

33 State Legislature

The state legislature occupies a preeminent and central position in the political system of a state.

Articles 168 to 212 in Part VI of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the state legislature. Though these are similar to that of Parliament, there are some differences as well.

ORGANISATION OF STATE LEGISLATURE

There is no uniformity in the organisation of state legislatures. Most of the states have an 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 Reorganisation Act, 2019.¹ The Tamil Nadu Legislative Council Act, 2010 has not come into force. The Legislative Council in Andhra Pradesh was revived by the Andhra Pradesh Legislative Council Act, 2005. The 7th Amendment Act of 1956 provided for a Legislative Council in Madhya Pradesh. However, a notification to this effect has to be made by the President. So far, no such notification has been made. Hence, Madhya Pradesh continues to have one House only.

The twenty-two states have unicameral system. Here, the state legislature consists of the governor and the legislative assembly. In the states having bicameral system, the state legislature consists of the governor, the legislative council and the legislative assembly. 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).

The Constitution provides for the abolition or creation of legislative councils in states. Accordingly, the Parliament can abolish a legislative council (where it already exists) or create it (where it does not exist), if the legislative assembly of the concerned state passes a resolution to that effect. Such a specific resolution **must be passed by the state assembly by a special majority**, that is, a majority of the total membership of the assembly and a majority of not less than two-thirds of the members of the assembly present and voting. This Act of Parliament is **not to be deemed as an amendment of the Constitution** for the purposes of Article 368 and is passed like an ordinary piece of legislation (ie, by simple majority).

“The idea of having a second chamber in the states was criticised in the Constituent Assembly on the ground that it was not representative of the people, that it delayed legislative process and that it was an expensive institution².” Consequently the provision was made for the abolition or creation of a legislative council to enable a state to have a second chamber or not according to its own

willingness and financial strength. For example, Andhra Pradesh got the legislative council created in 1957 and got the same abolished in 1985. The Legislative Council in Andhra Pradesh was again revived in 2007, after the enactment of the Andhra Pradesh Legislative Council Act, 2005. The legislative council of Tamil Nadu had been abolished in 1986 and that of Punjab and West Bengal in 1969.

In 2010, the Legislative Assembly of Tamil Nadu passed a resolution for the revival of the Legislative Council in the state. Accordingly, the Parliament enacted the Tamil Nadu Legislative Council Act, 2010 which provided for the creation of Legislative Council in the state. However, before this Act was enforced, the Legislative Assembly of Tamil Nadu passed another resolution in 2011 seeking the abolition of the proposed Legislative Council.

COMPOSITION OF TWO HOUSES

Composition of Assembly

Strength

The legislative assembly consists of representatives directly elected by the people on the basis of universal adult franchise. Its **maximum strength is fixed at 500 and minimum strength at 60**. It means that its strength varies from 60 to 500 depending on the population size of the state³. However, **in case of Arunachal Pradesh, Sikkim and Goa, the minimum number is fixed at 30 and in case of Mizoram and Nagaland, it is 40 and 46 respectively**. Further, some members of the legislative assemblies in Sikkim and Nagaland are also elected indirectly.

Nominated Member

The governor can nominate one member from the Anglo-Indian community, if the community is not adequately represented in the assembly.⁴ Originally, this provision was to operate for ten years (ie, upto 1960). But this duration has been extended continuously since then by 10 years each time. Now, under the 95th Amendment Act of 2009, this is to last until 2020.

Territorial Constituencies

For the purpose of holding direct elections to the assembly, each state is divided into territorial constituencies. The demarcation of these constituencies is done in such a manner that the ratio between the population of each constituency and the number of seats allotted to it is the same throughout the state. In other words, the Constitution ensures that there is uniformity of representation between different constituencies in the state. The expression 'population' means, the population as ascertained at the last preceding census of which the relevant figures have been published.

Readjustment after each census

After each census, a readjustment is to be made in the **(a)** total number of seats in the assembly of each state and **(b)** the division of each state into territorial constituencies. The Parliament is empowered to determine the authority and the manner in which it is to be made.

Accordingly, Parliament has enacted the Delimitation Commission Acts in 1952, 1962, 1972 and 2002 for this purpose.

The 42nd Amendment Act of 1976 had frozen total number of seats in the assembly of each state and the division of such state into territorial constituencies till the year 2000 at the 1971 level. This ban on readjustment has been extended for another years (i.e., upto year 2026) by the 84th Amendment Act of 2001 with the same objective of encouraging population limiting measures.

The 84th Amendment Act of 2001 also empowered the government to undertake readjustment and rationalisation of territorial constituencies in a state on the basis of the population figures of 1991 census. Later, the 87th Amendment Act of 2003 provided for the delimitation of constituencies on the basis of 2001 census and not 1991 census. However, this can be done without altering the total number of seats in the assembly of each state.

Reservation of seats for SCs and STs

The Constitution provided for the reservation of seats for scheduled castes and scheduled tribes in the assembly of each state on the basis of population ratios.⁵

Originally, this reservation was to operate for ten years (i.e., up to 1960). But this duration has been extended continuously since then by 10 years each time. Now, under the 95th Amendment Act of 2009, this reservation is to last until 2020.

Composition of Council

Strength

Unlike the members of the legislative assembly, the members of the legislative council are indirectly elected. The maximum strength of the council is **fixed at one-third of the total strength of the assembly and the minimum strength is fixed at 40⁶**. It means that the size of the council depends on the size of the assembly of the concerned state. This is done to ensure the predominance of the directly elected House (assembly) in the legislative affairs of the state. Though the Constitution has fixed the maximum and the minimum limits, the actual strength of a Council is fixed by Parliament⁷.

