

## Legislatures of Union and States

Legislature is not merely a law making body. Law-making is one of the functions of the legislature. It is the **centre of all democratic political process**. Indeed, a genuine democracy is inconceivable without a representative, efficient and effective legislature. 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. 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.**

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### Bicameralism:

When there are two houses of the legislature, it is called a **bicameral legislature**. 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.

States having a bicameral legislature:

1. Andhra Pradesh
2. Bihar
3. Telangana
4. Karnataka
5. Maharashtra
6. Uttar Pradesh

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 makes it possible to have every decision reconsidered.** This ensures a double check on every matter. **Upper House could perform the useful function of being a revising body.**

### For and Against of Bicameralism:

#### For

- it serves as a sobering influence on the Lower House and provides an opportunity for minorities and intellectuals.

#### Against

- it is used more often to rehabilitate jobless politicians, straining the public exchequer
- they can be used to park leaders who have not been able to win an election
- it delays important legislations over political considerations
- Also sometime upper house acts as an escape route for those legislators who are disqualified under anti defection too.

Speaking in constitution assembly, one of its members argued against the need of having upper house:

“Here they have provided for two chambers and the worst part of this is that in the Upper Chamber we shall have twelve nominated members; and we passed the other day that even those members, **who have been nominated and who will never seek the vote of the people, can become ministers** also. I think this is a most undemocratic aspect of our Constitution”.

Speaking over Legislative Council of states, Dr Ambedkar has said, that it was purely experimental and states could move out of this arrangements if they did not like it.

- Others who too opposed bicameralism termed Upper House as **“clog in wheel of progress”**,
- Twenty-four states have unicameral legislatures, that is, **only one legislative body, and only six states are bicameral. There is no justifiable legal basis for this classification** for if size is a determinant for bicameralism then for every Uttar Pradesh or Maharashtra that is two-House in design there is a West Bengal and Tamil Nadu that is not. If the bulk of the states can make do with one House why not the Centre?
- The Basic Structure doctrine enunciated by the Supreme Court in Re: Keshavananda Bharti **holds parliamentary democracy to be basic structure, not bicameralism.**

#### Utility of Upper House:

- To meet exigency when popular house is not in session or dissolved. E.g. Approval of emergency resolution.
- Council of states- as name suggest is the representative body made up of representative of state and they represent the interest of states.
- Need to approve some special resolutions e.g. one under Article 249, Creation of All India Services, Creation/Abolition of legislative council at states etc.

*Article 79: There shall be a Parliament for the Union which **shall consist of the President and two Houses** to be known respectively as the Council of States and the House of the People.*

### Rajya Sabha

Each of the two Houses of the 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 Rajya Sabha.

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**. In the U.S.A, every state has equal representation in the Senate.

This **second method means that regions or parts having larger population would have more representatives in the second chamber than regions having less population. India follows this system.** The number of members to be elected from each State has been fixed by the fourth schedule of the Constitution.

All members of the Rajya Sabha do not complete their terms at the same time. Thus the **Rajya Sabha is never fully dissolved**. Therefore, it is called the **permanent House of the Parliament**. 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.

**Article 80. Composition of the Council of States:** The Council of States] shall consist of—

(a) **twelve members to be nominated** by the President in accordance with the provisions of clause (3); and

(b) **not more than two hundred and thirty-eight** representatives of the States 3 [and of the Union territories].

(2) The allocation of seats in the Council of States to be filled by representatives of the States 3 [and of the Union territories] shall be in accordance with the provisions in that behalf contained in the Fourth Schedule.

(3) The members to be **nominated by the President** under sub-clause (a) of clause (1) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:— **Literature, science, art and social service.**

(4) The representatives of each State in the Council of States shall be elected by the **elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.**

### **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 for Lok Sabha. **This number has not changed since 1971 census.**

**Delimitation** is the act of redrawing boundaries of Lok Sabha and state Assembly seats to represent changes in population. **The main objective of delimitation is to provide equal representation to equal segments of a population.** Further, the population does not grow uniformly across all areas of a state. Hence, delimitation of constituencies is periodically carried out to **reflect not only an increase in population but changes in its distribution.**

**Delimitation is carried out by an independent Delimitation Commission, appointed by the Government of India under provisions of the Delimitation Commission Act.** The Delimitation Commission is appointed by the President of India and works in collaboration with the Election Commission of India. It is composed of the following: a **retired Supreme Court judge, the Chief Election Commissioner of India and respective State Election Commissioners.** The Constitution mandates that the Commission's orders are final and cannot be questioned before any court as it would hold up an election indefinitely.

