
UNIT 7 LEGISLATURE*

Structure

- 7.0 Objectives
- 7.1 Introduction
- 7.2 Union Legislature
 - 7.2.1 The President
 - 7.2.2 Lok Sabha
 - 7.2.3 Rajya Sabha
 - 7.2.4 Special Powers of Rajya Sabha
- 7.3 The Presiding Officers
 - 7.3.1 The Speaker
 - 7.3.2 The Chairperson of Rajya Sabha
- 7.4 Legislative Procedure
 - 7.4.1 Money Bills
- 7.5 Parliamentary privileges
- 7.6 Parliamentary devices to control the executive
 - 7.6.1 Parliamentary Committees
- 7.7 State Legislature
- 7.8 Let Us Sum Up
- 7.9 References
- 7.10 Answers to Check Your Progress Exercises

7.0 OBJECTIVES

This unit examines the evolution, structure and functioning of the Indian Parliament. After going through this unit, you will be able to:

- Trace the evolution of modern legislature in India;
- Discuss the organisation and functions of the Parliament; and
- Explain parliamentary procedures

7.1 INTRODUCTION

The term legislature has been derived from the Latin word *lex*, which means a distinct kind of legal rule mainly of general application. This rule is named legislation, and the institution, which enacts it on behalf of the people is known as legislature. Essentially, there are two models of legislative structure: the Parliamentary and Presidential. In the parliamentary model, the executive is selected by the legislature from among its own members. Therefore, the executive is responsible to the legislature. The Presidential system is based on the theory of separation of powers and does not permit any person to serve simultaneously in both executive and legislature.

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In India, the legislature exists at two levels: at the union level, i.e. the Parliament of India, and the State level, i.e. State legislatures. The unit deals specifically with the Parliament of India. In sub-section 7.7, you will also read about the State legislature. The Parliament of India, which is the creation of the Constitution, is the supreme representative authority of the people. It is the highest legislative organ and the national forum for the articulation of public opinion.

7.2 UNION LEGISLATURE

Under the provision of Article 79, the Parliament of India consists of the President and the two Houses - the Lower House or Lok Sabha (House of the People) and the Upper House or Rajya Sabha (Council of States). While the Lok Sabha is subject to dissolution, the Rajya Sabha is a permanent chamber which cannot be dissolved. The office of the President also never remains vacant.

7.2.1 The President

While the American President is not a part of the Legislature (Congress), the President of India is an integral part of the Indian Parliament. However, he cannot sit and participate in the deliberations in any of the two Houses. The President of India performs certain important role vis-à-vis the Parliament. The President summons and prorogues the House from one session to another and has the power to dissolve the Lok Sabha. A bill can not become law without the President's assent even though the bill may be passed by both the Houses. The President also has the power to promulgate Ordinances when both the Houses are not in session. These Ordinances, though temporary in nature, have the same force and power as a law passed by Parliament. In Unit 8, we will examine the position and powers of the President of India in detail.

7.2.2 The Lok Sabha

The Lower House or the House of the People is popularly known as Lok Sabha. People of the country directly elect members of the Lower House. It includes not more than 530 members chosen by direct election from territorial constituencies in the States and not more 20 members to represent the Union Territories. Moreover, the President may nominate two members of the Anglo-Indian community if in his opinion the community is not adequately represented in the Lok Sabha.

The distribution of seats among the States is based on the principle of territorial representation, which means each State is allotted seats on the basis of its population in proportion to the total population of all the States. For the purpose of election, each state is divided into territorial units called constituencies which are more or less of the same size in terms of the population.

The members of the Lok Sabha are elected on the basis of the adult franchise; every adult who has attained 18 years of age is eligible to vote. The candidate who receives the largest number of votes gets elected. The tenure of the Lower House is five years. However, it can be dissolved earlier by the President.

