

An Introduction to Bicameral Legislature

- Theory and Practice –

[The original document of this is compiled in Sinhala.]

[The present government is proposing a second-chamber in the legislature as a part of the solution to the political problem. In fact there is no significant debate on the issue. This attempt is to share a detail analysis with this regard, which will include a comparison of structures from other countries together with the proposed options and past experience with this regard in the Sri Lankan context. We hope this document will nurture the contemporary discourse on proposed bicameral legislature]

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Executive Summary

This paper will present an analysis on the bi-cameral system. The first chapter will provide with an introductory note on the legislature in general and the second will give an insight on the theoretical aspect of it. A comparative study on the second chamber is done in the third chapter, with the system in the USA, UK and in India. Next the paper will be focusing on the Sri Lankan experience during the Soulbury Constitution. Finally it will map various dimensions of the contemporary discourse on the second chamber.

Second chamber: Examples from the world

Country	Composition	Election/Appointment of members	Powers/Functions
The Senate	100 representatives	Senators are elected by their states	Legislative functions
United States of America (USA)	2 senators to represent each state	Term of office: 6 years The terms are staggered so that approximately one-third of the seats are up for election every two years	Check and balance the powers of other elements of the Federal government Advice and must consent some of President's government appointments Powers to ratify all government's treaties with foreign governments Power to try all impeachments Powers to elect the vice president in the event no person gets a majority of the electoral votes Powers with regard to the amendment of the constitution
House of Lords	789 members	Appointed by the	Limited relationship with the

United Kingdom (UK)	Consists of Lords spiritual & Temporal (life peers & hereditary peers)	Monarch on the advice of the Prime Minister	government Some legislative powers Limited judicial powers
Rajya Sabha	250 members	Term of office: 6 years	Limited legislative powers
India	12 of them are nominated by the President in different fields of expertise Balance is elected by the state and territorial legislatures	The terms are staggered so that approximately one-third of the seats are up for election every two years	Checks and balances on the Executive Powers over impeachments Unique powers in joint sittings with the Lok Sabha
Senate	30 members		Limited legislative powers
Soulbury Constitution of Sri Lanka	15 members were appointed by the Governor on the advice of the Prime Minister 15 were elected by the House of Representatives		Limited checks on the Executive

**Various dimensions of the contemporary discourse
on bi-cameral legislature/Second Chamber**

Options/Proposals	Composition	Election/appointment of members	Powers/functions
Mangala Moonesinghe Committee Proposals 1993	Total number of proposed members 50 3 members to represent each province Balance to be appointed by the President with the concurrence of the Leader of the Opposition and the political parties in the Lower House	Representatives from the Provinces to be elected Balance to be nominated by the President with the concurrence of the Leader of the opposition and the Political Parties represented in the Lower House of the Parliament	Powers are not mentioned
SLFP Proposals to APRC	75 members Space for women representation in the second chamber	25 members based on the percentage of votes for the parties elected to the lower house Chief Ministers of all Districts Balance to be appointed by the President	Review all Bills before it becomes a law Delay any law to be passed by the lower house (except a finance bill or any other related to national security)
Proposals by the UNP Progressive	Not mentioned	Should be a representation of all the	To provide the expert opinion/knowledge to the law

group	provinces	making process
Prof. Tissa Vitharana Report to the APRC (2007)	A ratio of 1:3 between the membership of the Senate and the House of Representatives	Members to be elected by the respective provincial legislatures Facilitate consensus building amongst interested groups in the law making process Mechanism against hasty legislations
APRC proposals presented by Hon R Yogarajan & Nizam Kariapper (2010)	75 members Seven Senators from each province, making up a total of 63 10 Senators selected by the community Councils The President of the Republic nominates two persons to represent unrepresented community groups	63 - elected on the basis of a single transferable vote system by the Members of the Respective provincial legislatures 10 Senators selected by the community Councils The President of the Republic nominates two persons to represent unrepresented community groups Provide space for provinces to play a role in the national legislature To act as an inbuilt mechanism against hasty legislature
Latest proposals by the Government of Sri Lanka (2011)	Three members to represent each administrative district = 75 and the balance 13 will be nominated by the President Seven members to represent each province =63 and to balance 17 to be nominated by the President	
Prof. Sumanasiri Liyanage	40 members (Sinhala 20, Sri Lankan Tamils 5, Indian Tamils 5, Muslims 5, smaller minorities 5)	Elected by the provincial councils To be nominated by the President with the approval of the Prime Minister and the Leader

