted a landmark event in the annals of India's parliamentary democracy. It was undertaken in two successive years (2015 and 2016) and, therefore, underlined the significance of the Council of States in the evolving democratic tradition of India. It also clearly brings out the dynamics of our parliamentary democracy which is dependent on the balance of strength of political parties and the composition of the House. It unambiguously testifies to the importance of the Rajya Sabha in our body polity and democracy. 'The Hindu' a leading English daily newspaper of India commented on the adoption of the amendment

by the Rajya Sabha under the caption 'Heeding the Spirit of the Amendment' on 12 March 2016 and stated:

"The President's Address sets out a government's policies and programmes, and is first approved by the Union Cabinet. Should an amendment to the Address be carried through in the Lok Sabha, the government would have to resign. There is, of course, no such obligation in the Rajya Sabha, but it is still seen to undermine the government's ability at consensus-building. For the members of the Rajya Sabha, it is a way to give notice that they cannot be taken for granted. It is therefore not just an embarrassment for the BJP-led National Democratic Alliance government to have faced this situation twice less than halfway through its five-year term. It also hints at the ruling party's failure to reach out to the Opposition and forge a working consensus on the legislative agenda... The BJP could plead helplessness over its lack of numbers in the Rajya Sabha, and instead cite the passage in the House of the Real Estate Bill this week as proof that it is getting on with its legislative workload. Or it could heed the spirit of the institutional mechanism of the amendment to a Motion of Thanks, and take up the subject highlighted for a follow-up debate in Parliament."

Conclusion

All such developments testify to the importance of the Council of States, the Upper House of Indian Parliament particularly in the context of multi-party democracy which often creates a situation wherein one or more groups of political parties obtain the majority in the Lower House (House of the People) and in the Upper House, the Opposition has a dominant position on account of its better numerical strength.



THE THREE WAVES OF THE WORLD FINANCIAL CRISES: MALTA'S EXPERIENCE



Hon. Tonio Fenech MP is a Maltese Member of Parliament and is Foreign Affairs spokesman for the Nationalist Party in Opposition, Chair of the Public Accounts Committee and Chair of the Executive Committee of the Commonwealth Association for Public Accounts Committee (CAPAC). He was Minister of Finance and before that served as Parliamentary Secretary in the Office of the Prime Minister responsible for Finance. Before entering Parliament, he was Mayor of Birkirkara for 6 years and an Observer to the European Parliament until his appointment as Parliamentary Secretary.

A lot of water has passed from under the bridge since the Lehman Brothers collapse in September 2009. Malta had just joined the Euro on the 1st of January 2008 and our Government had won its third term in office. I would easily say that the first two terms were the glory years: in the first term, we successfully managed to join the European Union after a very hard fought referendum campaign. I was appointed Parliamentary Secretary for Finance in the second term of that Government and was given the task to prepare Malta to adopt the Euro as our national currency.

In my second term of office, I was appointed as Minister for Finance for the Economy and Investment, a very large portfolio. In the crises that followed, however, this proved an important decision as it gave the Government the flexibility it required to withstand the crises and to act swiftly and coherently across the economic sectors. That way the impact of the crises on the Maltese financial and economic sectors could be adequately addressed.

The financial crisis that started in 2009 came in three waves; I am not sure whether we are not in the fourth and whether a fifth one might arise. While the banking crises were the first wave, the second were the economic crisis and, lastly, the sovereign debt crisis that followed was the third.

I am not sure whether Europe is really out of the third wave or whether this was the last wave

of that magnitude. Economic indicators may make us feel that we have come out of it, but I am not certain whether the methods being used to keep these waters calm, particularly the negative interest rate environment and the extensive quantitative easing tools adopted by the European Central Bank (ECB) today, are sustainable in the long run. We are simply building bigger and bigger mountains of debt by printing money. This cannot be sustained for much longer and we are only getting closer and closer to another tsunami.

I will leave my comments there, possibly to be debated by the powers, institutions and Parliaments looking at such policies, and rather focus on how Malta, the smallest member of the European Union, an island in the south of Europe and in the middle of the Mediterranean, managed to withstand this perfect storm.

The first wave, the banking crisis, had little impact on Malta, but this was not by coincidence. The foundations of our banking system and also our public debt were strong. Malta always ranked very high in terms of the soundness of our banking system whenever reviewed by international institutions like the IMF and the Global Competitiveness report of the World Economic Forum. The basis for this soundness was that Maltese banks were highly liquid, with a very strong local deposit base. Being 'conservative' by nature, they were not exposing themselves to the investments instruments that we know brought

the collapse of so many financial institutions world-wide. In the wake of the crisis, a Ministry was set up to form, together with the Central Bank and the Malta Financial Services Authority, a task force to review all our banks and to make sure that they had no significant exposures that could expose the entire banking system. There were some recommendations that were issued to one or two banks to divest in some positions that we then thought could be impacted through second round effects - particularly as bailouts and ailing banks started being bought out by other banks because of their holding of so many then termed 'bad assets'.

The second wave, the economic crisis, was, however, where our intervention as a Government was much more needed. Global demand fell drastically in 2010 as an aftermath of the financial crisis. Economies literally stopped and global institutions like the IMF heavily advocated the need for stimulus packages that would restart the economies that had soared in unemployment as closure and downsizing of manufacturing factories became the order of the day. It was estimated that 16 million jobs were lost in the EU alone.

A lot of governments came out with stimulus packages that sought to increase consumer spending through measures such as VAT one-off reductions, scrappage schemes to encourage consumers to buy new cars, which seemed to be the industry most hit, and other similar measures. Malta



“Malta is a small country with limited resources, as a Government we were not intent to resort to increase our debt significantly to generate the cash necessary to have a huge stimulus package. I believe that the higher debts countries entered into to finance so called stimulus packages, the more devastating the situation became, a situation which ultimately led to the third wave of the crises.”

is a small country with limited resources, as a Government we were not intent to resort to increase our debt significantly to generate the cash necessary to have a huge stimulus package. I believe that the higher debts countries entered into to finance so called stimulus packages, the more devastating the situation became, a situation which ultimately led to the third wave of the crises.

Being an economy of 450,000 people, we decided to focus our efforts on the industries that had jobs at risk. By investing in infrastructure, we created an economic multiplier effect that was much bigger than sending cheques to people in uncertain times, when they would simply tend to deposit these in banks in anticipation of worse to come.

As an alternative, we sat down with all our factories and offered them a scheme that encouraged them to invest rather than to downsize during the crises. Due to the heavy drops in order books, factories had to shift to a production schedule of a four day or even a 3-day week, when a few months before they were running at shifts of 24/7. Some were also

considering layoffs. This would have had a devastating impact on a sector which already had been facing a lot of challenges, and for a country like Malta, it was very easy to lose these factories. It would have taken years to rebuild what we lost and we could not afford this.

Consequently, we offered these factories a number of schemes aimed at growing rather than divesting. To that end, we either encouraged them to invest in newer technologies or animated them to take advantage of Malta's investment scheme when restructuring. That way, the cost of the investment in the new machinery and investment would be partly financed by the scheme.

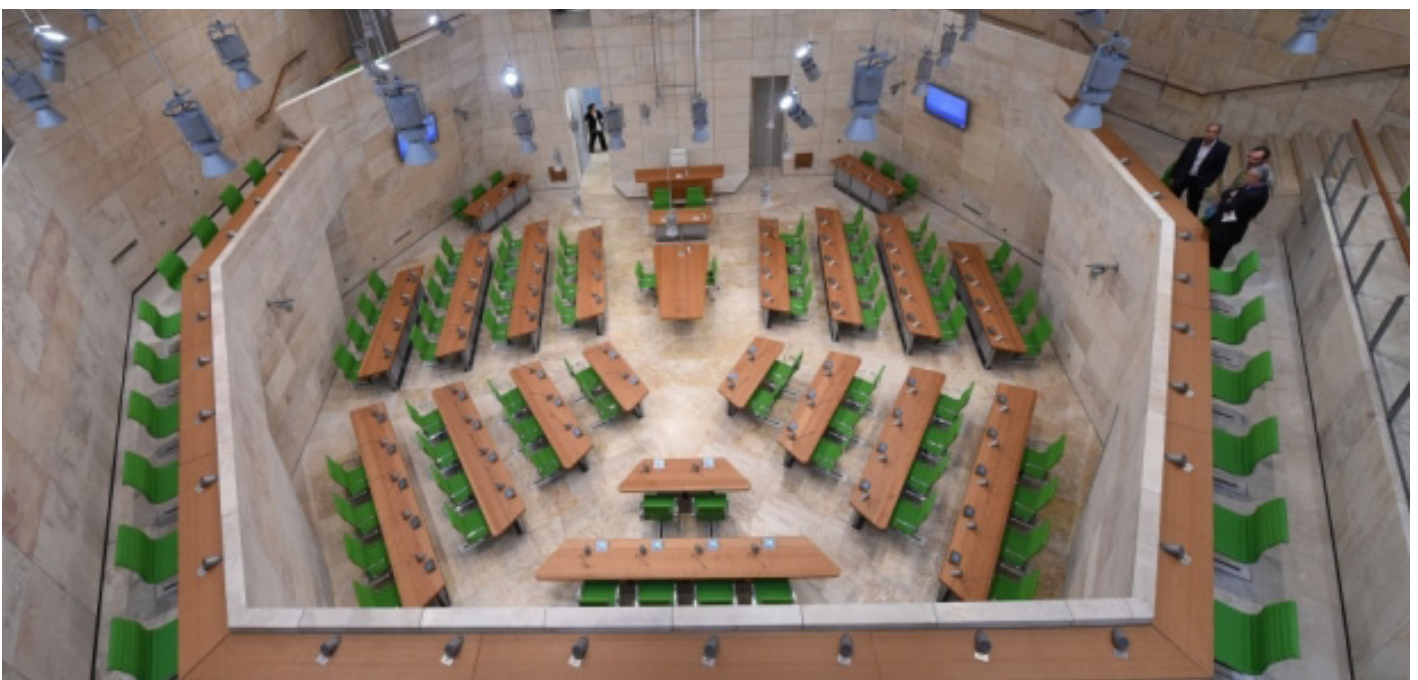
For a number of months, we also shared the costs of the days the employees were on forced leave, by paying a day or two a week ourselves while taking them through a training programme to upgrade their skills and prepare them for the new technologies or, in the worst case scenario, be more skilled to find alternative work should they lose their jobs. This approach worked; what we saw was that Malta was not only the last EU country to enter

the recession but also the first to exit, being in recession for only six months. We managed not to lose one job in the crisis and could even report a slight employment increase, keeping the unemployment rate stable during the worst times. We also invested heavily in attracting more tourists to Malta, which would have an immediate positive impact on the economy by encouraging more airlines to fly to Malta and therefore widening our tourism base.

The Third Wave

The third wave was a result of the second. As governments sought to aggressively address the crisis, the implemented stimulus packages stretched debt levels beyond what Governments could reasonably afford; markets started to become agitated. Greece caused a contagion of unprecedented proportion. At 160% of GDP, rising fast markets pulled the plug and Greece could not but default. The IMF and the EU sought to run to their rescue, but frankly

Below: Malta's new Parliament chamber.





THE WORLD FINANCIAL AND ECONOMIC CRISES: MALTA'S EXPERIENCE

the Eurozone had no tools at its disposal then and was trying to manage a huge crisis with very limited agility as loan agreements had to be agreed through inter-governmental arrangements. The slowness of our response caused even more concern in the markets as the once old belief that government debt is safe (as governments can always resort to taxes to pay off excesses) was proving not to be possible any more in an economic crisis that could not afford increased taxation.

In reality, governments had no money to create the stimulus; the economic downturn put more pressure on the public debts of some large countries, some defaulting after Greece, namely Portugal, Ireland, Spain and Cyprus which needed to be bailed out by third parties and

created concerning situations for Italy and France. From creating stimulus packages, countries could not do much more than implementing austerity packages as money for new debt was simply not available.

Malta was the only country in the southern region of Europe that did not follow suit. Fundamentally, this was for two reasons: firstly, in the wake of the second wave, the economic crisis, we did not overstretch ourselves in the stimulus package we sought to achieve by increasing our debt levels. Secondly, our debt was with the Maltese. In the run up to joining the Euro, many international financial players came to Malta to encourage us to 'internationalise' our debts under the guise that this would give us cheaper interest rates. I used to argue with them the benefit of this, as the interest we were paying was going into our economy and re-spent there,

which recouped back a significant portion in taxation. Paying a lower interest rate to outside creditors would have made us lose all this and expose us to international risks that then, to be fair, seemed only theoretical. When Cyprus defaulted, the international media's focus was on Malta, as many perceive our economies to be very similar. Commentators were saying that Malta was next to default. In fact, we did not. Why? Because defaults are caused by market speculators, who are market manipulators, making gains or losses from agitating stocks and equities. These players had no access to our debts because although listed on the local stock exchange, they had no real access to them. Our debt is 98% held by Maltese investors, mostly the retail investors who buy and hold the stock for the coupon they earn until these are repaid. There was no interest in rushing to the market to sell because

some international commentators were saying that Malta was next. Living in Malta, they could see and feel that we were just fine, not in recession, that we had good employment rates and a sound banking system.

Looking back, these were difficult and interesting times, but they were not the only challenges we were facing as being in the centre of the Mediterranean: Challenges did not only arise from our southern European neighbours, but also from the Arab Spring revolution which took place within the borders of our Northern African neighbours, which included Tunisia and Libya with whom Malta had a lot of economic links. It was a time I augur the world will not pass through again, but deep down I know this is wishful thinking as man tends to rarely really learn from past mistakes and, as we say, history repeats itself.

**Below: Malta's new
Parliament building.**





PROMOTING *EVALAGENDA2020* IN THE CONTEXT OF SUSTAINABLE DEVELOPMENT

A report from the Global Parliamentarians
Forum for Evaluation



Hon. Kabir Hashim MP is the Minister of Public Enterprise Development in Sri Lanka and Chair of Global Parliamentarians Forum for Evaluation. He has been an MP in Sri Lanka since 1994. In 2001 for the first time he became a minister and in 2015 he became the Secretary-General of the United National Party in Sri Lanka, the largest single political party in the country. He was instrumental in initiating Parliamentarians forums for evaluation in South Asia and globally. He initiated a campaign to emphasize 'Political Participation in Evaluation' in early 2000s.

Introduction to Parliamentarians' movement for evaluation

The Parliamentarians' movement for evaluation has rapidly grown in the past few years. Particularly during 2014-2015, regional Parliamentarians' fora were created in Africa, East Asia¹, Latin America² and MENA regions. The first ever Parliamentarians forum; *The Parliamentarians Forum for Development Evaluation* (PFDE) was established in South Asia in early 2013.³

This was a historical milestone as the first time in history Parliamentarians had raised their voices to advocate for national evaluation policies and to commit to put evaluation at the core of the agenda at the country level. Thereafter, Parliamentarians were featured in many international evaluation events for promoting national evaluation capacities. In this vein, one of the key milestones is the study on '*Mapping Status of National Evaluation Policies*' which was conducted by PFDE with support from EvalPartners, the global movement to strengthen national evaluation capacities. This helped to promote national evaluation policies including through regional consultations.

The African Parliamentarians Network on Development

Evaluation (APNODE) was initiated at the African Evaluation Association (AfrEA) conference held in Yaoundé, Cameroon in March 2014, a year after the initiation of PFDE. APNODE is hosted and supported by the African Development Bank and it is the most formal group among all the Parliamentarians' forums currently active. In 2015, regional Parliamentarians in other regions were initiated.

More importantly, the first ever national Parliamentarians' forum for evaluation was initiated in Nepal by a group of Parliamentarians representing all political parties. In Kenya, a Parliamentarians caucus for evaluation was initiated to advocate to the Kenya parliament on evaluation. In this context, Global Parliamentarians Forum for Evaluation (GPFE) was launched on the occasion of celebrating International Year of Evaluation 2015.

Why it is important for Parliamentarians to promote use of evaluation?

Developing and strengthening evaluation policies in countries is important for good governance and effective development. In 2013, EvalPartners declared 2015 as the International Year of Evaluation (EvalYear). This was reinforced when the UN

General Assembly passed Declaration A/RES/69/237, '*Evaluation Capacity Building for the Achievement of Development Results at Country Level*'⁴

Many additional stakeholders, including the United Nations Evaluation Group (UNEG) and the OECD/DAC EvalNet, joined the movement. The adoption of the Sustainable Development Goals (SDGs), also called the Global Goals, crafted through the largest consultation process ever documented by the United Nations. The outcome document '*Transforming Our World: The 2030 Agenda for Sustainable Development*' published in September 2015, and its focus on country-led evaluation in line with identified priorities for SDG targets that are most relevant to the national and local context, have also emphasized the need for countries to strengthen their data collection, analysis and review processes. The importance of evaluation was highlighted in the context of the SDGs, which state that the review of the SDGs will be "*rigorous and based on evidence, informed by country-led evaluations*"; and it also calls for the "*strengthening of national data systems and evaluation programs*".

One of the key principles of the SDGs, that of "*No one left*



PROMOTING EVALAGENDA2020 IN THE CONTEXT OF SUSTAINABLE DEVELOPMENT



Above: The culmination of over 86 global, regional and national EvalYear events was celebrated at the Global Evaluation Forum held in Kathmandu, Nepal in November 2015.

The Forum brought together key stakeholders to finalize EvalAgenda 2020 and to develop action plans to implement it.

During the Forum, members of EvalGender and EvalYouth met to prioritize activities, identify challenges to implementation and brainstorm solutions. The Global Parliamentarians Forum was launched in Nepal with government representatives and parliamentarians supporting the initiative.

Image courtesy: <http://ioce.net/evalyear>

behind”, points to the importance of achieving equity focused and sustainable development. It is a challenge in many countries that disadvantaged communities sometimes do not get the benefits of development. That is why equitable development needs to be emphasized with equity focused and gender responsive evaluation.

More over EvalPartners in collaboration with other stakeholders developed and launched the Global Evaluation Agenda 2016-2020 according to which national evaluation policies and systems play an important role at country level. According to the study on ‘Mapping status of national evaluation policies’, only 20 countries have established national evaluation policies. It shows how far the journey ahead is and where we stand now. The Global Parliamentarians Forum is

planning to further advance the important work on NEP and systems.

The Global Evaluation Agenda 2016-2020

The Global Evaluation Agenda 2016-2020 (also called EvalAgenda2020)⁵ was formally launched at the Parliament of Nepal on 25 November 2015. It is clear that evaluation as a tool for effective governance is increasingly becoming respected and implemented. Our vision is that evaluation has become so embedded in good governance that no policy maker or manager will imagine excluding evaluation from the decision making toolbox, dare hold an important meeting or reach an important decision without having reviewed relevant evaluation information. Equally evaluators, whether internal or external, will use whatever

methods and approaches are most appropriate to the situation to generate high quality, ethical information pertinent to the issues at hand.

At the same time, we envisage that evaluation will help to amplify the voice of all stakeholders, particularly the marginalized and disadvantaged. We know from experience the difference that evaluation can make in illuminating the realities of specific contexts by unpacking the complexity that peoples, organizations and communities face in struggling to address economic, social and environmental issues. We have seen the beneficial impact that principled evaluation can have in democratic settings when evaluators work in a neutral way with all stakeholders to contribute data, analysis and insights to assess results, identify innovations and synthesize learning towards



improved outcomes.

In our vision, four essential dimensions of the evaluation system make up the core of *EvalAgenda2020*. These are: (1) the enabling environment for evaluation, (2) institutional capacities, (3) individual capacities for evaluation, and (4) inter-linkages among these first three dimensions.

Vision of a strong *enabling environment* is that:

- All sectors of society understand and appreciate the value of evaluation
- Evaluation is explicitly required or encouraged in national evaluation policies and other governance and regulatory instruments
- Sufficient resources are allocated for evaluation, at all levels
- Credible, accessible data systems and repositories for evaluation findings are readily available
- Stakeholders are eager to receive and utilize evaluation information
- Evaluation receives due recognition as a profession
- The ownership of public sector evaluations rests with national governments based on their distinctive needs and priorities and with full participation of the civil society and the private sector

Vision of strong *institutional capacities* is that:

- A sufficient number of relevant institutions, including but not limited to Voluntary Organizations for Professional Evaluation (VOPEs); government agencies, Civil Society organizations (CSOs), academia and institutions that generate and share relevant data exist to develop and support evaluators and evaluation

- These institutions are capable of appreciating and facilitating quality evaluations
- These institutions are skilled at collaborating with other relevant and involved institutions
- These institutions are able to resource quality data generation and evaluations as required, make information readily accessible and are ready to follow-up on evaluation findings and recommendations
- These institutions are able to continually evolve and develop as the evaluation field advances
- Academic institutions have the capacity to carry out evaluation research and run professional courses in evaluation

Vision of strong *individual capabilities for evaluation* is that:

- Developing individual capacity for evaluation will be relevant not only to evaluators, but also to commissioners and users of evaluation
- Commissioners and users of evaluation will have a sound understanding of the value of evaluation, processes for conducting high quality, impartial evaluations; and more commitment to using evaluation findings and recommendations
- Sufficient numbers of qualified evaluators, drawn from a diversity of relevant disciplines, are available to conduct high quality evaluations in all countries and all subject areas
- These evaluators have the knowledge, skills and dispositions to make appropriate use of generally accepted evaluation principles, theories, methods and approaches

- Evaluators have integrated the values discussed above and are culturally sensitive
- Evaluators continually learn and improve their capabilities

Vision of strong *inter-linkages* among these first three dimensions is that:

- Governments, Parliamentarians, VOPEs, the United Nations, foundations, civil society, private sector and other interested groups dedicate resources to joint ventures in the conduct of evaluations, in innovation in the field of evaluation and evaluation capacity building
- A common set of terms exists in all languages to disseminate and share evaluation knowledge
- Multiple partners in evaluation regularly attend national and international learning opportunities
- The “*No one left behind*” principle stated in the SDGs is embedded as a key value that goes across three building blocks of evaluation system – enabling environment, institutional capacities and individual capacities for evaluation.

The four dimensions do not operate in isolation but are connected in diverse ways in different countries, sectors and situations. The relationships are dynamic, with overlapping influences, partners and drivers; yet at the same time, all dimensions are working like a vortex pulling the various dimensions ever closer towards better outcomes. Each partner (institutions, individuals and evaluation users) contributes a distinct part to the whole through the mutually supportive and interconnected dimensions of the Agenda.

Role of Parliamentarians in promoting evaluation

It is our collective hope and intention that by advocating for the many initiatives and activities outlined in the Global Evaluation Agenda that the global evaluation community will be able to make significant contributions to attaining EvalVision2020, and the attainment of all the SDGs, for the benefit of humankind. Each partner in the global community, including but not limited to Parliamentarians, donors, governments, VOPEs, Civil Society Organisations, media, private sector, will each have their roles to play. All the stakeholders are willing to work with Parliamentarians to promote evaluation.

Parliamentarians can play their role by demanding high quality evaluations to ensure accountability in all aspects. Parliamentarians can take the lead in promoting national evaluation policies and systems. We invite all Parliamentarians and parliaments to join hands with us. “*Together we can!*”

Further information:

Website <https://globalparliamentarianforum.wordpress.com/> or email aocampo@unicef.org

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STRENGTHENING EMERGENCY PREPAREDNESS FOR CITIZENS AND PARLIAMENTS



Craig James is the Clerk of the Legislative Assembly of British Columbia. Craig has worked in Parliament since 1978. In 2010, he was appointed Chief Electoral Officer for the Province of British Columbia and served in this position temporarily during a very tumultuous period in the Province. Upon his return to the Legislative Assembly, he was appointed as Clerk – the 12th person to hold this position in British Columbia. Craig is Executive Director of the Canadian Council of Public Accounts Committees (CCPAC) and an active member of the Association of Clerks-at-the-Table in Canada and in Commonwealth Parliaments.

