

# HISTORICAL DEVELOPMENT OF BICAMERALISM: INTERNATIONAL AND NATIONAL PERSPECTIVE

~ Kulwinder Singh Gill\*

## Abstract

*Bicameral system is very significant for a country especially democratic and well-functioning of a government to check upon the arbitrary system of the Government which may be because of unicameral system. This paper delves into the study of origin of bicameral system around the globe and in India. The paper analyses how bicameralism came into existence and how far philosophical foundations have impact on the current bicameral system existing around the globe. Bicameral system is most appropriate for the parliamentary form of government which history had proved that unicameral system could not create a fair and balanced government. The paper argues the ideas of various philosophers especially the doctrine of separation of powers propounded by Montesquieu and its relevance in today's bicameral system.*

**Keywords:** Systems of Government, Bicameralism, Doctrine of Separation of Powers.

---

## Introduction

There is a variety of parliamentary systems around the globe and forms of government also vary. India has adopted parliamentary form of government. The parliamentary system of government, which is also known as the Cabinet Government, is based on close relationship between the executive and legislature. The parliament of India is splendid manifestation of democratic philosophy of our country. Indian parliament has evolved as multidimensional body which performs various functions and nurtures the participatory democracy. Our parliament is a significant toll of social change and development through progressive legislation and meaningful and paves the way for good governance which is basic principle of basic structure.<sup>1</sup>

Origin of any concept is very significant in respect to knowing the nature and role of second chamber. The second chamber if we will look into properly was adopted by the British Government as charted out in the historical background. Second chamber is required in the parliamentary system because it has many usages which plays very significant role in governance system fairly. Philosophical discussions on the origin of the bicameral system

---

\* Former Assistant Professor of Law at K R Mangalam University, Gurugram. LLM in International and Comparative Law from the West Bengal National University of Juridical Sciences, Kolkata.

1 Sudhir Krishnaswamy, *Democracy and Constitutionalism in India: A Study of Basic Structure Doctrine* 5 (Oxford University Press, 2009).

unveils the benefits and reasoning behind adopting the bicameral system. The rationale for having a Second Chamber for a Parliament and its status and role in the body polity, has been one of the vexed questions in the history of democratic governance. Views and opinions, for and against the Second Chamber, have been aplenty – mostly sharply divided.<sup>2</sup> While the protagonists of the bicameral system have emphasized the need for having a Second Chamber as a safeguard against the possible tyranny of a unicameral Legislature, the critics have dismissed its existence as being inherently undemocratic and subversive of the will of the people expressed through the directly elected Lower House. The merits and demerits of the Second Chamber notwithstanding, the fact remains that about one-third of the Parliaments of the world today have Second Chamber, for one reason or the other.<sup>3</sup>

The present paper deals with the historical development of the Bicameral system around the globe. Part I provides an illustration of the kinds of legislatures. Part II of the paper illustrates the origin of pre-Bicameralism institutions in ancient Greece and Rome. Part III charts out the historical development of two houses of parliament in United Kingdom including the theory of separation of powers. Part IV deals with the historical development of Senate in United States of America. Part V of the paper provides an insight into historical development of Rajya Sabha in Indian Parliamentary system by giving an account of constituent Assembly debates. Part VI of the paper concludes on the basis of above discussions.

## **Kinds of Legislatures**

### **A. Unicameralism**

In unicameral system there is only one legislative house. The word unicameral has been derived from Latin term that means Uni meaning “one” “camera” means “chamber, therefore, unicameralism means one house legislative system. There are number of countries having unicameral system including Denmark, Hungary, Turkey and Sweden. The unicameralism was more popular during the 20<sup>th</sup> Century and there are number of countries which switched from bicameral system to unicameral in those Greece, New Zealand and Peru are important.<sup>4</sup>

Structure of the nation also having significant impact and more than size of the nation impacts more. Small nations with long established democracies prefer unicameral system

---

2 Dr. V K Agnihotri, Second Chamber in Indian Parliament: Role and Status Of Rajya Sabha, Rajya Sabha 2009.

3 *Ibid.*

4 Majambere, E, “Bicameralism or unicameralism: the case of the United Kingdom and Uganda” 12(4) *European Journal of Law Reform*, 417 (2010).

over bicameral system. So far as the law-making process is concerned, it is somewhat similar both in unicameral and bicameral. Though sometimes it is considered the role of the second chamber is not clear where the law can be enacted in single chamber as well.<sup>5</sup> There are various merits and demerits of unicameral system. One of the main merits of unicameral system it sums up the law-making process in one go, whereas in bicameral system it takes long time because the same process is followed in second chamber. So, it becomes tedious, lengthy and time consuming in bicameral system. Unicameral system is boon especially during the times of emergency because laws can be passed in little time and also inexpensive in nature.<sup>6</sup> If we look at the countries with legislative bodies around the globe, more or less two-third having unicameral system whereas rest of the countries are bicameral systems. Majority of the nation's elect members of legislative house directly. Even China is having unicameral system. Apart from merits, there are number of demerits of unicameral system which it may prone to like arbitrary legislation and will promote the chaos in the society and also may lead to corruption and secrecy.<sup>7</sup>

### **B. Multi-Cameral System**

In this system of legislature there may be three or four legislative houses three houses are called as "tri-cameralism" and four house legislative system is called as "tetracameralism". There are very conspicuous examples of tricameral system which was established in French system.<sup>8</sup> The most renowned example of tricameralism in history is certainly that which characterised the French *Ancien Régime*, where the States-General were divided into three assemblies, the first representing the clergy, the second the aristocracy and the third the commoners.