of Opposition

<p>Prof. Rajiva Wijesinhe</p>	<p>Weightage for regions. This can also provide for participation by distinguished individuals and professionals</p>	<p>Shall be both elected and nominated</p>	<p>Shall have unlimited powers of discussion and advice, Shall have limitations on decision making powers. Shall have powers for instance simply to delay some legislation Shall provide desirable checks on the Executive, in Executive appointments</p>
<p>Prof. Ranjith Amarasinghe</p>	<p>No of members should be between 60-70</p>	<p>Elected via a mixed electoral system To be nominated</p>	<p>Special focus on laws affecting the provinces Some powers in the process of amending the constitution Shall provide checks on the Executive No equal powers as the house of representatives</p>

1.Introduction

1.1 What is legislature?

In modern democracies, there are three branches of governance based on the concept of separations of power; legislature, executive and judiciary with the allocation of key functions; law making, execution and review.

Legislature generally comprises of a majority of people's representatives and in the simplest form it can be defined as '*a kind of deliberative assembly with the power to pass, amend, and repeal laws*'

Legislatures are known by many names, the most common being parliament and congress. In addition, 'state council' is also used in Sri Lankan constitutional history. In this way, one can argue that the states tend to adopt the terminologies for the legislature the best way that matches to their context.

The primary components of legislature are one or more houses. Hence the two famous types of legislature in the world are

Unicameral legislature (A legislature with only one house)

Bicameral legislature (A legislature with two houses)

It is also to note that there are tri-cameral legislatures in the world, yet very rarely.

1.2 Functions and powers of a legislature

Enact laws (powers to pass, amend and repeal laws)

Represent the people in the law making process

Adopt the budget and other monetary bills

Checks on the judiciary and the executive

Amend the constitution

1.3 Composition of a legislature; key principles

Legislature is the main deliberative assembly in a state with the powers to pass, amend and repeal the laws. It is these laws that are executed by the executive and reviewed by the judiciary. Hence, the law making process has to be carefully carried out. There are key principles to be adhered to in deciding the composition of the legislature of any state.

To ensure the representation of people with various knowledge streams and view points

To have a balanced number of members rather than being too large or too small (given the number of people and the geography of the state)

To minimize space for law making thoughtlessly and maximize space for rational and intense discussion

To follow proper procedural codes with regard to legislative functions

2. Bicameralism

Bicameralism is a key characteristic of liberal constitutionalism. In a government, bicameralism is the practice of having two legislative or parliamentary chambers and they are generally identified as the lower and the upper houses/chambers.

“Bicameral legislatures can be further divided into several categories based on the powers, functions and the composition. Most oftenly the second chambers are lower in power and hence secondary. This is the case, particularly in a state where the second chamber is accountable and is been elected by the House of Representatives. Second chamber generally carries limited legislative powers. In some countries the members to the second chamber are appointed either through elections, attained by elections or by virtue of their status/role. Some countries have powerful second chambers with equal powers as the first, and are appointed by the people. Senate of the United States Congress is an ideal example”

Based on the above justification, it is possible to identify the following classification of second chambers in general

Second chambers with limited legislative powers

Second chambers with equal powers as the first

House of Lords in the UK Parliament is an example for a second chamber that carries limited legislative powers. However, States that follow the British Parliamentary model have less powerful second chambers most of the time. Hence, based on the powers and functions of the second chamber they can be classified as

1. Second chambers within the British Parliamentary model (Westminster system)
2. Second chambers within the federal model

2.1. Why the need of a Bicameral Legislature?

Although the ideas on which bicameralism is based can be traced back to the theories developed in Ancient Sumer and later ancient Greece, ancient India, and Rome, recognizable bicameral institutions first arose in medieval Europe where they were associated with separate representation of different estates of the realm. However, the discourse on second chamber officially commenced from the UK Parliament with the introduction of the House of Lords that was established to bring a different view point to the law making exercise which was limited only to the House of Commons. The founding fathers of the US constitution also favored a bicameral legislature with the idea of having the senate to be ‘wealthier and wiser’.