The Inter-Parliamentary Union's 2010 report, *Disaster Risk Reduction: An Instrument for Achieving the Millennium Development Goals – Advocacy Kit for Parliamentarians*, states that, “elected representatives of the people ... oversee government action and play a crucial role in mobilizing national resources for reconstruction and development in disaster-affected areas.”

The report notes that, as political leaders, Parliamentarians have unique roles in influencing national policies and spending through their budget oversight, consideration of legislation, parliamentary committee scrutiny and the ability to tap into active expert networks, which can serve to improve public knowledge and government policy and procedures.¹

Like other jurisdictions, British Columbia faces risks from natural disasters, industrial accidents and terrorism. In particular, the south western region of the province is situated over an active earthquake zone stretching along the Pacific coast from the Americas to Asia and New Zealand. The provincial government has an overall leadership and coordination role in emergency management, working with federal and local governments. In fact, the British Columbia Provincial Government has established the first Ministry on emergency management in Canada.²

British Columbia's experience provides insight

into the roles of Parliaments, parliamentary committees and Parliamentarians in strengthening emergency preparedness for citizens and democratic institutions.

Independent Assessments by Auditors-General

Federal and provincial Auditors-General across Canada have conducted performance audits on emergency preparedness in recent decades, which have focused attention by the public, the media and Parliamentarians on gaps in preparedness and areas for change.

In British Columbia, the Auditor-General, an officer of the Legislative Assembly, issued a landmark audit report on the province's earthquake preparedness in 1997. The Auditor-General concluded that, “governments in British Columbia are not adequately prepared for a major earthquake,” and recommended strategic and operational changes to enhance preparedness. The audit found that, while readiness for a major or catastrophic earthquake can never be absolute, preparedness “can reduce the scale of impacts, help return life to normal sooner than would otherwise occur, and reduce the cost of recovery.”

The audit report recommended that: emergency preparedness be a higher priority for government; arrangements be established to ensure the integration and coordination of emergency services among provincial organisations and other levels

of government; and mitigation, response and recovery plans be developed to manage a range of potential earthquake scenarios.

British Columbia's Auditor-General has maintained a keen interest in the state of earthquake preparedness in the province in view of the gaps in government performance and a high level of public interest. Follow-up reviews issued in 2002 and 2005 found that improvements had been made by government in the implementation of the 1997 audit recommendations, but significant additional work was required. An audit of planning for school seismic safety was issued in 2008, pointing to the need for attention to upgrading school buildings as part of long-term capital planning.

In 2014, almost two decades after the 1997 audit report, the Auditor-General published an evaluation of catastrophic earthquake preparedness in the province. The Auditor-General found that government's emergency management office, “appears to have taken the report quite seriously and is working to develop and implement strategies to address the deficiencies noted in this report.” The report recommended “specific improvements to risk analysis, plans and procedures, integration of stakeholders, training and public education” to adequately prepare for earthquakes and other emergencies.



“British Columbia’s experience provides insight into the roles of Parliaments, parliamentary committees and Parliamentarians in strengthening emergency preparedness for citizens and democratic institutions.”

Scrutiny by Public Accounts Committees

Public Accounts Committees are given a central role in Westminster Parliaments for public sector financial and administrative oversight, through the consideration of audit findings put forward by Auditors-General.

In British Columbia, the Auditor-General’s reports on earthquake preparedness have been a significant focus of the Select Standing Committee on Public Accounts since 1997. After the 1997 audit report on earthquake preparedness, the Committee established a work plan of public hearings and field visits to enable Committee Members to discuss earthquake readiness through meetings with the Auditor-General, senior government officials and experts, and to hear first-hand from local officials who had experienced recent

earthquakes in the Pasadena and Oakland, California areas. The Committee’s meetings also provided a forum for increasing public awareness and for fostering citizen engagement with legislators on the status of earthquake preparedness, and the need for actions by governments to strengthen readiness.

The Committee endorsed the findings and recommendations in the 1997 audit. They recommended that the government implement them “*with dispatch*” and report to the Committee by the end of 1999 on progress in implementation. The Committee subsequently reviewed the Auditor-General’s assessments of follow-up on these recommendations, requested that continued annual evaluations be prepared for the Committee and endorsed a framework for increased government reporting on

earthquake preparedness.

In 2010 and 2014, the Committee considered audit reports on school seismic safety and catastrophic earthquake preparedness, respectively. Committee Members considered best practices in other jurisdictions, supported greater collaboration across all levels of government and increased public reporting on preparedness by government in order to provide accountability to citizens on actions on earthquake and emergency planning efforts.

Emergency Preparedness and Business Continuity for Parliaments

Parliaments must be prepared and resilient to respond to emergencies in order to protect Parliamentarians, staff and visitors as well as the parliamentary environment, minimise short-term disruption





to parliamentary business, and, over the longer-term, recover and return to normality as quickly as possible.

Canadian Auditors-General have recommended robust public sector business continuity plans as a demonstration that government organisations take their responsibilities seriously and follow recognized best practices – which also applies to parliamentary institutions. British Columbia's Auditor-General issued a 2007 audit of the Legislative Assembly's financial and administrative operations. The audit identified gaps in the Assembly's emergency preparedness plan and recommended clearer contingency arrangements to ensure that parliamentary operating and financial services remain available during an emergency and have regular testing. A 2012 audit report on the Assembly's financial records noted that business continuity and disaster plan work was proceeding with a view to completing the plan and undertaking regular testing.

To assist with advancing this work, the Legislative Assembly

contracted KPMG, a leading global professional services company with expertise on disaster preparedness and best practices, to carry out a review of business continuity planning. KPMG's 2013 report concluded that, overall, the Assembly was well prepared to respond to emergencies, with an experienced incident command team, leading-class equipment, and regular exercises. KPMG suggested that planning should continue to strengthen disaster preparedness and business continuity readiness. The company also confirmed that an important part of a robust emergency management and business continuity program involves learning from the experiences of other jurisdictions that have experienced disruptions.

Lessons Learned from Other Jurisdictions

To follow up on the KPMG report, fact-finding visits were undertaken in 2013 to New Zealand and U.S. western coastal state Legislatures. The results of the findings of the visits were submitted to the Legislative

Assembly Management Committee, the Assembly's parliamentary management board and are available upon request.

The fact-finding visits emphasized that:

- Business continuity for parliamentary institutions during times of crisis is distinct from that of governments, who are responsible for managing and responding to emergencies. During emergencies, Parliaments play a central role in establishing, continuing and revoking a state of emergency; legislating additional response and recovery powers, programmes and funding; holding government to account for the exercise of emergency powers and responding to the emergency; and providing Parliamentarians with the ability to speak about the emergency from their perspective and that of their constituents.
- Parliaments face unique challenges with the design

Above: The CPA-World Bank Parliamentary Study Group considers effective responses by Public Accounts Committees (PACs) to National Crises at a recent meeting in Nepal.

of parliamentary emergency preparedness and business continuity plans. Many Parliament Buildings are architectural icons with heritage status, which has important physical and financial consequences for emergency management decision-making and planning, as do political dynamics, traditions and practices.

- Notwithstanding these challenges, the evidence from jurisdictions which have experienced crises demonstrates that effective processes and structured and tested continuity plans increase the capability and agility of Parliaments to respond to and manage emergencies.
- Preparedness can assist Parliaments and Parliamentarians in



becoming well-positioned to thrive in times of crisis, by being able to meet and be seen to be meeting when needed. Effective preparedness also demonstrates a clear commitment to broader public sector responsibilities to citizens and government, and alignment with industry standards and best practices.

Since the KPMG report and fact-finding visits, the Assembly has worked with government's emergency management office on the enhancement and testing of business continuity and emergency preparedness. Business continuity plan test exercises have been undertaken

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to ensure a strong level of readiness, and to identify additional areas for follow-up. Work is advancing on robust business continuity, emergency preparedness and a disaster recovery plan consistent with government business continuity plans, supported by work carried out by a specialized professional services company, Risk Masters, Inc. The Assembly participates in an annual province-wide ‘ShakeOut’ earthquake drill, which is part of a global ShakeOut event with over 5.6 million participants world-wide and has developed personal safety and emergency training programs for Parliamentarians and staff that work at the Assembly.

After the tragic October 2014 attack at the Canadian House of Commons in Ottawa, parliamentary jurisdictions across the country examined their security frameworks and readiness. In British Columbia, the Legislative Assembly Management Committee concluded that a principled approach to security and accessibility should be continued, with flexible, seamless and up-to-date arrangements to effectively manage security risks. The Committee's 2015-16 Accountability Report also made the completion by 2016-17 of a comprehensive business continuity plan a key strategic priority.

Other Efforts

The Clerk and the Sergeant-at-Arms are members of an international committee titled Legislative Assemblies Business Continuity Working Group (LABCoN) consisting of the Parliaments of Scotland, United Kingdom (House of Commons), Canada (House of Commons and Senate), New Zealand and the Legislatures of Ontario and British Columbia. One purpose of the working group is to

prepare plans for the continuity of Parliaments in the event of a disaster and is expected to have a life span of four years after which, the working group will meet on an as needed basis. The working group was formed last year and held its first meeting at the Ontario Legislative Assembly.

The World Bank, in collaboration with the Commonwealth Parliamentary Association, has been active in sponsoring meetings on the oversight of business continuity plans. During the past year, the Clerk of the Legislative Assembly of British Columbia has been privileged to participate in two meetings - both in Kathmandu, Nepal - on the issue of earthquake preparedness, business continuity and disaster recovery. The work of the small group is ongoing.

Conclusions from British Columbia’s Experience

British Columbia’s experience indicates that strengthening emergency preparedness is a long-term process for national and sub-national jurisdictions. Progress depends on making preparedness an ongoing priority, and on sustaining gains through continued incremental actions.

The Legislative Assembly’s work on emergency preparedness over the past two decades and fact-finding visits to other jurisdictions indicate that Parliaments, their committees and Parliamentarians have key roles to play in strengthening overall emergency preparedness for citizens. Parliamentary oversight of budgets and funding, law-making and citizen engagement provide opportunities to make preparedness a priority and to government’s response in the event of an emergency. In particular, the Legislative Assembly’s Public Accounts Committee and continuing

attention by the province’s Auditor-General have been valuable for holding government to account for action on emergency and earthquake readiness. The Public Accounts Committee’s two decades of work on the Auditor-General’s performance audits on key aspects of earthquake preparedness have provided a long-term forum for hearing from senior government officials and experts on how government is meeting its responsibilities to citizens for earthquake preparedness. The Legislative Assembly’s attention to emergency and earthquake preparedness has also increased awareness by the Assembly’s Members and staff of the importance of disaster readiness and business continuity plans for the Assembly itself. The Auditor-General has helped to identify gaps and recommend areas for enhancing the Assembly’s disaster and business continuity plans.

While Parliaments have a shared obligation with governments for emergency preparedness, the Legislative Assembly’s experience demonstrates that Parliaments also require their own dedicated disaster and business continuity plans, staff and resources to meet their unique challenges and responsibilities in times of crisis. Lessons learned from other parliamentary jurisdictions have reinforced this conclusion and assisted with the development of best practices for the Legislative Assembly’s preparedness.

References

¹ Available at: <http://www.ipu.org/PDF/publications/drr-e.pdf>

² For more information, please see: <http://www2.gov.bc.ca/gov/content/safety/emergency-preparedness-response-recovery/emergency-management-bc>



A VIEW OF THE CPA FROM CANADA



Hon. Yasmin Ratansi MP is a Canadian MP for the Liberal Party. She is Chair of the Canadian Branch of the Commonwealth Parliamentary Association, Vice-Chair of the Standing Committee on Government Operations and Estimates and a Director of the Canada-Africa Parliamentary Association. She was the first female Muslim elected to the House of Commons and is continuously working to engage multi-faith groups in promoting peace, harmony and respect for each other. She is also a Fellow of the Chartered Professional Accountants of Canada, a Certified Management Consultant, and Vice-Chair of the GOPAC.

As a founding member of the Empire Parliamentary Association, established in 1911, Canada continues to play a significant role and is the second largest contributor to the organization in its current form of the Commonwealth Parliamentary Association (CPA). The current membership of the CPA is made up of over 180 Parliaments or Legislatures of the 53 Commonwealth member countries and includes Branches from both national and regional/provincial levels.

The CPA is an association united as a community of interest with respect for the rule of law, individual rights and freedoms, and parliamentary democracy and carries out its mandate irrespective of gender, race, religion, or culture. At its core, the CPA brings together Parliamentarians from Commonwealth nations to promote democratic governance and to support greater mutual understanding and the sharing of best practices recognising both the commonalities and the uniqueness of each of our parliamentary systems.

Through its wide-ranging activities, such as annual conferences, numerous inter-parliamentary visits, informative seminars and workshops, as well as publications and research, the CPA fosters respect for good parliamentary practice and facilitates consultation among its members on a regular basis.

The mandate of the CPA is to develop and share benchmarks of good governance and to implement the enduring values of the Commonwealth. It is important for the CPA to

meet its mandate; a robust governance structure should be in place.

As a newly elected chair of CPA Canada, I would like to say that Canada is back to re-engage with our Commonwealth colleagues in support of these important objectives. I have had the opportunity to meet with Mr Akbar Khan, the new Secretary-General of the Commonwealth Parliamentary Association (CPA) and with the Chairperson of the CPA Executive Committee, Hon. Dr Shirin Sharmin Chaudhury MP, Speaker of the Parliament of Bangladesh during a Canadian delegation visit to London, UK. The Canadian delegation had the opportunity to hold exclusive discussions on new initiatives and goals for the future. I also met the new Secretary-General of the Commonwealth of Nations, Baroness Patricia Scotland.

One significant development is the Caribbean Twinning Initiative (CTI) currently being developed between Canadian provinces and territories and CPA branches in the Caribbean, which will further enhance synergies across the Commonwealth while creating additional avenues for collaboration. Similar to the twinning program Australia initiated with Pacific Island countries of the Commonwealth, our adaptation aims to 'twin' each of the 14 provincial and territorial legislatures with those of 18 Commonwealth Caribbean countries. This twinning initiative received unanimous consent from all Canadian legislatures in July 2012.

Our goal is simple. The CTI provides a strong framework to share best practices, enhance

bilateral relations and promote democratic values. Through this initiative the parliaments agree to actively work together towards the exchange of information on matters of common interest, participate in training activities to promote parliamentary development, organize exchange visits between parliaments to create links between Parliamentarians, and meet with representatives of the parliaments at conferences or seminars.

Parliamentarians of the Canadian branch of the CPA recently met with their counterparts in Turks and Caicos and Guyana to lay the groundwork for twinning; Prince Edward Island with Turks and Caicos and British Columbia with Guyana. Other provinces and Caribbean countries are looking to establish their twinning initiatives. These inter-parliamentary initiatives are a natural extension of the strong linkages Canada has maintained with Caribbean countries for many decades.

Canada has a long history of accountability, democracy and pluralism that we hope to share with the CPA by fostering strong relationships through activities that encourage the transfer of knowledge. As part of CPA Canada's mandate to encourage the values of pluralism and synergy, three women legislators from Jamaica, Guyana, and Turks and Caicos have been invited to participate in the 54th Regional Commonwealth Women's Parliamentarian and Commonwealth Parliamentary Association meetings to be held in St. John's, Newfoundland in July 2016. Their participation is beneficial in enhancing ties and



“To further support the CPA’s mandate, the annual Canadian Parliamentary Seminar in Ottawa allows Parliamentarians from across several regions of the Commonwealth to join in the promotion of democratic governance and support of a greater understanding of Commonwealth parliamentary systems.”

allowing for the sharing of best practices and accountability.

To further support the CPA’s mandate, the annual Canadian Parliamentary Seminar in Ottawa allows Parliamentarians from across several regions of the Commonwealth to join in the promotion of democratic governance and support of a greater understanding of Commonwealth parliamentary systems. Many participants travel great distances to participate in the seminar in the spirit of cooperation and knowledge sharing as a means of strengthening the foundations of our democratic institutions. Over the course of the seminar, we examine many important topics that underpin parliamentary democracy and the fundamental principles enshrined in the Commonwealth Charter. For 13 years, the annual CPA seminar has proven to be a forum that encourages collaboration. In working together to build an informed parliamentary community, we are, at the same time, building goodwill among our countries and enhancing our democratic institutions.

Entitled *Strengthening Democracy and the Role of Parliamentarians: Challenges and Solutions*, the May 2016 seminar included working sessions on the Commonwealth and the role of the CPA, the operations of the Canadian Parliament, parliamentary committees, financing elections, the role of political parties and how to engage citizens, among other issues. Moreover, the seminar gives Canadian Parliamentarians the chance to learn about developments in other Commonwealth parliaments and hear from the varying perspectives of our counterparts.

As representatives of our citizens, it is vital that we take advantage of the forums that bring together decision-makers to take stock of the difficulties we face, engage with one another to identify common solutions, and as a result, ensure public confidence in our democratic process and our parliaments. By meeting together in this way, we come to see that although we may live in different parts of the globe, our challenges are not so different and common solutions are possible.

Above: The 13th CPA Canadian Parliamentary Seminar took place in Ottawa, Canada from 29 May to 4 June 2016.

In March 2016, the Canadian Branch of the CPA travelled to London, United Kingdom and Valetta, Malta for bilateral meetings. In addition to learning about the operations of the respective legislatures, the delegation gained significant insight into the major issues of the day. One significant challenge the delegation heard about is how the Commonwealth is coping with increased levels of migration as a result of climate change. The issue of climate change is of major concern to the CPA and was a priority topic during the Commonwealth Heads of Government Meeting (CHOGM) in 2015. Leaders and Ministers had constructive discussions on key issues such as climate change, sustainable development, human rights, migration, and the rising levels of global displacement and refugee flows.

To further strengthen our commitment to address climate change, Canada has signed on to the Paris Agreement and is



committed to working with CPA members, especially the small states, who understand the immediate risks of a warming planet and rising sea levels in an effort to support resilience building.

It is clear that the challenges that confront us are many, demanding our attention, our deliberation, and our action. The CPA has a special role to play in bringing together law-makers to deliberate novel solutions to the evolving challenges facing Commonwealth citizens. To meet these global challenges, we must first ensure that we create the institutional and personal connections – the friendships and partnerships – that allow us to learn from each other, to support each other, and to assist each other when overcoming adversity. When we harness our collective strength from the great diversity of the Commonwealth nations, we can institute long term changes to improve the lives of our citizens.

Commonwealth members are not immune to the challenges brought on by a changing climate. The strength and value of the Commonwealth lies in working together, and forging the

friendships and alliances that will allow us to confront any challenge, political, economic, environmental, or of any sort – together.

Canada's newly elected Liberal government has committed to placing renewed emphasis on our multilateral relationships. As such, the Canadian Branch of the CPA will explore how best we can address such issues of global consequence while recognizing that our resources are finite.

CPA activities focus on the Commonwealth's commitment to its fundamental political values, including just and honest government. I believe it would be beneficial to capitalize on the expertise developed within other organizations with similar objectives.

For example, the Global Organization of Parliamentarians Against Corruption (GOPAC) is the only international network comprised of Parliamentarians that focuses exclusively on combatting corruption. Many of the organization's goals overlap with the values that the CPA strives towards: integrity, accountability, collaboration and diversity.

Another example to help Parliamentarians exercise due diligence on the public purse is to engage with the public accounts committee. One such organization has been developed by Malta, called the Commonwealth Association of Public Accounts Committees (CAPAC). I propose that the CPA partner with CAPAC to leverage their expertise in anti-corruption issues in order to maximize our shared efforts. As we carry out our mandate to promote the values of the CPA, there is room to synergize with other organisations when it makes sense from a resource perspective.

Canadian Parliamentarians firmly believe that robust relationships are complemented and sustained by multi-faceted cooperation across a broad range of areas, and the Canadian Branch of the CPA is using this belief to fully support the mandate of the CPA.

Parliamentarians individually and parliaments institutionally must find new ways to work together to build on our shared past and to construct our common future. For it is

only through such collective action, through the building of friendships and partnerships, that we can meet whatever global challenges may come. To this end, Canada's ethos of pluralism and engagement serves as a model for Commonwealth nations to tackle the great challenges they face.

As we look ahead to the 62nd Commonwealth Parliamentary Conference, let us embrace the values we share, focus on the hurdles before us, and commit to a cohesive vision for parliamentary cooperation.

Below: The CPA Canada Delegation meet the Chairperson of the CPA Executive Committee, Hon. Dr Shirin Sharmin Chaudhury MP and Mr Akbar Khan, CPA Secretary-General in London in March 2016. The delegation was led by Yasmin Ratansi MP, Chair of CPA Canada and included Kelly McCauley MP, Hon. Senator David Smith PC QC, Hon. Senator Claude Carignan accompanied by Elizabeth Kingston, CPA Canada Federal Branch Secretary.





BUILDING PARLIAMENTARY STAFF CAPACITY

At the 2016 Montreal Symposium of Parliamentary Training Institutes, a Global Network of Parliamentary Training Institutes is formed

Thomas Cedric Eboutou is a Research Assistant for Rick Stapenhurst, Principal Investigator for Canada's Social Sciences and Humanities Research Council (SSHRC) project to establish a PTI Community of Practice and for the British Academy-DFID project on The Role of Parliaments in Curbing Corruption.

It is now commonly accepted that parliaments have an important impact on good governance and development. In the mind of many, however, that impact comes only as a result of MPs' actions undertaken while fulfilling their lawmaking and oversight functions. The role of parliamentary staff has often been overlooked. With high MPs turnover rates observed in recent elections, several analysts have come to realize that the influence of parliaments on countries' political and economic life cannot be materialized effectively without a stable, well-trained and professional parliamentary staff acting as the *"corporate memory of parliamentary institutions."*

The burgeoning of parliamentary staff capacity development programmes that we are witnessing now is a response to the need of a well-trained parliamentary staff. However, we can regret the little chaos that exists in the world of parliamentary staff training programmes: unnecessary duplication of curricula, little collaboration or at worst, competition among existing programmes. It seems like every time a parliamentary staff training programme is to be set up, developers, deliverers and sponsors want to reinvent the wheel, thus ignoring the accumulated knowledge and experience of already existing programmes.

The earliest parliamentary staff capacity-building programmes were often funded and designed by bilateral aid agencies and delivered

essentially through their home-country non-governmental organizations, such as the Parliamentary Centre in Canada and the National Democratic Institute for International Affairs in the United States. Lately, we have seen many developing countries establish their own parliamentary institutes and many others are in the process of creating theirs. For the newly established institutes or the institutes in the making, the challenges ahead will be pretty much the same.

Firstly, challenges related to the suitable institutional design model for those training institutes: how should parliamentary training institutes be funded to insure their autonomy and their effectiveness? Should training institutes be part of parliamentary institutions or academic institutions? What type of relations should training institutes have with the Parliament as an institution? With its members? With the staff serving those members? With institutions related to the Executive?

Secondly, issues related to identification of needs and desired outcomes: what are the relevant training needs for parliamentary staff? Do courses have to be created from scratch? Furthermore, how to ensure that recently trained staff actually apply the acquired skills and knowledge? Thirdly, challenges related to the delivery of capacity-building programmes: are shorter programmes/certificates more suitable for parliamentary staff

than longer programmes? What format of courses keeps learners engaged and motivated? Should programmes be delivered online, in-class or both? Should coaching and/or mentoring be part of such programmes?