As the French Revolution was over, the three-chamber legislative system was reinstated from 1799- 1804 during French Consulate. Together with the *Corps législatif*, which was the successor of the Council of Elders (thus the equivalent of an upper chamber) and the *Tribunat*, successor of the Council of Five Hundred (the equivalent of a lower chamber), a *Sénat conservateur* was established and endowed with the power to protect the Constitution from legislative acts.<sup>9</sup>

---

<sup>5</sup> *Ibid.*

<sup>6</sup> *Supra* Note 4.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

In 1807, the *Tribunat* was abolished and it became bicameral system with two houses. Republic of Croatia was having tricameral system till its independence in 1990 and introduced Bicameral system through Constitution of 1990.<sup>10</sup>

Another recent example of Tricameral system can be taken from 1983 Constitution of South Africa, which was consisting of three chamber or sometimes it was called as tricameral constitution. Tri-system was part of apartheid policy of the state and it was representing three races in the Nation. These chambers were: the House of Assembly was reserved for whites, the House of Representatives for blacks, and the House of Delegates for Indians.<sup>11</sup> Though later it was abolished and it became bicameral system with the adoption of Constitution of Republic of South Africa.

### C. Tetracameralism

There were certain countries where the fragmentation of houses led to four chambers. Most significant example can be taken from Swedish Riksdag of Estates. There were four houses namely: the aristocracy, the Clergy, the burghers and the peasants. This four-chamber system was abolished in 1866 and established bicameral system in the Swedish. This pattern from Sweden was adopted in Finland in 1809 when the land was lost by Realm of Sweden and grand Duchy submitted to Russian empire. This system was maintained by Finland for a century and in 1906 it replaced four houses with bicameral system.<sup>12</sup> Tetracameralism was just prevalent in Swedish Riksdag and Finland and it came to an end before the starting of 20<sup>th</sup> century. This system was very complex and number of issues were encountered by the governments to enact laws.

### D. Bicameralism

Bicameral system of government contains two houses of legislature. The modern bicameral system was started with the advent of constitutional government. Around 80 countries of the world are having bicameral system.<sup>13</sup> We can see the bicameral system is more prevalent in federal, large and presidential systems whereas unicameralism is more prevalent in small, unitary and parliamentary system but it is not true in every case because there are number of parliamentary systems where the bicameral system is existing for example India and United

---

10 *Ibid.*

11 Welsh David, "Constitutional Changes in South Africa", 83 *African Affairs* 147-162 (1984).

12 *Supra* note 4.

13 *Ibid.*

kingdom.<sup>14</sup> The bicameral system has been adopted by various nations for various reasons, of which major are to prevent arbitrary laws, corruption, transparency and so on. There are two chambers of legislature in India Lok Sabha and Rajya Sabha.

### **Pre-Bicameral and Bicameral Institutions in Ancient Greece and Rome**

Though there was no bicameral system in ancient Greece and other contemporaneous Mediterranean cultures, some political entities of that era created representative institutions to govern the polity. Because the executive, legislative, and judicial functions of these assemblies were not clearly separated, and the powers of the citizens' assembly often limited, it is inappropriate to speak of a bicameral legislature in the modern sense. Nonetheless, the dual deliberations that characterize modern bicameral legislatures were present in these early political institutions.<sup>15</sup>

Greek Philosophers were very keen to quality and functioning of the government according to which they evaluated with the concept of "mixed government". The evaluation of good government was based on the participation and also wise and rational governors, judges, legislators and so on. could falter without a countervailing force achieved through the representation of the society's constituent parts: the monarchy, the aristocracy, and the people. The Greek principles of mixed government were adopted by the Roman government but they more emphasised on the form of aristocratic government to make it more stable rather than countervailing force to plebeian representation.<sup>16</sup>

So far as the institutional evolution of institutions in Rome and Greece was concerned, they relied on the dual or multi organ government which were working on the basis of advisory and with overlapping functions and somewhat providing an early parallel to more modern institutions. Aristotle has provided an account of institutions which are somewhat similar to bicameral system which is based on the study of 158 constitutions from the Mediterranean world.