Whilst the bicameral legislatures in the world are mainly established based on the two main models explained above, it is important to analyze the necessity to have a bicameral legislature for any state.

- Ability to subdue the majoritarian dictatorship in the unicameral system, within a multi-ethnic society
- Capacity to review the hasty legislatures brought up by the House of Representatives
- Provides space for minority communities that are not sufficiently represented in the House of Representatives, to engage in the law making process.
- Engage with the professionals and experts from the different sectors
- Ability to ‘check and balance’ the powers of other elements of the government.

2.2. Criticisms against Bicameral Legislature

The criticisms against the Senate system generally based on three different positions

1. What is the need for a second chamber, when there is a House of Representatives engaged in the law making process?
2. Aren’t both chambers engaged in the same function?
3. Should second chamber be given powers to make laws over the House of Representatives?

The following criticisms are generally been made based on the above three stances;

Public consent should be expressed through a single institution.

Second Chamber is a counterpart of the First Chamber.

Constraints law making urgently or rapidly when required (within the democratic process)

Creates unnecessary delays in the law making process

Second Chamber cannot subdue the dictatorship of the First Chamber.

Problems regarding the composition of the Second Chamber.

Expense to have a second chamber as part of the legislature, particularly for developing states

There is no need of a Second Chamber to provide representation for the minority communities in a society

3. Bicameral Legislature in selected countries: Few Case studies

In most legislatures in the world today, one can view the second chamber as an essential element of the state. Australia, Canada, France, USA, UK, India, Germany and Japan are some of such examples. In fact, the functions, composition and powers of these second chambers are different from one another. The best ways to understand those differences are to study the following case studies.

3.1. United States of America - The Congress

The legislature created by the US Constitution is called the “Congress”. Article 1 of the US Constitution describes the Congress as the key legislative branch of the federal government. The United States Congress is a bicameral body consisting of two co-equal houses; the House of Representatives and the Senate. All legislative powers of the state are vested in the Congress. Senate is considered as more powerful in the law making process, as it has several exclusive powers that are not granted to the House of Representatives.

3.1. i. Reasons for the establishment of a Bicameral Legislature

There are four main reasons for introducing a bicameral legislature to the US constitution

The scholars who compiled the legislature were more familiar with the Bicameral than the unicameral system.

To provide protection against despotism (the Senate ‘checks and balances’ the despotic activism of House of Representatives).

To preserve constitutional conservatism (with the objective of maintaining the stability within the government).

The need of bringing about a compromise (the need of normalizing the discrepancies between the states).

3.1.ii. The Senate

The US senate is the upper house of its bicameral legislature and together with the House of Representatives comprises the Congress. The composition and powers of the Senate are established in Article one of the Constitution. Each US state represented by two senators, regardless of population. They serve staggered six years term.

3.1.iii. Qualifications

Article 1(iii) of the constitution sets three qualifications for senators

Each senator must be at least 30 years of age

Must have been a citizen of the United States for at least the past nine years and

Must be (at the time of the election) an inhabitant of the state he or she seeks to represent.

The age and citizenship qualifications for senators are more stringent than those for members of house of representatives.

3.1.iv. Elections and term

Originally, senators were selected by the state legislatures and not by popular elections. By the early years of 20th century, the legislatures of as many as 29 states had provided for popular elections of senators by a referendum. Popular election to the Senate was standardized nationally in 1931 by the ratification of the 17th amendment to the US constitution.

Senators serve terms of six years each, the terms are staggered so that approximately one-third of the seats are up for election every two years.

3.1.v. Functions of the Senate

- Legislative functions

Bills may be introduced in either Houses of Congress. However, the constitution provides that ‘all bills for raising revenue shall originate in the House of Representatives’. As a result, the Senate does not have the power to initiate bills imposing taxes. Moreover, the House of Representatives holds that the Senate does not have the powers to originate appropriation bills or bills authorizing the expenditure of the federal funds. The constitutional provision barring the senate from introducing revenue bills is based on the practice of the British Parliament, in which only the House of Commons may originate such measures.

