

*“A ship in harbor is safe, but that is not what ships are built for.” —John A.*

4. The Prime Minister of India, at the time of his/her appointment
- (a) need not necessarily be a member of one of the Houses of the Parliament but must become a member of one of the Houses within six months
  - (b) need not necessarily be a member of one of the Houses of the Parliament but must become a member of the Lok Sabha within six months
  - (c) must be a member of one of the Houses of the Parliament
  - (d) must be a member of the Lok Sabha

5. Which of the following is/are among the Fundamental Duties of citizens laid down in the Indian Constitution?

- 1.To preserve the rich heritage of our composite culture
- 2.To protect the weaker sections from social injustice
- 3.To develop the scientific temper and spirit of inquiry
- 4.To strive towards excellence in all spheres of individual and collective activity

Select the correct answer using the codes given below :

- (a)1 and 2 only (b)2 only  
(c)1, 3 and 4 only (d)1, 2, 3 and 4

# PRACTICE QUESTION

1. Which one of the following cases prompted the Parliament to enact 24th Constitutional Amendment Act ?

- (a) Golaknath case
- (b) Shankari Prasad case
- (c) Kesavananda Bharati case
- (d) Minerva Mills case

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# PRACTICE QUESTION

3. The Constitution of India establishes parliamentary form of Government, and the essence of this form of government is its responsibility to the:

- (a) People of India (b) President
- (c) Prime Minister (d) Legislature

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# PRACTICE QUESTION

4. In a parliamentary form of Government, ministers are appointed by:

- (a) The head of the state at his discretion
- (b) The head of the government
- (c) The legislature
- (d) None of the above

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# PRACTICE QUESTION

5. Which one of the following is/are essential feature(s) of the parliamentary system?

1. Fusion of the Executive and the Legislature

2. Elected head of the state

3. Collective responsibility

4. Fixed tenure of the executive

a) 1 and 3 only b) 1,3 and 4 only c) 1,2 and 3 only d) All of the above

# PARLIAMENT

## Composition of Parliament

### Article 79

## Why the President is also considered a part of the Parliament?

## Functions performed by the Union Legislature

- It provides Cabinet/CoM
- It exercises control over CoM; CoM remain in power till the time it enjoys the confidence of the Parliament/Loksabha
- It provides for criticism of the CoM
- It also acts as an organ/tool in availing information to the public
- It legislates/enacts laws
- It exercises control over finances/expenses/budgets of the Government



# PARLIAMENT

## In case of dissolution:

- A bill pending in the Lok Sabha lapses (whether originating in the Lok Sabha or transmitted to it by the Rajya Sabha).
- A bill passed by the Lok Sabha but pending in the Rajya Sabha lapses.
- A bill not passed by the two Houses due to disagreement and if the president has notified the holding of a joint sitting before the dissolution of Lok Sabha, does not lapse.
- A bill pending in the Rajya Sabha but not passed by the Lok Sabha does not lapse.
- A bill passed by both Houses but pending assent of the president does not lapse.
- A bill passed by both Houses but returned by the president for reconsideration of Houses does not lapse.

# PARLIAMENT

Members of the legislature hold the government accountable for its work. The basic office of profit law is that if a legislature holds an office of profit under the government, (s)he might be susceptible to government influence and may not discharge their constitutional duties impartially. The intent of the law is to ensure that there is no conflict of interest in case of an elected member of a legislature. It simply seeks to enforce the concept of separation of power between the legislature and the executive.