Dual advisory character of legislative councils can be seen in Sparta, Athens, Crete and Carthage. In his later three polities different assemblies which were represented by the citizens. The executives were representing as collective leadership that was consisting of "wise" men in the form of council, usually consisting of wealthy and powerful class. Athens

---

14 Elliot Bulmar, *Bicameralism* 3 (International Institute for Democracy and Electoral Assistance, 2017).

15 George Tsebelis and Jeannette Money, *Bicameralism* 17 (Cambridge University Press, 1997).

16 *Ibid.*

was most democratic set up in ancient times because the members were chosen 50 from each 10 tribes. Aristotle in his Book “Politic” has mentioned that initially there were four major tribes but later through Constitutional developments number were enlarged and reforms were done as well. Slaves were emancipated and later they were given citizenship political rights.<sup>17</sup>

Similar Practice was prevalent in Rome in form of Bicameralism, Roman Kings had appointed number of elder wise men to advise them which were in the form of councils, which are existing in modern upper houses in various states. A second consultative body was the *comitia curiate*, an assembly that organized the three tribes of Rome into 10 *curiae* each. The *comitia curiate* was called upon to endorse the new king, selected by the Senate after the death of the preceding king, and to approve the king’s imperium, or rule over the army. As the Roman institutions evolved, multiple representational structures developed, often with different deliberative responsibilities, so that the parallel to modern-day bicameral legislatures diminished over time.<sup>18</sup>

So far as the idea behind the mixed government over simple government is concerned, was chosen because simple form of government was supporting one kind of system either aristocracy or monarchy or republic. So mixed government was more mixture of attributes of all forms of governments which can be successful and rights of people will be more protected than just with single form of government. This form of mixed government will prevent degradation of system to anarchy or tyrannical system. Aristotle says:

*“The deviation forms of government are as follows: of kingship, tyranny; of aristocracy, oligarchy; of polity, democracy. For tyranny is the rule of a monarch who has only his own interest at heart, oligarchy has in view the interest of the well-to do; democracy, of the have-nots. None of them looks to the common good of all”.*<sup>19</sup>

This kind of mixed system was adopted so that there will upholding of all social classes and there will be very less discrimination towards people who will not be belonging to political class which needs to be maintained because single form of government surely would lead to degeneration of system and will become oppressive as it will find place.

---

17 Aristotle, *Politics and Athenian Constitution* Edited and translated by John Warrington 247-307 (1959).

18 *Supra* note 3 at 18.

19 *Supra* note 5 at 78.

The concept of mixed government was adopted, so there will be separation of powers because when there would be mixed form of government which would be responsible for number of tasks and had dealt by number of representatives, then there would be very less probability to become anarchy and also there are very less chances of exploitation of citizens at the hands of the government. But as the Athenian Constitution was adopted though they adopted the dual institutional structure but there were number of flaws prevalent in that system because they adopted the simple government. So far as common good of society is concerned it can be brought only with stable government that must be mixture of oligarchy, monarchy, and democratic principles, and it will also not be protecting the interests of one particular class. The appropriate mix of interests in government institutions includes an aristocratic magistrature and a democratic deliberative body, rather than a bicameral legislative body.<sup>20</sup>

### **Bicameral Ideology in Greek Philosophy**

In Greek philosophy, there is a subtle distinction between the efficient and political (redistributive) dimensions of constituent representation. An aristocratic government was admired for the presence of a virtuous elite who conducted affairs properly. However, the aristocracy was always in danger of degenerating into an oligarchy, and it was only through the balance of democratic and monarchic elements that the tyranny of the oligarchy was prevented. So, although the potential for greater efficiency through an educated and wise elite was acknowledged, it was the balance of power established through multiple interest representation that ensured the stability of government.<sup>21</sup>

If we will explore the historical background of Roman constitutional system and government then it requires to give account to Cicero's work which is most significant to understand the council of ministers. Romulus and Titus were the founders of the councils, consisting of the most outstanding citizens to serve as the kings' advisers. This is the origin of the Roman Senate, whose members were called patres (fathers). The kings furthermore divided the people into three tribes and thirty curiae. After the death of Titus Romulus never made great use of the Council rather, he provided equal importance to Lycurgus, who had been the first to see that a monarchy will function much better if the authority of the most outstanding

---

<sup>20</sup> *Id* at 103.

<sup>21</sup> Fritz Kurt Von, *The Theory of the Mixed Constitution in Antiquity: A Critical Analysis of Polybius Political Ideas* 123-140 (Columbia University Press, 1954).

citizens is joined with the domination of the king. Moreover, Romulus distributed the people of the lower classes among the outstanding citizens as their clients, a measure that proved extremely beneficial.<sup>22</sup> He did not use cruel means but he imposed heavy fines on the people to control them.

After the death of Romulus, the Council tried to rule the state without Monarch under the Senate, but people were not ready to accept the suggestion of Senate and asked to restore the existence of monarchy. But this time people realized that the selection of the king should not be based on Heredity, rather must be based on the capacity of the person to rule the country. First successor of Romulus was elected by the Senate through elections, by the people in Comitia Curiata, i.e., in an assembly in which the vote was taken by curiae.<sup>23</sup>

The Greek philosophers did not pay heed to demarcation of functions of the organs of government like judiciary, executive and legislative. The thinkers like Aristotle have criticized the concept of senate because it led to corruption because the membership is for lifetime which is major cause. Roman philosophers more emphasised on the alleged contribution of senators and their efficiencies. Though mixed government is significantly stable but others types of governments like simple government is significant for its strength and unity. Cicero said that he loves monarchy because the king loves his people and tries hard to keep them happy as much as he can, aristocracy is significant for wisdom of the council and democracy for freedom.<sup>24</sup>

The senate, in particular, provided the core of Cicero's ideal state. The council of elders applied the wisdom acquired by age as a moderating influence over the people). Because of their wisdom and virtue, the senators were reserved a dominant place in government. In Cicero's words, "When the good are worth more than the many, the citizens should be weighed, not counted". And unlike Aristotle, Cicero was less concerned with the senators' potential corruption; they would naturally refrain from immoral and illicit conduct.<sup>25</sup> Thus, Cicero concludes:

*"The safety of the state has been founded upon the wisdom of its ablest members. This is particularly true since nature has contrived to make the men who are superior in courage and ability rule over the weak and the weak willing to submit themselves to the best. Thus,*

---

<sup>22</sup> *Id.* at 127

<sup>23</sup> *Id.* at 129.