Manner of Election

Of the total number of members of a legislative council:

1. $\frac{1}{3}$ are elected by the members of local bodies in the state like municipalities, district boards, etc.,
2. $\frac{1}{12}$ are elected by graduates of three years standing and residing within the state,
3. $\frac{1}{12}$ are elected by teachers of three years standing in the state, not lower in standard than secondary school,
4. $\frac{1}{3}$ are elected by the members of the legislative assembly of the state from amongst persons who are not members of the assembly, and
5. the remainder are nominated by the governor from amongst persons who have a special knowledge or practical experience of literature, science, art, cooperative movement and social service.

Thus, $\frac{5}{6}$ of the total number of members of a legislative council are indirectly elected and $\frac{1}{6}$ are nominated by the governor. The members are elected in accordance with the system of proportional representation by means of a single transferable vote. The bonafide or propriety of the governor's nomination in any case cannot be challenged in the courts.

This scheme of composition of a legislative council as laid down in the Constitution is tentative and not final. The Parliament is authorised to modify or replace the same. However, it has not enacted any such law so far.

DURATION OF TWO HOUSES

Duration of Assembly

Like the Lok Sabha, the legislative assembly is not a continuing chamber. Its **normal term is five years** from the date of its first meeting after the general elections⁸. The expiration of the period of five years operates as automatic dissolution of the assembly. However, the governor is authorised to dissolve the assembly at any time (i.e., even before the completion of five years) to pave the way for fresh elections.

Further, the term of the assembly can be extended during the period of national emergency by a law of Parliament for one year at a time (for any length of time). However, this extension cannot continue beyond a period of six months after the emergency has ceased to operate. This means that the assembly should be re-elected within six months after the revocation of emergency.

Duration of Council

Like the Rajya Sabha, the legislative council is a continuing chamber, that is, it is a permanent body and is not subject to dissolution. But, one-third of its members retire on the expiration of every second year. So, a member continues as such for six years. The vacant seats are filled up by fresh elections and nominations (by governor) at the beginning of every third year. The retiring members are also eligible for re-election and re-nomination any number of times.

MEMBERSHIP OF STATE LEGISLATURE

1. Qualifications

The Constitution lays down the following qualifications for a person to be chosen a member of the state legislature.

- (a) He must be a citizen of India.
- (b) He must make and subscribe to an oath or affirmation before the person authorised by the Election Commission for this purpose.
In his oath or affirmation, he swears
 - (i) To bear true faith and allegiance to the Constitution of India
 - (ii) To uphold the sovereignty and integrity of India
- (c) 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.
- (d) He must possess other qualifications prescribed by Parliament.

Accordingly, the Parliament has laid down the following additional qualifications in the Representation of People Act (1951):

- (a) A person to be elected to the legislative council must be an elector for an assembly constituency in the concerned state and to be qualified for the governor's nomination, he must be a resident in the concerned state.
- (b) A person to be elected to the legislative assembly must be an elector for an assembly constituency in the concerned state.
- (c) He must be a member of a scheduled caste or scheduled tribe if he wants to contest a seat reserved for them. However, a member of scheduled castes or scheduled tribes can also contest a seat not reserved for them.

2. Disqualifications

Under the Constitution, a person shall be disqualified for being chosen as and for being a member of the legislative assembly or legislative council of a state:

- (a) if he holds any office of profit under the Union or state government (except that of a minister or any other office exempted by state legislature⁹),
- (b) if he is of unsound mind and stands so declared by a court,
- (c) if he is an undischarged insolvent,

- (d) if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state, and
- (e) if he is so disqualified under any law made by Parliament.

Accordingly, the Parliament has prescribed a number of additional disqualifications in the Representation of People Act (1951). These are similar to those for Parliament. These are mentioned here:

1. He must not have been found guilty of certain election offences or corrupt practices in the elections.
2. He must not have been convicted for any offence resulting in imprisonment for two or more years. But, the detention of a person under a preventive detention law is not a disqualification.
3. He must not have failed to lodge an account of his election expenses within the time.
4. He must not have any interest in government contracts, works or services.
5. He must not be a director or managing agent nor hold an office of profit in a corporation in which the government has at least 25 per cent share.
6. He must not have been dismissed from government service for corruption or disloyalty to the state.
7. He must not have been convicted for promoting enmity between different groups or for the offence of bribery.
8. He must not have been punished for preaching and practicing social crimes such as untouchability, dowry and *sati*.

On the question whether a member has become subject to any of the above disqualifications, the governor's decision is final. However, he should obtain the opinion of the Election Commission and act accordingly.

Disqualification on Ground of Defection

The Constitution also lays down that a person shall be disqualified for being a member of either House of state legislature if he is so disqualified on the ground of defection under the provisions of the Tenth Schedule.

The question of disqualification under the Tenth Schedule is decided by the Chairman, in the case of legislative council and, Speaker, in the case of legislative assembly (and not by the governor). In 1992, the Supreme Court ruled that the decision of Chairman/Speaker in this regard is subject to judicial review¹⁰.

3. Oath or Affirmation

Every member of either House of state legislature, before taking his seat in the House, has to make and subscribe an oath or affirmation before the governor or some person appointed by him for this purpose.

In this oath, a member of the state legislature swears:

- (a) to bear true faith and allegiance to the Constitution of India;
- (b) to uphold the sovereignty and integrity of India; and
- (c) to faithfully discharge the duty of his office.

Unless a member takes the oath, he cannot vote and participate in the proceedings of the House and does not become eligible to the privileges and immunities of the state legislature.

A person is liable to a penalty of ₹500 for each day he sits or votes as a member in a House:

- (a) before taking and subscribing the prescribed oath or affirmation; or
- (b) when he knows that he is not qualified or that he is disqualified for its membership; or
- (c) when he knows that he is prohibited from sitting or voting in the House by virtue of any law made by Parliament or the state legislature.

Members of a state legislature are entitled to receive such salaries and allowances as may from time to time be determined by the state legislature.