However, it is important to note that in practice the senate is equal to the House of Representatives in the respect of taxation and spending. As Woodrow Wilson once wrote;

“The Senate’s right to amend general appropriation bills has been allowed the widest possible scope. The upper house may add to them what it pleases; may go altogether outside of their original provisions and tack to them entirely new features of legislation, altering not only the amounts but even the objects of expenditure, and making out of the materials sent them by the popular chamber measures of an almost totally new character”

The approval of both houses is required for any bill, including a revenue bill, to become law. Both Houses must pass the same version of the bill; if there are differences, they may be resolved by sending amendments back and forth or by a conference committee, which includes members of both bodies.

- Checks and balances

The Constitution provides several unique functions for the Senate that form its ability to "check and balance" the powers of other elements of the Federal Government. These include the requirement that the Senate may advise and must consent to some of the president's government appointments; also the Senate must ratify all treaties with foreign governments; it tries all impeachments, and it elects the vice president in the event no person gets a majority of the electoral votes.

The president can make certain appointments only with the advice and consent of the Senate. Officials whose appointments require the Senate's approval include members of the Cabinet, heads of most federal executive agencies, ambassadors, Justices of the Supreme Court, and other federal judges

The Senate also has a role in ratifying treaties. The Constitution provides that the president may only make Treaties, provided two thirds of the Senators present concur Powers of certifying agreements.

The Constitution empowers the House of Representatives to impeach federal officials for "Treason, Bribery, or other high Crimes and Misdemeanors" and empowers the Senate to try such impeachments Power of adjudicating impeachments.

Further the Senate has the power to elect the vice president if no vice presidential candidate receives a majority of votes in the Electoral College.

3.1. Vi.Reasons for a powerful Senate

Nearly in all other countries, the Second Chamber is less powerful than the first. Yet, the US Senate operates as one of the most powerful Second Chambers in the world due to following reasons;

Small membership and long term of office

An institution made of senior politicians

Members are elected by direct public vote

Freedom of speech in the law making process

Consensus within the Upper House

Not being under the Parliamentary system

Equal legislative and financial powers

Possession of special powers

3.2 Parliament – United Kingdom

British Parliament is the supreme legislative body in the United Kingdom. Parliament alone possesses legislative supremacy and thereby ultimate power over all other political bodies in the UK and its territories. The Parliament is bicameral with an upper house, the House of Lords and a lower house, the House of Commons. The Queen is the third component of the legislature.

3.2.i House of Lords:

House of Lords is the upper house of the British Parliament. Hereditary nature of the House of Lords was changed over time in history and the most recent changes took place after the 1997 General Elections. The Labour Government that came into power in 1997 introduced legislation to expel all hereditary peers from

the Upper House as a first step in Lords reform, they had proposed. However, after House of Lords Act of 1999 it has gone through significant changes making it predominantly a house that is appointed.

3.2.ii. Composition

Unlike the House of Commons, membership of the House of Lords is not democratically elected, but attained by appointment or by virtue of their ecclesiastical role within the established church (Lord Spiritual), or through a bi-election. The Lord Spiritual are 26 senior bishops of the Church of England. The Lords Temporal make up the rest of the membership; of these the majority are life peers who are appointed by the Monarch on the advice of the Prime Minister, or on the advice of the House of Lords appointments commission. Membership was once a right of birth to hereditary peers, but following a series of reforms as of 1st July 2011 only 90 are elected by the House from the hereditary peers, members sitting by virtue of a hereditary peerage remain. The number of members is not fixed and as of now there are 789 members (plus 38 who are on leave of absence of otherwise disqualified from sitting) as against the fixed 650 seat membership of the House of Commons

3.2.ii. Functions

The powers of the House of Lords can be divided into three main categories.

Legislative Powers

The House of Lords debates legislation and has power to amend or reject bills. However, the power of the Lords to reject a bill passed by the House of Commons is severely restricted by the Parliament Acts. The House of Lords cannot delay a money bill for more than one month. Other public bills cannot be delayed by the House of Lords for more than two parliamentary sessions or one calendar year. A further restriction is a constitutional convention, which means that the House of Lords does not oppose legislation promised in the Government's election manifesto.

By a custom that prevailed even before the Parliamentary Acts, the House of Lords is further restrained insofar as financial bills are concerned. The House of Lords formerly maintained the absolute power to reject a bill relating to revenue or supply, yet this power was also curtailed by the Parliamentary Acts.