To help answer these questions and to facilitate the exchange of knowledge among developers and deliverers of parliamentary staff capacity-building programmes, McGill University in partnership with the World Bank, the Commonwealth Parliamentary Association (CPA), and with the generous support of the Canada's Social Sciences and Humanities Research Council (SSHRC) convened the first global Symposium of Parliamentary Training Institutes. The symposium was held in Montreal, Canada on 13-14 May 2016 and brought together a group of scholars, practitioners and executives of parliamentary institutes across the globe (Ghana, UK, Canada, Kenya, and Cambodia). Presentations and discussions were articulated into three distinct but connected blocks.

The first block was themed *'Parliamentary staff - a critical component of good governance'*. The block was designed to draw a framework within which the upcoming core discussions were to take place. Presenters were tasked to identify some of the channels whereby parliamentary staff could impact good governance. Following the welcome and introductory remarks from Dr. Carmen Sicilia, Associate Dean of the School of Continuing Studies at McGill University, Dr Rick Stapenhurst, Professor of



Above: Delegates at the 2016 Montreal Symposium of Parliamentary Training Institutes.

Practice at the McGill Desautels Faculty of Management, set out to answer the thought-provoking question, “*Does parliament matter?*”—a question inspired by Lord Philip Norton, a Member of the UK Parliament, who warned twenty years ago that the ability of parliaments to influence the direction and values of political and economic life is never guaranteed.

Using a set of recent data, Dr Stapenhurst made the point that Parliament does matter. He showed that parliamentary oversight is strongly correlated to several key political, social and economic indicators. In the same vein, countries with high parliamentary oversight were often found to also have higher GDP per capita and lower perceived corruption. Dr Stapenhurst went further and showed that in countries where Parliament's Public Accounts Committee (PAC) had been more productive (productivity being measured here by the number of reports produced), corruption tended to be better controlled and the Gross National Income per capita tended to be higher on average. According to Dr Stapenhurst, the ability of

Parliament to impact the indicators just mentioned is determined equally by Members of Parliament themselves on one side and on the other side, by parliamentary staff: their number and their training.

Mr Dirk Toornstra, former Director of the Office of the Programme for Parliamentary Democracy at the European Union Parliament explained that the role of parliamentary staff is even more important today than before. In this new era of ‘instant politics’ characterized by the omnipresence of social media, politicians tend to favor actions with ‘instant returns’. As a result, the battle for attention, development of public image and debates on the hottest topical issues are favored at the expense of long-term and more impactful actions. This context coupled with the high turnover of MPs has created parliaments where MPs have weaker knowledge and experience of parliamentary processes.

The role of parliamentary staff is critical to the good functioning of our democracy because parliamentary staff assist MPs in the accomplishment of their main duties: representation, lawmaking and oversight. For example, staff within its fact-based research services and its contacts with other institutions

and state agencies (ministerial departments, state auditors, statistical offices, etc.) provides MPs with indispensable sources of information to improve the quality of lawmaking and oversight activities.

The last presenter of the morning session was Ms Arlene Bussette, Assistant Director of Programmes at the CPA. Like her predecessors, she made the audience realise the vital role of parliamentary staff in a democracy. The CPA published in 2006 a set of **Recommended Benchmarks for Democratic Legislatures**. These benchmarks are “*a framework that sets out what constitutes effective democratic practice in contemporary parliaments [...] aimed at making parliaments more effective and democratic institutions.*” Ten of these benchmarks stressed the importance of a professional and well-trained staff.

While there are virtually no prescribed academic programmes preparing people to assume a parliamentary staff role, parliamentary staff are expected to perform at the highest level right after hiring. This situation makes parliamentary training programmes even more relevant because they offer opportunities for continuing education and

professional development. Ms Bussette ended her presentation with an overview of tools, initiatives and programmes developed by the CPA to enhance the capacity of parliamentary staff in the Commonwealth. For example, the CPA offers:

- Professional development seminars and workshops, including Regional workshops;
- Regional Staff Development workshops for the Africa, Asia, South-East Asia, Pacific and the Caribbean, Americas and Atlantic regions.
- Support for participation of parliamentary staff to the McGill/World Bank International Professional Development Programme for Parliamentary Staff.

The topic of the afternoon session was: “*What does contemporary research tell us about parliamentary staff development?*” It featured the following presenters: Mr Paul Belisle, former Clerk of the Canadian Senate; Dr Louis Imbeau, Director of the Centre for the Analysis of Public Policy (CAPP) at Laval University in Quebec; Mr Mitchell O'Brien, Governance Programme Leader at the World Bank; and Dr Rasheed Draman, Executive Director of the African Centre for Parliamentary Affairs (ACEPA) based in Ghana.

Mr Belisle's presentation offered a good overview of contemporary research on parliamentary staff development. Particular attention was given to a seminal study conducted by the World Bank in conjunction with the CPA and *La Francophonie*.

The study used survey questionnaires and interviews to assess and specifically identify the training needs to be addressed by the parliamentary capacity-building programmes in the making. The analysis of the answers collected during those surveys yielded a series of principles that could guide those developing their own parliamentary training



programmes. Some of these principles are as follows: the primary audience of parliamentary training programmes should be parliamentary staff from all sectors of the Secretariat and similar programmes should also be developed for Members in the future. Furthermore, the programmes should strike a good balance between theory and practice; the programmes should be unique and should not compete with existing efforts; the course content should be designed to concentrate on 'how' parliaments work with a focus on the students' local parliaments. E-learning emerged as a good alternative to residency programmes because of the travel cost they entail; however, clerks surveyed have expressed concerns related to e-learning availability in some countries and its effectiveness. Finally, the surveys indicated that parliamentary programmes should have clear learning objectives and practical exercises.

Dr Imbeau presented an example of a typical parliamentary staff training programme at Laval University. His presentation focused on how the programme is offered today. The Laval University partners with the Québec National Assembly and the International Organization of Francophonie and targets parliamentary staff from French-speaking countries.

Mr Mitchell O'Brien made a presentation on how his organization (the World Bank) views parliamentary development. According to Mr. O'Brien, a parliamentary capacity support project should be designed in order to be: a) scalable; b) sustainable; c) results-focused; d) integrated; and e) capacity building focused. Mr. O'Brien presented three broad capacity building approaches:

- Individual approach where the training programme would seek to enhance the

capacity of individual MP and parliamentary staff.

- The institutional approach where the programme seeks to strengthen the Parliament as an institution or a selected institution under the umbrella of Parliaments like oversight committees.
- The practitioner exchange approach where like-minded professionals or MPs are brought together to learn from each other's experiences.

Mr O'Brien's presentation was followed by the last block of the symposium themed: *"The Practitioner's Perspective"*, which was led by Dr Rasheed Draman. Dr Draman presented to the audience his perspectives on parliamentary staff training. Dr Draman has been working with African parliaments for more than 10 years. His presentation first highlighted the main issues faced by parliamentary administrations in Africa and re-enforced the idea that a strong, dynamic and effective Parliaments cannot exist without a parliamentary administration of equal quality. Parliamentary staff training can be, according to him, a way to strengthen African parliaments.

Dr Draman argued that parliamentary training programmes be demand-driven instead of being supply-driven: this will ensure that they provide services that are considered a priority by the targeted recipients. He further explained that training needs should be aligned to more strategic needs. Also, he stressed the importance of communication and coordination, which he believes would help achieve some synergies. Lastly, he pointed out the need for training programmes to be sustainable and ensure knowledge transfer in the long run.

On its second day, the symposium started off with a presentation from Mr Dararith Kim Yeat, Executive Director of the Parliamentary Institute of Cambodia (PIC). Despite being

quite recently established (2011), the PIC has many attributes of a model parliamentary institute. It is demand-driven: created at the request of the members of Cambodian Parliament and parliamentary Secretary-Generals. Mr Yeat explained that the PIC follows a systemic approach to capacity building: it assists in capacity building at all the stages of the activities related to parliamentary functions (representation, lawmaking and oversight). Besides its more traditional services, the PIC also offers general professional and skills development classes like English language classes. When asked how he saw the development of the PIC, Mr. Yeat stated his vision which includes extensive 'South-South' cooperation. The PIC intends to increase knowledge sharing and capacity building with the parliaments of neighbouring countries: Laos, Myanmar and Thailand.

The last presentation of the Symposium was given by Dr Nyokabi Kamau, Director of the Center for Parliamentary Studies and Training (CPST) of Kenya. Her exposé detailed the functioning and challenges of one of the earliest and avant-garde parliamentary training institutes in sub-Saharan Africa. The CPST was created by the Kenyan Parliament to serve a broad base of clients including not only the Kenyan MPs and staff, but also the members and staff of county legislatures, as well as other stakeholders and individuals interested in parliamentary administration. Many participants to the symposium found the CPST's initiative to train and serve members and staff of the parliaments in the region to be innovative.

Also very interesting is the eclectic and ever evolving nature of curricula at the CPST. In addition to traditional trainings in legislative and procedural matters, in public finance, in human resources and parliamentary administration, etc., the CPST has also made sure

to address issues like gender inequalities and marginalization. Furthermore, a countrywide capacity needs assessment is underway to inform the CPST's work after the 2017 general elections.

Its successes notwithstanding, the CPST deals with some challenges that Dr Kamau shared with the audience. One of these challenges is related to the financial autonomy of the Centre as many trainings provided are still donor-funded. Also, even four years after its establishment, the Centre is still searching for the best model for its structure and its staffing.

The Q&A session that followed was dedicated to discussions on questions coming from the presentations held since the beginning of the symposium. While it would be naive to believe that the Montreal symposium provided answers to every single question related to parliamentary capacity building, it definitely met one of the needs expressed by participants, namely the need to have a forum to share experiences best practices and to learn from each other. Participants agreed to establish a 'community of practice' to allow the discussions that started in Montreal to continue and deepen. The Global Network of Parliamentary Training Institutes (GNPTI) was thus born, with McGill University offering to host a web platform for such exchanges. Dr Kamau offered to host the next symposium of the GNPTI in Nairobi, Kenya in 2017.

For further details on the Global Network of Parliamentary Training Institutes, please email: Frederick.stapenhurst@McGill.ca.

For details of McGill University-CPA International Professional Development Programme for parliamentary staff, please email hq.sec@cpahq.org.



PARLIAMENTARIANS' ROLE IN DEFENDING HUMAN RIGHTS

The work of the All-Party Parliamentary Human Rights Group in the UK Parliament



Rt Hon. Ann Clwyd MP is a UK Member of Parliament and has represented the Cynon Valley, a former mining community in the South Wales Valleys since 1984, after a career in journalism and broadcasting. She is a member of the Foreign Affairs Select Committee, of the Inter-Parliamentary Union's Committee on the Human Rights of Parliamentarians and has been the Special Envoy to the UK Prime Minister on Human Rights in Iraq from 2003 to 2010 under the Labour Government. She has also chaired the All-Party Parliamentary Human Rights Group (PHRG) since 1997.

As a UK Member of Parliament, and like many Parliamentarians throughout the Commonwealth and the wider world, my priorities have been the effective representation of my constituents and the scrutiny of domestic Government policy, programmes and spending. But in addition I have also felt compelled to use the Parliamentary platform and mandate to promote respect for fundamental political and civil rights in the UK and further afield – to ensure that those who govern serve, and are answerable to, those who are governed.

Political and civil rights have, particularly since the Second World War, largely become international obligations – to which all, or at least the overwhelming majority of, Commonwealth states have signed up.

Indeed Commonwealth member states have recently reaffirmed their commitment to Commonwealth core values and principles, including international human rights obligations, through the Commonwealth Charter 2013, which states:

"We are committed to the Universal Declaration of Human Rights and other relevant human rights covenants and international instruments. We are committed to equality and respect for the protection and promotion of civil, political, economic, social and cultural rights, including the right to development, for all without discrimination on any grounds as the foundations of peaceful, just

and stable societies. We note that these rights are universal, indivisible, interdependent and interrelated and cannot be implemented selectively. We are implacably opposed to all forms of discrimination, whether rooted in gender, race, colour, creed, political belief or other grounds."

The Communiqué of the Commonwealth Heads of Government Meeting in Malta in 2015 similarly stated that *"all human rights are equal, indivisible, interdependent, interrelated and universal"* and went on to urge Members *"to promote and protect all human rights and fundamental freedoms."*

Having committed to respecting those rights, countries need to be held to account for their actions and for how they promote compliance with those rights in their foreign policies – in reality.

As a Parliamentarian in the UK, there are certain tools I have found particularly helpful in holding both the UK Government and other Governments to account – one of which is the All-Party Parliamentary Human Rights Group (PHRG), which I have chaired since 1997.

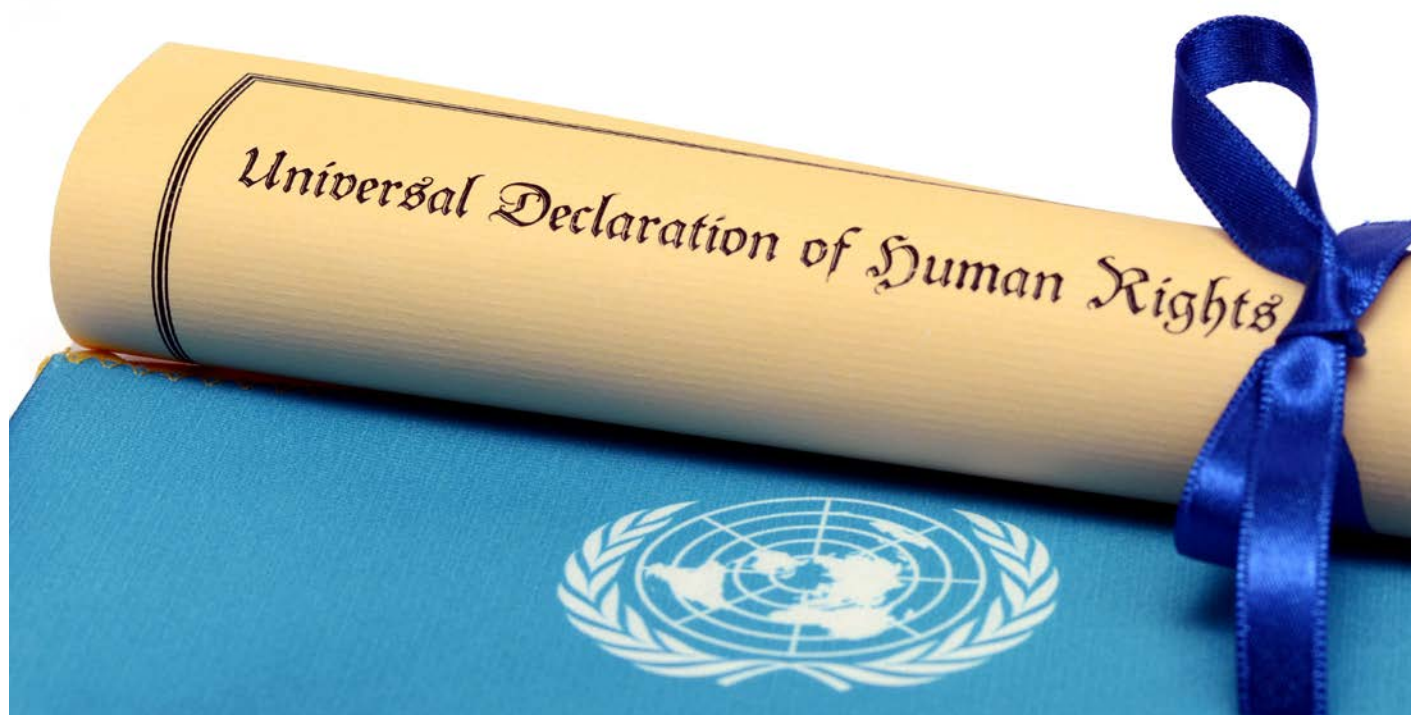
The PHRG is one of the many All-Party Parliamentary Groups (APPGs) in the UK Parliament – though I am proud to be able to say that this is one of the most long-standing, having been founded in 1976 by my distinguished Parliamentary colleague, Lord Avebury – who sadly died recently and was widely

recognised as the human rights champion in the House of Lords.

The UK Parliament has recognised All-Party Parliamentary Groups (APPGs) for decades now. APPGs are informal cross-party groups run by and for Members of the House of Commons and the House of Lords (usually from the back-benches), and can involve individuals and organisations from outside Parliament in their administration and activities. Registered APPGs must conform with rules about cross-party membership and transparency about their activities and funding.

I have noted that Parliaments in other Commonwealth countries have similar informal cross-party groups, although with the exception of those in Canada and Australia, it would seem most Parliaments in the Commonwealth have groups focused on strengthening relations with other specified countries (or groups of countries), as opposed to working on thematic issues. These groups are often referred to as *"Friendship Groups"*. Of course, if there are groups focused on thematic issues in other Parliaments, I would be delighted to know more from my Commonwealth Parliamentary colleagues.

Though APPGs have been maligned to a certain extent in recent years in the UK, particularly as regards the extent to which some outside bodies and companies are able to exert what is felt by some to be undue influence in Parliament



and among Parliamentarians, I believe that the PHRG – along with a number of other APPGs – is an example of how an APPG can bring Parliamentarians, from both our Houses and from

“As a Parliamentarian in the UK, there are certain tools I have found particularly helpful in holding both the UK Government and other Governments to account – one of which is the All-Party Parliamentary Human Rights Group (PHRG), which I have chaired since 1997.”

across the political spectrum, together for the greater good.

More generally, I believe that the most successful APPGs fill in gaps in the existing and more formalised Parliamentary system; offer equal opportunities for all Parliamentarians to get involved; allow Parliamentary members to receive and exchange relevant information from a wide range of sources, as well as develop and deepen areas of expertise; facilitate networking between Parliamentary colleagues, Government officials and other stakeholders; and enable more inclusive policy coalitions to be built.

I believe there are some subject areas which naturally lend themselves to a more non-partisan approach, one of which is Human Rights.

As elected Parliamentarians, we are to a large extent a product and protector of the international human rights regime. Carrying out our mandate depends on the ability to exercise our political and

civil rights; it also entails the safeguarding of the rights of our constituents and the wider electorate, and requires us to hold Government to account as regards their international human rights commitments.

We, as Parliamentarians, no matter which party we belong to, should therefore recognise our special responsibility to be pro-active in the defence of rights and support for victims of violations. In addition, so much more can be done to promote, project and protect these rights when Parliamentarians work together to reinforce the message that these rights apply to everyone – regardless of political affiliation, race, ethnicity, religion or sexual orientation.

Every government gets it wrong sometimes – and tries to overreach itself. Within every society there are engrained prejudices which serve to marginalise particular groups and can result in abuse, persecution, systemic discrimination – or even

miscarriages of justice.

Promotion and protection of fundamental rights also contribute to longer-term security and prosperity throughout the world, by providing vital outlets and mechanisms for people to resolve conflict and mediate differences non-violently, and for business to be conducted with greater confidence.

The PHRG works therefore to keep human rights – and the voice of victims throughout the world – on our Government's and the international community's agenda. Many UK Parliamentarians have seen the PHRG as a meaningful way to plug what many of us consider to be a gap in our Parliamentary system.

Our Parliament, like many others in the Commonwealth and around the world, has a number of formal Committees made up of members of different parties which consider policy issues, scrutinise the work and expenditure of the Government, and examine



PARLIAMENTARIANS' ROLE IN DEFENDING HUMAN RIGHTS

proposals for primary and secondary legislation.

One of the Joint Committees is the Human Rights Committee, made up of Members of both Houses, which has a mandate to examine matters relating to human rights *within the UK*, including the scrutiny of every Government Bill for its compatibility with human rights, the scrutiny of the Government's response to court judgments concerning human rights, and the UK's compliance with its human rights obligations contained in a range of international treaties, as well the

conduct of thematic inquiries on topics of its choice.

Our Parliament also has a Foreign Affairs Select Committee (FAC), of which I am currently also a member, whose remit is to examine the expenditure, administration and policy of the Foreign and Commonwealth Office (FCO), other bodies associated with the FCO and the way in which the FCO is discharging its responsibility for UK participation in international and regional multilateral organisations such as the United Nations, the Commonwealth, NATO and the

European Union.

The FAC also chooses its own inquiries, and calls for evidence from a wide range of sources. The usual culmination of an inquiry is a report in which conclusions are reached and recommendations made to the UK Government, who then have to give a detailed response. The reports are also often debated.

Although human rights matters can be the sole subject matter of a report, particularly in connection with the review of the FCO's annual human rights report, or can feature in reports on more wide-ranging topics,

human rights are usually one of many other issues covered, such as trade, security and counter-terrorism, and conclusions and recommendations are directed at the UK Government.

In contrast, the PHRG is able to take a more focused approach to international human rights matters, with a view to both trying to hold the British Government to account on an on-going basis in its foreign policy as regards its international human rights obligations, as well as engaging with the wider international community to generate momentum to





end serious and systematic violations wherever they may occur. It aims to mobilise UK Parliamentarians, from across the political spectrum, to use the Parliamentary platform and mandate, for these ends.

More specifically, as PHRG members, we can call on the Foreign and Commonwealth Office (FCO) – Ministers and officials – to meet with us; ask the UK Government to raise and lobby on related issues with relevant counterparts; support and assist with grassroots efforts in countries to strengthen good governance and protect civil society

“Recognising good practice, progress and meaningful efforts to address long-standing human rights problems is also constructive. Giving credit where credit is due - to encourage those, whether in Government, Parliament or civil society, to continue doing what is necessary but sometimes unpopular, expensive and/or time-consuming to right serious wrongs.”

participation and space; and, raise serious concerns with appropriate international organisations, such as UN agencies and the International Committee of the Red Cross (ICRC).

We can also ask to meet Ambassadors and officials from other countries – and are often able to meet with our Parliamentary counterparts – including through organisations such as the Commonwealth Parliamentary Association and the Inter-Parliamentary Union – to exchange information and discuss challenges and issues of concern.

Almost every week when the UK Parliament is sitting, the PHRG organises meetings, open to all Parliamentarians, and otherwise communicates – by letter, email and on the phone - with the above. The PHRG also informs its members on a weekly basis about the relevant business in Parliament relating to international human rights matters for the coming week – to encourage greater use of the Parliamentary platform and processes, such as scheduled sessions involving specific departmental Ministers, debates and motions, on behalf of human rights victims.

The PHRG is not tied either to any particular NGO, institution or think tank. This allows our members to be exposed to different views, analyses and approaches, to develop constructive working relationships with many different stakeholders, to build bridges between decision-makers and human rights victims, and to deal with serious human rights issues and related humanitarian crises that might otherwise be ignored.

The development of in-depth expertise and longer-term engagement, with decision-makers, civil society representatives and victims, and the harnessing of Parliamentarians wealth of experience and networks

are key, as many situations are complex and concern entrenched vested interests resistant to change.

Achieving redress and reform can involve identifying specific problems with capacity or lack of training, and/or helping to generate the necessary awareness, understanding and political will. Sometimes judicial proceedings may be the most appropriate and effective method of redress, and to stop further abuses being committed, so support for victims in their quest to access formal justice mechanisms may be called for too.

Recognising good practice, progress and meaningful efforts to address long-standing human rights problems is also constructive. Giving credit where credit is due - to encourage those, whether in Government, Parliament or civil society, to continue doing what is necessary but sometimes unpopular, expensive and/or time-consuming to right serious wrongs.

Collective cross-party action is the way the PHRG – and the APPG system more generally - works, so efforts are constantly being made to engage with country and other thematic APPGs where there is an overlapping interest to bring relevant issues and stakeholders to the attention of as many Parliamentarians as possible.

Work with Parliamentarians in other countries, including in Commonwealth countries, is also something the PHRG would like to develop further. I think it would be very useful to do more to promote the exchange of information and share what has worked and what hasn't in each of our respective Parliaments, with a view to innovating and building on good practice, as well as generating further Parliamentary solidarity in connection with this work, and in defence of each other's rights when they are threatened.