4. Vacation of Seats

In the following cases, a member of the state legislature vacates his seat:

- (a) *Double Membership*: A person cannot be a member of both Houses of state legislature at one and the same time. If a person is elected to both the Houses, his seat in one of the Houses falls vacant **as per the provisions of a law made by the state legislature.**
- (b) *Disqualification*: If a member of the state legislature becomes subject to any of the disqualifications, his seat becomes vacant.
- (c) *Resignation*: A member may resign his seat by writing to the Chairman of legislative council or Speaker of legislative assembly, as the case may be. The seat falls vacant when the resignation is accepted¹¹.

- (d) *Absence*: A House of the state legislature can declare the seat of a member vacant if he absents himself from all its meeting for a period of sixty days without its permission.
- (e) *Other Cases*: A member has to vacate his seat in the either House of state legislature,
 - (i) if his election is declared void by the court,
 - (ii) if he is expelled by the House,
 - (iii) if he is elected to the office of president or office of vice-presid and
 - (iv) if he is appointed to the office of governor of a state.

PRESIDING OFFICERS OF STATE LEGISLATURE

Each House of state legislature has its own presiding officer. There is a Speaker and a Deputy Speaker for the legislative assembly and a Chairman and a Deputy Chairman for the legislative council. A panel of chairman for the assembly and a panel of vice-chairman for the council is also appointed.

Speaker of Assembly

The Speaker is elected by the assembly itself from amongst its members.

Usually, the Speaker remains in office during the life of the assembly. However, he vacates his office earlier in any of the following three cases:

1. if he ceases to be a member of the assembly;
2. if he resigns by writing to the deputy speaker; and
3. if he is removed by a resolution passed by a majority of all the then members of the assembly. Such a resolution can be moved only after giving 14 days advance notice.

The Speaker has the following powers and duties:

1. He maintains order and decorum in the assembly for conducting its business and regulating its proceedings. This is his primary responsibility and he has final power in this regard.
2. He is the final interpreter of the provisions of (a) the Constitution of India, (b) the rules of procedure and conduct of business of assembly, and (c) the legislative precedents, within the assembly.
3. He adjourns the assembly or suspends the meeting in the absence of a quorum.
4. He does not vote in the first instance. But, he can exercise a casting vote in the case of a tie.
5. He can allow a 'secret' sitting of the House at the request of the leader of the House.
6. He decides whether a bill is a Money Bill or not and his decision on this question is final.
7. He decides the questions of disqualification of a member of the assembly, arising on the ground of defection under the provisions of the Tenth Schedule.

8. He appoints the chairman of all the committees of the assembly and supervises their functioning. He himself is the chairman of the Business Advisory Committee, the Rules Committee and the General Purpose Committee.

Deputy Speaker of Assembly

Like the Speaker, the Deputy Speaker is also elected by the assembly itself from amongst its members. He is elected after the election of the Speaker has taken place.

Like the Speaker, the Deputy Speaker remains in office usually during the life of the assembly. However, he also vacates his office earlier in any of the following three cases:

1. if he ceases to be a member of the assembly;
2. if he resigns by writing to the speaker; and
3. if he is removed by a resolution passed by a majority of all the then members of the assembly. Such a resolution can be moved only after giving 14 days' advance notice.

The Deputy Speaker performs the duties of the Speaker's office when it is vacant. He also acts as the Speaker when the latter is absent from the sitting of assembly. In both the cases, he has all the powers of the Speaker.

The Speaker nominates from amongst the members a panel of chairman. Any one of them can preside over the assembly in the absence of the Speaker or the Deputy Speaker. He has the same powers as the speaker when so presiding. He holds office until a new panel of chairman is nominated.

Chairman of Council

The Chairman is elected by the council itself from amongst its members.

The Chairman vacates his office in any of the following three cases:

1. if he ceases to be a member of the council;
2. if he resigns by writing to the deputy chairman; and
3. if he is removed by a resolution passed by a majority of all the then members of the council. Such a resolution can be moved only after giving 14 days advance notice.

As a presiding officer, the powers and functions of the Chairman in the council are similar to those of the Speaker in the assembly. However, the Speaker has one special power which is not enjoyed by

the Chairman. The Speaker decides whether a bill is a Money Bill or not and his decision on this question is final.

The salaries and allowances of the Speaker and the Deputy Speaker of the assembly and the Chairman and the Deputy Chairman of the council are fixed by the state legislature. They are charged on the Consolidated Fund of the State and thus are not subject to the annual vote of the state legislature.

Deputy Chairman of Council

Like the Chairman, the Deputy Chairman is also elected by the council itself from amongst its members.

The deputy chairman vacates his office in any of the following three cases:

1. if he ceases to be a member of the council;
2. if he resigns by writing to the Chairman; and
3. if he is removed by a resolution passed by a majority of all the then members of the council. Such a resolution can be moved only after giving 14 days advance notice.

The Deputy Chairman performs the duties of the Chairman's office when it is vacant. He also acts as the Chairman when the latter is absent from the sitting of the council. In both the cases, he has all the powers of the Chairman.

The Chairman nominates from amongst the members a panel of vice-chairman. Any one of them can preside over the council in the absence of the Chairman or the Deputy Chairman. He has the same powers as the chairman when so presiding. He holds office until a new panel of vice-chairman is nominated.

SESSIONS OF STATE LEGISLATURE

Summoning

The governor from time to time summons each House of state legislature to meet. The maximum gap between the two sessions of state legislature cannot be more than six months, ie, the state legislature should meet at least twice a year. A session of the state legislature consists of many sittings.

Adjournment

An adjournment suspends the work in a sitting for a specified time which may be hours, days or weeks.

Adjournment *sine die* means terminating a sitting of the state legislature for an indefinite period. The power of the adjournment as well as adjournment *sine die* lies with the presiding officer of the House.