# ANTI-DEFECTION LAW

## Background

- Indian politics in 70's and 80's
- Ayaram Gayaram Politics

## Objective of Anti-defection law

To Prevent political defections which may be due to reward of office or other similar considerations

- Inserted Xth Schedule via 52<sup>nd</sup> Constitutional amendment act
- Added article 102(2) and 191(2) in the Indian Constitution

## Whom does it apply to ?

MPs, MLAs and MLCs

# ANTI-DEFECTION LAW

## Provisions

- According to the law any legislator can be disqualified if he/she:
  - ☐ Voluntarily gives up membership of political party
  - ☐ Votes or abstains in the house, contrary to the whip of the party

## In case of a nominated member

Joins a political party after 6 months of taking the seat

## Independent Member

# ANTI-DEFECTION LAW

## Exceptions

- Presiding officers

## Exception on splits/mergers

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# ANTI-DEFECTION LAW

Constitutionality of the law

Reasonable restriction on privileges

Judicial review

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# ANTI-DEFECTION LAW

## Voluntarily gives up membership

- Ravi Naik vs UOI 1994 : Wider than resignation

## Incase of expulsion/suspension from a party

- Internal matter of the individual and political party
- Disqualification on joining another party
- Still bound by the whip

## Time limit on decision making by the speaker

- 2015 Hyderabad High Court case
- Speaker, Haryana Vidhan Sabha vs Kuldeep Bishnoi, 2012
- Vice-president's order

# ANTI-DEFECTION LAW

## Anti-defection law in other countries

- Prevalent in 23 commonwealth countries
- Bangladesh, Kenya, Singapore disqualify a legislator on ceasing to be a member of the party or when he is expelled
- UK, USA, Canada and Australia : Free to switch sides

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# ANTI-DEFECTION LAW

## Analysis of Anti-defection law

- Ensures stability
  - Prevents horse trading
  - Ensures loyalty to the party
  - Promotes party discipline
  - Reduces possible corruption
- 
- Compromises on parliamentary democracy
  - Curbs dissent in the name of stability
  - Started to promote wholesale defections
  - Harmful to democracy especially because of lack of internal party democracy
  - Weakens the system of checks and balances
  - Excessive delays in decision making

# ANTI-DEFECTION LAW

## Way Ahead

- Make the institution neutral
- Whip only after internal discussions
- Independent Tribunals
- Private member bill 2010
- Concept of free votes of UK

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# ANTI-DEFECTION LAW

## Recommendations

Dinesh Goswami Committee on electoral reforms suggested that the issue of disqualification should be decided by the President/ Governor on the advice of the Election Commission.

Halim Committee on anti-defection law suggested that the words 'voluntarily giving up membership of a political party' and the term 'political party' be comprehensively defined.

Law Commission suggested that the Political parties should limit issuance of whips to instances only when the government is in danger.

Election Commission suggested that decisions under the Tenth Schedule should be made by the President/ Governor on the binding advice of the Election Commission.

NCRWC suggested that the vote cast by a defector to topple a government should be treated as invalid and that the defectors should be barred from holding public office for the duration of the remaining term.

# PARLIAMENT

## Legislative Procedure in the Parliament

- 1st reading of the bill: General discussion on the bill in parliament. Referred to consideration of a parliamentary committee for further scrutiny and deliberation
- 2nd reading of the bill: clause by clause discussion and certain amendments will be suggested, voting takes place.

[Modes of voting: 1. voice vote (Ayes/No's) 2. Division of votes (e-voting) 3. Show of hands]

- 3rd reading of the bill: The entire bill is put to vote
- Bill in the second house
- Bill is presented before President for his Assent
- Notification of the law by the govt.

# PARLIAMENT

## Budgetary Process

### Article 112: Annual financial statement includes:

- Estimates of the expenditure for the coming year
- Estimates of the revenues for the coming year
- Actual expenditure and revenue of the preceding year
- Important proposals and policies of the government

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# PARLIAMENT

## Stages involved in the passing of budget in the Parliament

- The tabling of the Annual Financial statement
- General discussion: 3-5 days; no voting
- Parliament will go for the break; meanwhile, during the break, Departmental standing committees scrutinize demands for grants
- Reports of Departmental standing committees containing their recommendations for parliament
- Vote on demand of grants by Lok Sabha; Lok Sabha could also impose cuts on demand of grants
- Appropriation bill
- Passing of the finance bill [finance bill- includes proposals for taxation]