In this regard, I have been very interested to see that Parliamentarians from different regions in the Commonwealth have been meeting in the last few years and issued Declarations, such as those from Mahé, Pipitea and Kotté, which acknowledge the critical role Parliaments and Parliamentarians have to play and commit them to act to promote and protect human rights.

I look forward to seeing how this initiative evolves and to exploring whether and how the PHRG could support and learn from future follow-up activities, which will hopefully draw on the expertise of the Commonwealth Parliamentary Association, under the leadership of its new Secretary-General, Akbar Khan who is also introducing a number of interesting new activities and programmes, CPA branches, Commonwealth Women Parliamentarians and other Commonwealth bodies working in this area, including the Commonwealth Secretariat, the Commonwealth Human Rights Initiative and the Commonwealth Journalists Association.

I would like to conclude by thanking the many Parliamentarians in the Commonwealth who act in defence of international human rights and on behalf of victims. I have attempted to provide information – and possibly some inspiration – about how Parliamentarians are able to work together to achieve these ends, including through informal cross-party Parliamentary groups, such as the All-Party Parliamentary Human Rights Group. My hope is that this article will kick-start further dialogue and interchange among Commonwealth Parliamentarians, to enable us to identify innovative ideas, best practice and further opportunities – which would benefit our constituents, our wider electorates and human rights victims throughout the world.



REFLECTIONS ON WOMEN'S EMPOWERMENT BY THE UK'S OUTGOING LORD SPEAKER



Baroness D'Souza

was elected as the second Lord Speaker in July 2011, taking office in September. She entered the House in 2004 and was Convenor of the Crossbench Peers from 2007 to 2011. Baroness D'Souza has a special interest in human rights and development issues. She lived and worked in southern Europe, Africa, Asia and Oceania. She was director of an independent research group focusing on development and emergency aid. Baroness D'Souza studied Anthropology at UCL and studied for her Doctor of Philosophy at Lady Margaret Hall, University of Oxford. She taught anthropology at both the LSE and Oxford Brookes University.

We all know that as we get older time moves faster! I have come now to the end of my five years as the Lord Speaker and it seems only yesterday that I first entered my office and donned my robes in preparation for the Chamber. I arrived with few tangible goals in part because I believed that I had to feel my way. My predecessor as the first Lord Speaker had the huge job of creating the job – my task was to provide a degree of continuity and gradually see where I could make a contribution. Matters to do with reform at this end of Parliament move very slowly and the notion of bringing about anything but the most gentle step forward would be doomed at the outset.

However I did have modest aims – to try to make our relations with the House of Commons more cordial, to protect and promote the reputation of the House of Lords and to continue and even expand the House of Lords outreach programme. It is the latter goal that I would like to look at in more detail – because it is largely in partnership with the CPA UK Branch at the Houses of Parliament that such outreach has been possible overseas.

Let me say briefly that my career in the past decades before I joined the House of Lords had been predominantly concerned with overseas work both in development and human rights contexts. I have lived and worked in many different countries in sub-Saharan Africa, Europe, the Middle East, South and South East Asia and Oceania.

The focus of my concern was initially to understand better the role of international assistance, particularly humanitarian relief, in improving life for the most disadvantaged. In later years it became clear that while the provision of aid was in most cases useful, the real issue was the degree to which people in the underdeveloped parts of the world had the opportunity to be involved in decisions which affected their lives and livelihoods. This is a question of individual rights and my concern therefore became how to enable such freedoms. Not an easy task!

I made myself a life member of the CPA the week I was appointed a peer and in the next few years joined delegations to Swaziland, Pakistan, Rwanda, Mozambique (all countries in which I had worked before) and Namibia. The access to ministers and the opportunities to question officials in some detail was a privilege. But I shared with other members of our various delegations and with the staff of CPA UK a nagging concern that we were not able to follow up our visits by, for example, building more permanent and focussed institutional relations with our fellow Parliamentarians.

This changed when I visited Pakistan as Lord Speaker in 2013 and met with the Pakistan Women's Parliamentary Caucus (WPC). In a country where perhaps one has reason to question the treatment of women in society, we found a vibrant group of women who were determined to work

together to achieve more equality for women generally but in political life in particular. CPA UK's initial foray into working with women Parliamentarians in South Asia had come a year earlier. CPA UK hosted MPs from Pakistan and Afghanistan and focussed on how best to enhance the empowerment of women Parliamentarians. It was a full programme of exchanges, briefings and visits on issues of women and politics, governance and justice, the relationship between gender and development and gender based violence.

This had laid the foundations for my 2013 visit to Pakistan, where I was joined by a delegation of senior women Parliamentarians from the UK Parliament.

The theme was economic empowerment: did women especially at the rural levels have access to credit and how far can female entrepreneurs act as agents of change? During the course of the meeting, we heard of microloans targeted at women entrepreneurs, whose output might otherwise not contribute to GDP. We also heard of the example in Sindh where surplus land is granted to women by the Provincial Government as a gift which can be transferred only to their daughters. Meanwhile the Pakistan Parliament has passed laws to protect a woman's right to inheritance and to criminalise any attempt to bar women from their inheritance.

Research in Pakistan shows a significant decrease



in domestic violence within households where women are economically independent. We learnt too that while educating girls is the magic bullet of development, a specific kind of education encompassing financial management had a particularly marked effect on changing women's cultural mind sets, and encouraging entrepreneurs.

In subsequent years, a third gathering in Islamabad (Education and Maternal Health) and a fourth in London became occasions to meet old friends and to report on progress. By this time women Parliamentarians from six countries across South Asia attended and the theme was what role women can play in promoting women's rights both in parliament and in their constituencies.

Detailed attention to the shape of the meetings was beginning to take place. It was agreed that rather than a series of hugely worthy but essentially non-interactive addresses the focus should be on workshops. The aim here was to not only engage each and every member of the delegations but to share personal experiences of what had worked and what hadn't in each of the countries represented. Delegates would then bring this knowledge back to their own countries, helping to share best practice. Visits to a closed women's training prison, an organisation dealing with tackling violence against women, a women's refuge and a foodbank were included.

It is always difficult to know exactly what impact such a series of meetings has. There are difficulties in keeping alive a transnational network of extremely busy women and ensuring that experience is usefully shared on a regular basis. But we are in the process of cracking the nut! I think the time has come to sit around a table with some of the more

active members of the respective parliamentary caucuses and brainstorm how we can continue to promote women in parliament.

The outcome for me has been constructive and the principles we have established are instructive. Meeting so many dedicated women, often working in truly adverse contexts, moved me to adopt a further aim as Lord Speaker – to use whatever influence I might have to promote women as leaders in the political and economic fields.

Let me share with you some of the reasoning behind this decision. One might for example question in a world of so many pressing problems why single out the under representation of women? Is it a pressing issue? An obvious answer to this is that women make up 50% of the world population and it is therefore simply undemocratic to have less than half represented in the political, parliamentary and economic fraternity.

"Women are a driving force of our economies, formally and informally. Solutions to the current crisis must therefore involve women as key actors – building on their potential, recognising their contributions and pronouncing gender equality."

This quote is taken from the conclusions of the fifth Meeting of Women Speakers of Parliament held in Vienna at the time of the economic crisis affecting some Eurozone countries and subsequent global recession and austerity.

More recent research in America and elsewhere has recently revealed that those corporations that employ

women as board members see an increase in profits. So there is more than lip service paid to the increasing move towards gender equality – the contribution of women is being carefully documented and recorded throughout the world. The results are *always* weighted in favour of a greater role for women in every aspect of life.

Those who feel threatened by women's economic or indeed political empowerment will continue to say that this is not a pressing issue – or that it will happen anyway and thus there is no need for such strenuous efforts, such as those the CPA undertakes along with many, many other organisations throughout the world. Violence against women (including the shocking growth of anti-women acts of terrorism that have made world headlines in the last couple of years), they assert, is a far more important issue. Of course this is a vitally important matter but that does not negate the importance of empowering women more generally. Perhaps more thought could be given to countering the view that empowering women disempowers men? Women's rights in whatever sphere are everyone's rights. The economic pie is not and should never be



Above: The House of Lords is situated at the Victoria Tower end of the UK Houses of Parliament.

restricted but constantly opened and expanded so that all can have a slice, women *and* men.

As Parliamentarians, we are not just law makers but crucially we are also public opinion shapers. My journey as Lord Speaker has been enormously enriching – this example of embracing women's economic and political engagement is but one outcome of a very full five years.

I will continue with those themes I have been lucky enough to embrace beyond when I step down as Lord Speaker. I believe we as Parliamentarians have a clear responsibility to join forces with other women's groups around the world and to create a critical mass insisting on equality. The strands of my own professional journey from international development, through human rights to political influence have been fruitfully brought together. With a continued close association with the CPA, I plan to make my contribution to a better world by promoting the political education, participation and contribution of women.



WOMEN LEGISLATORS: FROM EMPOWERMENT TO NATION BUILDING

The inaugural 'Women Legislators: Building Resurgent India' Conference took place from 5-6 March 2016 in New Delhi, India



Dr D. Bhalla is an IAS officer serving as the Secretary in the Lok Sabha Secretariat, Parliament of India, New Delhi, India. Dr. D. Bhalla has held key positions in the Government of Nagaland as well as the Government of India. He has participated in many national as well as international seminars, conferences and training programmes in India and in different countries. He has written many books but the most popular scholarly work has been on sustainable tourism strategies.

Globally women have made remarkable gains – politically they are proactive; socially they are much better placed; economically they are well settled and they are aware of their human rights. Women's empowerment is a key tenet of gender equality. In fact, gender empowerment has three dimensions: political participation, political representation and political leadership. Over the years, the realization that women's political participation and their representation in the decision-making process helps in shaping the socio-economic development of the country, is gaining momentum worldwide.

India has a vibrant and mature democracy, represented by different sections of society. And the role of women members in this journey of democratic governance is indeed unquestionable. Presently, there are 62 women members in the House of People, that is Lok Sabha, from a total strength of 543 members. Though they constitute only 12%, the interesting fact is that there are 40 new women members who have been elected for the first time to this House. The Council of States has 31 women members out of a total strength of 245 members.

The percentage of women representatives at the national level has improved over the

years. India, being a federal polity, has Legislatures in 30 States/Union Territories with 9% of the seats occupied by women members. The country is undergoing a silent revolution in villages and towns where 1.27 million women have been elected as representatives of the people thereby bringing a humane touch to the various welfare issues. With such an unprecedented large base of elected women representatives across the country, India is today talking not about gender equality or about under-representation. There has been a paradigm shift in the approach from women's welfare to development to empowerment.

Rather, the focus today is how women legislators in India could contribute in the national development. As members, they are already empowered and what is required is that they should move beyond the frontier of self-empowerment to find innovative ways to empower the people, society and the nation. Since the development of the nation largely depends on the development of the States, it is all the more important that members of Parliament and State Legislatures work together, think together and act together to bring positive change in the lives of people.

With this vision, a two day National Conference exclusively of women members of the

Indian Parliament and of the State Legislatures was held in New Delhi from 5-6 March 2016 on the initiative of the Lok Sabha Speaker, Smt. Sumitra Mahajan. The conference, the first of its kind, was attended by 350 women members as well as women Ministers, women Chief Ministers and other dignitaries thereby giving them a platform to share their experiences, to draw strength from each other, to celebrate their role as legislators and to build bonds of friendship and understanding. It was a unique conference of women members, by women members and for women members. The vision of the conference was translated into a mission with the adoption of the Resolution on the concluding day.

The conference, with its theme '*Women Legislators: Building Resurgent India*', assumed greater significance with the august presence of the President of India, Shri Pranab Mukherjee; the Vice-President, Shri Mohammad Hamid Ansari; the Prime Minister, Shri Narendra Modi; the Lok Sabha Speaker, Smt. Sumitra Mahajan; and the Speaker of the Bangladesh Parliament and the Chairperson of the Executive Committee of the CPA, Hon. Dr Shirin Sharmin Chaudhary MP, as well as women members of Parliament and State Legislatures at the conference's



inaugural function.

Inaugurating the conference, the President of India, Shri Pranab Mukherjee stated that political representation of women in Parliament had not increased beyond 12% since independence reflecting an unfortunate dimension of women's representation. He made the suggestion for improving women's representation through reservation by making necessary amendments to the Constitution. In this regard, he urged all the parties across the political spectrum to ensure sufficient representation of women in the legislative bodies to enable them to play their due role. He also made reference to the United Nations' theme of the 2016 International Women's Day as 'Planet 50-50 by 2030: Step It Up for Gender Equality'. The global community has to rededicate themselves to gender equality and women's empowerment and the organization of the

National Conference of Women Legislators was a step in the right direction. The President urged delegates that the conference agenda should be carried forward and there should be sustained efforts to take the necessary follow up action.

Addressing the distinguished gathering, the Vice-President of India, Shri Mohammad Hamid Ansari underlined that women are catalysts for development; they are also the strongest voices for peace and non-violence. Thus, their political participation results in tangible gains for democratic governance, including greater responsiveness to citizens' needs. He said that women in politics has two perspectives - women's political representation and women's performance in the Legislatures. Though women's political representation at the local bodies stood at 43.56% of the total elected representatives, a commensurate increase in the Legislatures, both at the Centre and the States, is equally

imperative. Women's leadership and conflict resolution styles embody democratic ideals and they tend to work in a less hierarchical, more participatory and collaborative manner than their male colleagues. Thus, women's contribution is crucial to building a strong and vibrant nation, he added.

Welcoming the delegates, the Lok Sabha Speaker, Smt. Sumitra Mahajan said that the conference would find ways to channel the power and responsibility of women legislators so that they could proactively and productively contribute towards national welfare and development. She observed that growth rate or per capita income is not the only criteria for holistic national development - it should be commensurate with social development and good governance as well. Referring to a study of IMF, she said that if the women's workforce becomes equal to its male counterpart, then there would be

Above: The President of India Shri Pranab Mukherjee (centre); Vice-President Shri Mohammad Hamid Ansari (second from left); Prime Minister Shri Narendra Modi (second from right); Lok Sabha Speaker, Smt. Sumitra Mahajan (far left); and the Speaker of the Bangladesh Parliament and Chairperson of the CPA Executive Committee, Hon. Dr Shirin Sharmin Chaudhury MP at the inaugural National Conference of Women Legislators on the theme of 'Women Legislators: Building Resurgent India' held in March 2016, New Delhi, India.

a 27% increase in GDP which would result in a quantum jump in terms of economic and social development.

In the Plenary Session, which deliberated on the theme of the conference, eminent dignitaries shared their valued and rich experiences as women in politics. The Union Minister, Dr. Najma Heptulla lauded the importance accorded to women



WOMEN LEGISLATORS: FROM EMPOWERMENT TO NATION BUILDING

in the sub-continent, both at political and social levels during the last several decades, unlike in Europe and the West, wherein women were still struggling even today to carve a political space for themselves. Sharing her experiences, the Union Minister, Smt. Sushma Swaraj urged women members to focus on the higher goal of empowering the nation which would empower them automatically. Women members make significant changes at the ground level in the lives of the public at large and women, in particular. Unlike their male counterparts, women had an advantage while interacting with the ordinary citizens by thinking and acting as a mother, as a sister and as a daughter and could emotionally feel and relate to their pain and sufferings.

Placing the theme of the conference in its perspective, Hon. Dr Shirin Sharmin Chaudhury MP, Speaker of the Bangladesh Parliament, observed that women have the potential to act as agents of social change in society and politics. As public representatives, they play a pivotal role in improving the working conditions of women and reducing gender-based discrimination in every field. The women legislators could also help in creating space and opportunities to their brethren to move forward and excel. She summed up her address with an inspiring quote that *'the hand which rocks the cradle, can rule the world'*.

The conference had three Business Sessions on subjects inter-twined with the main theme of the conference. In the first Business Session on *'Contributing to Social Development'*, the delegates underscored that social development is concerned with processes of change that lead to improvements in human well-

being. It promotes social inclusion of the poor and the vulnerable by empowering people, building cohesive and resilient societies and making institutions accessible and accountable to citizens.

The delegates pointed out that there were adequate policies but the evaluation and assessment of policies and programmes need to be regularly monitored for effective implementation. The conference urged all the women members to particularly involve themselves with the monitoring of the Mid-Day Meal Scheme in the schools in their respective constituencies.

The conference reaffirmed that women can successfully handle multifarious responsibilities, whether at home or in the workplace, more so because of their inherent quality of multitasking. The delegates were unanimous that *'women always give, they never take'*; women by nature strive for social development in whatever capacity they might be working and this very quality should be utilized to the hilt for the betterment of society. They admitted that women have proved themselves more credible and effective in sustainable use of natural resources and also investments made in them would yield better returns to society as compared to men.

The challenges of bringing under-privileged and marginalized people into the mainstream for the

inclusive growth and equitable development; the need to identify and respect the qualities of women and dignity of women; and education for all and health for all were the key issues discussed in this Session.

India's economic growth story has caught the imagination of the world. The Indian economy has fared reasonably well in coping with global economic challenges, and especially in the context of gargantuan challenges that it has had to confront. It has emerged as a key player on the global economic landscape. The Second Business Session on *'Contributing to Economic Development'* threw some light on the challenges in making development endeavours more inclusive and people-centric. Sharing her experiences, the Chief Minister of Gujarat, Smt. Anandiben Patel explained the importance of women-specific budgets aimed at implementing women-only schemes. In that direction, she mentioned that the State of Gujarat had earmarked a separate budget for the overall development of women. The voters expect their legislators to address their problems regularly and in this context, she asked the members to frequently visit their constituencies to understand

Above: The conference heard from a wide range of speakers both in person and via video link.

their economic hardships and day-to-day developmental issues. The delegates agreed that apart from ensuring that Government grants were properly utilised, it was also imperative to monitor the implementation of various schemes and to forward the feedback to the Government.

India, demographically, is one of the youngest nations of the world with an average age of 29 years. By 2020, India would have 28% of the world's workforce. The conference observed that this potential should be fully utilised and channeled to create a skilled workforce to take India to a higher economic plane. The conference also advocated bringing in women into the mainstream of economic activities and in promoting and strengthening the base of micro, small and medium enterprises. The session concluded with a note that the country which ensures gender equity brings economic prosperity to the nation.

An inclusive and participatory governance reflects the views and interests of the society from which it draws its sustenance. That being so, it needs to





focus on how stakeholders can together take society forward in the right direction. More so, when legislators, who are opinion makers and policy planners, are involved, it will certainly lead to transparent and good governance. The Third Business Session on 'Good Governance and Legislation' considered the delivery mechanisms of administration. Appreciating the multi-dimensional role that women play in managing families, relationships and

“The Prime Minister called upon women legislators to recognise their strength as agents of change and to share their experiences with their counterparts in local bodies. Women legislators should use and adopt technology for better communication with their constituents, performance and to gain knowledge. He expressed optimism about ‘women-led development’, rather than the ‘development of women’.”

household matters including finances, the conference observed that good governance comes naturally to women as it is ingrained in the very nature of women. At the national level, the tenets of good governance are: Rule of law, protection of human rights, prevention of violence, inclusiveness, responsiveness, transparency, independent and impartial judiciary. The delegates agreed that good governance should be participatory and aimed at fulfilling the aspirations of the people. Legislators, therefore, should be innovative and responsive, right from the stage of framing of laws to creating their awareness among citizens.

The Prime Minister, Shri Narendra Modi, had all along supported the conference and was present at the inaugural function as well as at the valedictory session. Earlier, on the floor of the House, he had applauded the Lok Sabha Speaker for taking this initiative of convening the Women Legislators' Conference.

Sharing his thoughts at the valedictory session, the Prime Minister observed that women are inherently empowered, they only need to be aware of their inner strength which could not be realised unless they face challenges. He called upon women legislators to recognise their strength as agents of change and to share their experiences with their counterparts in local bodies. Women legislators should use and adopt technology for better communication with their constituents, performance and to gain knowledge. He expressed optimism about 'women-led development', rather than the 'development of women'.

The Prime Minister stated that although multi-tasking is a modern managerial concept, it comes naturally to women who have been practicing it since

ages. Illustrating the resilience of women as compared with men, he recalled the experience of Rwandan women when they shouldered the responsibility of governance after the mass extermination of Rwandan men following the genocide. Rwanda today has 64% women representation in the Parliament, which is the highest in the world.

The conference concluded with the unanimous adoption of the historic resolution whereby women members resolved to:

- Work for transparent, accountable and inclusive governance and to contribute to the task of building a resurgent India;
- Strive for social and financial inclusion with a view to ensuring equal opportunities to all;
- Inform, communicate and educate citizens about the developmental programmes, proactively monitor implementation of schemes, effective utilization of allocations and efficient service delivery mechanisms;
- Work to ensure accessible, inclusive and quality education with focus on outcomes;
- Undertake to strengthen accessible, affordable and equitable public healthcare infrastructure with effective delivery at its core;
- Emphasize the need for greater synergy between the people and the administrative/law enforcement agencies to ensure their welfare, safety and security, especially safety and security of women and the girl child;
- Promote grassroots entrepreneurship, and improve the skill levels of the workforce;
- Engage with Elected Women Representatives at the Municipal and Panchayat levels regularly as bridges of constructive dialogue between and among the people, the States and the Union;
- Promote increased role of women in financial decision making and fostering financial literacy among the masses;
- Proactively engage in the formulation, implementation and monitoring of Sustainable Development Schemes, and in particular in meeting specified targets;
- Engender all legislative and development plans for integrating gender concerns into the processes and procedures;
- Contribute to robust legislation and policy making through study and research and to coordinate with the Administration at all levels for their efficacious implementation; and
- Engage with young people, who are the harbingers of change and innovation; encourage women to be part of the developmental processes and procedures; motivate communities and citizens to engage with governance issues; and ensure follow-up action towards inclusive and citizen-centric governance and building a truly empowered and resurgent nation.

The conference gave many new learning experiences to the legislators to connect, to synergize and to build new bridges among themselves and with their constituents. The message of the New Delhi Conference was that true empowerment of women legislators in all manifestations means to deliver in social and economic development and to carry forward the principles of good governance to build a resurgent India.



WOMEN IN LEADERSHIP: THE SCOTTISH PARLIAMENT'S EXPERIENCE



Susan Duffy is Head of Committees and Outreach Services at the Scottish Parliament. Susan has worked for the Parliament since 2002, beginning her career as a Senior Assistant Clerk for the Education, Culture and Sport Committee. She went on to become clerk to the Finance Committee, then Local Government Committee and she was head of the Parliament's Business Team which organises all of the business in the Parliamentary chamber and provides advice to the Presiding Officer.

One of the key principles underpinning the establishment of the Scottish Parliament was that the Parliament should, in its operation and its appointments, recognise the need to promote equal opportunities for all.

This is a principle that the institution has always held dear and the Scottish Parliamentary Corporate Body has, from the beginning, set out to be an exemplar as an employer.

Not only has the organisation always been committed to equality, it also recognises there is compelling evidence that having greater diversity of thinking and talent in decision-making leads to better performance. We have always monitored our activities to make sure that we were complying with equalities legislation, but we wanted to move beyond compliance and take a more strategic look at how we could ensure diversity and inclusion.

Therefore, when the Scottish Parliamentary Corporate Body set up what we are calling our Organisational Development programme, we wanted to ensure that equality was at the heart of it. This overarching programme has many strands, but essentially it is designed to help our staff to develop their potential and we want to do this in an inclusive way. The programme seeks to enhance leadership capability across the organisation and we are setting up a variety of initiatives that we hope will bear fruit.