To be a member of the Lok Sabha, a person should be the citizen of India and must have completed 25 years of age. The person must also possess all other qualifications that are prescribed by the law. A candidate is free to contest from

any parliamentary constituency of any States in India. The Constitution has laid down certain disqualifications for membership of parliament. A person can not be a member of both Houses of the Parliament. The candidate may contest from several seats. However, he/ she can have only one seat according to his/her choice despite being elected from more than one seat; If a person is elected from both the State Legislature and the Parliament, and if he does not resign from the State legislature within the defined time period, he/she will forfeit his seat in Parliament; A member should not hold any office of profit under the Central or State government except those that are exempted by a law of Parliament and should not have been declared as an insolvent or of unsound mind by a competent court. A member also gets disqualified on the following conditions such as when he remains absent from the sessions of the House for a period of sixty days without prior permission; or when he voluntarily acquires the citizenship of another country; or is under any acknowledgement of allegiance to a foreign state.

7.2.3 The Rajya Sabha

According to Indian constitution, the Rajya Sabha or the Council of States is the house of representatives of the States. The Rajya Sabha or the Council of States consists of not more than 250 members out of which 12 members are nominated by the President from amongst persons having ‘special knowledge or practical experience in literature, science, art, and social service.’ The remaining members are elected by the members of the State Legislative Assemblies on the basis of the population of the state. Unlike Lok Sabha, Rajya Sabha adopts the method of indirect election. There is no uniformity in the members of representatives of the Council of States. It largely depends on the population of the state. It means that the state which have larger population has more representative in the house compared to the states which have small population). The number of representatives of the States to the Rajya Sabha varies from one (Nagaland) to 34 (Uttar Pradesh) depending upon the population of a state. The Council of States thus reflects the federal character by representing the States or the units of the federation.

Rajya Sabha is a continuing chamber as it is a permanent body not subject to dissolution. One-third of its members retire at the end of every two years, and elections are held for the vacant positions. A member of Rajya Sabha has a six-year term unless she/he resigns or is disqualified.

7.2.4 Special Powers of Rajya Sabha

It has every right to seek information on all matters which are exclusively in the domain of Lok Sabha. It has no power to pass a vote of no-confidence in the Council of Ministers. It also does not have much influence on the matters of Money Bill. However, the Constitution grants certain special powers to the Rajya Sabha. As the sole representative of the States, the Rajya Sabha enjoys two exclusive powers which are of considerable importance. First, under Article 249, the Rajya Sabha has power to pass a resolution by a majority of not less than two-thirds of members present and voting, declaring that it is ‘necessary or expedient in the national interest’. The matter in such resolution should belong to the State List. The law passed on the matter in the resolution shall be valid for one year. The second, Article 312 also provides special power to the Rajya Sabha to pass a resolution on another matter, i.e. to create one or more All India Services.

Like the resolution to be passed under Article 249, under Article 312 also, the resolution should be passed by two-third of members present and voting in the House. Thus, these special provisions make the Rajya Sabha an important component of Indian Legislature rather than just being an ornamental body. Its compact composition and permanent character provide continuity and stability in the system.

7.3 PRESIDING OFFICERS

Each house of the Parliament has a presiding officer. The Lok Sabha has a Speaker as its principal presiding officer and a deputy speaker to assist him and manages as presiding officer in the absence of the speaker. The Rajya Sabha is presided by the Chairperson, assisted by a deputy chairperson. The latter performs all the duties and functions of the former in case of his/her absence.

7.3.1 The Speaker

The position of the Speaker of the Lok Sabha is more or less similar to the Speaker of the English House of Commons. The office of the Speaker is a symbol of high dignity and authority. Once elected to the office, the speaker does not have affiliation to any party but works in an impartial manner. He/ She acts as the guardian of the rights and privileges of the members.

The Speaker has the power to ensure an orderly and efficient conduct of the proceedings of the House. He/She conducts the proceedings of the house, maintains order and decorum in the house and decides points of order, interprets and applies rules of the house. The Speaker's decision is final in all such matters. The Speaker certifies whether a bill is money bill or not and he/she also authenticates that the house has passed the bill before it is presented to the other House or the President of India for his assent. The Speaker in consultation with the leader of the house determines the order of business. He/she also decides on the acceptability of questions, motions and resolutions. The Speaker does not vote in the first instance but can exercise a casting vote in case of a tie. The Speaker appoints the chairpersons of all the Committees of the House and exercises control over the Secretarial staff of the house. The Speaker's conduct cannot be discussed in the House except in a substantive motion. His/Her salary and allowances are charged to the Consolidated Fund of India.