Prorogation

The presiding officer (Speaker or Chairman) declares the House adjourned *sine die*, when the business of the session is completed. Within the next few days, the governor issues a notification for prorogation of the session.

However, the governor can also prorogue the House which is in session. Unlike an adjournment, a prorogation terminates a session of the House.

Dissolution

The legislative council, being a permanent house, is not subject to dissolution. Only the legislative assembly is subject to dissolution. Unlike a prorogation, a dissolution ends the very life of the existing House, and a new House is constituted after the general elections are held.

The position with respect to lapsing of bills on the dissolution of the assembly is mentioned below:

1. A Bill pending in the assembly lapses (whether originating in the assembly or transmitted to it by the council).

2. A Bill passed by the assembly but pending in the council lapses.
3. A Bill pending in the council but not passed by the assembly does not lapse.
4. A Bill passed by the assembly (in a unicameral state) or passed by both the houses (in a bicameral state) but pending assent of the governor or the President does not lapse.
5. A Bill passed by the assembly (in a unicameral state) or passed by both the Houses (in a bicameral state) but returned by the president for reconsideration of House (s) does not lapse.

Quorum

Quorum is the minimum number of members required to be present in the House before it can transact any business. It is ten members or one-tenth of the total number of members of the House (including the presiding officer), whichever is greater. If there is no quorum during a meeting of the House, it is the duty of the presiding officer either to adjourn the House or to suspend the meeting until there is a quorum.

Voting in House

All matters at any sitting of either House are decided by a majority of votes of the members present and voting excluding the presiding officer. Only a few matters which are specifically mentioned in the Constitution like removal of the speaker of the assembly, removal of the Chairman of the council and so on require special majority, not ordinary majority. The presiding officer (i.e., Speaker in the case of assembly or chairman in the case of council or the person acting as such) does not vote in the first instance, but exercises a casting vote in the case of an equality of votes.

Language in State Legislature

The Constitution has declared the official language(s) of the state or Hindi or English, to be the languages for transacting business in the state legislature. However, the presiding officer can permit a member to address the House in his mother-tongue. The state legislature is authorised to decide whether to continue or discontinue English as a floor language after the completion of fifteen years from the commencement of the Constitution (i.e., from 1965). In case of Himachal Pradesh, Manipur, Meghalaya and Tripura, this time limit is

twenty-five years and that of Arunachal Pradesh, Goa and Mizoram, it is forty years.

Rights of Ministers and Advocate General

In addition to the members of a House, every minister and the advocate general of the state have the right to speak and take part in the proceedings of either House or any of its committees of which he is named a member, without being entitled to vote. There are two reasons underlying this constitutional provision:

1. A minister can participate in the proceedings of a House, of which he is not a member.
2. A minister, who is not a member of either House, can participate in the proceedings of both the Houses¹².

LEGISLATIVE PROCEDURE IN STATE LEGISLATURE

Ordinary Bills

Bill in the Originating House

An ordinary bill can originate in either House of the state legislature (in case of a bicameral legislature). Such a bill can be introduced either by a minister or by any other member. The bill passes through three stages in the originating House, viz,

1. First reading,
2. Second reading, and
3. Third reading.

After the bill is passed by the originating House, it is transmitted to the second House for consideration and passage. A bill is deemed to have been passed by the state legislature only when both the Houses have agreed to it, either with or without amendments. In case of a unicameral legislature, a bill passed by the legislative assembly is sent directly to the governor for his assent.

Bill in the Second House

In the second House also, the bill passes through all the three stages, that is, first reading, second reading and third reading.

When a bill is passed by the legislative assembly and transmitted to the legislative council, the latter has four alternatives before it:

1. it may pass the bill as sent by the assembly (i.e., without amendments);
2. it may pass the bill with amendments and return it to the assembly for reconsideration;
3. it may reject the bill altogether; and
4. it may not take any action and thus keep the bill pending.

If the council passes the bill without amendments or the assembly accepts the amendments suggested by the council, the bill is deemed to have been passed by both the Houses and the same is sent to the governor for his assent. On the other hand, if the assembly rejects the amendments suggested by the council or the council rejects the bill altogether **or the council does not take any action for three months**, then the assembly may pass the bill again and transmit the same to the council. If the council rejects the bill again or passes the bill with amendments not acceptable to the assembly or does not pass the bill

within one month, then the bill is deemed to have been passed by both the Houses in the form in which it was passed by the assembly for the second time.

Therefore, the ultimate power of passing an ordinary bill is vested in the assembly. At the most, the council can detain or delay the bill for a period of four months—three months in the first instance and one month in the second instance. The Constitution does not provide for the mechanism of joint sitting of both the Houses to resolve the disagreement between the two Houses over a bill. On the other hand, there is a provision for joint sitting of the Lok Sabha and the Rajya Sabha to resolve a disagreement between the two over an ordinary bill. Moreover, when a bill, which has originated in the council and was sent to the assembly, is rejected by the assembly, the bill ends and becomes dead.

Thus, the council has been given much lesser significance, position and authority than that of the Rajya Sabha at the Centre.

Assent of the Governor

Every bill, after it is passed by the assembly or by both the Houses in case of a bicameral legislature, is presented to the governor for his assent. There are four alternatives before the governor:

1. he may give his assent to the bill;
2. he may withhold his assent to the bill;
3. he may return the bill for reconsideration of the House or Houses; and
4. he may reserve the bill for the consideration of the President.

If the governor gives his assent to the bill, the bill becomes an Act and is placed on the Statute Book. If the governor withholds his assent to the bill, the bill ends and does not become an Act. If the governor returns the bill for reconsideration and if the bill is passed by the House or both the Houses again, with or without amendments, and presented to the governor for his assent, the governor must give his assent to the bill. Thus, the governor enjoys only a *suspensive veto*. The position is same at the Central level also¹³.