<sup>24</sup> Cicero, *On the Commonwealth* 149 (translated by George Holland Sabine and Stanley Barney Smith. Columbus: Ohio State University Press, 1929).

<sup>25</sup> Gordon Wood, *the Creation of the American Republic, 1776-1786* (Norton Press, 1969).



*between the weakness inherent in a single ruler and the recklessness inherent in the many, aristocracy has come to hold a middle place. Nothing, in fact, can be more perfectly balanced; and as long as an aristocracy guards the state, the people are necessarily in the happiest condition".<sup>26</sup>*

Cicero begins to depart from the Greek ideal of mixed government, where the contributions of the aristocracy are inextricably bound to the presence of countervailing forces. It is the specific characteristics of the aristocracy, their 'courage and ability', that represent a contribution to the polity. The emphasis on the benefits of senatorial wisdom is reflected in more contemporary debates on bicameral legislatures and becomes a distinct and separate justification for a two-chamber house irrespective of the interests represented in the second chamber.<sup>27</sup>

As the examples given above indicate, there are many historical instances of dual deliberation; most are based on multiple interest representation in political decision making, often in the form of bicameral-like institutions. The idea of an advisory council, a senate, that could improve the efficiency of government is never entirely absent from the dialogue. Nonetheless, until the eighteenth century, the emphasis was on representation of multiple societal interests as a mechanism of balancing power and rendering the political system more stable. The two dimensions that characterize dual deliberative structures, political and efficient, are inextricably intertwined: one is not available without the presence of the other.<sup>28</sup>

### **Historical emergence of Bicameralism in United Kingdom**

The earliest appearance of a bicameral legislature in the modern sense is in fourteenth-century England. By the eighteenth century, the British parliament was widely regarded among Western philosophers as a model political institution. England's legislative practice of meeting in two distinct decision-making assemblies - the House of Commons and the House of Lords - was then recast in terms of the ancient Greek theory of mixed government. The legislature was defined as the locus of decision making, and the principles of mixed government were then applied to the legislature. The lower house represented the democratic element of society; the upper house, the aristocratic element; and the king's veto power, the monarchic element. The two dimensions of bicameralism - political representation and legislative efficiency - were still inextricably intertwined. The balance of power between the

---

<sup>26</sup> *Supra* note 12 at 138.

<sup>27</sup> *Supra* note 3 at 37.

<sup>28</sup> *Ibid.*

various societal interests represented in government ensured that the political system would not deteriorate into tyranny of one group over the others.<sup>29</sup>

The Bicameral legislature in England originated out of king's Great Council, which was assembly to advise to the king. This emergence take place into three stages throughout the two centuries. The emergence started taking place with retaining powers with the king's great council. At the second stage the number of representatives was expanded in king's council. Later at third stage the council was divided into two chambers, which later become modern houses of legislative wing in the United-kingdom.<sup>30</sup>

Initially, English political institutions were similar to those evolving on the continent. The king drew upon two advisory councils (*curia regis*) for advice, the Small Council (*concilium*), composed of "professional administrators" and close personal advisors, and the Great Council (*Concilium magnum*), composed of feudal lords, both religious and secular. The former was a permanent council in constant session, while the latter was summoned periodically to discuss extraordinary issues, especially taxation. The English aristocracy was able to extract a written guarantee of power over taxation, creating the basis of continually enlarged control over legislation. The Magna Carta signed by King John in 1215 required consent of the Great Council for all royal requests for taxation other than customary feudal aids; it also shifted the basis of membership in the Great Council from feudal tenure to special summons. Thus, the basis of a legislative, rather than a purely consultative, council was laid.<sup>31</sup>

Membership in the Great Council was enlarged for a variety of reasons, the most common being the need for additional taxes to support the king's personal and public expenses. The call for broader representation took the form of a general summons to select local representatives, disseminated through the county sheriffs. The first record of representation from counties by knights dates from 1227; the lower clergy was first called in 1254; and the burgesses were originally summoned to the King's Council in 1283. The so-called model parliament of 1295 reflects this broadened base of representation; it included the great prelates, lay barons, representatives of the lower clergy, two knights from each of 37 counties, and two burgesses from each of 110 cities and boroughs. The label *model parliament* is somewhat of a misnomer, since many parliaments in this era had more restricted membership. Nonetheless, by the early fourteenth century, a pattern had been established of holding

---

29 *Id* at 35

30 *Supra* note 3 at 38.