Relationship with the government

The House of Lords does not control the term of the Prime Minister or of the Government. Only the Lower House holds such powers. Thus their oversight of the government is limited. Most Cabinet

Ministers are from the House of Commons, rather than the House of Lords. In particular, all Prime Ministers since 1902 have been members of the Lower House. In recent history it has been very rare for major cabinet positions to have been filled by peers. However, it does remain a source for junior ministers even today.

Former Judicial powers

Historically, the House of Lords held several judicial functions. Most notably until 2009 the House of Lords served as the court of last resort (Privy Council) for most instances of UK law. Since 1st October 2009 this role is now held by the newly created Supreme Court of the UK.

3.3 **Parliament - India**

The Parliament of India is the supreme legislative body in India. Founded in 1919, the Parliament alone possesses legislative supremacy and thereby ultimate power over all political bodies in India. The Parliament of India consists of the two houses and the President of India. The president holds the power to call, prorogue and dissolve parliament. The Parliament is bicameral with an upper house called as Council of States or Rajya Sabha and a lower house called as House of People or Lok Sabha.

3.3.i **Rajya Sabha**

The Rajya Sabha is the upper house of the Indian Parliament. Its membership is limited to 250 members, 12 of whom are chosen by the President of India for their expertise in specific fields of art, literature, science and social services. These members are known as nominated members. The remainder of the body is elected by the senate and territorial legislatures. Terms of office are for six years with one third of the members retiring every two years.

3.3.i. **Functions**

Indian Rajya Sabha is not a powerful entity as the Senate in the USA. But in the legislative affairs it enjoys powers to some extent.

Legislative powers

Possess the power to initiate any bills apart from Financial Bills. However it can amend Financial Bills. In addition, it has the power to delay the bills; 6 month for Ordinary Bills and two weeks for Financial Bills.

Checks and balance on the Executive

It has the ability to check the Executive through questioning.

Judicial powers: Adjudicate impeachments.

Powers possessed only by the Rajya Sabha

According to Article 312 of the Constitution – To establish services relate to entire India, or a State or to both of them.

According to Article 249 of the Constitution – to convey the power to Parliament for one year period, regarding any matter in the list of powers of the Provincial List, through a resolution adopted by 2/3 majority of the Rajya Sabha.

3.3.ii. Joint functions of Rajya Sabha and Loke Sabha

Appointment of the President and initiate impeachments against the President

Removal of the Vice President, Judges of the Supreme Court and the Auditor General of India, from the office

Give approval to the declaration of emergency regulations

4. The discourse on Bicameral Legislature in the history of Sri Lankan Constitutional history

4.1. Bicameral Legislature under the Soulbury Constitution of Sri Lanka

The legislature established under the Soulbury Constitution, during 1947 to 1972, was called the “Parliament”. It was created in consistent with the traditions of the British Parliament. Thus the parliament consisted of three main institutions; they are the Lower House, Upper House and the Queen. The Soulbury Parliament was framed on the basis of Bicameralism, and its Lower House was called the House of Representatives and the Upper House as the Senate. Governor General acted as the representative of the Queen within Sri Lanka.

4.1.i. The Senate

Senate was the Second Chamber of the Parliament under the Soulbury Constitution and it comprised 30 members. Fifteen of them were elected by the Governor General on instructions of the Prime Minister. The purpose was to provide enough representation to the groups of people who did not get an adequate representation in the elections for the House of Representatives. The other 15 were elected by the House of

Representatives. That is, by political parties represented the House of Representatives, under the Single Transferable Voting System. The term of office of the Senate was 6 years, and one third of its membership was retired every two years. If Parliament was dissolved at some point, it had no effect on the Senate which was a significant character of the system.

4.1.ii. Qualifications for membership

Attain 35 years of age

Not being a member of the House of Representatives

Being an expert in a field of profession; commerce, industry, agriculture, education, law, medicine, engineering and banking (this was specifically relevant to the members of Senate, who were appointed by the Governor General)

4.1.iii. Objectives to introduce a Senate

Prevent hasty and thoughtless law making

Provide space for the representation of the minority communities in the law making process

Provide space for political education and understanding in the law making process (to the Sri Lankan people)

Obtain the contribution of the experts/professionals/intellectuals to the law making process

Establish consistency among legislatures in Commonwealth countries

4.1.iv. Functions

Legislative powers

The senate had powers to initiate any bill other than the Finance Bills. Moreover, they had the power to delay any bill conditioned to some limitations; a Financial Bill for a period of one month, an Ordinary Bill for two sessions of the Parliament (under the maximum period of a year). However, if the Senate did not give its approval after the relevant period of time, the House of Representatives had the power to implement those bills, assuming that the Senate had given its approval.

