

Notes on

State Legislature



State Legislature

The state legislature is a legislative branch of a political subdivision (state in India's case) in a federal system. As such, it occupies a central position in the polity of a state in India. Part VI of the Constitution of India (Article 168-212) deals with the organization and functions of the state legislature. Despite many similarities with the Parliament at the Central level, there are significant differences as well.

Organization of state legislature

Art. 168 deals with the Constitution of Legislatures in the States. It says that-

“For every State, there will be a Legislature which will consist of the Governor, and Legislative Assembly, and Legislative Council in some states”

The organization of state legislatures is not uniform. Most states have a unicameral system, while others have a bicameral system. At present (2019), only six states have two Houses (bicameral). These are **Andhra Pradesh, Telangana, Uttar Pradesh, Bihar, Maharashtra, and Karnataka**. The Jammu and Kashmir Legislative Council was abolished by the Jammu and Kashmir Reorganization Act, 2019.

Though the AP Legislative Assembly in January, 2020 passed a resolution seeking to abolish the Council, it will continue to transact business without any hindrance till both the Houses of Parliament pass a bill for the same and the President gives his assent to it.

22 states have a unicameral system in which the state legislature consists of the governor along with the legislative assembly. In the states having a bicameral system, the state legislature consists of the Governor, the legislative council (Vidhan Parishad) and the legislative assembly (Vidhan Sabha). The Legislative Council (Vidhan Parishad) is the upper house (second chamber or house of elders), while the Legislative Assembly (Vidhan Sabha) is the lower house (first chamber or popular house).

Article 169 deals with the Creation/abolition of Legislative Councils in States.

The Parliament has the power to abolish a legislative council or create it, provided that the legislative assembly of the state passes a specific resolution by a special majority, that is, a majority of the total membership of the assembly along with a majority of not less than two-thirds of the members of the assembly who are present and voting. This Act of Parliament is not an amendment of the Constitution (Article 368) and is passed like ordinary legislation.

Composition

STRENGTH- The legislative assembly consists of representatives which are directly elected by the people on the basis of universal adult franchise. The maximum strength of a legislative assembly is fixed at 500 and minimum strength at 60. However, in case of smaller states (in terms of population) such as Sikkim it is 32; and for Goa and Mizoram, it is 40. Apart from this, the Governor can also nominate one member from the Anglo-Indian community to the legislative assembly if they are not adequately represented in the house.

The members of the legislative council of states are indirectly elected. The maximum strength of the legislative council of states is fixed at 1/3rd of the total strength of the corresponding state legislative assemblies whereas minimum strength of the legislative councils should be 40. Delhi, Puducherry and Jammu and Kashmir are the only three Union Territories that have a Legislative Assembly.

Manner of election to the legislative councils:

- (a) 1/3rd are elected by the members of local bodies in the state such as municipalities etc.,
- (b) 1/12th are elected by graduates of three years standing and residing within the state,
- (c) 1/12th are elected by teachers of three years standing in the state, not lower in standard than secondary school,
- (d) 1/3rd are elected by the members of the legislative assembly of the state from amongst persons who are not members of the assembly, and
- (e) The remainder are nominated by the governor from amongst the persons who have special knowledge or practical experience of literature, science, art, cooperative movement, and social service.

Thus, 5/6 of the total number of members of a legislative council is indirectly elected and 1/6 are nominated by the governor.

Membership of the State Legislature

The Constitution lays down the following qualifications for a person to be chosen as a member of the State legislature: -

- Citizen of India.
- He must be not less than 30 years of age, in the case of the legislative council and not less than 25 years of age in the case of the legislative assembly.
- He should not have been found guilty as per the provisions of RPA, 1951. In defection case also a member is liable to be disqualified as per the Anti-Defection Act (10th Schedule).

- Also, he should not be of unsound mind, he should not hold any office of profit; he isn't declared an un-discharged insolvent etc.

Presiding Officers of State Legislature

Each House has its presiding officer. There is a Speaker and a Deputy Speaker for the Vidhan Sabha and a Chairman and a Deputy Chairman for the legislative council (Vidhan Parishad). The Speaker is elected by the Vidhan Sabha itself from amongst its members. Normally, the Speaker remains in office during the life of the assembly. However, he vacates his office earlier in the following three cases:

1. he stops being a member of the assembly;
2. he submits his resignation in writing to the Deputy Speaker; and
3. he is removed by a majority of all the members of the Vidhan Sabha. The resolution for the same can be moved only after giving 14 days advance notice regarding the same.