A special feature of the Speaker's office is that even when the House is dissolved, the Speaker does not vacate his/her office. He/She continues in office until the new House elects a new Speaker. In the absence of the Speaker, the Deputy Speaker presides the House.

7.3.2 Chairperson of Rajya Sabha

The Vice-President of India is the ex-officio chairperson of the Rajya Sabha. But during the period when the Vice-President acts a President or discharges the functions of the President, he/she does not perform the duties as a presiding officer of the Rajya Sabha. The Vice-President is elected by the members of both the Houses of Parliament assembled at a joint meeting, in accordance with the system of proportional representation by means of single transferable vote and the voting at such elections is by secret ballot. The Vice-President is not a member

of either House of Parliament or a House of the Legislature of any State. He holds office for a term of five years from the date on which he enters upon his office or until he resigns or is removed from his office by a resolution passed by a majority of members of the Rajya Sabha and agreed by the Lok Sabha. The functions and duties of the Chairperson of the Rajya Sabha are the same as those of the Speaker of the Lok Sabha.

Check Your Progress Exercise 1

Note: 1) Use the space below for your answers.

2) Check your answers with the model answers given at the end of this unit.

1) What are the qualifications and disqualifications for a member of Indian Parliament?

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2) What are the powers of Speaker of the Lok Sabha?

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7.4 LEGISLATIVE PROCEDURE

Law making is the primary function of the legislature. The Constitution of India prescribes the following stages of the legislative procedure:

The first stage of legislation is the introduction of a bill which embodies the proposed law and is accompanied by the “Statement of Objects and Reasons”. The introduction of the bill is also called the first reading of the bill. There are two types of bills: ordinary bills and money bills. A bill other than money or financial bill may be introduced in either House of Parliament and requires passage in both the Houses before it can be presented for the President’s assent. A bill may be introduced either by a minister or a private member. Every bill that is introduced in the House has to be published in the Gazette. Normally, there is no

Chapter Five

LEGISLATURE



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INTRODUCTION

You have already studied the importance of elections and the method of election adopted in India. Legislatures are elected by the people and work on behalf of the people. In this chapter you would study how elected legislatures function and help in maintaining democratic government. You will also learn about the composition and functioning of the parliament and State legislatures in India and their importance in democratic government. After reading this chapter you would know

- ◆ *the importance of the legislature;*
- ◆ *the functions and powers of the Parliament of India;*
- ◆ *the law making procedure;*
- ◆ *how the Parliament controls the executive; and*
- ◆ *how the Parliament regulates itself.*

WHY DO WE NEED A PARLIAMENT?

Legislature is not merely a law making body. Lawmaking is but one of the functions of the legislature. It is the centre of all democratic political process. It is packed with action; walkouts, protests, demonstration, unanimity, concern and co-operation. All these serve very vital purposes. Indeed, a genuine democracy is inconceivable without a representative, efficient and effective legislature. The legislature also helps people in holding the representatives accountable. This is indeed, the very basis of representative democracy.

Yet, in most democracies, legislatures are losing central place to the executive. In India too, the Cabinet initiates policies, sets the agenda for governance and carries them through. This has led some critics to remark that the Parliament has declined. But even very strong cabinets must retain majority in the legislature. A strong leader has to face the Parliament and answer to the satisfaction of the Parliament. Herein lies the democratic potential of the Parliament. It is recognised as one of the most democratic and open forum of debate. On account of its composition, it is the most representative of all organs of government. It is above all, vested with the power to choose and dismiss the government.



Activity

Consider these newspaper reports and then think: what would happen if there were no legislatures? After reading each news report, state how the legislature succeeded or failed in maintaining control over the executive.