Assent of the President

When a bill is reserved by the governor for the consideration of the President, the President may either give his assent to the bill or withhold his assent to the bill or return the bill for reconsideration of the House or Houses of the state legislature. When a bill is so returned, the House or Houses have to reconsider it within a period of

six months. The bill is presented again to the presidential assent after it is passed by the House or Houses with or without amendments. It is not mentioned in the Constitution whether it is obligatory on the part of the president to give his assent to such a bill or not.

Money Bills

The Constitution lays down a special procedure for the passing of Money Bills in the state legislature. This is as follows:

A Money Bill cannot be introduced in the legislative council. It can be introduced in the legislative assembly only and that too on the recommendation of the governor. Every such bill is considered to be a government bill and can be introduced only by a minister.

After a Money Bill is passed by the legislative assembly, it is transmitted to the legislative council for its consideration. The legislative council has restricted powers with regard to a Money Bill. It cannot reject or amend a Money Bill. It can only make recommendations and must return the bill to the legislative assembly within 14 days. The legislative assembly can either accept or reject all or any of the recommendations of the legislative council.

If the legislative assembly accepts any recommendation, the bill is then deemed to have been passed by both the Houses in the modified form. If the legislative assembly does not accept any recommendation, the bill is then deemed to have been passed by both the Houses in the form originally passed by the legislative assembly without any change.

If the legislative council does not return the bill to the legislative assembly within 14 days, the bill is deemed to have been passed by both Houses at the expiry of the said period in the form originally passed by the legislative assembly. Thus, the legislative assembly has more powers than legislative council with regard to a money bill. At the most, the legislative council can detain or delay a money bill for a period of 14 days.

Finally, when a Money Bill is presented to the governor, he may either give his assent, withhold his assent or reserve the bill for presidential assent **but cannot return the bill for reconsideration of the state legislature.** Normally, the governor gives his assent to a money bill as it is introduced in the state legislature with his prior permission.

When a money bill is reserved for consideration of the President, the president may either give his assent to the bill or withhold his

assent to the bill but cannot return the bill for reconsideration of the state legislature.

Table 33.1 *Comparing Legislative Procedure in the Parliament and State Legislature*

Parliament	State Legislature
A. With Regard to Ordinary Bills	
1. It can be introduced in either House of the Parliament.	1. It can be introduced in either House of the state legislature.
2. It can be introduced either by a minister or by a private member.	2. It can be introduced either by a minister or by private member.
3. It passes through first reading, second reading and third reading in the originating House.	3. It passes through first reading, second reading and third reading in the originating House.
4. It is deemed to have been passed by the Parliament only when both the Houses have agreed to it, either with or without amendments.	4. It is deemed to have been passed by the state legislature only when both the Houses have agreed to it, either with or without amendments.
5. A deadlock between the two Houses takes place when the second House, after receiving a bill passed by the first House, rejects the bill or proposes amendments that are not acceptable to the first House or does not pass the bill within six months.	5. A deadlock between the two Houses takes place when the legislative council, after receiving a bill passed by the legislative assembly, rejects the bill or proposes amendments that are not acceptable to the legislative assembly or does not pass the bill within three months.
6. The Constitution provides for the mechanism of joint sitting of two Houses of the Parliament to resolve a	6. The Constitution does not provide for the mechanism of joint sitting of two Houses of the state legislature to resolve a deadlock between

deadlock between them over the passage of a bill.	them over the passage of a bill.
7. The Lok Sabha cannot override the Rajya Sabha by passing the bill for the second time and vice versa. A joint sitting is the only way to resolve a deadlock between the two Houses.	7. The legislative assembly can override the legislative council by passing the bill for the second time and not <i>vice versa</i> . When a bill is passed by the assembly for the second time and transmitted to the legislative council, if the legislative council rejects the bill again, or proposes amendments that are not acceptable to the legislative assembly, or does not pass the bill within one month, then the bill is deemed to have been passed by both the Houses in the form in which it was passed by the legislative assembly for the second time.
8. The mechanism of joint sitting for resolving a deadlock applies to a bill whether originating in the Lok Sabha or the Rajya Sabha. If a joint sitting is not summoned by the president, the bill ends and becomes dead.	8. The mechanism of passing the bill for the second time to resolve a deadlock applies to a bill originating in the legislative assembly only. When a bill, which has originated in the legislative council and sent to the legislative assembly, is rejected by the latter, the bill ends and becomes dead.
B. With Regard to Money Bills	
1. It can be introduced only in the Lok Sabha and not in the Rajya Sabha.	1. It can be introduced only in the legislative assembly and not in the legislative council.
2. It can be introduced only on the recommendation of the	2. It can be introduced only on the recommendation of the

president.	governor.
3. It can be introduced only by a minister and not by a private member.	3. It can be introduced only by a minister and not by a private member.
4. It cannot be rejected or amended by the Rajya Sabha. It should be returned to the Lok Sabha within 14 days, either with or without recommendations.	4. It cannot be rejected or amended by the legislative council. It should be returned to the legislative assembly within 14 days, either with or without amendments.
5. The Lok Sabha can either accept or reject all or any of the recommendations of the Rajya Sabha.	5. The legislative assembly can either accept or reject all or any of the recommendations of the legislative council.
6. If the Lok Sabha accepts any recommendation, the bill is then deemed to have been passed by both the Houses in the modified form.	6. If the legislative assembly accepts any recommendation, the bill is then deemed to have been passed by both the Houses in the modified form.
7. If the Lok Sabha does not accept any recommendation, the bill is then deemed to have been passed by both the Houses in the form originally passed by the Lok Sabha without any change.	7. If the legislative assembly does not accept any recommendation, the bill is then deemed to have been passed by both the Houses in the form originally passed by the legislative assembly without any change.
8. If the Rajya Sabha does not return the bill to the Lok Sabha within 14 days, the bill is deemed to have been passed by both the Houses at the expiration of the said period in the form originally passed by the Lok Sabha.	8. If the legislative council does not return the bill to the legislative assembly within 14 days, the bill is deemed to have been passed by both the Houses at the expiration of the said period in the form originally passed by the legislative assembly.
9. The Constitution does not	9. The Constitution does not

provide for the resolution of any deadlock between the two Houses. This is because, the will of the Lok Sabha is made to prevail over that of the Rajya Sabha, if the latter does not agree to the bill passed by the former.

provide for the resolution of any deadlock between the two Houses. This is because, the will of the legislative assembly is made to prevail over that of legislative council, if the latter does not agree to the bill passed by the former.