31 *Ibid*.

frequent parliaments including representatives of all three estates - the clergy, the lords, and “other privileged groups in society”.<sup>32</sup>

The final stage of institutional evolution involved the division of the Great Council into two separate bodies. The original division was one based on estates. In the model parliament, for example, the three estates met together to hear the king’s address. Then all repaired separately to consider the king’s request for taxation and each estate approved different amounts, the burgesses granting a seventh, the landed classes (Barons and Knights) an eleventh, and the clergy a tenth. But the ultimate division into the House of Lords and the House of Commons was based on the distinction between individual and general summons, between those who represented themselves and those who represented their communities.<sup>33</sup>

Initially, the clergy withdrew from the parliament: they held their own annual synods during which they considered the king’s request for taxation. Only the prelates continued to attend the Great Councils, based on their position as feudal tenants and as church leaders. The departure of the lower clergy left the lords, summoned to parliament as individuals, and the knights and the burgesses, summoned as representatives of their communities. The distinction between collective and individual representation was reinforced by the growing perception of common interest between the knights and the burgesses. They first presented joint petitions to the king during the Great Council under the reign of Edward II (1307- 27); this collaboration had become common under Edward III (1327—77). In the parliament of 1339, the knights and burgesses met together for the first time to deliberate over the royal request for a grant. Thereafter the knights and burgesses met in their separate house. Thus, by 1339, England could be said to have the basic dimensions of a bicameral legislature.<sup>34</sup>

This institutional structure was interrupted only once, when Cromwell abolished the House of Lords in 1655. With the restoration of the monarchy the following year, the House of Lords was quickly re-established. Power gradually shifted from the king to Parliament and from the upper house to the lower house. It was in this environment of stable institutions that the electoral reforms of the nineteenth century took place, expanding suffrage to working-class men and women, whose votes were incorporated into the House of Commons.

If we look into the intellectual emergence of bicameral system in United Kingdom was forced by the social factors instead of theoretical understanding of political institutions. So, we can see, partially the stability and power of British Government, and political institutions of

---

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

<sup>34</sup> Glyn Williams and John Ramsden, *Ruling Britannia: A Political History of Britain, 1688-1988* (Longman, 1990).

British government became role model for stability and efficiency. But the concept was drawn from the Greek and Roman concept of mixed government to justify the twofold legislative assembly in the British government.<sup>35</sup> Montesquieu is representative of the debate on the eastern board of the Atlantic, while John Adams represents a similar understanding in the North American colonies, in the process of becoming an independent nation. Montesquieu's philosophy.

### **Montesquieu's Theory of Separation of Powers**

Montesquieu, wrote his book the "Spirit of the Laws" in 1748 where he summarized the philosophy of the government. There he adopts the traditional position that political liberty is forfeited when a single class holds the reins over executive, legislative, and judicial power. "Miserable indeed would be the case, were the same man, or the same body whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and that of judging the crimes or differences of individuals". From this perspective, Montesquieu judged the majority of European kingdoms as moderate because they were constrained by the presence of two or three classes in the institutions of government.<sup>36</sup>

However, in distinction from the Greeks and the Romans, Montesquieu focused on the special characteristics of the monarchy, the aristocracy, and the people as indicative of the roles they should assume in government. Executive power is best located in the hands of the monarch, who can act quickly when action is needed, while legislative power is "better ordered" by many individuals rather than a single individual. Furthermore, the aristocracy would be overwhelmed if represented an individual in a single legislative body and would fail to support such an institutional structure. Therefore, Montesquieu recommended separate and equal legislative bodies for the aristocracy and the people:

*"In a state there are always persons distinguished by their birth, riches, or honors: but were they to be confounded with the common people, and to have only the weight of a single vote like the rest, the common liberty would be their slavery, and they would have no interest in supporting it, as most of the popular resolutions would be against them. The share they have therefore in the legislature ought to be proportioned to the other advantages they have in the*

---

<sup>35</sup> *Supra* note 3 at 23.

<sup>36</sup> *Ibid.*

*state; which happens only when they form a body that has a right to put a stop to the enterprises of the people, as the people have a right to oppose any encroachment of theirs.”*<sup>37</sup>

Montesquieu’s theory of separation of powers has played very significant role in the UK government set up because it provides stability and transparency into the system. England has based its political system on the Montesquieu’s theory of separation of powers that retained political liberty of its citizens by dividing political powers into three classes. If we will compare the UK system with other countries, then it is perfect balance of powers between all the organs of the government, so far.

Montesquieu also noted the distinctive qualities of a senate, whose members shared the characteristics of age, virtue, wisdom, and service to the community. Such a council would reinforce the stability of the polity through its sound advice. In other words, a senate was a wise body that could remind the society of its first principles and ensure that new legislation improved rather than corrupted the old. The potential corruption of the hereditary nobility that concerned Aristotle could be avoided, according to Montesquieu, by diminishing their legislative power to that of veto rather than extending to this legislative chamber the power of initiative.<sup>38</sup>