- 28th February 2002: The Union Finance Minister, Jaswant Singh, announced in the Union budget proposal an increase of Rs. 12 in the price of a 50 kg bag of urea and a smaller increase in the price of two other fertilizers which constituted about 5 per cent rise in prices. The current urea price of Rs. 4,830 a tonne carries a subsidy of as much as 80 per cent.

- 11 March 2002. The Finance Minister had to roll back the increases in fertilizer prices under intense opposition pressure (*The Hindu*, 12 March 2002)
- On 4 June 1998, the Lok Sabha witnessed acrimonious scenes over the hike in urea and petroleum process. The entire opposition staged a walkout. The issue rocked the house for two days leading to walkout by opposition. The finance minister in his budget proposal had proposed a hike of 50 paise per kilogram of urea to reduce subsidy on it. This forced the finance minister Mr. Yashwant Sinha to roll back the hike in urea prices (*Hindustan Times*, 4 and 5 June 1998)
- 22 February 1983: In a rare move, the Lok Sabha today unanimously decided to suspend official business and give precedence to debate on Assam. Home Minister P.C.Sethi made a statement “I seek the cooperation of all members whatever their views and policies, in promoting harmony among different communities and groups living in Assam. What is needed now is not acrimony but a healing touch.” (*Hindustan Times*, 22 February 1983)
- Congress Members voiced protest against atrocities on Harijans in Andhra Pradesh (*The Hindu*, 3 March 1985)

WHY DO WE NEED TWO HOUSES OF PARLIAMENT?

The term ‘Parliament’ refers to the national legislature. The legislature of the States is described as State legislature. The Parliament in India has two houses. When there are two houses of the legislature, it is called a bicameral legislature. The two Houses of the Indian Parliament are the Council of States or the Rajya Sabha and the House of the People or the Lok Sabha. The Constitution has given the States the option of establishing either a unicameral or bicameral legislature. At present only six States have a bicameral legislature.



- 2024-25

Countries with large size and much diversity usually prefer to have two houses of the national legislature to give representation to all sections in the society and to give representation to all geographical regions or parts of the country. A bicameral legislature has one more advantage. A bicameral legislature makes it possible to have every decision reconsidered. Every decision taken by one house goes to the other house for its decision. This means that every bill and policy would be discussed twice. This ensures a double check on every matter. Even if one house takes a decision in haste, that decision will come for discussion in the other house and reconsideration will be possible.

“...an Upper House could perform the...useful function of being a revising body, and ...its views may count but not its votes... ...,those who could not enter into the rough and tumble of active politics could...advise the Lower House.”

Purnima Banerji
CAD, Vol. IX, p. 33, 30 July 1949

Rajya Sabha

Each of the two Houses of Parliament has different bases of representation. The Rajya Sabha represents the States of India. It is an indirectly elected body. Residents of the State elect members to State Legislative Assembly. The elected members of State Legislative Assembly in turn elect the members of the Rajya Sabha.

We can imagine two different principles of representation in the second chamber. One way is to give equal representation to all the parts of the country irrespective of their size or population. We may call this as symmetrical representation. On the other hand, parts of the country may be given representation according to their

population. This second method means that regions or parts having larger population would have more representatives in the second chamber than regions having less population.

In the USA, every state has equal representation in the Senate. This ensures equality of all the states. But this also means that a small state would have the same representation as the larger states. The system of representation adopted for the Rajya Sabha is different from that in the USA. The number of members to be elected from each State has been fixed by the fourth schedule of the Constitution.

What would happen if we were to follow the American system of equality of representation in the Rajya Sabha? Uttar Pradesh with a population of 1998.12 lakhs would get seats equal to that of Sikkim whose population is only 6.10 lakhs. The framers of the Constitution wanted to prevent such discrepancy. States with larger population get more representatives than States with smaller population get. Thus, a more populous State like Uttar Pradesh sends 31 members to the Rajya Sabha, while a smaller and less populous State like Sikkim has one seat in the Rajya Sabha.