POSITION OF LEGISLATIVE COUNCIL

The constitutional position of the council (as compared with the assembly) can be studied from two angles:

- A. Spheres where council is equal to assembly.
- B. Spheres where council is unequal to assembly.

Equal with Assembly

In the following matters, the powers and status of the council are broadly equal to that of the assembly:

1. Introduction and passage of ordinary bills. However, in case of disagreement between the two Houses, the will of the assembly prevails over that of the council.
2. Approval of ordinances issued by the governor¹⁴.
3. Selection of ministers including the chief minister. Under the Constitution the, ministers including the chief minister can be members of either House of the state legislature. However, irrespective of their membership, they are responsible only to the assembly.
4. Consideration of the reports of the constitutional bodies like State Finance Commission, state public service commission and Comptroller and Auditor General of India.
5. Enlargement of the jurisdiction of the state public service commission.

Unequal with Assembly

In the following matters, the powers and status of the council are unequal to that of the assembly:

1. A Money Bill can be introduced only in the assembly and not in the council.
2. The council cannot amend or reject a money bill. It should return the bill to the assembly within 14 days, either with recommendations or without recommendations.
3. The assembly can either accept or reject all or any of the recommendation of the council. In both the cases, the money bill is deemed to have been passed by the two Houses.
4. The final power to decide whether a particular bill is a money bill or not is vested in the Speaker of the assembly.

5. The final power of passing an ordinary bill also lies with the assembly. At the most, the council can detain or delay the bill for the period of four months—three months in the first instance and one month in the second instance. In other words, the council is not even a revising body like the Rajya Sabha; it is only a dilatory chamber or an advisory body.
6. The council can only discuss the budget but cannot vote on the demands for grants (which is the exclusive privilege of the assembly).
7. The council cannot remove the council of ministers by passing a no-confidence motion. This is because, the council of ministers is collectively responsible only to the assembly. But, the council can discuss and criticise the policies and activities of the Government.
8. When an ordinary bill, which has originated in the council and was sent to the assembly, is rejected by the assembly, the bill ends and becomes dead.
9. The council does not participate in the election of the president of India and representatives of the state in the Rajya Sabha.
10. The council has no effective say in the ratification of a constitutional amendment bill. In this respect also, the will of the assembly prevails over that of the council¹⁵.
11. Finally, the very existence of the council depends on the will of the assembly. The council can be abolished by the Parliament on the recommendation of the assembly.

From the above, it is clear that the position of the council *vis-a-vis* the assembly is much weaker than the position of the Rajya Sabha *vis-a-vis* the Lok Sabha. The Rajya Sabha has equal powers with the Lok Sabha in all spheres except financial matters and with regard to the control over the Government. On the other hand, the council is subordinate to the assembly in all respects. Thus, the predominance of the assembly over the council is fully established.

Even though both the council and the Rajya Sabha are second chambers, the Constitution has given the council much lesser importance than the Rajya Sabha due to the following reasons:

1. The Rajya Sabha consists of the representatives of the states and thus reflect the federal element of the polity. It maintains the federal equilibrium by protecting the interests of the states against the undue interference of the Centre. Therefore, it has to be an effective revising body and not just an advisory body or

dilatory body like that of the council. On the other hand, the issue of federal significance does not arise in the case of a council.

2. The council is heterogeneously constituted. It represents different interests and consists of differently elected members and also include some nominated members. Its very composition makes its position weak and reduces its utility as an effective revising body. On the other hand, the Rajya Sabha is homogeneously constituted. It represents only the states and consists of mainly elected members (only 12 out of 250 are nominated).
3. The position accorded to the council is in accordance with the principles of democracy. The council should yield to the assembly, which is a popular house. This pattern of relationship between the two Houses of the state legislature is adopted from the British model. In Britain, the House of Lords (Upper House) cannot oppose and obstruct the House of Commons (Lower House). The House of Lords is only a dilatory chamber—it can delay an ordinary bill for a maximum period of one year and a money bill for one month.¹⁶

Keeping in view its weak, powerless and insignificant position and role, the critics have described the council as a 'secondary chamber', 'costly ornamental luxury', 'white elephant', etc. The critics have opined that the council has served as a refuge for those who are defeated in the assembly elections. It enabled the unpopular, rejected and ambitious politicians to occupy the post of a chief minister or a minister or a member of the state legislature.

Even though the council has been given less powers as compared with the assembly, its utility is supported on the following grounds:

1. It checks the hasty, defective, careless and ill-considered legislation made by the assembly by making provision for revision and thought.
2. It facilitates representation of eminent professionals and experts who cannot face direct elections. The governor nominates one-sixth members of the council to provide representation to such people.

PRIVILEGES OF STATE LEGISLATURE

Privileges of a state legislature are a sum of special rights, immunities and exemptions enjoyed by the Houses of state legislature, their committees and their members. They are necessary in order to secure the independence and effectiveness of their actions. Without these privileges, the Houses can neither maintain their authority, dignity and honour nor can protect their members from any obstruction in the discharge of their legislative responsibilities.