Some salient features regarding the Speaker-

- 1) The Speaker is the final interpreter of the provisions of the Constitution of India, the rules of procedure and conduct of business of assembly and the legislative precedents within the assembly.
- 2) He does not vote in the first instance. However, he can exercise a casting vote in the case of a tie.
- 3) He has the power to decide whether a bill is a Money Bill or not and his decision on this question is final.
- 4) He has the power to decide the questions of disqualification of a member of the assembly arising on the ground of defection.

Deputy Speaker of Assembly- The Deputy Speaker is also elected by the assembly itself from amongst its own members. He is elected after the Speaker. The Deputy Speaker remains in office normally during the life of the assembly. The Deputy Speaker performs the duties of the Speaker's office when it falls vacant.

Chairman of Council - The Chairman is elected by the council from amongst its members. The Chairman has to vacate his office if:

- 1) if he stops being a member of the council;
- 2) if he submits his resignation in writing to the Deputy Chairman; and
- 3) if he is removed by a majority of all the members of the council. A resolution for the same can be moved only after giving 14 days advance notice.

The Speaker has one power which is not enjoyed by the Chairman, which is the power to decide whether a bill is a Money Bill or not. His decision is final.

Deputy Chairman of Council- The Deputy Chairman is elected by the council from amongst its members.

DURATION

1. The legislative assembly is not a continuing chamber. Its normal term is five years. It starts from the date of its first meeting after the elections. However, the governor has the power to dissolve the assembly at any time (even before the completion of its term) to conduct fresh elections. Also, the term of the assembly can be extended during a national emergency, by a law of Parliament, for the duration of one year at a time. But this extension cannot continue after a period of 6 months after the emergency has stopped to operate. The assembly should be re-elected within six months after the end of emergency.

2. The legislative council is a continuing chamber, which means that it is a permanent body which is not subject to dissolution. Rather, one-third of its members retire every second year. So, the term of office of an MLC is 6 years. Vacant seats are filled up at the beginning of every third year. The retiring members are eligible for re-election for unlimited number of times.

Sessions of the state legislature:

Summoning - The governor summons each House of legislature to meet. The maximum gap between the two sessions of the state legislature cannot be more than 6 months. A session of the legislature consists of many sittings.

Adjournment- Adjournment suspends the work in a sitting for a specific time. Adjournment sine die means terminating a sitting of the legislature for an indefinite period.

Prorogation- The presiding officer declares the House adjourned sine die when the business of the session gets completed. As soon as possible, the governor issues a notification for prorogation of the session.

But the governor can also prorogue the House which is already in session. A prorogation has the effect of terminating a session of the House.

Dissolution- Only the Vidhan Sabha is subject to dissolution. A dissolution ends the life of the existing House and a new House must be constituted after the general elections are held again.

Quorum- A Quorum is the minimum number of members needed to be present in the House for it to transact any business. It is 10 members or one-tenth of the total number of members of the House, whichever is more. On failure to achieve a quorum, it is the duty of the presiding officer to either adjourn the House or to suspend the meeting until a quorum can be achieved.

Rights of Ministers and Advocate General- In addition to every member of a House, all ministers and the advocate general of the state also have the right to speak and take part in proceedings of the House or any of its committees of which he/she is named a member, however, without being entitled to vote.

There are two reasons underlying this constitutional provision:

- 1) He/She can participate in proceedings of a House of which he/she is not a member.
- 2) A minister, not a member of either House, can also participate in the proceedings of both the Houses.

Law Making Powers of the state legislature in India

The State Legislature has the power to make laws on State List and Concurrent List. At the same time, the Parliament and the Legislative Assemblies both have the right to make laws on the subjects that are mentioned in the Concurrent List. But if a contradiction arises between the Union law and the State law on the subject, ultimately the law made by the Parliament will prevail.

Ordinary bills can be introduced in either of the Houses (Vidhan sabha or the Vidhan Parishad if the state happens to be bicameral), but the Money bill is always and of necessity first introduced in the Vidhan Sabha. It cannot be introduced in the Vidhan Parishad and its powers to make changes in a money bill are limited.

After the bill has been passed by both Houses of the state legislature, it is sent to the Governor for his assent. The Governor has the option to send back the bill for reconsideration. When and if this bill is passed again by the Legislature, the Governor must give his assent to the bill, he cannot withhold it.

Like the President, the Governor has the power to issue an Ordinance on State subjects when the legislature is not in session. These ordinances have the force of law. The ordinances which have been issued are ultimately laid before the State Legislature when it reassembles. It ends being in operation after the expiry of six weeks, unless rejected by the Legislature before that

period. If approved, the Legislature passes a regular bill to become a law in order to replace the ordinance.