Members of the Rajya Sabha are elected for a term of six years. They can get re-elected. All members of the Rajya Sabha do not complete their terms at the same time. Every two years, one third members of the Rajya Sabha

Bicameralism in Germany

Germany has a bicameral legislature. The two Houses are known as Federal Assembly (Bundestag) and Federal Council (Bundesrat). Assembly is elected by a complex system combining direct and proportional representation for a period of four years.

The 16 federal states of Germany are represented in the Federal Council. The 69 seats of the *Bundesrat* are divided among states on the basis of a range of populations. These members are generally the ministers in the governments at the state level and are appointed, not elected, by the governments of the federal states. According to the German law, all the members from one state have to vote as a bloc as per the instructions of the state governments. Sometimes due to coalition government at the state level, they fail to reach an agreement and may have to abstain.

The Bundesrat does not vote on all legislative initiatives but all the policy areas on which the federal states have concurrent powers and are responsible for federal regulations must be passed by it. It can also veto such legislation.

complete their term and elections are held for those one third seats only. Thus, the Rajya Sabha is never fully dissolved. Therefore, it is called the permanent House of the Parliament. The advantage of this arrangement is that even when the Lok Sabha is dissolved and elections are yet to take place, the meeting of the Rajya Sabha can be called and urgent business can be conducted.

Apart from the elected members, Rajya Sabha also has twelve nominated members. The President nominates these members. These nominations are made from among those persons who have made their mark in the fields of literature, science, art and social service.



Activity

Find out the number of representatives elected from different States. Prepare a chart showing number of representatives and the population of the State according to the 2011 census.



I don't understand why there is a provision for nominating these sportspersons and artists and scientists. Whom do they represent? And, do they really contribute much to the proceedings of the Rajya Sabha?

Lok Sabha

The Lok Sabha and the State Legislative Assemblies are directly elected by the people. For the purpose of election, the entire country (State, in case of State Legislative Assembly) is divided into territorial constituencies of roughly equal population. One representative is elected from each constituency through universal adult suffrage where the value of vote of every individual would be equal to another. At present there are 543 constituencies. This number has not changed since 1971 census.

The Lok Sabha is elected for a period of five years. This is the maximum. We have seen in the chapter on the executive that before the completion of five years, the Lok Sabha can be dissolved if no party or coalition can form the government or if the Prime Minister advises the President to dissolve the Lok Sabha and hold fresh elections.

Check your progress

- ❖ Do you think that composition of Rajya Sabha has protected the position of States of India?
- ❖ Should indirect election of Rajya Sabha be replaced by direct elections? What would be its advantages and disadvantages?
- ❖ Since 1971 census the number of seats in the Lok Sabha has not increased. Do you think that it should be increased? What should be the basis for this?

WHAT DOES THE PARLIAMENT DO?

What is the function of the legislature? Do both Houses of the Parliament have similar functions? Is there a difference in the powers of the two Houses?

Apart from law making, the Parliament is engaged in many other functions. Let us list the functions of the Parliament:

- ❖ **Legislative Function:** The Parliament enacts legislations for the country. Despite being the chief law making body, the Parliament often merely approves legislations. The actual task of drafting the bill is performed by the bureaucracy under the supervision of the minister concerned. The substance and even the timing of the bill are decided by the Cabinet. No major bill is introduced in the Parliament without the approval of the Cabinet. Members other than ministers can also introduce bills but these have no chance of being passed without the support of the government.
- ❖ **Control of Executive and ensuring its accountability:** Perhaps the most vital function of the Parliament is to ensure that the executive does not overstep its authority and remains responsible to the people who have elected them. We shall discuss this function in greater detail later in this chapter.
- ❖ **Financial Function:** Government is about spending a lot of money on various matters. Where does this money come from? Every

government raises resources through taxation. However, in a democracy, legislature controls taxation and the way in which money is used by the government. If the Government of India proposes to introduce any new tax, it has to get the approval of the Lok Sabha. The financial powers of the Parliament involve grant of resources to the government to implement its programmes. The government has to give an account to the legislature about the money it has spent and resources that it wishes to raise. The legislature also ensures that the government does not misspend or overspend. This is done through the budget and annual financial statements.