Executive power

Under the Soulbury Constitution, two members of the elected Board of Ministers had to be chosen from the Senate. One of them had to be the Minister of Justice. Hence, the Senate had the ability to participate in the Executive affairs.

4.1.v Criticisms against the Senate

The principle criticism against the Senate under the Solbury constitution was that it could never accomplish the expected objectives at the time of establishment. The structure and the composition of the senate did not bring the representation of neither the professionals nor experts or a minority community representation. The members who were appointed by the Governor General became mainly his/her supporters. Others appointed by the House of Representatives were also supporters of their political parties. Hence, the objective of providing political education to the members of Parliament was completely a failure. The result of all these downfalls was the adoption of a unicameral legislature under the Republican Constitution of 1972.

5. Contemporary discourse on the bicameral legislature

The question of Bicameralism or the question whether an Upper House should be established or not, is on dialogue again. The government is having discussions with the Tamil National Alliance (TNA) about the possibility to establish a Senate, as part of the solution to the political problem. Hence, it is important to map various arguments for and against establishing a senate in the present post-war Sri Lankan context. Bicameral legislature has been in discussion in all the proposed options in the recent history, starting from the Mangala Moonesinghe Committee report until All Party Representatives Committee Report of Hon R Yogarajan and Nizam Kariapper in 2010.

5.1 Managala Moonesinghe Committee Report -1993

The committee was established to propose a solution for the North East problem. In addition to proposing several options with that regard, they had also proposed the option of a Senate or an upper house to the Parliament with a membership of 50 people out of which 27 were elected from the provinces. Each province could elect 3 representatives to the Senate. The balance could be appointed by the political parties that are represented in the House of Senate and others to be appointed by the executive to obtain the contribution of the professionals and experts from various fields. However, this was not highlighted in the final proposals put forward by the committee and was only discussed as a possible option.

5.2 SLFP proposals to the APRC

The senate was proposed as a power sharing mechanism and to ensure the provincial representation in the central legislature. The proposed senate according to them shall consist of 75 members out of which 25 shall be appointed after the general elections based on the representation in the House of Representatives. Hence,

they assume that even a party with few seats in the House of Representatives shall obtain a seat in the senate. Chief Ministers from all the provinces shall be members of the senate as well. The balance shall be appointed by the President. In addition, women representation will also be guaranteed via the senate. The legislative powers of the senate include mainly reviewing and researching on bills. In fact they cannot delay any piece of legislature for more than three months.

5.3 Prof. Tissa Vitarana Proposals

The highlights of proposals are as follows

1. ‘The Senate should comprise representatives from the Provinces. (This would enable the Provinces to play a role in the national legislature. It would also act as an in-built mechanism against hasty legislation that may have an adverse effect on the Provinces.
2. Such a senate is found in almost every country where there is substantial devolution of power. A Senate should be considered a unifying mechanism. It would also function as a mechanism to rectify possible imbalances of representation in the House of Representatives. The senate could also facilitate consensus building amongst interest groups).
3. The members of the Senate shall be elected by the respective provincial legislatures. The election shall be according to the principle of proportional representation in a way that will facilitate the representation of the different communities and small political parties.
4. In determining the size of the Senate there is the need to maintain a fair balance between the Senate and the Parliament. A ratio of 1:3 between the membership of the Senate and that of the House of Representatives is desirable.
5. All legislation, with the exception of Money Bills, can be initiated in the Senate as well.
6. The cabinet of Ministers should, in principle, reflect the pluralistic character and also be representative of the province of Sri Lanka.

APRC Proposals (Hon R Yogarajan & Nizam Kariapper)

Key features of the proposals

Functions: Provide space for provinces to play a role in the national legislature, to act as an inbuilt mechanism against hasty legislature

Structure: Each of the Provinces is represented by seven Senators making up a total of 63, elected on the basis of a single transferable vote system by the Members of the Respective provincial legislatures.