John Adams drew on the same Greek principles of mixed government but found a different method of justifying a bicameral legislature. He argued that legislative power was sovereign and therefore required the balance of constituent interests *within* its institutional structure. According to Adams, “Legislative power is naturally and necessarily sovereign and supreme over the executive, and therefore the latter must be made an essential branch of the former”.<sup>39</sup> For Adams, every society, including the American society, reflects the same divisions that the Greeks enumerated - the one, the few, and the many. To ensure a stable society, these divisions must be reflected in the government. His constitutional trinity was therefore a tripartite legislature, two houses representing the aristocracy and the people, and the executive - endowed with a legislative veto - representing the monarchic element. In the English government, he too discovered the perfect balance. But because the circumstances in the American colonies were distinctive from those on the continent, some adaptation of definitions was required. For Adams, there was no basic difference between hereditary monarchy and an elective executive. Either was suited to perform executive functions and represented the interests of the nation as a whole. And the aristocracy was not a hereditary

---

37 Bernard Moses, *The Federal Government of Switzerland: An Essay on the Constitution* 205 (Pacific Press, 1989).

38 *Ibid.*

39 Wood, Gordon S. *The Creation of the American Republic, 1776-1787*, 522 (New York: Norton.1969).

one but a 'natural' aristocracy, those who *achieved* superiority rather than those who were born to it. Nonetheless, the natural aristocracy was marked by wealth and wisdom lacking in the common people.<sup>40</sup>

The balance Adams sought in the legislature is identical to the broader government balance recommended by the Greeks:

*"The three natural orders in society, the monarchical, the aristocratical and the democratically are . . . constitutionally placed to watch and control each other. . . . Thereby, also, each will balance the other two. The executive will balance the upper and lower chambers, that is, the upper and lower classes, the aristocracy and the democracy, especially preserving the people from the arrogance of the nobles; the senate will balance the king and the people or their representatives, especially preserving the people from the usurpations of the king and his favorites (or from the people's own tendency to set up a tyrant); and the commons, or the people's representatives, will balance the king and the senate, especially preserving the king from the jealousy of the aristocracy."*<sup>41</sup>

Both Montesquieu and Adams, as representatives of eighteenth-century political thought, adapted the Greek philosophy of mixed government to a distinctive institutional form - a bicameral legislature. Their understanding of the political and efficient dimensions of dual deliberative assemblies was likewise similar. The aristocracy was admired for its knowledge, training, wisdom, age, and service; but it could not be relied upon to provide these skills to improve the government unless aristocratic power was checked by the power of the monarchy (either hereditary or elected ruler) and the people.

### **Origin of Bicameralism in United States of America**

American colonialism was beginning unicameral government legislation in various colonies. But later American colonies started bicameral legislation. most of these governments evolved into bicameral systems so that at the founding of the United States, all but Pennsylvania and Georgia had bicameral legislatures. The evolutionary process varied but most involved the transformation of the executive council into a second legislative house. Connecticut provides one example. The "Fundamental Orders" establishing the colony in 1639 provided for a single legislative body consisting of the governor, magistrates, and four deputies from each of

---

<sup>40</sup> *Ibid.*

<sup>41</sup> Correa Moylan Walsh, *The Political Science of John Adams: A Study in the Theory of Mixed Government and the Bicameral System* 80-81 (Putnam's Press, 1915).

the towns.<sup>42</sup> Most of these governments evolved into bicameral systems so that at the founding of the United States, all but Pennsylvania and Georgia had bicameral legislatures. Their evolutionary process varied but most involved the transformation of their executive council into a second legislative house. Connecticut provides one example. The “Fundamental Orders” establishing the colony in 1639 provided for a single legislative body consisting of the governor, magistrates, and four deputies from each of the towns. The magistrates were elected by the freemen of the entire colony, while the deputies were selected by the townspeople. Because of the press of business, in May 1678, the governor, deputy governor, and assistants (magistrates) were constituted as a standing council, thereby creating a second, distinct legislative body. Dual deliberations were ensured in 1689, when the acts of the Council required the approval of the general assembly. Ultimately, the Executive Council evolved into the upper house. A bicameral legislature was adopted in October 1698; the governor and magistrates were designated as representatives to the upper house and the deputies to the lower house. Laws required the sanction of both houses.<sup>43</sup>

Well established bicameralism tradition was established till 1987 in United States of America. The Articles of Confederation failed to draw on this tradition but also failed to provide a stable national government. The Constitutional Convention of 1787 therefore debated and adopted a bicameral federal legislature. There was a great compromise to form the government. It was decided that house of Representatives would be elected on the basis of population whereas Senate would be elected on equal representation irrespective of population, area etc. the compromise was made for the sake of protecting the rights of small states from the major dominating state. The constitution was adopted with the consent of all small states as well.<sup>44</sup>

So far as the representation in bicameral system is concerned was subject to representation of all classes of society instead of focusing on few dominating classes. The constitution opens its preamble with “the peoples of United States of America” which shows that peoples are source of power of the constitution and it would be regulated according to the will of the people only. The lower house reflected a popular dimension, while the upper house reflected a territorial dimension. This system of national representation was combined with the reservation of certain powers to the constituent political units, the thirteen original colonies.<sup>45</sup>

---

42 *Supra* note 3 at 27.

43 *Ibid.*

44 *Supra* note 13 at 162-88.