We know that as an employer, we have a track

record to be proud of and we have put in place a number of policies and procedures to ensure we operate fairly and equally. However, even with all of those policies and procedures and with almost a 50:50 gender balance in the organisation, we found that women were still under-represented in senior and decision-making roles. We decided it was important to look at why that was the case and to do something to make sure we were creating a truly level playing field.

Ensuring we have equality is not just about having the right policies and procedures in place, it is about examining all aspects of the way an organisation operates to ensure there are no hidden barriers. We wanted to highlight the importance of this issue by establishing a leadership programme for women. This was the first leadership programme to be established under the Organisational Development banner.

The Clerk/Chief Executive and the Parliament's senior Leadership Group (of which I am a member) were very happy to endorse this programme. That endorsement was extremely important as it signalled to all staff this was something that was important to the organisation. We were also extremely grateful to have the support of the Presiding Officer at that time, Rt Hon. Tricia Marwick MSP.

The pilot programme which we ran in conjunction with an external provider, was for 15 women. The programme ran

from September 2015 until March 2016 and involved a series of workshops supplemented by one to one coaching sessions. It was very important to us that all women had an opportunity to put themselves forward for this and therefore, we agreed that any woman could apply, regardless of their grade or their role. We set out to look for women who had the potential to be leaders; who had the ability to motivate and inspire others; wanted to learn and were open to new ideas; embraced change and wanted to make the most of their career in the Parliament and fulfil their potential.

As we could only offer 15 places on this pilot course, we needed to undertake a degree of sifting and selection. However, we were careful to avoid the perception that this was akin to a recruitment process for a job within the organisation. Therefore, we didn't ask for applications. Instead, we asked women to provide a short statement setting out why they wanted to participate in the programme. We asked women to cover issues such as what motivated them, what they wanted to get out of the programme, what inspired them to do well in their career and describe where they saw themselves in the future.

We were overwhelmed by the response we got – with around 60 women applying to take part in the programme. However, this also made it an incredibly difficult job for me and the five other



women who had to whittle this number down to 15. We were all very experienced in sifting applications and interviewing people but we knew we had to approach this exercise very differently. We were not looking for the *'best person for the job'* but for the people who would benefit most from this programme and for a good blend of women who would work well together.

From the initial number of women who sent in their statements, we chatted to 30 and this was one of the most rewarding experiences I have had working in the Parliament. It gave us an opportunity to talk frankly about our hopes, our fears, what might be holding us back and what we wanted to do about it. My colleagues and I who were having these chats are all women who hold senior positions in the organisation and it was incredibly important that we took an active part in these conversations, so that these women could see that we understood their aspirations and recognised the challenges they sometimes faced.

So often, one of the barriers to equality is a lack of role models. If people do not see themselves reflected in leadership and decision making roles, then it becomes more difficult for them to imagine that they can ever succeed in these roles. Therefore, it is very important that I and my colleagues and the women who take part in the Women in Leadership programme are prepared to act as role models and to encourage and support other women across the organisation.

This initial programme has now concluded and the feedback has been overwhelmingly positive. One participant said to me that it was incredibly important for her to have a 'safe space' to be able to discuss how she felt both about herself and about the



organisation. Women who felt they did not have the confidence to speak up, gained a greater insight into how to increase their self-belief and to realise that their voice mattered. It also provided an opportunity to look at different leadership styles and to show the importance of being an authentic leader.

As we were not able to have more women on this programme and as we want this initiative to be something that is sustainable, we also established a Women's Network. The Network will be run by a group from the Network itself and the plan is that we will facilitate training sessions, discussions with guest speakers and other events.

It is very important to recognise that under-representation in senior and decision-making roles will not be resolved solely by women gaining more confidence through a leadership programme. That would somehow imply that if only women pushed themselves forward more, things would change. As an organisation, we also have to look at whether there are any barriers

to progress that we need to tackle. As stated previously, the Scottish Parliament has a range of excellent policies which promote fairness and diversity. Therefore, we need to see if there are barriers that are not so obvious. For example, the Parliament has established a number of boards to oversee significant projects for the organisation. When we looked at the membership of those boards, we realised that women were under-represented in this crucial area. This has two disadvantages – firstly, the organisation is not benefitting from improved decision making that diversity brings and secondly, women are not gaining the type of experience they need to help them gain promotion. These are the kind of issues that we want and need to address as an organisation.

We intend to open up certain Network events and discussions to everyone in the organisation. While it is very important for the Network to have its own identity and to be responsible for the programme that is devised, it is also important to have a conversation about issues of

**Above: The launch of the
Women in Leadership
Programme at the Scottish
Parliament.**

equality across the Parliament. Looking at things differently requires everyone to recognise where there might be issues to address and to be bought into what is being done to further promote equality.

As I mentioned earlier, this Programme is part of a larger Organisational Development Programme and we want inclusion and diversity to be integral to everything we do within that Programme. We intend to use the work we have done in relation to women as a template for policies and programmes we devise for other groups within the organisation.

This programme and the establishment of a women's network underlines our commitment to set an example in empowering women to achieve their goals.



POSITIVE ACTION FOR WOMEN PARLIAMENTARIANS IN THE COMMONWEALTH



Dr Roberta Blackman-Woods MP is a British Labour Party politician who has been the Member of Parliament for the City of Durham since 2005. She has held several roles in the Shadow Cabinet including Shadow Minister for Business, Shadow Minister in Communities and Local Government and Shadow Housing Minister. Dr Roberta Blackman-Woods has been involved in the Commonwealth Parliamentary Association and Commonwealth Women Parliamentarians for a number of years and has held various positions in both organisations at a UK and International level.

When we celebrate Commonwealth Day, we look at how we work together as a family of nations and what we can learn from one another. The theme of Commonwealth Day this year was 'An Inclusive Commonwealth' and I think this was particularly apt following on from a fantastic International Women's Day the week before.

Although we are seeing some positive progress for women's representation in the public and political sphere across the Commonwealth, there is still work to be done and mechanisms that we can use to translate the huge potential of women into equal political representation and greater economic independence.

Current participation rates amongst women in political life

Unfortunately, in 2015, women's parliamentary representation seemed to plateau, increasing by only 0.5 percentage points from the previous year. The more significant gains achieved in 2013 that saw an increase of 1.5 percentage points in the global average were not repeated.

As of August 2015, only 22% of all national parliamentarians were female; globally, there are 37 States in which women account for less than 10% of Parliamentarians in single or lower houses, including six chambers with no women at all. In the United Kingdom, the House of Commons is just 29% of members who are women so

we have some way to go too. Partly as a result of these low figures across the world, only 11 women currently serve as Head of State and 13 serve as Head of Government.

However, I am pleased to say that amongst Commonwealth countries there have been some positive moves in the past year for women's representation.

In Saint Kitts, 2015 saw the first woman to succeed in an election; Trinidad and Tobago reached the 30% target in their lower house - 31% to be precise - with the election of 13 women.

Namibian female Parliamentarians made fantastic steps up with Saara Kuugongelwa-Amadhila becoming Namibia's first female Prime Minister alongside Deputy Speaker Margaret Mensah-Williams being promoted to Speaker.

We also saw Canada taking significant steps last year when the newly-elected Prime Minister Justin Trudeau chose to make half of the members of his cabinet women "*because it's 2015!*"

And of course, Rwanda continues to be a world leader with more than 60% of its Parliamentarians being female.

But what's becoming clear is that without specific measures to bring more women into political leadership and public life, female representation struggles to reach levels of up to or beyond 30%.

The Commonwealth Parliamentary Association and the Commonwealth Secretariat

have been actively promoting the importance of increasing the participation of women in the parliamentary activity of the Commonwealth with the Commonwealth Women Parliamentarians (CWP) being a strong voice for the greater role for women in our national and local legislatures.

Women need to be at the table in key domestic and international institutions. It's to be welcomed a woman, Christine Lagarde, is leading the IMF and, of course, we now have Baroness Patricia Scotland as Secretary-General of the

Commonwealth and Hon. Dr Shirin Sharmin Chaudhury MP as Chair of the Commonwealth Parliamentary Association but there needs to be more women leading the way in national and international bodies globally.

The role of Commonwealth Women Parliamentarians (CWP)

The work of the CPA, and in particular the CWP, is vital to developing a network that female Commonwealth Parliamentarians can use to share best practice and experiences and to support and push one another to maximise their voices in their home state.

Both the CPA and CWP's influence have contributed significantly to positive developments for women's participation in the Commonwealth, as alluded to in the Harare Declaration (1991). The CPA contributed to the Commonwealth Plan of



Action 2005-2015, in which the Harare declaration is enshrined. The Plan draws on international commitments for the realization of women's rights and integral to this is the 30% female representation goal.

I recently attended a workshop with a group South Asian women Parliamentarians, arranged by the CPA, and

“Both the CPA and CWP’s influence have contributed significantly to positive developments for women’s participation in the Commonwealth, as alluded to in the Harare Declaration (1991). The CPA contributed to the Commonwealth Plan of Action 2005-2015, in which the Harare declaration is enshrined. The Plan draws on international commitments for the realization of women’s rights and integral to this is the 30% female representation goal.”



although those represented there were from a diverse range of countries, with a wide variety of democratic and parliamentary practices, there was definitely a sense of commonality amongst us.

The event was titled ‘*Building a Community for Change*’ and I thought that was a very suitable name as it has become more and more apparent that if we want to see more female Parliamentarians and heads of state, and Secretary-Generals, we need to create a community that supports that agenda. There is clearly value to be had in strengthening the ties both within the CWP and working more closely with international partner organisations so that we can develop strong resources and support systems for women Parliamentarians, and would-be Parliamentarians, all across the Commonwealth.

The CWP is committed to a comprehensive agenda to work both at a constituency, civil

society level and parliamentary level to increase female representation in Parliament across the Commonwealth.

This is something that the CWP is going to be tackling head on when it looks at political violence against women and what limits their access to participating in public life at our next triannual conference which will be taking place in Bangladesh in September 2016.

Mechanisms

Whilst there may be those who would suggest that we should be able to increase female representation through merely promoting equality and equality rhetoric, there is evidence that points to equality guarantees resulting in women faring significantly better in elections. In 2015, in elections where some form of quotas were legislated, women took almost a quarter of the parliamentary seats available.

Political parties absolutely

Above: On International Women’s Day 2016, Dr Roberta Blackman-Woods MP (second from left) represented the Commonwealth Women Parliamentarians (CWP) at an event held at the Commonwealth Secretariat where she spoke about the work of the Commonwealth Women Parliamentarians (CWP) and participated in the panel discussion.

have a role to play in this. Across the world, many election results in 2015 have shown that women make the most gains where they were preselected by political parties, both in sufficient numbers and in winnable positions.

The recent history of women's representation in the UK shows that there has been a clear and positive impact of All Women Shortlists (AWS).

In 1983, just 4% of MPs were women; in 1987 it was 6%;



POSITIVE ACTION FOR WOMEN PARLIAMENTARIANS IN THE COMMONWEALTH

1992 it was 9%; and then, as a result of bringing in All Women Shortlists, after the 1997 General Election that doubled to 18% - from 60 to 120 women Members.

Hard mechanisms are necessary to promoting gender equality and it is apparent that the soft message of the importance of equality just simply does not have the same impact.

Barriers to full participation

But more than just giving making sure women are not being pushed out of participation in politics, we need to look at the barriers that prevent women even getting on the starting blocks in wider public life.

I do not think it's a coincidence that in the Sustainable Development Goals, the goals of '*Ensuring inclusive and equitable quality education and promote lifelong opportunities for all*' and '*Achieving gender equality and empowering all women and girls*' are placed next to one another - as Goals 4 and 5 respectively - as these goals have a very symbiotic relationship.

Education is one of the most powerful instruments for reducing poverty and inequality and so we know that to achieve real and meaningful gender

equality and the empowerment of women and girls, access to education is vital. We simply will not see the full participation of women in public life if we do not see girls being given the same educational opportunities globally as their male counterparts.

More than 63 million girls are out of school and data suggests that the number is rising. According to a new report from UNESCO, almost 16 million girls between the ages of about 6 and 11 will never get the chance to learn to read or write in primary school compared to about 8 million boys if trends continue as they are.

But action also needs to touch not just primary and secondary learning but also higher and further education.

We need to encourage the best universities globally to put more funds aside for scholarships for women, especially women from the developing world, so that they have access to the best education which can enable them to become the future leaders both in their home countries and on the global stage.

Converting education into quality employment and economic independence

Hand in hand with enhancing women and girls' access to education, and making that education of the best quality, is the need to ensure that it is converted into employment opportunities and economic independence for women on all levels.

Women's university enrolment ratios are exceeding those of men - even in locations where you might not expect it. Although men continue to outnumber women in university enrolment in some developing countries, in many others, including Iran, Nigeria and Saudi Arabia, women constitute the majority of university students.

Among the world's two largest populations, China and India, women are also moving toward parity with men in university participation.

And yet this is simply not reflected in economic and employment opportunities - although things are getting better.

On average across OECD countries, the gender gap in labour force participation for the working-age population narrowed from 23% in 1990 to 13% in 2012. Nevertheless,

gender employment gaps remain larger than 10 percentage points in 15 of the G20 countries.

So the gaps that we see in women's participation comes down to more than just educational opportunities. It is how those opportunities are translated into employment and we must consider what barriers exist there.

Issues surrounding

childcare, elderly care and maternity rights must be tackled if we are to facilitate conditions where women do not feel that professions are off limits because of their gender.

Unless we approach gender equality and female leadership in all walks of life with an understanding of the link between education, employment and equality, we are going to struggle to make meaningful headway in ensuring women's full participation in public and economic life.

Conclusion

So overall, women's participation in politics is getting better but mechanisms are needed to ensure that progress does not slow and we do not rest on our laurels when it comes to continuing to prioritise equal representation.

The new SDGs are prioritising women's right to access education and achieving gender parity is important but this must translate into a wider range of opportunities for women for economic participation and independence.

Of course every society has its own cultural and social roadblocks that women must face, but it is very important that, if meaningful progress is to be made, women face these barriers strongly and collectively. There is a real role for the Commonwealth and Commonwealth Women in this - joining with partners in the UN and IPU - to ensure barriers to women's political participation are identified and removed.

We need a new Harare-style agreement that is not satisfied with a 30% target - we need 50%. Diversity and inclusion strengthen democracy and any excuses for lack of equality have to stop.

Women come forward when a space is made for them and we must be proactive in making that space.





Commonwealth Women Parliamentarians (CWP) attend global network of female Parliamentarians, held in the Middle East for the first time

The Commonwealth Women Parliamentarians (CWP) have joined more than 400 female Members of Parliaments and Governments from around 80 countries at the Women in Parliaments Global Forum (WIP) Summit 2016 which took place in the Plenary Hall of the Parliament of Jordan.

Under the title *'Women in Politics: Fast Forward'* the WIP 2016 Summit focused on the importance of parity of power, and address urgent matters such as peace, security, migration and integration. This Summit, co-hosted by WIP and the Parliament of Jordan, and the Organisation for Economic Cooperation and Development (OECD), was the first of its kind to be held in a country of the Middle East and North Africa (MENA) region.

The Commonwealth Women Parliamentarians, as an integral part of the Commonwealth Parliamentary Association, works for the better representation of women in legislatures and for the furtherance of gender equality across the Commonwealth and held its first Commonwealth Women Parliamentarians Working Group at the WIP Summit on the subject of *'Political Violence Against Women'*.

The CWP Working Group was led by: Hon. Catherine Cusack MLC (New South Wales, Australia), CWP Australia Region Steering Committee Member (representing the CWP Chairperson); Hon. Shirley Osborne MLA, Speaker of the Legislative Assembly of Montserrat, CWP Steering Committee Member for the Caribbean, Atlantic and Americas Region and Vice-Chairperson of



the Commonwealth Parliamentary Association; and Ms Clare Doube, Chairperson, Commonwealth Human Rights Initiative.

Many Commonwealth Women Parliamentarians were also in attendance at the summit: Hon. Munokoa Poto Williams MP, CWP Steering Committee Member for the Pacific Region (New Zealand); Hon. Asma Rasheed MP (Maldives) CWP Steering Committee Member for the Asia Region; Baroness Armstrong (United Kingdom), Representing the CWP Steering Committee Member for the British Islands and Mediterranean Region; Hon. Patricia Arab MP (Canada), Representing the CWP Steering Committee Member for the Canada Region; CPA Executive Committee Member, Hon. Emilia Monjowa Lifaka MP (Cameroon).

"The mission of Women in Parliaments Global Forum

(WIP) is to increase the number and influence of female Parliamentarians across the globe. After bringing this forum to different countries and continents to identify and share best practices, WIP is delighted to celebrate its annual summit in the Middle East for the first time. We are honoured and thrilled that so many female leaders coming from different countries and political families will be sharing ideas and strategies to boost women's participation in politics, regionally and globally". – Silvana Koch-Mehrin, Founder of WIP.

Left: The CWP Working Group on 'Political Violence Against Women' takes place at the WIP Summit.

Below left: Commonwealth Women Parliamentarians meeting Hanna Birna Kristjansdottir MP from Iceland.





Commonwealth Women Parliamentarians (CWP) News and Regional Strengthening Activities

Commonwealth Women Parliamentarians Rwanda Branch Steering Committee inaugurated

The Commonwealth Women Parliamentarians (CWP) Rwanda has inaugurated and has elected a number of Members of Parliament (both Senators and Deputies) to its Steering Committee to promote the views and concerns of women Parliamentarians throughout the country.

The CWP Rwanda Steering Committee is also responsible for developing programmes to further the aims of the CWP within the country, in the Africa Region and across the world.

The CWP Rwanda Steering Committee is headed by a Chairperson – Senator Hon. Mukobwa Justine - deputized by two members, one in charge of policy, mobilization and strategy – Senator Hon. Mukasine Marie Claire - and the other in charge of finances – Senator Hon. Kazarwa Gertrude – with a further five Members. Upon her election as the Chairperson of the CWP Rwanda, Hon. Mukobwa Justine informed the House that she was ready to work with other Members for the good of the

organisation and also assured them that her stewardship will leave no stone unturned on how best to empower women in Rwanda and Africa as a continent.

CWP Australia rolls out 'Stepping Up' Campaign to encourage young women into politics

The 'Stepping Up' Programme is an initiative launched by the Commonwealth Women Parliamentarians (CWP) Australia Region to encourage young women to consider a career in parliament.

A number of events have been held in Australia Region Branches following the launch event for the programme in New South Wales.

The Australia Capital Territory (ACT) Representative of CWP Australia Region, Nicole Lawder MLA held a recent 'Stepping Up' event for young women to consider a career in politics in Australia's capital city. The event was a great success including a Tri-partisan panel of three female politicians - Meegan Fitzharris MLA, Minister for Transport and Municipal Services, Giulia Jones MLA, Shadow Minister for Women and Amanda Bresnan (former MLA); a community



Above: The new CWP Rwanda Steering Committee is headed by Chairperson, Senator Hon. Mukobwa Justine .

sector panel discussing their influence on the political process with Jordan Lim of YWCA, Jenni Gough of the Women's Centre for Health Matters and Rebecca Cuzzillo of the Youth Coalition of the ACT; a 'Communicating with influence' workshop by Katrina Howard; and a media coaching session with renowned journalist Ginger Gorman.

The event was also attended by the Speaker of the ACT Legislative Assembly, Mrs Vicki Dunne MLA, CPA Executive Committee Member and Regional Representative for the Australia Region, who also spoke at the event and hosted a lunch for participants.

Below right: The CWP Chair for the Australia Capital Territory, Nicole Lawder MLA with young women participants in the 'Stepping Up' Programme.

Below left: Speaker of the Australia Capital Territory (ACT) Legislative Assembly, Vicki Dunne MLA speaks at the event.



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CANADIAN FEDERAL PARLIAMENT BUDGET AND LEGISLATION

The Budget

In a marked departure from the previous government, on 22 March 2016, the Minister of Finance, **Hon. William Morneau MP** tabled a budget that projected a deficit. The budget made investments in infrastructure, post-secondary institutions and clean technologies. It also provided for important investments in First Nations, Inuit Peoples and the Métis Nation.

New Democratic Party Leadership Vote

At the New Democratic Party (NDP) Convention on 10 April 2016, leader **Hon. Thomas Mulcair MP** lost the confidence of party delegates when 52% of them voted to hold a leadership race. Mr Mulcair, who was elected leader in 2012 after the death of former leader Jack Layton, served as leader of the Official Opposition until October 2015. In last year's General Election, the NDP went from 95 seats to 44 and became once again the third party in the House. Mr Mulcair said he will stay on as interim leader until a new leader is chosen in two years' time.

Legislation

To implement certain aspects of its election platform, the government tabled legislation that aims to, among other things, reduce the income tax rate for middle-class taxpayers, increase it for the richest and reverse some changes the previous government had made to the Citizenship Act.

On 14 April 2016, the government tabled its legislative response to the Supreme Court's February 2015 ruling that prohibiting physician-assisted dying is unconstitutional. Bill C-14 would restrict physician-assisted death to mentally competent adults who are Canadian residents. The bill did not include, however, some of the recommendations of the Special Joint Committee on Physician-Assisted Dying, such as permitting mature minors and the mentally ill to access physician-assisted death and allowing those with degenerative disorders to give advance consent.

On 17 May 2016, the Standing Senate Committee on Legal and Constitutional Affairs tabled a report on the subject matter of the Bill. Among other things, it recommended permitting advance consent in certain circumstances. The House adopted the Bill on 31 May 2016 and it was referred to the Senate.

Meanwhile, in an attempt to pass Bill C-14 by the Supreme Court's 6 June deadline, the government introduced Motion 6, which would have given the executive power over proceedings in the House. The opposition parties criticized the Motion, and on 18 May 2016, during a vote for time allocation on the Bill, there was an altercation in the House when the Prime Minister, **Rt Hon. Justin Trudeau MP** crossed the floor and tried to pull

Conservative whip **Gordon Brown MP** to his seat in order for the vote to proceed.

During the altercation, the Prime Minister inadvertently elbowed NDP member **Ruth Ellen Brosseau MP**. Though he apologized, this led to debate over a question of privilege, and the matter was referred to the Standing Committee on Procedure and House Affairs. The government also withdrew Motion 6.

On 31 May, the Committee heard a statement from Ms Brosseau saying she accepted the Prime Minister's apology and voted to consider the matter resolved.

On 20 April 2016, the government introduced Budget Implementation Act, 2016, No. 1, which, among many other things, imposed restrictions on cabinet's ability to authorize the borrowing of money without Parliament's approval.

Committee on Electoral Reform

On 11 May 2016, the government introduced a motion to establish a special all-party committee on electoral reform. The Committee will study different voting systems to replace the first-past-the-post system, including preferential ballots and proportional representation, and will look into mandatory voting and online voting. The Committee will table its report by December 2016.

Liberal Party members were initially going to form the majority on the

Committee, but on 2 June, the government accepted an NDP proposal that the Committee be made up of five members of the Liberal Party, three from the Conservative Party, two from the NDP, one from the Bloc Québécois and one from the Green Party.

The Senate

In the Senate, the increase in the number of independent senators led to much discussion over their role. In addition to a number of Liberal and Conservative senators leaving their caucuses to sit as independents, seven new independent senators were appointed. These were the first senators that **Prime Minister Trudeau** appointed based on the advice of the Independent Advisory Board on Senate Appointments.

The new senators, who were sworn in on 10 April 2016, are:

- **Hon. Raymonde Gagné**, an educator;
- **Hon. Murray Sinclair**, an Aboriginal judge who served as Chief Commissioner of the Truth and Reconciliation Commission;
- **Hon. Peter Harder**, a former senior public servant, who was appointed as the government's representative in the Senate;
- **Hon. Frances Lankin**, a former provincial legislator and minister;
- **Hon. Ratna Omidvar**, an expert on diversity who has long been active in

the fields of immigration and multi-culturalism;

- **Hon. Chantal Petitclerc**, a former Paralympic athlete and advocate for the disabled; and
- **Hon. André Pratte**, a long-time journalist.