# PRESIDING OFFICERS OF THE HOUSE

- Vice-President presides over the meetings of the House.
- Unchallenged guardian of the prestige and dignity of the House.
- He is also the principal spokesman of the House and represents the collective voice to the outside world.
- He ensures that the proceedings of the House are conducted in accordance with the relevant constitutional provisions, rules, practices and conventions and that decorum is maintained in the House.
- He is the custodian and guardian of the rights and privileges of the House and its members.
- During the question hour he deftly handles the situation, ensures that Members' rights of asking questions and receiving complete replies is well enforced and gives rulings on privilege matters and other procedural points.
- Whenever important debates or landmark discussions such as on Constitution Amendment Bills take place, he is invariably in the Chair.
- The Chairman's rulings constitute precedents which are of a binding nature. The Chairman is not bound to give reasons for his decisions. The Chairman's rulings cannot be questioned or criticised and to protest against the ruling of the Chairman is a contempt of the House.

# PRESIDING OFFICERS OF THE HOUSE

- Right of the Chairman to interpret the Constitution and Rules
- Maintenance of order in the House is a fundamental duty of the Chairman and he has been invested with all the necessary disciplinary powers under the rules for the purpose, such as checking irrelevance or repetition in the speech of a member, intervening when a member makes an unwarranted or defamatory remark by asking him to withdraw the same.
- Parliamentary Committees, whether set up by the Chairman or by the House, work under his guidance. He appoints their Chairmen and issues such directions to them as may be necessary in respect of the procedure and work. He nominates members to various Standing Committees and the Department-related Parliamentary Committees. He himself is the Chairman of the Business Advisory Committee, the Rules Committee and the General Purposes Committee
- He is empowered to adjourn the House or to suspend its sitting in the event of absence of quorum. In case of resignation of a member from the House, the Chairman is required not to accept the resignation, if from information received or otherwise, and after making such inquiry as he thinks fit, he is satisfied that such resignation is not voluntary or genuine; under the Tenth Schedule to the Constitution, the Chairman determines the question as to disqualification of a member of the Rajya Sabha



# PRESIDING OFFICERS OF THE HOUSE

## Deputy Chairman

- In his task as Chairman, he is assisted by the Deputy Chairman who is a member of the House and elected by it. The Deputy Chairman presides over the Rajya Sabha in the absence of the Chairman and performs the duties of the office of the Chairman if the Vice-President is acting as President or if there is a vacancy in the office of the Vice-President.

## Vice-Chairmen

- There is also a panel of six Vice-Chairmen, which is constituted every year. A Vice-Chairman presides over the meeting of the Rajya Sabha in the absence of the Chairman or the Deputy Chairman.
- As the Presiding Officer, the Chairman of the Rajya Sabha is the unchallenged guardian of the prestige and dignity of the House. His impartial and fair judgment enhances the reputation and prestige of his office.

# PRESIDING OFFICERS OF THE HOUSE

## Election as Speaker of Lok Sabha

- No specific qualifications are prescribed for being elected as the speaker.
- The constitution states that the Speaker must be a member of the House but an understanding of the constitution and conventions of the Parliament is considered a major asset.
- The House elects its presiding officer by a simple majority of members present, who vote in the House.
- Usually, a member belonging to the ruling party is elected Speaker.

## Removal of Speaker of Lok Sabha

- The House can remove the Speaker through a resolution passed by an effective majority which means more than 50% of the total strength needs to vote for removing the Speaker. This is done as per Articles 94 and 96.
- A Speaker can also tender his resignation to the Deputy Speaker.

# PRESIDING OFFICERS OF THE HOUSE

- The Speaker presides over the meetings in the Lower House. In other words, the Speaker conducts business in Lok Sabha by ensuring discipline and decorum among members.
- S/he guards the rights and privileges of the members of Lok Sabha, deciding who should speak at what time, the questions to be asked, the order of proceedings to be followed, among others.
- A Speaker uses his/her power to vote, in order to resolve a deadlock. That is, when the House initiates a voting procedure, the speaker does not cast a vote in the first instance. It is only when the two sides receive equal number of votes that the Speaker's vote breaks the deadlock, making his/her position impartial.
- In the absence of a quorum in the House, it is the duty of the Speaker to adjourn the House or to suspend any meeting, until a quorum is met.
- The Speaker decides the agenda that must be discussed in a meeting of the Members of the Parliament.
- The Speaker is invested with the immense powers of interpreting the Rules of Procedure. Since s/he is a member of the House as well as the Presiding Officer, s/he ensures the discipline of the House.