In addition, there shall be 10 Senators selected by the community Councils (one for the Muslims living outside the North and East, and the other for the Indian Tamils). The President of the Republic nominates two persons to represent unrepresented community groups.

The election of members of the Senate shall be done in a manner that will facilitate the representation of the different communities and smaller political parties. In electing representatives to the Senate, it must be ensured that every district in a Province is represented.

One-third of the total number of Senators shall vacate office every two years

The Senate shall be presided over by the Vice-President of the Republic who shall not have a right to vote but would nonetheless be entitled to a casting vote

5.5 Proposals of the Present UPFA Government

The government has proposed two options for the establishment of the senate

The provincial councils to elect 75 members, three each from the 25 districts with the President nominating 15 members

People to elect 63 members -- seven from each province to the Senate or the Second Chamber with the President nominating 17 members.

5.6 Expert opinion on the Senate

Prof. Sumanasiri Liyanage, an eminent political economist has shared some of his suggestions on the senate in public. His first suggestion is that the Senate should be based on Ponnambalam's 50-50 formula. Suppose the Senate is comprised of 40 members (I prefer small Senate), 20 members out of 40 shall be Sinhalese while the other 20 belong to other communities. Out of this 20, 5 should represent members of very small ethnic groups, like Dutch burghers, other Burgher communities, Malays. He further suggests Tamils, Muslims and Up-country Tamils shall get 5 seats each in the 40 member Senate. Malays, Veddhas, and other small communities, like Malayalis, Telingu community etc.

Instead of provincial legislatures electing members to the Senate, his second option proposes that provincial legislators elect members of the Senate. So the provincial legislators belonging to different communities can elect their respective representatives to the Senate. For example Sinhala members shall elect 20 members of the 40 member Senate. Up-country Tamil members, Tamils and Muslims shall elect five representatives each. This will give more representative capacity to non-contiguous communities. The balance five members shall be appointed by the President with the advice of the Prime Minister and the leader of the

Opposition in consultation with different representative bodies of the respective communities (like Dutch Burgher Association).

In the opinion of Hon. Prof Rajiva Wijesinhe a senate can provide for participation by distinguished individuals as advocates for interests needing consideration without having much political weight, such as religious views, aesthetic concerns, academics and professional viewpoints. However, such special interests should not have undue weight in examining general issues. Thus a senate, while having unlimited powers of discussion and advice could have limitations on decision making powers. Moreover, like most other second chambers in the world, Prof Wijesinhe believes that it could have powers for instance simply to delay some legislation, by advancing considerations Parliament must examine. In fact, if Parliament insists, then senate consent will not be needed.

Meanwhile, he believes a senate could also provide desirable checks on the Executive, being required for instance to approve Executive appointments to particular positions accepting the principle that appointments to crucial positions should not be in the hands of a single individual; the Executive President.

In addition, Professor in Political Science in the University of Peradeniya, Ranjith Amarasinghe's opinion on the second chamber is worth looking at. According to him in a centrally governed system like Sri Lanka a unitary parliament and an executive presidency is a real challenge for democratic governance. The best example for this is the process the present government followed in bringing the 18th amendment to the constitution. Hence, a separation of powers if possible both vertically and horizontally is important to bring about democratic governance in Sri Lanka. In this context, he proposes a senate as such mechanism for separations of powers. The membership of the senate according to him should be 60 to 70. Every province should be given an equal representation in the senate and they should be elected by a mixed electoral system. Moreover, there should be special provisions to ensure the representation of the minority communities. However, the space for president to appoint few members to the senate should also be accommodated. In terms of the powers of the senate, a fair amount of powers on the provinces should be vested in them.

Taking the opinions of these experts into consideration the following common grounds can be mapped

Provide space for Provincial representation within the national Legislature

Use the second chamber as an effective methodology of sharing of powers

Provide space for the experts/professionals to contribute to the law making process

Provide desirable checks on the executive

As a mechanism of protecting the rights of minority communities and marginalized social groups

However, as yet, there is no comprehensive agreement between political parties about the Bicameral Legislature. In fact, this exercise was an attempt to draw key options for a second chamber as it has come to the forefront in the contemporary political discourse.