45 *Ibid.*

James Madison published his paper “the Federalist” in 1788 which gave proper justification of bicameralism in the new constitution. To promote the ratification, he drew on both dimensions of the intellectual debate: representation of interests and efficiency of a second legislative body. the political dimension of U.S. bicameralism, Madison moved to the efficient dimension. The discussion can be separated into two categories, aspects that improve political stability and aspects that improve the quality of legislative decisions.<sup>46</sup>

Political stability can be affected by the changing preferences of the assembly or by the changing composition of the assembly. Madison first noted the “propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions A senate (or second chamber) provided the ballast needed to control the lower house’s tendency to produce a new majority that overturned the previous majority. Madison also describes the “mutability in the public councils arising from a rapid succession of new members, however qualified they may be”. This leads to the “necessity of some stable institution in the government.” The Senate became the anchor for legislation subject to the changing preferences of the lower house that arise from either the “rapid succession of new members” or the advent of sudden and violent passions.<sup>47</sup>

Finally, Madison also noted “the propensity of all single and numerous assemblies to be seduced by factious leaders into intemperate and pernicious resolutions”. The presence of the Senate (or second chamber) reduces the likelihood that one individual will be able to sway both groups of legislators and decreases the potential for “pernicious resolutions.” In the republican debates at the end of the eighteenth century, the justifications for a dual legislative system still acknowledged both a political dimension and an efficiency dimension, but that connection begins to be severed.<sup>48</sup> In addition, in its promise to represent “the people” as a whole, republicanism undermined political institutions based on distinctive representation by class (unitary political systems), as well as political institutions based on territory (federal political systems). Therefore, as republican waves shook the political establishment during the nineteenth century, institutions evolved differently.

---

46 *Supra* note 3 at 28.

47 *Ibid.*

48 *Id.*, at 29



## **Origin of Bicameralism in India**

India was ruled by the British rulers, so the governing system of the British empire was applicable in India too. Even India has adopted the parliamentary system from the United Kingdom after Independence. Rules and regulation and the historical evolution of the Bicameral legislature, including its philosophical foundations, have been discussed above. But if we will particularly focus on the bicameral system in India, that has been referred to in the Indian Council Act, 1892, bicameral legislation in representation in Provincial council in the provincial councils from District Boards, Municipalities, and Chambers of Commerce, etc.<sup>49</sup> then it was started in 1919, In India, a Second Chamber was envisaged for the first time under the Montague Chelmsford Reforms proposals. The Government of India Act, 1919<sup>50</sup>, accordingly, provided that the Indian Legislature shall consist of the Governor-General and the two chambers, namely the Council of State and the House of Assembly. The term of the Council was fixed at five years. Under the Government of India Act, 1935; however, the Council of State was made a continuous body, not subject to dissolution. The members were to hold their seats for nine years and one-third of them retiring at the end of every three years. But the scheme envisaged for the Second Chamber under the Government of India Act, 1935<sup>51</sup>, never materialized because the provisions pertaining to the federal structure under the Act were never put into operation. As a result, the Second Chamber set up under the Government of India Act, 1919 continued to function till 1947. In other words, the structure and composition of the legislative institutions provided in the previous enactments did not furnish any viable basis on which the Legislature of independent India under the new Constitution could be devised; and the Constituent Assembly had, therefore, to give thought to this matter without any guidance from the past.

### **A. The Provincial Governments under the Government of India Act, 1919**

The essential novelty of the Government of India Act, 1919 was the provision for rules to classify subjects as central, under the government of India, and provincial, and to divide provincial subjects into 'reserved' and 'transferred', to be dealt with by the governor in council and the governor acting with a minister or ministers respectively. The latter distinction involved the alteration of the form of government of the United Provinces, the

---

<sup>49</sup> *Ibid.*

<sup>50</sup> The Government of India Act, 1919.

<sup>51</sup> The Government of India Act, 1935.

Punjab, Bihar and Orissa, the Central Provinces, and Assam, so that each fell under a governor with an executive council.<sup>52</sup> The number of members of such councils remained four, but only one need be a civilian of twelve years' standing, so that it was open to reduce the council to two, one an Indian. The joint committee while insisting that the character of any decision as that of the governor in council or the governor acting with ministers should be made clear urged the adoption of the practice of close consultation between the two sides of the government, whose actions might at any time seriously interact; thus, a restrictive excise system such as might be anticipated in certain provinces would clearly impose special duties on the forces of law and order.<sup>53</sup>

The duration of the councils was fixed at three years, subject to the power of the governor to dissolve at any time and to extend it for one year in special circumstances. After dissolution a new council must be summoned within six, or with the secretary of state's permission nine, months. The governor was authorized to summon and prorogue the council, while the presiding officer might adjourn it. The presiding officer had only a casting vote. As a sign of the new regime the governor ceased to preside, and for the first four years a president appointed by the governor presided; thereafter the president was elected by the council, which could remove him, in both cases subject to the governor's concurrence.<sup>54</sup>

The powers of the councils extended to legislation for the peace and good government of the territories in the province, including the right to repeal or alter any law made for the province before or after the Act of 1919 by any authority in British India. But this power was subject to the rule that the previous sanction of the governor-general was required before the legislature made or took into consideration any law (a) imposing new taxation unless the taxation fell within specified heads; (b) affecting the public debt or customs duties or any other tax or duty imposed by the central legislature; (c) affecting military, naval, or air forces; (d) affecting the relations of the government with foreign princes or states; (e) regulating any central subject or any provincial subject declared to be subject to central legislation.<sup>55</sup>

The joint committee went farther than the report in reconstructing the Indian legislature. The report had contemplated that the second chamber, the Council of State, should be mainly nominee, only 21 out of 250 members being elected, chiefly by the non-official members of the provincial legislatures. It would have occupied a minor position in ordinary legislation,

---

52 Arthar Berriedale Keith, *A Constitutional History of India: 1600-1935* 248 (Methuen & Co Ltd London, 1936).

53 *Id.* at 251.