# PRESIDING OFFICERS OF THE HOUSE

- The Speaker ensures that MPs are punished for unruly behaviour.
- A Speaker can also disqualify a Member of Parliament from the House on grounds of defection (under the Tenth Schedule of the Constitution).
- A member who flouts the Speaker's orders or directions may be named by the Speaker and in such cases, the member may have to withdraw from the House.
- S/he also issues warrants to execute the orders of the House, wherever necessary and delivers reprimands on behalf of the House.
- The Speaker also permits various parliamentary procedures like the motion of adjournment, the motion of no confidence, the motion of censure, among others.
- The Speaker presides over the joint sitting of the two Houses of Parliament.
- Once a Money Bill is transmitted from the Lower House to the Upper House, the Speaker is solely responsible for endorsing his or her certificate on the Bill. In other words, s/he is given the pivotal power to decide whether any Bill is a Money Bill. His/her decision is considered final.
- Except for the no-confidence motion, all other motions which come before the House come only after the Speaker permits them.

# PRESIDING OFFICERS OF THE HOUSE

- The Speaker also decides on granting recognition to the Leader of the Opposition in the Lok Sabha.
- The Speaker has under his or her jurisdiction, a number of Parliamentary Committees such as the Rules Committee, the Business Advisory Committee and the General Purposes Committee. The Speaker nominates the various Chairmen to these Committees while monitoring the committees' workings as well.
- S/he is the ultimate arbiter and interpreter of those provisions which relate to the functioning of the House. His/her decisions are final and binding and ordinarily cannot be questioned, challenged or criticized.
- Speaker's approval is sought for the date on which the House will start before it is convened by the President.
- The Speaker decides the form in which amendments may be moved to the Motion of Thanks to the President's address.
- With regard to moving amendments to a Bill, the permission of the Speaker is required.
- The Speaker makes obituary references in the House, formal references to important national and international events and the valedictory address at the conclusion of every Session of the Lok Sabha and also when the term of the House expires.

# PRESIDING OFFICERS OF HOUSE

## Powers and duties of the speaker in nutshell

- Presides over the joint sittings of the parliament
- Decides whether a bill is a money bill or not
- Proceedings of the house
- Expunge remark
- Custodian of privileges of the members of the house/MPs
- Admittance/rejections of the various motions
- Decides anti-defection cases
- Power to admit a point of order

# PRESIDING OFFICERS OF HOUSE

How the Indian constitution ensures independence of the presiding officers of the parliament?

- Casting vote; no vote in the first instance
- Exemption under 10th schedule
- Salaries, expenses- charged on Consolidated Fund of India
- Their conduct can't be discussed in parliament- unless a resolution for their removal has been taken up

Instances of misuse of the position of the speaker

- In the case of Anti-defection law partiality towards their party
- Certifying a bill as a money bill in an arbitrary manner
- Misuse of breach of Privileges of parliament
- Biased in admitting motions from opposition

# PRESIDING OFFICERS OF HOUSE

## Way forward

- Following the UK system: A money bill should be decided by a committee formed for the purpose and not by the speaker alone;
- Once a speaker always a speaker- will help in making speaker neutral and unbiased by removing insecurity
- Bar post-speaker positions
- Appoint people of the highest integrity to the post of speaker

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# MOTIONS AND RESOLUTIONS

Motions and resolutions are procedural devices to raise a discussion in the House on a matter of general public interest. With few exceptions, the process of debate in the House is initiated by a member or Minister by making a motion. In its widest sense, the term 'motion' means any proposal submitted to the House for eliciting its decision.