On 3 May, Senator Harder announced that **Senator Hon. Grant Mitchell**, who left the Liberal caucus the day before, would serve as whip for independent Senators. **Senator Hon. Diane Bellemare**, who in March left the Conservative Party caucus to sit as an independent, was named deputy government representative.

Meanwhile, on 22 April, Quebec **Senator Hon. Céline Hervieux-Payette** retired. She served as a Member of the House of Commons from 1979 to 1984 and was appointed to the Senate in 1995. On 16 May, Ontario **Senator Hon. David Smith** retired. He had served as a Member of the House of Commons from 1980 to 1984 and was appointed to the Senate in 2002. On 3 June, the Senate comprised 42 Conservatives, 23 Liberals and 21 independents; there were 19 vacancies.

Charges against Senators

On 21 April 2016, **Senator Hon. Mike Duffy** was acquitted of all 31 charges of fraud, breach of trust and bribery related to expenses he claimed. In his decision, the judge criticised the actions of former Prime Minister Stephen Harper's one-time chief of staff. These revolved around a \$90,000 cheque he gave to Senator Duffy in 2013 to cover some expenses that the Senator had repaid. Senator Duffy was suspended in 2013, and with his acquittal, he was

reinstated with full salary and office resources.

In May, the Royal Canadian Mounted Police announced that, following its investigations into Senate expenses, it would not be laying criminal charges against **Senator Hon. Pamela Wallin** or former **Senator Mac Harb**.

Changes to the Ministry

On 31 May 2016, **Hon. Hunter Tootoo MP** resigned as Minister of Fisheries, Oceans and the Canadian Coast Guard in order to seek treatment for addiction issues. He was replaced by **Hon. Dominic LeBlanc MP**, who is also the Government House Leader.

Mission against the Islamic State of Iraq and the Levant

On 8 March 2016, the House of Commons adopted a government motion redefining Canada's mission against the so-called Islamic State of Iraq and the Levant (ISIL). Air strikes ceased in February. The new mission comprises an advisory mission in Iraq, humanitarian assistance, engagement with political leaders throughout the region and the welcoming of tens of thousands of Syrian refugees to Canada.

Emergency Debate on the Situation in Indigenous Communities

On 12 April 2016, the House of Commons held an emergency debate on the situation in indigenous communities. The debate was sparked by a rash of suicide attempts on the Attawapiskat First Nation, a remote community on the James Bay coast. During the debate, the Minister of Health, **Hon. Jane Philpott MP** remarked that suicide rates among First

Nations and Inuit youth are between 10 and 35 times higher than the Canadian average. Noting that the budget includes investments for addressing health gaps in indigenous communities, she also said that long-term measures are needed to address the situation.

Honorary Speaker

On 9 March 2016, **Hon. Mauril Bélanger MP** a long-serving member whose diagnosis of amyotrophic lateral sclerosis (Lou Gehrig's Disease) forced him to withdraw his candidacy for Speaker last year, served as Honorary Chair Occupant for the day. Amid scenes of great emotion, he took part in the daily Speaker's Parade and presided over Members' Statements and the beginning of Question Period.

Death of a Member

All Parliamentarians were saddened when **Jim Hillyer**

MP passed away suddenly. He was first elected in 2011.

More money for members' offices

As of 1 April 2016, the office budgets for Members of the House of Commons increased 20%. The budgets had been frozen since fiscal year 2010-11.

Supreme Court Ruling

On 14 April 2016, the Supreme Court of Canada ruled that hundreds of thousands of Métis (people with mixed Aboriginal and non-Aboriginal ancestry) and non-status Indians (First Nations people who do not have registered Indian status) fall under federal government jurisdiction. Prior to the ruling, these communities were in what the Court called "*a jurisdictional wasteland*" with neither the federal nor the provincial governments accepting legislative authority for them.



THIRD READING: BRITISH COLUMBIA, CANADA

Budget Measures Implementation Act, 2016

The Budget Measures Implementation Act, 2016 gives effect to social and economic development policy initiatives in the government's February 2016 budget which require statutory amendments.

During second reading debate, **Hon. Michael de Jong**, Minister of Finance, explained the tax and programme measures in the legislation and highlighted the creation of a new B.C. Prosperity Fund to receive a portion of the revenues anticipated from liquefied natural gas development. The Minister explained that the fund will *"serve as an endowment for future generations"* to pay down provincial debt, fund government programs, and support tax reductions. The Minister also drew attention to initiatives to enhance the affordability of housing.

In this regard, the legislation provides that the purchase of a qualifying newly constructed home valued at up to \$750,000 will be exempt from the property transfer tax. At the same time, the legislation requires the collection of citizenship information on foreign purchasers of property in British Columbia, which *"will be used to compile statistical information on real estate purchases ... and for the enforcement and administration of tax statutes."*

The Opposition Finance critic, **Carole James, MLA**, expressed concern about *"what's not in the bill"* and urged greater support for workers, more resources for education and training, a reorientation of tax relief to assist low and middle income levels and comprehensive measures to reduce poverty. While commending the legislation's property transfer tax exemption and measures to collect information on foreign purchases of housing, she called for stronger measures to address *"the affordability crisis in housing"* including support for renters and the construction of rental housing units. She also noted that difficulties and delays in securing the construction of liquefied natural gas projects had resulted in significant adverse consequences for actual revenues available for the B.C. Prosperity Fund.

The Budget Measures Implementation Act, 2016 received Third Reading on 10 March 2016.

Mines Amendment Act, 2016

The Mines Amendment Act, 2016 strengthens regulatory oversight of the mining industry and provides additional compliance and enforcement tools. In particular, the legislation authorises administrative monetary penalties for contraventions which do not involve the courts and raises penalties available for court prosecution from \$100,000 and/or up to one year imprisonment to \$1 million and/or up to three years imprisonment.

Hon. Bill Bennett, Minister of Energy and Mines, advised in second

reading debate that the legislation *"is part of government's ongoing implementation of the 26 recommendations"* of an independent review of the Mount Polley tailings storage failure. The Minister indicated that the new provisions will enhance the *"quite limited"* compliance and enforcement tools, which will modernize British Columbia's mining regulatory regime and position the province as a leader in this area. These changes will also serve to restore public and First Nations confidence in the mining industry, which is a key sector for job creation and economic development.

The Opposition critic for Energy and Mines, **Norm Macdonald, MLA**, stated that the Opposition supported the legislation's stronger administrative penalties to support the public interest in having safe mine operations and minimizing negative impacts on the environment. However, noting that similar penalties in effect in the forest sector since 2003 had *"never been applied in that way at all"* he suggested that government's record meant that *"British Columbians will remain ... highly skeptical that the tools created in this bill will ever be used."* He urged the government to allocate additional resources to monitor and enforce the legislation's provisions and to commit to apply the penalties to ensure the protection of workers and the environment.

The Mines Amendment Act, 2016 received Third Reading on 15 March 2016.

Local Elections Campaign Financing (Election Expenses) Amendment Act, 2016

The Local Elections Campaign Financing (Election Expenses) Amendment Act, 2016 establishes a framework for implementing expense limits for local government elections in British Columbia. The legislation follows the government's October 2015 introduction of an exposure bill outlining an approach for setting expense limits by regulation for local government candidates, school board trustees and third-party advertising in advance of the next local government elections in British Columbia in 2018. The exposure bill followed the recommendations of the Special Committee on Local Elections Expense Limits, as outlined in its June 2015 report.

Hon. Peter Fassbender, Minister of Community, Sport and Cultural Development, told the Legislative Assembly that the legislation was based on consultations on the exposure bill and honoured the principles of fairness, neutrality, transparency and accountability and the overall expense limits model recommended by the Special Committee. The legislation includes flat rates for election areas with less than 10,000 people and per capita formulas for areas with more than 10,000 people. The framework also provides for higher expense limits for mayors than other candidates *"to reflect the fact that it is usually more expensive to run a campaign for mayor. This is consistent with the approach in other provinces that have expense limits."*

Selena Robinson, MLA, Opposition critic for Local Government, supported the legislation's provisions, while expressing concern that the legislation did not deal with local election campaign contribution limits. She noted that this issue had been raised during the Special Committee's public consultations on local election expense limits and stated that *"while this is the beginning of a direction that suggests that we can and must bring in rules that limit what people can spend, we have missed the mark with this bill ... We need to have addressed contribution limits ..."*

The Local Elections Campaign Financing (Election Expenses) Amendment Act, 2016 received Third Reading on 11 April 2016.



AUSTRALIA BUDGET AND DOUBLE DISSOLUTION ELECTION

Australian Federal Budget 2016

On 3 May 2016, the Treasurer, **Hon. Scott Morrison MP** delivered the Coalition Government's 'jobs and growth' budget. This budget has particular significance as it sets the government's economic agenda shortly before the federal election was announced on 8 May. Mr Morrison commented that *"Australians know that our future depends on how well we continue to grow and shape our economy as we transition from the unprecedented mining investment boom to a stronger, more diverse, new economy."*

Mr Morrison outlined the economic forecasts of the budget noting that the deficit is expected to reduce from \$39.9 billion in 2015-16 to \$6.0 billion or just 0.3% of GDP over the next four years to 2019-20. Payments as a share of the economy are expected to fall from 25.8% in 2015-16 to 25.2% in 2019-20.

The theme of 'jobs and growth' underpinned the budget with the Treasurer announcing *"a growth friendly, 10-year enterprise tax plan to boost new investment, create and support jobs and increase real wages, starting with tax cuts and incentives for small and medium-sized business."*

In particular, Mr Morrison announced a new initiative *"to help more than 100,000 vulnerable young people into jobs, to be part of our growing economy by giving them real work experience with real employers that lead to real jobs."*

In relation to company income tax, Mr Morrison advised that the *"small business tax rate will be lowered to 27.5% and the turnover threshold for small businesses able to access it will be increased from \$2 million to \$10 million."*

Going forward, Mr Morrison stated that *"phase 2 of our 10-year enterprise tax plan will extend the lower tax rate of 27½% to all businesses, by continuing to step up the threshold each year until 2023-24, before reducing the 27½% rate for all businesses to 25% at the end of 10 years in 2026-27."*

The cost to the budget over ten years of reducing the company tax rate to 25% was the subject of ongoing questioning of the Prime Minister and the Treasurer who were initially reticent to provide an answer. Finally, after ongoing pressure, the Treasurer authorised the Treasury Secretary, Mr John Fraser, to inform the Senate Economics Committee, during an estimates hearing on 6 May, how much the measure would cost.

Mr Fraser advised that *"Treasury's standard practice is not to release costings beyond the forward estimates or for the medium term. On this occasion, the Treasurer has authorised me to provide to the committee the medium-term estimate of the cost to the budget, of lifting the small business entity threshold and reducing the company tax rate to 25% by 2026-27. The cost of these measures to 2026-27 is \$48.2 billion in cash terms."*

Another focus of the budget was combating tax avoidance particularly by multinational companies. Mr Morrison advised that Australia's 'world leading' multinational tax avoidance laws *"will be backed up by a new operational taskforce of more than 1,000 specialist staff in the ATO to police and prosecute companies, multinationals and high-wealth individuals not paying the tax that they should."*

In relation to superannuation, Mr Morrison noted that *"we need to ensure that our superannuation system is focused on sustainably supporting those most at risk of being dependent on an age pension in their retirement, which is the purpose of these concessions."*

He advised that while the tax free status of retirement accounts will be retained, the government will reduce access to generous superannuation tax concessions for the most wealthy. Mr Morrison noted that *"ninety-six per cent of Australians with super will be unaffected by or be better off as a result of the superannuation changes we have announced tonight."* The net impact of changes to superannuation announced in these measures will be a net gain of \$2.9 billion over the next four years.

In relation to defence spending and capability, Mr Morrison commented that *"the nine future frigates, 12 offshore patrol vessels and 12 new regionally superior submarines will do the job*

of boosting our defence capability, but they will also drive jobs and growth in the new economy we are building—not just in the shipyards in Adelaide and Perth, but right across the supply chain of our defence industry in the national economy."

Mr Morrison noted that *"this budget is a practical, targeted and responsible economic plan that meets these challenges by clearing the way for jobs and growth, in a stronger, more diversified new economy."*

The Leader of the Opposition, **Hon. Bill Shorten MP** in his budget reply speech commented that *"after seven months of waiting, after months of ruling in and ruling out, after all of that on and off the table, after apprehension and great expectations this budget has fallen apart in 48 hours. This budget was meant to be Malcolm Turnbull's justification for rolling Tony Abbott. After Tuesday night, Australians are left to wonder why he bothered. The same \$80 billion of cuts to schools and hospitals are still in the budget. The same cuts to working and middle-class families are still in this budget. The same cuts to Medicare, child care, aged care, paid parental leave, pensioners and carers are still in this budget. The same wrong priorities for Australia. Was this really the point of the Turnbull experiment? Tax cuts for high-income earners and nothing for families - not one cent for ordinary working families and working Australians. From*

Tony's tradies to Malcolm's millionaires, this is a budget for big business over the battlers."

Mr Shorten, in response to claims that he is waging class war, responded that *"class war is cutting money from families on \$50,000 and \$60,000 a year in order to give millionaires a tax break. Class war is cutting \$80 billion from schools and hospitals but spending billions on tax cuts for big business. It is not class war for Labor to speak up on behalf of everyone that this government has forgotten and betrayed - women, young people, pensioners, carers, veterans. Labor will never apologise for standing up for Australians who go to work every day and want to come home safe, who rely on penalty rates to make ends meet, who do not want to be forced to work until they are 70."*

In relation to company tax cuts, Mr Shorten confirmed that Labor would support a tax cut for small businesses with a turnover of less than \$2 million a year *"because that's what a small business is."* Mr Shorten, however, commented that *"billion-dollar businesses are not small businesses - never have been, never will be. Coles is not a small business. The Commonwealth Bank is not a small business. Goldman Sachs is not a small business. As important as they are to our economy, they do not need a taxpayer subsidy which Australia cannot afford to pay, especially when our imputation system means a cut in the corporate tax rate delivers no meaningful benefit for mum and dad investors. The only shareholders who will win out of this live overseas. Labor will support a tax cut for small business but, unlike the Prime Minister, we will not use this as a camouflage*

for a massive tax cut to big multinationals, and especially when the government is refusing to tell us the 10-year cost of their 10-year plan."

The Leader of the Australian Greens, **Senator Richard Di Natale** commented that *"this Budget is a massive let-down, just like Malcolm Turnbull has turned out to be."* Senator Di Natale stated that *"the government is pretending it can afford unsustainable and unfair tax cuts for the big end of town by claiming fanciful levels of economic growth. While champagne will be flowing in board rooms across the country, these irresponsible cuts come at the expense of long-term funding for schools, hospitals and public services. Rather than reducing inequality the government has chosen to make it worse by cutting social support, university funding and health services."*

Double Dissolution Election called for 2 July 2016

On 9 May 2016, the Governor-General **HE General the Honourable Sir Peter Cosgrove AK MC (Retd)**, on the advice of the Prime Minister, **Hon. Malcolm Turnbull MP**, dissolved both Houses of Parliament with an election scheduled for 2 July 2016. This will be the seventh double dissolution since Federation in 1901. The most recent double dissolution was held in July 1987.

Section 57 of the Australian Constitution sets out procedures to resolve deadlocks between the House of Representatives and the Senate. If the House passes a bill which the Senate rejects or fails to pass and, after an interval of three months, the House again passes the same

bill and the Senate again rejects or fails to pass it then the Governor-General can dissolve the Senate and the House of Representatives simultaneously. Three bills satisfied these requirements and the Prime Minister considered them vital enough to recommend to the Governor-General that a double dissolution election be called. If after the election, the House of Representatives passes the same laws and the Senate again rejects them, then the Governor-General may convene a joint sitting of the members of the Senate and the House of Representatives to deliberate and vote together on the proposed laws. If the legislation is confirmed by an absolute majority of the total number of the members of the Senate and the House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament. Since Federation there has been only one joint sitting following a double dissolution and this was in 1974.

The Prime Minister, in announcing the election, stated that *"at this election Australians will have a very clear choice; to keep the course, maintain the commitment to our national economic plan for growth and jobs, or go back to Labor, with its higher taxing, higher spending, debt and deficit agenda, which will stop our nation's transition to the new economy dead in its tracks."* Mr Turnbull noted a range of policies that were important including the Coalition's Innovation and Science agenda, the Defence Industry Investment Plan and measures to promote youth training and employment. In relation to the tax system,

Mr Turnbull commented that *"we are providing tax relief for Australian businesses with our enterprise tax plan, beginning with smaller businesses with a turnover of \$10 million or less and then working up so that after 10 years all Australian companies will be paying 25% corporate tax rather than 30, making our tax rate more competitive, providing the incentives for investment and for jobs."*

Mr Turnbull explained that the double dissolution has been *"brought about because the Senate has twice refused to pass legislation relating to the accountability of unions and employer organisations, and most critically, has twice refused to pass legislation to re-establish the Australian Building and Construction Commission. The re-establishment of that commission, in particular, which will be the consequence of us winning this election, if the Australian people so decide, that will restore the rule of law to the construction sector, which employs a million Australians. It is a vital economic reform and critical to our continued success."*

The Prime Minister concluded that *"these are exciting times for Australia. These are times for confidence, for optimism, for a clear plan and we will be seeking a mandate from the Australian people on the 2nd of July. I will be seeking a mandate from the Australian people, as the Prime Minister of this country, to carry out this plan because we know that it will lay the way, clear the way for us to have the greatest years in our history."*

The Leader of the Opposition, **Hon. Bill Shorten MP** commented that the election is *"a choice between Labor's positive plans for the*

future, and three more years of dysfunction, of dithering and of disappointment.”

Mr Shorten said that *“this election is most definitely about what I stand for and what my opponent stands for. What my party stands for, and what the Liberals stand for. My opponent has openly said that he wants to give States the right to raise separate income taxes. That he thinks that in a perfect world the Commonwealth taxes should not be used for government schools, just to fund private schools. For six months he’s toyed with Australians with the prospect of an increase of the GST by 50% and a GST to be put on everything. And in his Budget this week just past he has launched retrospective changes to the tax treatment of people’s superannuation undermining confidence in the whole superannuation system. And the centrepiece of his Budget this week was to reward millionaires with a \$17,000 tax cut, to provide \$50 billion of tax breaks to Australia’s largest companies.”*

The Leader of the Australian Greens, **Senator Richard Di Natale** commented that *“both the Liberals and Labor support new coal mines. They both support detaining innocent people in hellish camps offshore. They both lack the courage to clean up our democracy. They’re a double disappointment and this double dissolution election is an opportunity for voters to demand better.”* Senator Di Natale noted that *“the Budget put forward by Scott Morrison is a four year plan to do nothing on global warming, on creating safer pathways for people seeking asylum, or really cracking down on unfair tax breaks. Labor*

has also budgeted for a \$1 billion cut to the Australian Renewable Energy Agency, for the continuation of offshore detention and for the destruction of precious places like the Great Barrier Reef in favour of propping up the dying coal industry.”

Cabinet Secretary refuses to appear before Senate Committee

On 19 April 2016, the Senate referred to the Senate Finance and Public Administration References Committee an inquiry into the oversight of electoral funding and disclosure regimes and particularly of associated entities of political parties. What is notable about this inquiry is paragraph 2 of the reference which states that *“the Senate directed Senator Sinodinos to appear before the committee to answer questions.”*

The usual practice, outlined in Senate Standing Order 177(2) and discussed in a recent Senate Procedural Information Bulletin (SPIB), is for the committee to request the attendance of a Senator as a witness and, in the event that the Senator refuses, the committee shall report the matter to the Senate. Standing Order 177(3) provides for the Senate to order a Senator to attend a Senate committee and to give evidence to the committee. The SPIB notes that this path is taken because a committee has no disciplinary powers of its own and *“in any case, it would not be appropriate for a subsidiary body such as a committee, to have any coercive powers over members of the plenary body.”*

In this case, the Senate has made the direction, at the outset, for Senator Sinodinos to appear before the committee. The Committee’s Interim Report commented

that *“it is important to note, Senator Sinodinos’ attendance was not requested by the committee; it was directed by the Senate.”*

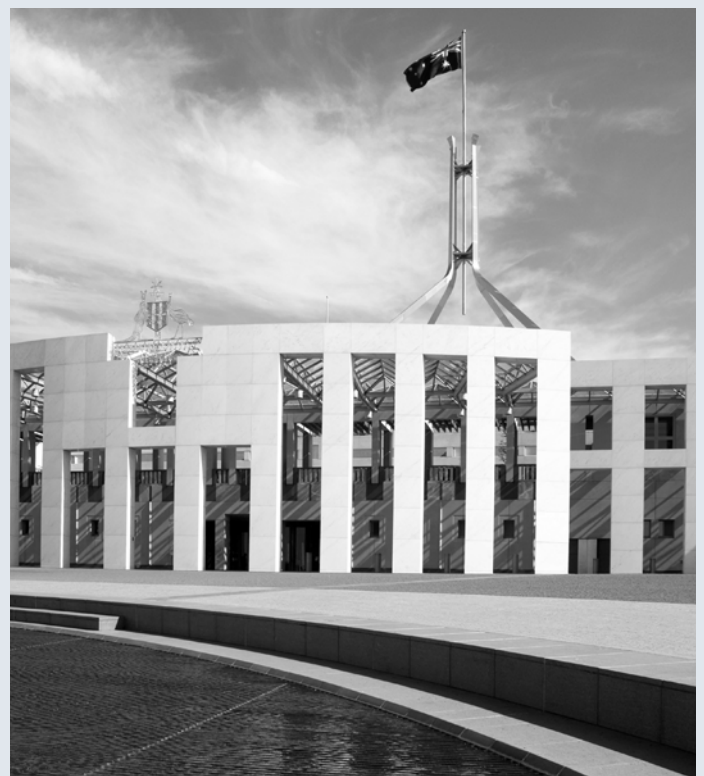
The Coalition Senators’ Dissenting Interim Report commented that *“never before has the Senate directed any of its Ministers to appear before one of its Committees. Ministers are accountable through questions with and without notice, and through the Estimates process. The motion establishing this inquiry stands without precedent and violates well-established Senate practice.”*

The dissenting report further stated that *“in conclusion, the establishment of this inquiry, the conduct of the Chair and Senator Wong at its one hearing and the content of the majority report, has been a partisan political exercise, unworthy of a Senate Committee and unworthy of further consideration by the Senate.”*

The Committee’s interim report outlined possible responses by the Senate

to Senator Sinodinos’ non-compliance including motions: requiring Senator Sinodinos to attend the Senate chamber in order to explain the reasons for his non-compliance to the Senate; directing Senator Sinodinos to attend a further hearing of the committee; referring the non-compliance with a senate order to the Senate Standing Committee of Privileges, consistent with Parliamentary Privilege Resolution 6(8); to censure Senator Sinodinos; to consider whether a contempt has been committed, under Standing Order 82; and to pursue other remedies which may be available under the Parliamentary Privileges Act 1987.

On 4 May the Senate considered and referred the matter of Senator Sinodinos’ non-compliance to the Senate Privileges Committee for inquiry. However, with the dissolution of the Senate on 9 May, the inquiry lapsed but it could be re-referred in the 45th Parliament.