Shankar. Copyright: Children's Book Trust.

READ A CARTOON



3 April 1955

The Parliament is the boss and the ministers are looking very humble here. That is the effect of the Parliament's power to sanction money to different ministries.

- ❖ Representation: Parliament represents the divergent views of members from different regional, social, economic, religious groups of different parts of the country.
- ❖ Debating Function: The Parliament is the highest forum of debate in the country. There is no limitation on its power of discussion. Members are free to speak on any matter without fear. This makes it possible for the Parliament to analyse any or every issue that faces the nation. These discussions constitute the heart of democratic decision making.

- ❖ **Constituent Function:** The Parliament has the power of discussing and enacting changes to the Constitution. The constituent powers of both the houses are similar. All constitutional amendments have to be approved by a special majority of both Houses.
- ❖ **Electoral functions:** The Parliament also performs some electoral functions. It elects the President and Vice President of India.
- ❖ **Judicial functions:** The judicial functions of the Parliament include considering the proposals for removal of President, Vice-President and Judges of High Courts and Supreme Court.

Powers of Rajya Sabha

We discussed above, the functions that are performed by the Parliament in general. However, in a bicameral legislature, there is some difference between the powers of the two Houses. Look at the charts showing the powers of Lok Sabha and Rajya Sabha.

Powers of the Lok Sabha	Powers of Rajya Sabha
<ul style="list-style-type: none">❖ Makes Laws on matters included in Union List and Concurrent List. Can introduce and enact money and non money bills.❖ Approves proposals for taxation, budgets and annual financial statements.❖ Controls the executive by asking questions, supplementary questions, resolutions and motions and through no confidence motion.❖ Amends the Constitution.❖ Approves the Proclamation of emergency.❖ Elects the President and Vice President and removes Judges of Supreme Court and High Court.❖ Establishes committees and commissions and considers their reports.	<ul style="list-style-type: none">❖ Considers and approves non money bills and suggests amendments to money bills.❖ Approves constitutional amendments.❖ Exercises control over executive by asking questions, introducing motions and resolutions.❖ Participates in the election and removal of the President, Vice President, Judges of Supreme Court and High Court. It can alone initiate the procedure for removal of Vice President.❖ Can give the Union parliament power to make laws on matters included in the State list.

Special Powers of Rajya Sabha

As you know, the Rajya Sabha is an institutional mechanism to provide representation to the States. Its purpose is to protect the powers of the States. Therefore, any matter that affects the States must be referred to it for its consent and approval. Thus, if the Union Parliament wishes to remove a matter from the State list (over which only the State Legislature can make law) to either the Union List or Concurrent List in the interest of the nation, the approval of the Rajya Sabha is necessary. This provision adds to the strength of the Rajya Sabha. However, experience shows that the members of the Rajya Sabha represent their parties more than they represent their States.

Powers exercised *only* by the Lok Sabha: Then, there are powers that only the Lok Sabha exercises. The Rajya Sabha cannot initiate, reject or amend money bills. The Council of Ministers is responsible to the Lok Sabha and not Rajya Sabha. Therefore, Rajya Sabha can criticise the government but cannot remove it.

Can you explain why? The Rajya Sabha is elected by the MLAs and not directly by the people. Therefore, the Constitution stopped short of giving certain powers to the Rajya Sabha. In a democratic form as adopted by our Constitution, the people are the final authority. By this logic, the representatives, directly elected by the people, should have the crucial powers of removing a government and controlling the finances.

In all other spheres, including passing of non-money bills, constitutional amendments, and impeaching the President and removing the Vice President the powers of Lok Sabha and Rajya Sabha are co-equal.



So, the Lok Sabha controls the purse! Then it must be the more powerful House.

HOW DOES THE PARLIAMENT MAKE LAWS?

The basic function of any legislature is to make laws for its people. A definite procedure is followed in the process of making law. Some of the procedures of law making are