Every matter is determined in the House by means of a question put from the Chair on a motion made by a member and resolved either in the affirmative or negative. The decision which has thus been elicited, turns the motion into a resolution or order of the house. In other words, by a motion, the House discusses a matter, by a resolution the House declares its own opinion. Motions and resolutions can be moved by private members as well as Ministers.

When they are moved by the former, they are called private members' motions or resolutions. As the time for discussing motions is taken from the time available for Government Business, Government motions get precedence over private members' motions, on the same subject. When they are moved in pursuance of a constitutional or statutory provision, they are called statutory motions or resolutions. The short duration discussion is a procedural device to enable members to raise discussion without a formal motion on a matter of urgent public importance.

# MONEY BILL AND FINANCIAL BILL

Under Article 110 (1) of the Constitution, a Bill is deemed to be a Money Bill if it contains only provisions on all or any of the following:

- (a) imposition, abolition, remission, alteration or regulation of any tax;
- (b) regulation of borrowing by the government;
- (c) custody of the Consolidated Fund or Contingency Fund of India, and payments into or withdrawals from these Funds;
- (d) appropriation of moneys out of the Consolidated Fund of India;
- (e) declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;
- (f) receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or
- (g) any matter incidental to any of the matters specified in (a) to (f).

# MONEY BILL AND FINANCIAL BILL

In a general sense, any Bill that relates to revenue or expenditure is a Financial Bill. A Money Bill is a specific kind of Financial Bill, defined very precisely: it must deal only with matters specified in Article 110 (1) (a) to (g).

A Money Bill is certified by the Speaker as such — only those Financial Bills that carry the Speaker's certification are Money Bills. Financial Bills that are not certified by the Speaker are of two kinds: Bills that contain any of the matters specified in Article 110, but do not contain only those matters [Article 117 (1)]; and ordinary Bills that contain provisions involving expenditure from the Consolidated Fund [Article 117 (3)].

# MONEY BILL AND FINANCIAL BILL

## Financial Bill TYPE 1

- Deals with (i) Money Bill and (ii) other Financial Bills subjected to Art.110 of Constitution.
- (i) Money Bill can Only be introduced in Lower House , i.e. Lok Sabha (ii) Financial Bill can be introduced in either House.
- GST Bill , Finance Bill 2018, Appropriation Bill 2018 are all example of Finance Bill Type 1.

## Financial Bill TYPE 2 :

- Deals with bills related to Consolidated Fund of India which are not specified under Art.110.
- Deals with matters related to President's Emoluments , Pensions Of Govt Staff etc
- Can be Introduced in Either House, Both Houses involve Equal Powers
- President's (Emoluments) and Pension Act Bill 1951 is Example of Financial Bill type 2.

# MONEY BILL AND FINANCIAL BILL

A Financial Bill of Type I has 2 features in common with a Money Bill, viz., that it cannot be introduced on Council of States and also cannot be introduced except on the recommendation of the President. But not being a money bill the Rajya Sabha has not the same power to reject or amend such a Financial Bill as it has in the case of non-Financial Bills subject to the limitation that an amendment other than for reduction or abolition of a tax cannot be moved in either House without the President's recommendation. Such a Bill has to be passed in the Rajya Sabha through 3 readings like an ordinary bill and in case of a final disagreement between the two Houses over such a Bill, the provision for joint sitting in Art 108 is attracted.

A Financial Bill of Type II is an ordinary Bill can be introduced in either of the Houses and The Rajya Sabha has full power to reject it or amend it. But it has only one special incident in view of the financial provisions (i.e., provision involving expenditure contained in it) viz., that it must not be passed in either House unless the President has recommended the consideration of such a Bill. (His prior recommendation is required in case of Type I or Money Bill but not in Type II)

# RAJYA SABHA – DOMICILE ISSUE

## Amendment in 2003

- Did away with the domicile requirement : Section 3 of the RoPA, 1951
- Secret ballot replace with open ballot