THIRD READING: AUSTRALIA

Northern Australia Infrastructure Facility Act 2016

The legislation establishes the Northern Australia Infrastructure Facility which will address gaps in the infrastructure finance market for northern Australia. The Minister for Resources, Energy and Northern Australia, **Hon. Josh Frydenberg MP** commented that *"the Australian government recognises the enormous economic potential of northern Australia and is committed to its development."*

The Minister noted that *"Northern Australia has just 5.6% of Australia's population but contributes over 11% of Australia's GDP and covers over 40% of our landmass with significant agricultural, energy and resource assets. Its proximity to Asia provides an opportunity to service the burgeoning middle class in Asia. According to Ernst and Young, the Chinese middle class is expected to reach one billion people by 2030, with India's middle class reaching 475 million people by 2030. Northern Australia has great potential for economic and population growth, but it needs the right backbone economic infrastructure to drive that growth."*

The government has already committed nearly \$5 billion to transport infrastructure in Northern Australia. Mr Frydenberg noted, however, that *"despite this investment by the Commonwealth Government, infrastructure in northern Australia continues to face particular cost and service challenges, including accessing private sector financing."* The Minister explained that *"at a national level, financing of debt markets has become more dependent on bank lending, rather than longer term bonds. Infrastructure Australia has estimated that, since the 2008 global financial crisis, the capacity of the Australian financial market to fund infrastructure has halved due to the withdrawal of international finance providers. Also, constraints in the finance sector have resulted in longer tenor loans in excess of seven years becoming increasingly difficult to access for infrastructure projects."*

The Northern Australian Infrastructure Facility will seek to address these concerns. The Minister noted that *"through the facility, the government, working with the states and territories, will support the private sector to construct transformative economic infrastructure for northern Australia. This*

infrastructure will provide a basis for the longer term expansion of the economy and population in northern Australia. The facility will provide an innovative approach to the funding of infrastructure projects by offering up to \$5 billion in financial assistance to encourage and complement private sector investment. This encouragement of the private sector will ensure that economic infrastructure that otherwise would not be built, or would not be built for some time, will be delivered."

The Minister concluded that *"the objectives of the facility reflect the government's priorities for the development of northern Australia and the importance of ensuring public funds are invested responsibly and for the benefit of the wider economy."*

During debate in the Senate, **Senator Nova Peris** (Australian Labor Party) indicated her support for the legislation noting that *"the development of northern Australia should be made an absolute priority for Australia."* Senator Peris stated that *"the Northern Territory is in desperate need of meaningful economic infrastructure. We need infrastructure that can be harnessed to benefit the whole of the Territory. What does this look like? It means quarantine facilities for our fruit and vegetable exporters. It means cold storage at our ports. It means sealed and safe roads for our live cattle transport to improve access to the remote parts of the Northern Territory. It means upgrading our regional and remote airstrips and our ports. We need to ensure that we can move goods and people around in a way that is cost-effective and easy. It means adequate biosecurity measures. All of this, of course, means Australian jobs."*

Independent Senator for South Australia, **Senator Nick Xenophon** unambiguously welcomed the legislation. Senator Xenophon stated that *"it is an important step towards giving industries in northern Australia, particularly the agricultural sector, access to finance to invest in viable infrastructure projects for which they may otherwise have been unable to attract sufficient investment to get off the ground. To reflect on Senator Lazarus's speech: of course we need to make sure that the money is spent wisely and that there is accountability for that. I know that Senator Whish-Wilson in his contribution made mention of that as well in terms of having either a cost-benefit analysis or*

another transparency mechanism to ensure that the loans given are there for maximum benefit and are subject to scrutiny of how those loans work out in the longer term. The criteria for investment, all those related issues and the outcomes of those investments need to be considered as well."

Road Safety Remuneration Repeal Act 2016

The legislation repeals the Road Safety Remuneration Act 2012 and, in particular, abolishes the Road Safety Remuneration Tribunal (RSRT) and the orders that it has made. The Minister for Industry and Innovation and Science, **Hon. Chris Pyne MP** commented that the government is introducing the legislation *"because this government stands by owner drivers and mum-and-dad small businesses who just want to earn an honest living."* Mr Pyne stated that *"it has been clear for some time that the Road Safety Remuneration System, established in 2012 by the former Labor government, has demonstrated no tangible safety outcomes for the road transport industry. Two separate, comprehensive, evidence based reviews have supported this in the strongest of terms."*

The Minister noted that *"there is nothing fair or safe about the Road Safety Remuneration System and that is why the coalition government has listened to thousands of owner drivers across the country and put this very urgent bill before the House today. The refusal of the Road Safety Remuneration Tribunal to listen to reason and delay the commencement of the 2016 Payments Order in the face of widespread confusion and misunderstanding is the last straw. Around 800 submissions were made to the tribunal. Almost all of these called for a delay to the Payments Order, with many indicating that the order will negatively impact their business and, in a number of cases, put them out of business altogether. Even in the face of this evidence, the tribunal refused to delay the start date of the Payments Order to allow these small businesses time to try to comply."*

Mr Pyne commented that *"the way owner-driver trucks are financed means the family home is often at risk if the family business goes under. The tribunal is not just putting*

people out of business; they are also putting them out of their home if their business fails.”

Mr Pyne argued against the proposition that the RSRT payment order will help improve road safety. Mr Pyne commented that “there is no tangible link between paying drivers more and improved road safety. As one owner-driver explained to me, if you pay the cowboy drivers more, because they are cowboys, they will just drive more—more hours, longer distances, to get that money. This creates increased risk to road users, not safer roads.” In addition, Mr Pyne pointed out that the payments order only applies to owner-drivers. Mr Pyne stated that “road accidents involving trucks involve both owner-drivers and employee-drivers and in 84 per cent of cases are caused by the other vehicle involved, not the truck. To single one group out, effectively branding them as unsafe, is not only unfair, but it’s also wrong, and enormously insulting.”

Mr Pyne concluded that “the uncertainty is almost as crippling as the order itself, and some drivers have indicated they are parked up and will be broke within weeks. This order has nothing to do with safety and everything to do with pricing small businesses out of a market. Small businesses whose workers do not typically choose to be a member of a union—which when it boils down to it, is what the Road Safety Remuneration System has always really been about.”

The Minister commented that the RSRT is “is clearly not the body to tackle road safety.” He stated that “this is why we will ensure that the proper regulator, solely focused on safety issues, will be properly funded. We will redirect all the resources from the Road Safety Remuneration System—\$4 million each year—to the National Heavy Vehicle Regulator to ensure the tangible safety measures the industry want are given priority.”

During debate in the Senate, the Deputy Leader of the Opposition, **Senator Hon. Stephen Conroy** indicated that Labor did not support the legislation. Senator Conroy stated that “this bill seeks to abolish the Road Safety Remuneration Tribunal, a tribunal established by Labor in 2012 to make Australian roads safer by reducing the number of fatal crashes involving trucks on our roads. By abolishing the Road Safety Remuneration Tribunal, the following will be wiped out: maximum 30-day payment terms for owner-drivers; the right for both employee-drivers and owner-drivers to have a written contract setting out the terms and conditions of engagement; safe driving plans for both employee-drivers and owner-drivers so that the work is planned to be performed both safely and legally before the driver gets behind the wheel; a prohibition on deducting money from owner-drivers without express authorisation; adverse action against protection for drivers raising the hand about safety issues, including their pay; client accountability to ensure contracts conform with this order; and a requirement that transport operators have drug and alcohol policies in place.”

Senator Conroy noted that “fatality rates for the trucking industry are 12 times the national average. This makes the road transport industry the most deadly industry in Australia. Just last month, 25 people died on Australian roads as a result of heavy vehicle accidents. Yet, despite all of the evidence, those opposite continue to peddle the lie that there is no link between rates of pay and safety.”

Senator Glenn Lazarus, Leader of the Glenn Lazarus Team, indicated that he would support the legislation and the abolition of the RSRT because “owner-drivers need the right to run their businesses their own way; secondly, owner-drivers are being forced to

charge higher freight rates, which is pricing them out of the market and sending them broke.” Senator Lazarus commented that “I believe that truck drivers—owner truck drivers, in particular—are the very fabric of this country. If they stop this country stops. I am absolutely horrified about what this tribunal has handed down, in the way of an order. It, quite clearly, is not a level playing field. All this does is benefit the big end of town and the Transport Workers’ Union (TWU). Owner truck drivers will get so desperate that they will have to sell their trucks at a minimal price. Then, they will have to sell their houses, because they will have to pay off their debts and, then, they will be looking for work. The first place they will go—because all they know is driving trucks—is to the big transport companies. If you want to become a truck driver for one of those big companies you have to be a member of the TWU.”

Independent Senator for South Australia, **Senator Nick Xenophon** commented that “John Maynard-Keynes once said, ‘when the facts change, I change my mind’.... Clearly, this tribunal, which I supported in good faith back in 2012, has turned into an unmitigated disaster. The payment order that was made a number of weeks ago is one that is completely unsustainable for this sector.” Senator Xenophon stated that “the Contractor Driver Minimum Payments Road Safety Remuneration Order of 2016 shows you that this tribunal cannot be trusted in this sector. It is a tribunal that does not understand what happens in the real world with owner-operator drivers. Interestingly, two independent reports commissioned by the coalition government have shown that the RSRT is expensive and ineffective in achieving its aim—road safety.”

The legislation passed the Senate 36 votes to 32.



UGANDA PARLIAMENT OPENS UP TO ELECTRONIC BROADCASTING

For much of independent Uganda (apart from a few years serving expulsion), the legislative arm of government has followed the tradition, practices and precedents of the Commonwealth – on which sections on Parliament in the Constitution and in the Rules of Procedure were based. Even before her independence, Uganda followed the traditions of the British, who through the Imperial British East African Company (IBEAC), set up the first form of legislative administration in the country.

Uganda obtained her independence from the British in October 1962. At independence Uganda formed its First Parliament – based on multi-party politics. For the past 50 years (apart from 1971–1978 and 1985–1986), Uganda has had a legislative arm of government. Although, as stated above, Parliament had copied much from the British and the Commonwealth systems, and although it allowed print media coverage, it did not open up its proceedings to electronic media coverage until the late 1990s.

From Independence until the 1990s, coverage of the proceedings of Parliament was only done by the print media – newspapers and magazines. Limitations of this form of media amongst the population – low literacy levels and poor newspaper circulation – meant that only a few Ugandans could follow the activities of Parliament.

This situation was bound to change. In 2001, Aggrey

Awori, then a Member of Parliament from Samia Bugwe South, a constituency in Busia district in Eastern Uganda, initiated an attempt to further open up Parliament to allow for electronic media coverage. Awori, a former national athlete, photo-journalist and head of the national broadcaster, would later become government Minister for ICT. (He would also later stand for President of the country).

Noting the importance of electronic media in the dissemination of information, Awori argued that Parliament proceedings are a matter of public interest that should be disseminated as widely as possible. He proposed that the Rules of Procedure of Parliament be amended by inserting a new Rule 193, to provide that “*Parliamentary*

proceedings may be broadcast by electronic media; that is, television and radio, live or relayed, in part or whole, subject to the Speaker's permission and having due regard to the dignity of the august House.”

He added that “*the primary purpose of allowing media coverage of parliamentary proceedings is to inform and educate the general public on how Parliament works and its role in governance.*” This was before providing terms under which the coverage of broadcasts would be done.

The Motion was committed to the Committee on Rules, Privileges and Discipline, with the mandate to examine and advise the House on the amendments proposed. The same committee can also review the rules and make recommendations to

the House for amendment as it (Committee) considers necessary, for the satisfactory functioning and efficient transaction of business in both plenary and committees. Because much of the debate had been held before the motion was sent to the Committee for consideration, the Committee Report and proposed amendment were quickly passed and the new rule inserted.

Subsequently, considering that radio and TV were widespread, the Clerk to Parliament signed a Memorandum of Understanding with Uganda Television and Radio Uganda

Below: The Parliament building in Uganda.



(now Uganda Broadcasting Corporation), the national broadcaster, to televise live House proceedings. The Memorandum was signed on 12 April 2005.

With facilitation from both government and the United Nations Department of Economic and Social Affairs, Parliament sanctioned the live television and radio coverage of its proceedings but said that there was need for the live broadcast “to be executed responsibly and in a manner which preserves the dignity” of the institution. It was agreed that the live broadcasts be only for the purpose of enabling the population to follow the proceedings of the House and enhancement of its understanding of the operations of the institution of Parliament. The MOU prohibited the use of extracts or entire proceedings of the House in satire, advertisement or entertainment; as well as any commentary intended to expound or criticize any aspect of the House. Through the Memorandum, other broadcasters were free to relay House proceedings, but with the consent of Radio Uganda and Uganda Television. However, even with the amendment to the Rules and the signed Memorandum with the national broadcaster, Rule 202 (5) remained in place, preventing people from carrying cameras, tape recorders, transistor radios or any electronic devices to the gallery.

In 2011, at the start of the 9th Parliament, a decade after the original attempts, the House Rules came up for amendments yet again. In wide ranging proposals to the Rules of Procedure

of Parliament, that included the creation of new Standing Committees and Leadership arrangements on House Committees, the Committee on Rules, Privileges and Discipline recommended that the prohibition of use of electronic devices in the Chamber/gallery be scrapped. *“Due to advancement in technology, telephones and devices like iPads and iPods provide substantial information that may aid a member in contributing to the debates in the House. They also constitute useful research tools,”* read the Committee Report.

It was further argued that it may not be necessary for legislators to carry large volumes of printed materials to the House, yet the information could easily be retrieved from the electronic gadgets. The Committee recommended changes to the Rules to admit media personnel into the press gallery with electronic/ recording and transmitting devices and allow them access to functional feed for live broadcasts.

In February 2012, the limitation on carrying electronics into the gallery was lifted, permitting *“a member of the press or media accredited to Parliament to be admitted into the press gallery with an electronic device for recording and coverage purposes.”* This was intended to *“enable the press in Parliament to comply with technological advances and modern reporting practices.”*

It was also argued that since the UK’s House of Commons, had only lifted a similar restriction in October 2010, Uganda by following suit, would be a leader in innovation and democratic practice in our region.

Currently, the national/ public broadcaster, Uganda Broadcasting Corporation is joined by a number of private broadcasters to air Parliamentary proceedings both live and in news segments. Parliament’s major days of the opening of a new Session (held on first Thursday of June) when the President, according to the Constitution, delivers the State of the Nation Address; and the Budget Day (held on the second Thursday of June) are broadcast live on several television stations. Similarly, the swearing in of Members of a new Parliament (after the election held every five years) is also broadcast live on TV. In addition, selected TV and radio stations will cover sittings when visiting Presidents or Heads of State address Parliament.

Current situation

Journalists covering proceedings of Parliament have formed themselves into an Association – the Uganda Parliamentary Press Association (UPPA), through which they get assistance from Parliament and also make presentations to committees of the House on issues relating to the media. In some cases, the Association has made presentations to push for further opening up of the House. Further the Parliamentary Commission has made it a requirement that journalists need to possess university degrees in order for them to be accredited to cover Parliament. The requirement takes effect in May 2016 when the new (10th) Parliament commences.

Forty nine (49) broadcast media houses out of 71 media houses are accredited

to cover proceedings at Parliament of Uganda.

However, with all these developments, two committees of Parliament remain closed to any form of media coverage, even with persistent calls to open up one of them - the Committee on Appointments. This Committee, which is chaired by the Speaker of Parliament, is charged with approving the appointment of persons nominated for appointments by the President under the Constitution or any other appointment required to be approved by Parliament under any law. The Committee, through its Chair, is tasked to report its approval of appointments to the House. The Rules bar any debate on such a report. In addition, the Speaker communicates the Committee decision to the President within three working days after the decision has been made.

Similarly, the Business Committee, which arranges the business for each Meeting and the order in which it shall be taken, is also closed the public and media. In addition, electronic coverage will not be permitted in cases where the Speaker orders for members of the public to withdraw from the gallery.

Learning from the Parliament of Zambia, the Parliament of Uganda has initiated plans for setting up Parliament radio and television stations in order to enhance information dissemination to the public. The Parliament station is expected to broadcast parliamentary debates, committee proceedings and other programmes explaining government policies.

Employment Standards Legislation Bill: Broad support for changes to employment law

The legislation arising from the Employment Standards Legislation Bill unanimously passed its Third Reading on 10 March 2016. The Bill, first introduced in August 2015, was divided into five separate Bills in the Committee of the whole House: the Parental Leave and Employment Protection Amendment Bill, the Employment Relations Amendment Bill (No 3), the Holidays Amendment Bill, the Minimum Wage Amendment Bill, and the Wages Protection Amendment Bill.

Speaking in support of the changes, Minister for Workplace Relations and Safety **Hon. Michael Woodhouse MP** (National) said *"The real winners are New Zealand employees, who, when these Bills are passed, will have a materially improved parental leave entitlement, strengthened requirements on their employers for record-keeping and other obligations, and the end of pernicious conditions known as zero hours."*

The passing of the legislation with support from across the House was described by **Mr Andrew Little MP** (Leader, Labour) as *"a most unusual—in fact, I would say, unprecedented—occasion."*

Ms Jan Logie MP (Green) emphasised the public engagement with the contents of the legislation, noting that *"There were 12,000 submissions on the original Bill. People care, people fought for this, and it is a wonderful moment to see this House listening to the people."* The legislation was considered by the Transport and Industrial Relations Committee, and its chair, **Mr Jonathan Young MP** (National), said the

process had shown *"the great response of the select committee process that works in this Parliament."*

Mr Iain Lees-Galloway MP (Labour) discussed amendments proposed by him, as an Opposition member, which had been adopted by the House. He said that the amendments *"took this legislation from a Bill that entrenched zero-hour contracts and turned it into a Bill that eliminates zero-hour contracts ... It also means that people are going to be able to live a decent life, because they are going to be able to know when they can have a life outside of work."*

In addition to zero-hour contracts, the other major focus of the legislation was the expansion of paid parental leave. **Ms Jacinda Ardern MP** (Labour) referenced Ms Sue Moroney's Member's Bill to expand paid parental leave, which was narrowly defeated in its Third Reading in February 2015. Ms Ardern said *"I think it is widely acknowledged that the huge amount of debate and discussion on paid parental leave that we are, rightly, having in this Parliament has in a large part been driven by Sue Moroney."*

Greater Christchurch Regeneration Bill: Rebuilding after disaster

The Greater Christchurch Regeneration Bill passed its Third Reading on 31 March 2016, establishing a new body, Regenerate Christchurch, to carry out the functions and exercise the powers provided for in the legislation. The Bill repeals the Canterbury Earthquake Recovery Act 2011 and aims to support the regeneration of greater Christchurch



THIRD READING: NEW ZEALAND

following the damage caused by the 2010 and 2011 earthquakes.

In a media release, Minister for Canterbury Earthquake Recovery **Hon. Gerry Brownlee MP** (National) stated *"When we passed the CER Act in 2011 we were responding to a national disaster, with significant loss of life and massive damage to houses, commercial buildings and infrastructure ... almost five years on, it is time for this form of extraordinary legislation to be replaced, so that we can continue to progress in a new way."*

This "new way" means a transition to a more locally led arrangement for the rebuild and recovery of Christchurch, a move widely supported across all parties. **Dr Megan Woods MP** (Labour) said *"Our position has been very clear right from the beginning on this piece of legislation when it came to the House for its first reading. This had to be a piece of legislation that fulfilled the desire that was clearly evident in Christchurch for a locally led recovery."*

Although neither Labour nor the Greens supported the Bill when it was reported back from the select committee, both parties went on to support the legislation as amended, with **Mr Kris Faafoi MP** (Labour) saying *"I acknowledge the part that the Government has played and that it has been willing to work to a consensus where everyone in this House is happy with the legislation."*

However, **Ms Jan Logie MP** (Green Party) expressed concern about the powers given to Government Ministers: *"We are, and we do, remain unhappy with the retention of extended powers for a range of Government Ministers, which is present in clause 42 and enables them to override district or regional plans under the Resource Management Act or the Local Government Act, plans or bylaws, or regional transport plans. We think that degree of power is unnecessary at this stage."*

The Green Party spoke also of the need for the regeneration of Christchurch to have an environmental focus, with **Ms Eugenie Sage MP** (Green Party) noting that *"making Christchurch a more resilient city must involve planning for climate adaptation, planning for sea-level rise. That must be a central part of the regeneration planning and it must ensure that we have commercial and residential buildings and infrastructure development taking better account of sea-level rise, better account of more extreme weather events."*

Mr Denis O'Rourke MP (New Zealand First) added *"I think [the Bill] will ensure a very robust process, focusing, as it must, on regeneration, and I think it will mean that we will get a proper balance between redevelopment and the wider public interest, especially the public's interest in achieving an excellent environment and a vibrant and viable community."* **Mr Matt Doocey MP** (National) praised the Government's inclusion of social well-being as a purpose of regeneration, noting that *"it was great to see the Government respond with an extra \$20 million recently for mental health services."*

Te Pire mō Te Reo Māori / Māori Language Bill: Revitalising Indigenous Language

Te Pire mō Te Reo Māori / the Māori Language Bill passed its Third Reading on 14 April 2016. The Bill was drafted following a review of the Government's Māori Language Strategy, which was initially developed in 1998. Speaking in Te Reo Māori at the Second Reading of the Bill on 9 March 2016, Minister for Māori Development **Hon. Te**

Ururoa Flavell MP (Leader, Māori Party) said *"The introduction of this Bill in 2014 was a response to the view that the Māori Language Act 1987 had become less effective in fulfilling aspirations for Māori language revitalisation."* The review found that re-establishing Te Reo Māori in homes was the key requirement for Māori language revitalisation.

Te Pire mō Te Reo Māori replaces and updates a range of legislation relating to Te Reo Māori. It affirms Te Reo Māori as an official language of New Zealand and a taonga (treasure) guaranteed to iwi (tribes) and Māori by the Treaty of Waitangi. It strengthens provisions guaranteeing the right to speak Te Reo Māori in legal proceedings. It also establishes a board, Te Mātāwai, as an independent statutory entity to provide leadership on behalf of iwi and Māori in their role as kaitiaki (guardians) of Te Reo Māori. Te Mātāwai will take over direction of the Māori language commission and Māori television and broadcasting services.

Te Pire mō Te Reo Māori is notable for being the second piece of legislation in New Zealand that is published in both Te Reo Māori and English. **Ms Louisa Wall MP** (Labour) noted that *"it [is] actually a time for celebration, because we, today, have a Bill that is in English and Te Reo."* In the Second Reading debate, **Mr Nuk Korako MP** (National) explained *"This is very significant, as there has been only one other Bill where the text is in both Māori and English; however, this is the first Bill where both languages are of equal validity. If the meaning between the Māori and English is contested, it is the Māori version that will take precedence."*

New Zealand Members of Parliament may speak in both Te Reo Māori and English in the House, and all debates on the Bill saw many members of Parliament speak in Te Reo Māori. Speaking in Māori in his First Reading speech on the Bill, **Hon. Dr Pita Sharples MP** (Former Leader, Māori Party) said *"As an introduction, speak the language! The Māori language is a treasure of tribes and Māori people and an important part as well of the cultural identity of all New Zealanders."*

Hon. Nanaia Mahuta MP (Labour) said, in Te Reo Māori, *"In my personal view, if you have the language of your ancestors in your heart, that is where the revitalisation of our language will begin from. Even if this Bill is mandated, the manifestation of these aspirations of our ancestors is really within the family and the support of the tribe for future generations."*

Also speaking in support of the Bill in the Committee of the Whole House, **Ms Marama Davidson MP** (Green Party) said *"While the Te Pire mō Te Reo Māori / Māori Language Bill is not the be-all and end-all of our Reo journey, it is important. It is important because the Crown needs to maintain a responsibility to put back what was taken away, not just from Māori but from our whole nation."*

However, speaking in opposition to the Bill, **Mr Pita Paraone MP** (New Zealand First) said *"I do not, for one moment, think that we need to depend on this Bill to revitalise the use of Te Reo. I would suggest to those of us in this House who are Māori that if we go home to the wā kāinga, go home to our marae, there you will learn your Reo. We do not need legislation for us to increase the number of Te Reo speakers."*

Te Pire mō Te Reo Māori passed its Third Reading with 104 votes in favour and 11 votes against.