Financial Powers

The State Legislature (Vidhan Sabha) has strict control over the finances of the State. A money bill is introduced at the first instance only in the Vidhan Sabha. The money bill, among other things, includes authorization for the expenditure to be incurred by the government along with imposition or abolition of taxes, borrowing, etc.

Such a bill is introduced by a Minister of the state government on the recommendations of the Governor. The money bill, in any case, cannot be introduced by a private member. The Speaker of the Vidhan Sabha has the sole responsibility of certifying that a particular bill is a money bill.

After a money bill has been passed by the Vidhan Sabha, it is then sent to the Vidhan Parishad. It has then the job of returning this bill within 14 days either with or without its recommendations. The Vidhan Sabha has the power to either accept or reject its recommendations. The bill is deemed to have been passed by both Houses of the legislature after this stage.

The bill is then sent to the Governor for his assent to the bill. The Governor cannot withhold his assent in case of money bills as they are introduced with his prior approval.

Position of a State Legislature

The State Legislature occupies the same position in a state as the Parliament at the central level. However, there are some differences in the degree of their relative powers. There are several limitations on the powers of a state legislature with respect to the Union Government.

Limitations on the Powers of State Legislature

1. Prior consent of the President of India is needed for the introduction of some bills regarding certain matters.
2. Reservation of particular bills by the Governor for the President's Assent. Such bills can become laws only after the President has given his assent to them.
3. Certain limitations can be imposed by the Rajya Sabha.

4. During a national emergency (Article 352), the Parliament is empowered to pass a law on any subject enumerated in the State List. Such a law operates during the period of emergency and for a further period of six months after the end of the emergency.
5. During the operation of constitutional emergency in a state (Article 365), the Parliament gets the power of making laws for that particular state.
6. Discretionary powers of the Governor of a state are also a limitation on the State Legislature. Whenever he/she acts in his/her discretion, he/she is beyond the jurisdiction of the State Legislature. The Governor can even dissolve the State Legislative Assembly while acting in his discretion.

Specifics of the articles pertaining to the above aspects are given below-

Article 170: Composition of Vidhan Sabha

Article 171: Composition of Vidhan Parishad

Article 172: Duration

Article 173: Qualification for membership

Article 174: Sessions of the Legislature, prorogation and dissolution

Article 175: Right of Governor to address the House

Article 176: Special address by the Governor to the House

Article 177: Rights of Ministers and Advocate-General

Article 178: The Speaker & Deputy Speaker of the Vidhan Sabha

Article 179: Vacation of the offices of Speaker and Deputy Speaker

Article 180: Power of the Deputy Speaker to perform the duties of the Speaker

Article 181: The Speaker/the Deputy Speaker should not preside over a resolution for his/her removal from office under consideration.

Article 182 – The Chairman and Deputy Chairman of the Vidhan Parishad

Article 183 – Vacation of the offices of Chairman and Deputy Chairman

Article 184 – Power of the Deputy Chairman to perform the duties of the Chairman

Article 185 –The Chairman or the Deputy Chairman should not preside over a resolution for his/her removal from office under consideration

Article 186 – Salaries and allowances of the Presiding Officers

Article 187 – Secretariat of State Legislature

Article 188 –Oath/affirmation by members of the Vidhan Sabha and the Vidhan Parishad

Article 189 –Voting in Houses, Quorum

Article 190 - Vacation of seats in the legislature

Article 191- Disqualifications for membership of the legislature

Article 192- Decision on disqualifications of members of the legislature

Article 194- Powers, privileges, etc. of the Legislatures and their members and committees

Article 195- Salaries and allowances of members of the legislature

Article 196- Provisions regarding introduction and passing of Bills in the legislature

Article 197- Restriction on powers of Legislative Council with regard to Bills other than Money Bills

Article 198- Special procedure with respect to Money Bills

Article 199- Definition of Money Bills (to be taken up only by the Vidhan Sabha)

Article 200- Assent to Bills of the legislature

Article 201- Bills reserved by the Governor for consideration of the President

Article 202- Annual financial statement in the legislature

Article 203- Procedure in the Legislature with respect to estimates presented before it

Article 204- Appropriation Bills in the legislature

Article 205- Supplementary, additional or excess grants in the legislature

Article 206- Votes on account, votes of credit and exceptional grants in the legislature

Article 207- Special provisions as to financial Bills in the legislature

Article 208- Rules of procedure in the legislature

Article 212- Courts are not supposed to inquire into proceedings of the Legislature

Article 213- Power of Governor of the state to promulgate Ordinances during recess of the Legislature

Article 333: Anglo Indian representation (if inadequately represented) in the legislative assembly of different states.