## Kuldip Nayyar vs UoI (2006)

- No violation of basic structure : As residence not a constitutional requirement but a matter of qualification made by the parliament under article 84
- No violation of federalism
- No constitutional requirement for secret voting at RS elections
- Secret voting would prevent cross voting and help in wiping out corruption

# USEFULNESS OF RAJYA SABHA

- Serves federal purpose
- Permanent house and thus several benefits
- Ensures a check on the misuse of powers by the Lok Sabha
- Prevents hasty legislation
- Serves as a chamber to get technical expertise
- Ensures sound policy making away from the populism of Lok Sabha

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# NON FEDERAL FEATURES OF RAJYA SABHA

- Unequal representation
- No special powers w.rt. Article 3
- Article 249 is considered against federalism by some

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# PARLIAMENTARY PRIVILEGES

Parliamentary privilege refers to rights and immunities enjoyed by Parliament as an institution and MPs in their individual capacity, without which they cannot discharge their functions as entrusted upon them by the Constitution.

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# PARLIAMENTARY PRIVILEGES

**Are these parliamentary privileges defined under law?**

According to the Constitution, the powers, privileges and immunities of Parliament and MP's are to be defined by Parliament. No law has so far been enacted in this respect. In the absence of any such law, it continues to be governed by British Parliamentary conventions.

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# PARLIAMENTARY PRIVILEGES

## Freedom of Speech:

According to the Indian Constitution, the members of Parliament enjoy freedom of speech and expression. No member can be taken to task anywhere outside the four walls of the House (e.g. court of law) or cannot be discriminated against for expressing his/her views in the House and its Committees.

Freedom from Arrest: It is understood that no member shall be arrested in a civil case 40 days before and after the adjournment of the House (Lok Sabha or Rajya Sabha) and also when the House is in session. It also means that no member can be arrested within the precincts of the Parliament without the permission of the House to which he/she belongs.

Exemption from attendance as witnesses: The members of Parliament also enjoy freedom from attendance as witnesses.

# PARLIAMENTARY PRIVILEGES

Right to publish debates and proceedings:

Though by convention, the Parliament does not prohibit the press to publish its proceedings, yet technically the House has every such right to forbid such publication.

Again, while a member has the privilege of freedom of speech in Parliament, he has no right to publish it outside Parliament.

Anyone violating this rule can be held responsible for any libellous matter it may contain under the common law rules.

Right to exclude strangers:

Each house of Parliament enjoys the right to exclude strangers (no-members or visitors) from the galleries at any time and to resolve to debate with closed doors.

Right to punish members and outsiders for breach of its privileges:

In India, the Parliament has been given punitive powers to punish those who are adjudged guilty of contempt of the House.

Such contempt can be committed by the members of any House or any outsider. When a member of the House is involved for parliamentary misbehaviour or commits contempt he can be expelled from the House.

# PARLIAMENTARY PRIVILEGES

## What is breach of privilege?

A breach of privilege is a violation of any of the privileges of MPs/Parliament. Among other things, any action 'casting reflections' on MPs, parliament or its committees; could be considered breach of privilege. This may include publishing of news items, editorials or statements made in newspaper/magazine/TV interviews or in public speeches.

What is the punishment in case of breach of privilege or contempt of the House? The house can ensure attendance of the offending person. The person can be given a warning and let go or be sent to prison as the case may be. In the case of throwing leaflets and chappal, the offending individuals were sentenced to simple imprisonment. In the 2007 case of breach of privilege against Ambassador Ronen Sen, the Lok Sabha Committee on privileges held that the phrase "headless chicken" was not used by Shri Sen in respect of MPs or politicians. No action was taken against him. In 2008, an editor of an Urdu weekly referred to the deputy chairman of Rajya Sabha as a "coward" attributing motives to a decision taken by him. The privileges committee held the editor guilty of breach of privilege. The committee instead of recommending punishment stated that, "it would be better if the House saves its own dignity by not giving undue importance to such irresponsible articles published with the sole intention of gaining cheap publicity."



THANKS!

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Any questions?

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