SECONDARY LEGISLATION, THE QUEEN'S SPEECH AND A NEW LORD SPEAKER ELECTED

Secondary Legislation

Secondary, or delegated, legislation has been an unlikely topic of prominence in Westminster in recent months. The majority of statutory instruments, which cannot be amended, require approval by both Houses – usually a process involving little attention even within the UK Parliament, let alone in the outside world. However, following a row over the House of Lords' decision in October 2015 to decline to

approve controversial cuts to tax credits, secondary legislation, and the scrutiny by Parliament thereof, has become a key battleground within Parliament.

In response to the high profile defeat the Government warned of a 'constitutional crisis', arguing that two key Parliamentary conventions enshrining the primacy of the House of Commons had been broken.

First, that the House of Lords should only reject

statutory instruments in 'exceptional circumstances'. And secondly, that the views of the elected House on matters of spending and taxation should prevail. The Government then asked Lord Strathclyde, a former Leader of the House of Lords, to lead a review into "how to secure the decisive role of the elected House of Commons in relation to its primacy on financial matters, and secondary legislation."

Lord Strathclyde reported in December 2015, putting forward three options: to remove the House of Lords from the secondary legislation scrutiny process entirely; to retain the present role of the House of Lords but clarify the restrictions on how its powers should be exercised; or to legislate for a new procedure by which the House of Commons would be guaranteed the final say on secondary legislation.

In the following months, four select committees criticised the report's recommendations. The House of Commons Public Administration and Constitutional Affairs Committee argued against a legislative option, arguing that legislation would be "an overreaction and entirely disproportionate to the House of Lords' legitimate exercise of a power that...is rarely used."

The House of Lords Constitution Committee agreed and went further in saying the issues went much wider: "the Strathclyde

Review was asked the wrong questions by the Government. The role of the House of Lords in rejecting the tax credits regulations was not about the House of Lords versus the House of Commons; it was about Parliament scrutinising the Government."

This was a view shared by the House of Lords Delegated Powers and Secondary Legislation Scrutiny Committees, who said that implementing any of the report's recommendations would have the effect of tilting "the balance of power away from Parliament generally and towards Government." All four reports called for urgent consideration instead of the increased use of secondary legislation to implement policy objectives and of how to improve scrutiny in both Houses.

The Government have not yet formally responded to the Strathclyde report and the Queen's Speech, which sets out the Government's programme for the session ahead, gave few clues. But with its reference to the Government's intent to uphold "the primacy of the House of Commons", it seems that, one way or another, there remains plenty of life in the debate in this area.

Queen's Speech

It had been widely expected that the Government would delay the State Opening of Parliament and the start of the next Parliamentary session until after the referendum on



the UK's membership of the European Union on 23 June. But on 18 May, a month after her 90th birthday, the Queen opened the UK Parliament for the 61st time in her reign. In her speech she announced a number of new bills which the Prime Minister, **Rt Hon. David Cameron MP** said showed the Government was leading a *"progressive, One Nation"* Government which was *"using the opportunities presented by Britain's strengthening economy to increase life chances for the most disadvantaged."*

The Leader of the Opposition, **Rt Hon. Jeremy Corbyn MP** was combative in response saying *"if anyone wants to deliver a more equal society, an economy that works for everyone and a society where there is opportunity for all, it takes an active government to do it, not the driverless car heading in*

the wrong direction that we have with this Government at the present time."

The Bills announced in the speech included reforms to prisons, the care system, adoption and to universities. Other measures aimed at strengthening the economy included the development of spaceports, self-driving vehicles (hence the Leader of the Opposition's quip) and commercial drones as well as a right to fast broadband connections.

The decision on Britain's membership of the European Union got barely a mention in the Speech, with most energies in the referendum debate being deployed outside of Parliament. The European question came to the fore in the subsequent debate on the Speech, though, with Eurosceptic Conservative MPs and the Labour Opposition combining to pass

an amendment expressing regret at the absence of a bill to remove the NHS from the scope of a proposed EU-US trade deal which they fear would put the NHS at risk of privatisation. By accepting the amendment the Government managed to avoid what looked set to have been the first Government to be defeated on their legislative programme since 1924.

Lord Speaker Election

In February 2016, **Baroness D'Souza**, Lord Speaker since September 2011, announced that she would not be re-standing for election. Lady D'Souza is the second Lord Speaker of the UK Parliament, a post created in 2006 to serve as presiding officer in the House of Lords.

Three candidates stood in the election to replace her: **Lord Fowler**, who served in the Cabinet under Margaret

Thatcher; Conservative peer **Lord Cormack**, a long-standing Member of the House of Commons; and **Baroness Garden of Frognal**, a Liberal Democrat who served as a whip and government spokesperson during the coalition government.

The results were announced on Monday 13 June and the successful candidate was Lord Fowler who received 443 out of 639 votes cast. Lord Fowler will take up his new post as Lord Speaker on 1 September 2016.

Please turn to page 160 to read an article by the outgoing Lord Speaker.

Below: Her Majesty The Queen has opened the UK Parliament many times during her reign. This occasion was in 1977.





President Address to Parliament

The 2016 Budget Session of Parliament commenced on 23 February 2016 with the Presidential Address to the members of both Houses of Parliament assembled together in the Central Hall of Parliament. In his Address, the President of India, **Shri Pranab Mukherjee** said Parliament reflected the supreme will of the people and democratic temper called for debate and discussion, not disruption or obstruction. He urged all MPs to discharge their solemn responsibilities in a spirit of cooperation and mutual accommodation.

The President said the government's development philosophy was *Sabka Saath Sabka Vikas* (together with all, development for all) and the overriding goal was to eradicate poverty. The focus was on the welfare of poor, farmers and jobs for the youth. The government was trying hard to make this possible through financial inclusion and social security. The government was working towards a second green revolution to fully harness the agricultural potential of eastern States and recently launched farmer crop insurance scheme the Pradhan Mantri Fasal Bima Yojana, with the biggest-ever Government contribution to crop insurance and with lowest-ever premium rates for farmers. Maintaining the well-being of farmers was vital to nation's prosperity and the President said food security cover had doubled since 2015.

Highlighting the welfare measures taken by government, the President said the innovative initiatives of the government helped India jump 12 places in the latest rankings by World Bank on

'*Ease of Doing Business*'. India was a haven of stability in an increasingly turbulent global economy. The government fostered competitive cooperation among various states to enhance Ease of Doing Business. The state governments were being encouraged and supported to simplify procedures, introduce e-enabled processes and invest in infrastructure to improve investment climate. The GDP growth had increased, making India the world's fastest growing economy. The '*Make in India*' initiative had achieved 39% increase in FDI inflow despite adverse global investment climate. Inflation, fiscal deficit and current account deficit had all decreased and India had recorded the highest ever foreign exchange reserves in 2015. Several steps were taken to put in place a simplified, progressive and non-adversarial tax regime by incorporating internationally prevalent best practices in tax administration.

The President said the government aimed at creating an educated, healthy and clean India. The government was committed to providing housing for all by 2022. The government took several measures to eliminate the scope of corruption and was unsparing in punishing those who were found guilty of corruption. The concerted efforts of the government to tackle the menace of '*black money*' had started yielding results. The Government firmly believed that economic development and environmental protection could co-exist.

The President said India believed in a secure and prosperous future for its neighbourhood. India was committed to forging a mutual

respectful relationship with Pakistan and creating an environment of cooperation in combating cross border terrorism. India remained at the forefront of the global fight against terrorism. The President said terrorism was a global threat and strong counter-terrorism measures were necessary worldwide to eradicate it completely. Sustained Indian efforts led to concrete action for reforming the UN Security Council. India also provided strong leadership and new vision to regional and international groupings like BRICS, G-20, WTO, East Asia Summit, ASEAN and the SCO.

Moving the Motion of Thanks on the President's Address on 24 February 2016, **Smt. Meenakshi Lekhi** (BJP) said the '*Make in India*' programme of the government with emphasis on the development of infrastructure, railways, defence, and telecom sectors would transform India. She described the Pradhan Mantri Fasal Bima Yojana was a game changer in the field of agriculture, especially for those poor farmers who never received full compensation. The foreign direct investment almost doubled and despite adverse international conditions, Indian economy was poised to grow at seven per cent per annum. Seconding the Motion, the Minister of Food Processing Industries, **Smt. Harsimrat Kaur Badal** said in 19 months, India became the fastest growing economy in the world. Narrating the various achievements of the government she said transparency and honesty was the hallmark of the government. In order to make farmers prosperous more attention should be

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given to agriculture and food processing industry.

The leader of the INC in Lok Sabha, **Shri Mallikarjun Kharge**, participating in the resumed debate on 25 February 2016, alleged that the programmes mentioned in the President's Address were old ones repacked with new names. He said the schemes publicized by the BJP government to gain media attention were started by the previous UPA Government. He claimed that the pace of poverty alleviation was fastest ever during 2005-2012, under the Congress-led UPA government. Stating that the government lacked any firm and effective policy to deal with cross border terrorism, he wanted the government to ask America the reason for supplying F-16 fighter planes to Pakistan.

Giving a detailed account of the achievements of the government, the Minister of Urban Development, Minister of Housing and Urban Poverty Alleviation and Minister of Parliamentary Affairs, **Shri M. Venkaiah Naidu** said a new momentum had been generated in the country and no one should try to derail that momentum. India's reputation had gone up in the world and there was growing support for India's claim to the UN Security Council membership.

Shri P. Nagarajan (AIADMK) said the Pradhan Mantri Jan Dhan Yojana was world's most successful financial inclusion programme. The programme went beyond mere opening of bank accounts to becoming a platform for poverty eradication by offering basic financial services and security to the poor. He requested

the government to create a separate ministry for fisheries.

In the resumed debate on 26 February, **Shri Sultan Ahmed** (AITC) said the government had failed to implement the Food Security Act and asked the government to reveal the number of youths who got employment during the past 19 months. While farmers were in a distressed situation, the government was writing off huge bank loans owed by big industrialists. **Shri Bhartruhari Mahtab** (BJD) pointed out that there was despair among youths and the manufacturing sector was not picking up, which could have generated massive employment.

Replying to the debate on 3 March 2016, the Prime Minister, **Shri Narendra Modi** thanked the Speaker, **Smt. Sumitra Mahajan** for her initiative to organize a conference of all the elected women legislators of Legislative Bodies in India which was held on 5 and 6 March 2016. The Prime Minister said the House was meant for discussion and when Parliament did not function, the nation suffered and MPs suffered more as they were not able to discuss issues of public interest. The Prime Minister appealed to the entire opposition to extend their support for the passage of important bills in Parliament saying these legislations were in the interest of the people. He also stressed the need for focusing on primary education and water conservation.

The Prime Minister proposed that only women MPs might speak in the House on 8 March to mark International Women's Day. He also suggested for choosing a

week in one or two sessions in a year when only first-time MPs should be allowed to speak to develop fresh ideas. During a session all MPs, cutting across party line, could sit an extra day on Saturday to discuss issues related to humanity like SDGs.

The Prime Minister asserted that his government was making efforts to strengthen the National Rural Employment Guarantee Act by plugging the loopholes. Following the recommendations of the 14th Finance Commission, states were being provided more financial resources from 2015-16 onwards. He was of the view that the government must repose faith in the citizens, and not leave them in the hands of bureaucracy and it was incumbent upon MPs to increase the accountability of the Executive. The Prime Minister sought the help and cooperation of members in efforts to improve the condition of people.

The motion was debated for 12 hours 50 minutes. At the end of the debate, all the amendments moved were negated and the motion was adopted.

The Rajya Sabha also discussed a motion of Thanks on the President's Address to Parliament. The Prime Minister replied to the debate on 9 March 2016. The motion, however, was passed with an amendment moved by the Leader of the Opposition in Rajya Sabha, **Shri Ghulam Nabi Azad** "*regretting that the Address does not mention that the Government is committed to securing the fundamental right of all the citizens to contest elections at all levels, including to Panchayats (local elected bodies) to further strengthen the foundations of democracy, which also forms*

part of the basic structure of the Constitution." (See article on Challenges to the President's Address on page 137).

Celebrating International Women's Day

On 8 March 2016, on the occasion of International Women's Day, the Speaker, Lok Sabha, **Smt. Sumitra Mahajan** greeted the members of Lok Sabha. She informed the members that women legislators from the States, Union territories and women MPs from Lok Sabha and Rajya Sabha participated in the National Conference of Women Legislators held in New Delhi on 5 and 6 March 2016 (see page 162 for report).

The Conference adopted a resolution calling upon the women legislators to strive for ensuring the qualitative participation of the greatest number of women in the process of decision-making, nation building and development work in all walks of life and committing towards removing all obstacles in the path of achieving these objectives.

The Speaker, Lok Sabha hoped that all MPs, on the occasion of International Women's Day, would extend their support to the objectives of the Conference as she believed that ensuring greater access to women in the sphere of education, social inclusion and nation building would ensure the prosperity of entire family and the country.

Speaking on the occasion, the Chairperson of the UPA and the President of the INC, **Smt. Sonia Gandhi** said over the past six and a half decades, women had made many striking achievements

in different fields, which was quite remarkable, considering the obstacles they faced. Women, however, continued to be victims of oppression and discrimination. The mandatory reservation of seats for women in local elected bodies resulted in having over 40% of women among the elected representatives in urban and rural local bodies. This she believed was nothing short of a revolution. While there was much in Indian tradition to cherish and to preserve, all must have the courage to confront and fight against social evils. Women legislators, must join hands with male colleagues in a concerted campaign to change the mindset that underlined these practices. She wanted the government to pass the long awaited Women's Reservation Bill.

Highlighting the problem of bride trafficking, **Smt. Pratyusha Rajeshwari Singh**

(BJD) asked for providing justice to the victims of bride trafficking where girls and women were kidnapped or lured into and sold, raped and/ or married off without their consent.

Smt. Bhavana Pundalikrao Gawali (Shiv Sena) requested the government to reserve for women 33% of seats at the graduate and post graduate level courses to enable them to go for higher studies. Women needed to be empowered economically to command respect in society. **Smt. Kavitha Kalvakuntla** (TRS) was of the view that good decisions in favour of women were taken only when a woman occupied a position to make decision. Women of the country could prosper if all worked in a focused manner and started providing education to girls. **Smt. P.K. Sreemathi Teacher** (CPI-M) said the status of women was one of the main yardsticks to measure the development of a country. Bemoaning the

low women representation in the Lok Sabha, she wanted an assurance from the government on the enactment of the Bill providing for reservation of seats for women in elected legislative bodies.

Smt. Meenakashi Lekhi (BJP) said the fifth goal of the Sustainable Development Goals (SDG) set out by the UN related to gender equality and women empowerment. The inadequate representation of women in parliamentary committees was an oversight and needed to be corrected. **Smt. Jayshreeben Patel** (BJP) suggested for providing 30% reservation for women in all ministries and departments of the union government and giving opportunity daily to women MPs to speak in the House. **Smt. M. Vasanthi** (AIADMK) requested the union government to increase the funds available under the Member of Parliament Local Area Development (MPLAD) Scheme so that MPs would be

able to help women in the rural areas in a better way.

The Minister of Urban Development, Minister of Housing and Urban Poverty Alleviation and Minister of Parliamentary Affairs, **Shri M. Venkaiah Naidu** (BJP) said women could excel if they were given the opportunity. Women still faced discrimination despite the existence of various laws and this required a change in the mindset of people. Education of girls was of utmost importance and the government had taken several steps in this regard. The Minister observed there had to be a social change, economic and political empowerment of women. Responding to the concern that there was no adequate representation of women in parliamentary committees, **Shri Naidu** said he would request the respective parties to suggest the names of female members for membership of such committees.

The Atomic Energy (Amendment), 2014

The Atomic Energy Act, 1962 empowers the Central Government of India to produce, develop, use and dispose of atomic energy either by itself or through any authority or corporation established by it or by a Government company and carry out research in any matters connected therewith.

At present, only two Public Sector Undertakings (PSUs), namely, Nuclear Power Corporation of India Limited (NPCIL) and Bhartiya Nabhikiya Vidyut Nigam Limited (BHAVINI), which are under the administrative control of Department of Atomic Energy, are operating nuclear power plants in the country. Formation of Joint Venture companies by NPCIL with other PSUs of India for civil nuclear power projects is under consideration to meet the additional funding requirements for expending nuclear power programme and augmenting the nuclear power generation capacity of India.

The expression 'Government company' had been defined in the Act to mean a company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government. The Act thus precludes a Government company

from entering into Joint Ventures with other PSUs for the above said purposes for the reason that any Joint Venture company formed by two PSUs might not be subject to the control of the Central Government as a shareholder.

The Government accordingly brought forward the Atomic Energy (Amendment) Bill, 2015 to overcome this difficulty. During discussion on the Bill in both Houses of Parliament broadly the measure has been welcomed.

The Minister-in-charge of the Bill while replying to the debate inter alia observed that India is the world's biggest storehouse of thorium. But its fullest potential is yet to be exploited. In regard to safety concern, the Minister observed that there is absolutely no compromise on the priority given to the victim. Secondly, the liability of the operator to the supplier had been kept intact so that the operator can also claim it. Further, there is a proper scientific methodology of dealing with the spent fuel. Minister also assured that as far as entry of the private sector or foreign company is concerned, that has not been granted.

The Bill was passed by Lok Sabha on 14

December 2015 and by Rajya Sabha on 23 December 2015. The Bill passed by both Houses of Parliament was assented to by the President of India on 31 December 2015.

The Arbitration and Conciliation (Amendment) Bill, 2014

The general law relating to arbitration is contained in the Arbitration and Conciliation Act, 1996. The Act, which is based on the UNCITRAL Model Law on International Commercial Arbitration, as adopted in 1985 by the United Nations Commission on International Trade Law (UNCITRAL), applies to both international as well to domestic arbitration.

The Act was enacted to provide for speedy disposal of cases relating to arbitration with least court intervention. With the passage of time, some difficulties in the applicability of the Act had been noticed. Interpretation of the provisions of the Act by courts in some cases had resulted in delay of disposal of arbitration proceedings and increase in interference of courts in arbitration matters, had been seen to tend to defeat the object of the Act. With a

THIRD READING: INDIA

view to overcome the difficulties, the matter was referred to the Law Commission of India, which examined the issue in detail and submitted its 176th Report. On the basis of the said report, the Arbitration and Conciliation (Amendment) Bill, 2003 was introduced in the Rajya Sabha on 22 December 2003. The said Bill was referred to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice for examination and Report. The said Committee, submitted its Report to the Parliament on 4 August 2005, wherein the Committee recommended that since many provisions of the said Bill were contentious, the Bill might be withdrawn and a fresh legislation may be brought after considering its recommendations. Accordingly, the said Bill was withdrawn from the Rajya Sabha.

On a reference made again in pursuance of the above, the Law Commission examined and submitted its 246th Report on "*Amendments to the Arbitration and Conciliation Act, 1996*" in August 2014 and recommended various amendments in the Act. The proposed amendments to the Act would facilitate and encourage Alternative Dispute Mechanism, especially arbitration, for settlement of disputes in a more user-friendly, cost effective and expeditious disposal of cases since India is committed to improve its legal framework to obviate delay in disposal of cases.

As India had been ranked at 178 out of 189 nations in the world in contract enforcement, it was felt that it was high time that urgent steps are taken to facilitate quick enforcement of contracts, easy recovery of monetary claims and award of just compensation for damages suffered and reduce the pendency of cases in courts and hasten the process of dispute resolution through arbitration, so as to encourage investment and economic activity.

As Parliament was not in session and immediate steps were required to be taken to make necessary amendments to the Arbitration and Conciliation Act, 1996 to attract foreign investment by projecting India as an investor friendly country having a sound legal framework, the President in exercise of his powers under article 123 of the Constitution of India promulgated the Arbitration and Conciliation (Amendment) Ordinance, 2015.

Thereafter, the Government introduced

in Lok Sabha the Arbitration and Conciliation (Amendment) Bill, 2015 to replace the Arbitration and Conciliation (Amendment) Ordinance, 2015. The amending measure found a broad consensus among members during discussion on bill in both Houses of Parliament. The Bill was passed by Lok Sabha on 17 December 2015 and by Rajya Sabha on 23 December 2015. The Bill as passed by both Houses of Parliament was assented to by the President of India on 31 December 2015.

The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2014

The proposal to provide for speedy disposal of high value commercial disputes had been under consideration of the Government of India for quite some time. The high value commercial disputes involve complex facts and question of law. A need was, therefore, felt to provide for an independent mechanism for their early resolution. A considered view was also taken that early resolution of commercial disputes would create a positive image to the investor world about the independent and responsive Indian legal system.

The Law Commission of India in its 188th Report had recommended the constitution of the Commercial Division in each High Court. Accordingly, the Commercial Division of High Courts Bill, 2009 was introduced and passed by the Lok Sabha. However, during the discussion of the aforesaid Bill in the Rajya Sabha, some Members raised certain issues and in view thereof, the matter was again referred to the Law Commission of India for its examination. The Law Commission of India, in its 253rd Report, had recommended for the establishment of the Commercial Courts, the Commercial Division and the Commercial Appellate Divisions in the High Courts for disposal of commercial disputes of specified value.

Based on the recommendations of the Law Commission made in its 253rd Report, a Bill namely, the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 was introduced in the Rajya Sabha on 24 April 2015 and the same thereafter, went for the consideration of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice. As provided in the said Bill, 2015, all the suits, appeals or applications related to commercial disputes of

specified value i.e. one crore or above, are to be dealt with by the Commercial Courts or the Commercial Division of the High Court.

By way of the Delhi High Court (Amendment) Act, 2015, the ordinary original jurisdiction of the Delhi High Court had been increased from rupees twenty lakhs to rupees two crore and there is a provision for transfer of pending case from the Delhi High Court to District Courts. On the enactment of Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015, some of the Commercial Disputes which are to be transferred to the District Courts from the Delhi High Court may again be required to be transferred to the Commercial Division of the High Court of Delhi. This tend to cause delay in the disposal of cases as well as inconvenience to the parties and counsels. Under the circumstances, it became necessary that the provisions of the Delhi High Court (Amendment) Act, 2015 and establishment of the Commercial Courts and Commercial Division of the High Courts be brought into force simultaneously.

As Parliament was not in session and urgent steps were needed to be taken, the Commercial Courts, Commercial Division and Commercial Appellate Division in High Courts Ordinance, 2015 was promulgated on 23 October 2015, by the President of India in exercise of his powers under article 123 of the Constitution.

The Government, therefore, brought forward the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 to replace the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Ordinance, 2015. The Minister-in-charge of the Bill while replying to the debate inter alia observed that the purpose of the bill is to accelerate economic growth, improve the international image of the Indian justice delivery system and the faith of investor world in the legal culture of the nature. Commercial disputes require better understanding and specialization. By taking away commercial matters from normal courts, such matters can be dealt quickly and speedy disposal of the cases can be brought about.

The Bill was passed by Lok Sabha on 16 December 2015 and by Rajya Sabha on 23 December 2015. The Bill as passed by both Houses of Parliament was assented to by the President of 31 December 2015.

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Commonwealth Parliamentary
Association, CPA Secretariat,
Suite 700, Westminster House,
7 Millbank, London SW1P 3JA,
United Kingdom

Tel: (+44-20) 7799-1460
Fax: (+44-20) 7222-6073
Email: hqsec@cpahq.org
www.cpahq.org

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