54 *Ibid.*

55 *Ibid.*

measures passed in the assembly being put before it, a joint session following if the council desired amendments which the Assembly did not wish to accept. The joint committee preferred that the Council should be placed on the footing of an ordinary second chamber, and rejected the idea that it should be elected in part by the provincial legislatures, a decision which was to affect in an important degree the constitution of 1935. Hence the Council was composed of 19 official and 6 unofficial nominated members and 34 elected members, general 20, Muslim 10, Sikh 1, and European 3.<sup>56</sup>

### **B. Bicameral System under the Government of India Act, 1935**

Initially, the second chamber in provincial states was not desirable under the 1919 Act but in the Government of India Act, 1935 contained certain changes, Assam was given a second chamber as a further concession to the conservative character of the whole scheme. Under the Government of India Act, 1935, the Central Legislature was bicameral, consisting of Federal Assembly and Council of States. The Council of States was to be upper house and a permanent body with one third of its membership retiring every 3rd year. It was to be composed of 260 members of which 156 were to be representatives of British India while, 104 of the Indian states. The Federal Assembly was the lower house with the tenure of five years. It was to be made of 375 members, out of which 250 were to be representatives of British India and not more than 125 members from the princely states. While the seats reserved for princely states were to be filled by nominated members, the provinces were given different numbers of seats. Election to the Federal assembly was to be indirect. The term of the assembly was five years but it could be dissolved earlier also.<sup>57</sup>

It also introduced bicameralism in six out of eleven provinces. Thus, the legislatures of Bengal, Bombay, Madras, Bihar, Assam and the United Provinces were made bicameral consisting of a legislative council (upper house) and a legislative assembly (lower house). However, many restrictions were placed on them.<sup>58</sup>

### **C. The Constituent Assembly Debates**

Matter came for discussion before the Constituent Assembly whether to keep second chamber in Indian Parliament or not. The assembly has various models of second chamber of world

---

<sup>56</sup> *Supra* note 38 s. 19 and rules.

<sup>57</sup> Binpin Chandra, *Modern History of India* 290-91 (NCERT, 1971, Delhi).

<sup>58</sup> *Ibid.*

parliaments, but also the working of the then existing Central Legislature set up under the Government of India Act, 1919.

The Union Constitution Committee, set up by the Constituent Assembly under the chairmanship of Shri Jawaharlal Nehru, in its report presented to the Assembly on 21 July 1947, made certain proposals in respect of the Second Chamber at the Centre. The Report of the Committee was also discussed in the Constituent Assembly on 28 July 1947.<sup>59</sup> During the discussion, divergent views were expressed in regard to having a Second Chamber. For instance, a member was of the opinion that a Second Chamber was not essential. Another member was of the view that experience in the last so many years had been that the Upper House acted as a “clog in the wheel of progress” and so it was not wise to continue the same thing in the Constitution. On the other hand, a member felt that a Second Chamber would not only be an advantage but an absolute necessity. It would, in his opinion, introduce an element of sobriety and second thought and without a Second Chamber it would be difficult to fit in the representatives of the states under the scheme.<sup>60</sup> The motion was adopted by the Constituent Assembly on 28 July 1947. First election to the Council of States was held in March 1952 and the House was constituted on 3 April the same year. The Rajya Sabha, its Hindi nomenclature, was adopted on 23 August 1954.

## Conclusion

The bicameral system has not resulted only through institutional structure, it has philosophical underpinnings as well. If we will look into the philosophical insights we can find writings of Aristotle, Machiavelli, Cicero, Montesquieu and so on. These thinkers have played very significant role by providing types of government and their criticism which were prevalent in Rome and Greece in ancient time in the form of mixed government. Montesquieu’s theory of separation of powers has significantly elaborated the merit of bicameral system which was initiated in the United Kingdom.

The United States of America is first Constitution of the world which is written in form and considered senate as second chamber of legislature. United Kingdom constitution is unwritten but it has evolved through constitutional conferences and which further paved way for bicameral system in India as well which was adopted by the Constituent Assembly after discussing all the aspects required.

---

59 IV The Constituent Assembly Debate, 1947 from 14 July to 31 July 1947, available at: <http://164.100.47.194/Loksabha/Debates/cadebadvsearch.aspx> last accessed on 27 October 2021.

60 *Ibid.*

The underpinnings of the Bicameral system are traceable from the Council of States Act, 1872 and then in 1919 Act established the bicameral system in central parliament but later the Government of India Act, 1935 extended it to six provinces. After independence it was adopted in the Constitution of India which is debated in the debates of the Constituent Assembly. So, it can be said that the bicameral system, more or less, is product of philosophical underpinnings more than institutional basis because it considers all the aspect.

VidhiNama