The Constitution has also extended the privileges of the state legislature to those persons who are entitled to speak and take part in the proceedings of a House of the state legislature or any of its committees. These include advocate-general of the state and state ministers.

It must be clarified here that the privileges of the state legislature do not extend to the governor who is also an integral part of the state legislature.

The privileges of a state legislature can be classified into two broad categories—those that are enjoyed by each House of the state legislature collectively, and those that are enjoyed by the members individually.

Collective Privileges

The privileges belonging to each House of the state legislature collectively are:

1. It has the right to publish its reports, debates and proceedings and also the right to prohibit others from publishing the same¹⁷.
2. It can exclude strangers from its proceedings and hold secret sittings to discuss some important matters.
3. It can make rules to regulate its own procedure and the conduct of its business and to adjudicate upon such matters.
4. It can punish members as well as outsiders for breach of its privileges or its contempt by reprimand, admonition or imprisonment (also suspension or expulsion, in case of members).
5. It has the right to receive immediate information of the arrest, detention, conviction, imprisonment and release of a member.
6. It can institute inquiries and order the attendance of witnesses and send for relevant papers and records.

7. The courts are prohibited to inquire into the proceedings of a House or its Committees.
8. No person (either a member or outsider) can be arrested, and no legal process (civil or criminal) can be served within the precincts of the House without the permission of the presiding officer.

Individual Privileges

The privileges belonging to the members individually are:

1. They cannot be arrested during the session of the state legislature and 40 days before the beginning and 40 days after the end of such session. This privilege is available only in civil cases and not in criminal cases or preventive detention cases.
2. They have freedom of speech in the state legislature. No member is liable to any proceedings in any court for anything said or any vote given by him in the state legislature or its committees. This freedom is subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of the state legislature¹⁸.
3. They are exempted from jury service. They can refuse to give evidence and appear as a witness in a case pending in a court when the state legislature is in session.

Table 33.2 *Strength of Legislative Assemblies and Legislative Councils (2019)*

S. No.	Name of the State/Union Territory	Number of Seats in Legislative Assembly	Number of Seats in Legislative Council
I. STATES			
1.	Andhra Pradesh	175	58 ^{18a}
2.	Arunachal Pradesh	60	—
3.	Assam	126	—
4.	Bihar	243	75
5.	Chhattisgarh	90	—
6.	Goa	40	—
7.	Gujarat	182	—

8.	Haryana	90	—
9.	Himachal Pradesh	68	—
10.	Jharkhand	81	—
11.	Karnataka	224	75
12.	Kerala	140	—
13.	Madhya Pradesh	230	—
14.	Maharashtra	288	78
15.	Manipur	60	—
16.	Meghalaya	60	—
17.	Mizoram	40	—
18.	Nagaland	60	—
19.	Odisha	147	—
20.	Punjab	117	—
21.	Rajasthan	200	—
22.	Sikkim	32	—
23.	Tamil Nadu	234	—
24.	Telangana	119	40
25.	Tripura	60	—
26.	Uttarakhand	70	—
27.	Uttar Pradesh	403	100
28.	West Bengal	294	—
II. UNION TERRITORIES			
1.	Delhi	70	—
2.	Puducherry	30	—
3.	Jammu and Kashmir	83 ¹⁹	—

Table 33.3 *Seats Reserved for SCs and STs in the Legislative Assemblies (2019)*

Name of the State/ Union Territory	Total	Reserved for the Scheduled Castes	Reserved for the
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				Scheduled Tribes
I. STATES				
1.	Andhra Pradesh	175	29	7
2.	Arunachal Pradesh	60	–	59
3.	Assam	126	8	16
4.	Bihar	243	38	2
5.	Chhattisgarh	90	10	29
6.	Goa	40	1	–
7.	Gujarat	182	13	27
8.	Haryana	90	17	–
9.	Himachal Pradesh	68	17	3
10.	Jharkhand	81	9	28
11.	Karnataka	224	36	15
12.	Kerala	140	14	2
13.	Madhya Pradesh	230	35	47
14.	Maharashtra	288	29	25
15.	Manipur	60	1	19
16.	Meghalaya	60	–	55
17.	Mizoram	40	–	38
18.	Nagaland	60	–	59
19.	Odisha	147	24	33
20.	Punjab	117	34	–
21.	Rajasthan	200	34	25
22.	Sikkim	32	2	12
23.	Tamil Nadu	234	44	2
24.	Telangana	119	19	12
25.	Tripura	60	10	20
26.	Uttarakhand	70	13	2
27.	Uttar Pradesh	403	85	–
28.	West Bengal	294	68	16

II. UNION TERRITORIES				
1.	Delhi	70	12	—
2.	Puducherry	30	5	—
3.	Jammu and Kashmir	83	6	—

Table 33.4 *Articles Related to State Legislature at a Glance*

Article No.	Subject-matter
General	
168.	Constitution of Legislatures in states
169.	Abolition or creation of Legislative Councils in states
170.	Composition of the Legislative Assemblies
171.	Composition of the Legislative Councils
172.	Duration of State Legislatures
173.	Qualification for membership of the State Legislature
174.	Sessions of the State Legislature, prorogation and dissolution
175.	Right of Governor to address and send messages to the House or Houses
176.	Special address by the Governor
177.	Rights of Ministers and Advocate-General as respects the Houses
Officers of the State Legislature	
178.	The Speaker and Deputy Speaker of the Legislative Assembly
179.	Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker
180.	Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker
181.	The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration

182.	The Chairman and Deputy Chairman of the Legislative Council
183.	Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman
184.	Power of the Deputy Chairman or other person to perform the duties of the office of, or to act as, Chairman
185.	The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration
186.	Salaries and allowances of the Speaker and Deputy Speaker and the Chairman and Deputy Chairman
187.	Secretariat of State Legislature
Conduct of Business	
188.	Oath or affirmation by members
189.	Voting in Houses, power of Houses to act notwithstanding vacancies and quorum
Disqualifications of Members	
190.	Vacation of seats
191.	Disqualifications for membership
192.	Decision on questions as to disqualifications of members
193.	Penalty for sitting and voting before making oath or affirmation under Article 188 or when not qualified or when disqualified
Powers, Privileges and Immunities of State Legislatures and their Members	
194.	Powers, privileges, etc., of the House of Legislatures and of the members and committees thereof
195.	Salaries and allowances of members
Legislative Procedure	
196.	Provisions as to introduction and passing of Bills
197.	Restriction on powers of Legislative Council as to Bills other than Money Bills

198.	Special procedure in respect of Money Bills
199.	Definition of “Money Bills”
200.	Assent to Bills
201.	Bills reserved for consideration
Procedure in Financial Matters	
202.	Annual financial statement
203.	Procedure in Legislature with respect to estimates
204.	Appropriation Bills
205.	Supplementary, additional or excess grants
206.	Votes on account, votes of credit and exceptional grants
207.	Special provisions as to financial Bills
Procedure Generally	
208.	Rules of procedure
209.	Regulation by law of procedure in the Legislature of the state in relation to financial business
210.	Language to be used in the Legislature
211.	Restriction on discussion in the Legislature
212.	Courts not to inquire into proceedings of the Legislature
Legislative Powers of the Governor	
213.	Power of Governor to promulgate Ordinances during recess of Legislature

Table 33.5 *Laws made by Parliament under Article 169 of the Constitution*

Sl. No.	Acts	Provisions
1.	West Bengal Legislative Council (Abolition) Act, 1969	Provided for the abolition of the Legislative Council of the State of West Bengal.
2.	Punjab Legislative Council (Abolition) Act, 1969	Provided for the abolition of the Legislative Council of the

		State of Punjab.
3.	Andhra Pradesh Legislative Council (Abolition) Act, 1985	Provided for the abolition of the Legislative Council of the State of Andhra Pradesh.
4.	Tamil Nadu Legislative Council (Abolition) Act, 1986	Provided for the abolition of the Legislative Council of the State of Tamil Nadu.
5.	Andhra Pradesh Legislative Council Act, 2005	Provided for the creation of Legislative Council for the State of Andhra Pradesh.
6.	Tamil Nadu Legislative Council Act, 2010	Provided for the creation of Legislative Council for the State of Tamil Nadu.

NOTES AND REFERENCES

1. The erstwhile state of Jammu and Kashmir had adopted a bicameral legislature by its own state Constitution, which was separate from the Indian Constitution.
2. M.P. Jain, *Indian Constitutional Law*, Wadhwa Fourth edition, P. 159
3. See [Table 33.2](#) at the end of this chapter.
4. An Anglo-Indian means a person whose father or any other male progenitor in the male line is or was of European descent, but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only.
5. This means that the number of assembly seats reserved in a state for such castes and tribes is to bear the same proportion to the total number of seats in the assembly as the population of such castes and tribes in the concerned state bears to the total population of the state.
6. The minimum strength fixed at 40 by the Constitution of India was not applicable to the erstwhile state of Jammu and Kashmir. Its council had 36 members under the provisions of its own state Constitution.
7. See [Table 33.2](#) at the end of this chapter.

8. The term of the legislative assembly of the erstwhile state of Jammu and Kashmir was six years under its own state Constitution.
9. A minister in the union or state government is not considered as holding an office of profit. Also, the state legislature can declare that a particular office of profit will not disqualify its holder from its membership.
10. *Kihota Hollohan v. Zachilhu*, (1992).
11. However, the Chairman/Speaker need not accept the resignation if he is satisfied that it is not voluntary or genuine.
12. A person can remain a minister for six months, without being a member of either house of the state legislature.
13. For a comparative study of the veto power of the president and the governor, see [Chapter 30](#).
14. For a comparative study of the ordinance-making power of the president and the governor, see [Chapter 30](#).
15. The position, in this regard, is very well analysed by J.C. Johari in the following way: 'The Constitution is not clear on this point whether a bill of constitutional amendment referred to the states for ratification by their legislatures shall include the Vidhan Parishad or not. In practice, it may be understood that the will of the Vidhan Sabha has to prevail. In case the Vidhan Parishad concurs with the view of the Vidhan Sabha, it is all right; in case it differs, the Vidhan Sabha may pass it again and thereby ignore the will of the Vidhan Parishad as it can do in case of a non-money bill'. (*Indian Government and Politics*, Vishal, Thirteenth Edition, 2001, P. 441).
16. The Parliament Act of 1911, and the Amending Act of 1949, have curtailed the powers of the House of Lords and established the supremacy of the House of Commons.
17. The 44th Amendment Act of 1978 restored the freedom of the press to publish true reports of state legislature without its prior permission. But, this is not applicable in the case of a secret sitting of the House.
18. Article 211 of the Constitution says that no discussion shall take place in the legislature of a state with respect to the conduct of any judge of the Supreme Court or of a high court in the discharge of his duties. Under the rules of a House(s) of the state legislature, use of unparliamentary

language or unparliamentary conduct of a member is prohibited.

- 18a. The Andhra Pradesh Reorganisation (Amendment) Act, 2015, increased the number of seats in the Legislative Council of Andhra Pradesh from 50 to 58.
19. Under the Jammu and Kashmir Reorganisation Act, 2019, the total number of seats fixed for the Legislative Assembly of the Union territory of Jammu and Kashmir is 107. But, 24 seats fall in the Pakistan-occupied-Kashmir (PoK). These seats are vacant and are not to be taken into account for reckoning the total membership of the Assembly. In addition, the Lieutenant Governor of the Union territory of Jammu and Kashmir may nominate two members to the Assembly to give representation to women, if in his opinion, women are not adequately represented in the Assembly.