After every census, a readjustment is to be made in

- (a) allocation of seats in the Lok Sabha to the states, and
- (b) division of each state into territorial constituencies.

This is done based on recommendation of Delimitations Commission and by an act of parliament.

- The 42nd Amendment Act of 1976 **froze the allocation of seats in the Lok Sabha to the states and the division of each state into territorial constituencies till the year 2000 at the 1971 level.**
- This ban on readjustment was extended for another 25 years (i.e. up to 2026) by the 84th Amendment Act of 2001, with the same objective of encouraging population limiting measures.
- 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 number of seats allotted to each state in the Lok Sabha.

### Stages in Delimitation:

1. Parliament is to enact a Delimitation Act after every Census.
2. Once the Act is in force, the Union government sets up the Delimitation Commission. The Commission is supposed to determine the number and boundaries of constituencies in a way that the population of all seats, so far as practicable, is the same.
3. The Commission is also tasked with identifying seats reserved for Scheduled Castes and Scheduled Tribes.
4. The draft proposals of the Delimitation Commission are published for public feedback. The Commission also holds public sittings. After hearing the public, it considers objections and suggestions, and carries out changes, if any, in the draft proposal.
5. The final order is published in the Gazette of India and the State Gazette concerned and comes into force on a date specified by the President.

**Past Delimitations:** In the history of the Indian republic, Delimitation Commissions have been set up four times — 1952, 1963, 1973 and 2002 under the Acts of 1952, 1962, 1972 and 2002. There was no delimitation after the 1981, 1991 and 2001 Censuses.

However, the 2002 Act did not make any changes in total Lok Sabha seats or their apportionment between various states. It also left out a few states including Assam, Arunachal Pradesh, Nagaland and Manipur from the exercise due to “security risks.” The central government reconstituted the Delimitation Commission for these four states as well as the union territory of [Jammu](#) and Kashmir on 6 March 2020.

Power to merge administrative district lies with.?

<b>Representative of States</b>	<b>530</b>
Union Territories	20
Anglo Indians**	2
Present strength is	543

(a) there shall be allotted to each State a number of seats in the House of the People **in such manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States;** and

(b) each State shall be divided into territorial constituencies in **such manner that the ratio between the population of each constituency and the number of seats allotted to it is, so far as practicable, the same throughout the State**

This clause shall not be applicable for the purpose of allotment of seats in the House of the People to any State so long as the population of that State does **not exceed six millions**


**Tenure of Lok Sabha:** The Lok Sabha is elected for a maximum period of five years. 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 election.

While Proclamation of Emergency is in operation, be **extended by Parliament by law for a period not exceeding one year at a time** and not extending in any case **beyond a period of six months after the Proclamation has ceased to operate.**

Role and responsibilities:

- 1) legislative function: both house and sign by president
- 2) financial function :
- 3) judicial function:
- 4) debate and deliberation:
- 5) represent : represent every section of society.

questioning the executive: question hour, zero hour, adjournment motion, censor motion, privilege motion.



**Question 20. Function of parliament is not limited to merely to making laws but its beyond that. What are the multiple functions being performed by the parliament in India? (To be discussed in class)**

ghbnj





1) having said that Rajya Sabha and legislative council of state do not have much effective power the concept of bicameralism become futile excise critically examine.

this all



### Article 84 Qualification for membership of Parliament. —

- is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an **oath or affirmation according to the form set out for the purpose in the Third Schedule;**]
- is, in the case of a seat in the Council of States, **not less than thirty years** of age and, in the case of a seat in the House of the People, not less than **twenty-five years of age;** and
- possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

Constitutional (Provided under Article 102)	Under RoPA
Should not hold office of profit	guilty of certain election offences or corrupt practices in the elections
Should not be of unsound mind	convicted for any offence resulting in imprisonment for two or more years
Should not be Undischarged insolvent	failed to lodge an account of his election expenses within the time
Not have acquired citizenship on any other country	must not have been dismissed from government service for corruption or disloyalty to the State
A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule	convicted for promoting enmity between different groups or for the offence of bribery
	director or managing agent nor hold an office of profit in a corporation in which the government has at least 25 per cent share

**As per article 101: A person cannot be a member of both Houses of Parliament at the same time. Thus, the Representation of People Act (1951) provides for the following:**

(a) If a person is elected to both the Houses of Parliament, **he must intimate within 10 days in which House he desires to serve. In default of such intimation**, his seat in the Rajya Sabha becomes vacant.

(b) If a sitting member of one House is also elected to the other House, his seat in the first House becomes vacant.

(c) If a person is elected to **two seats in a House**, **he should exercise his option for one**. Otherwise, both seats become vacant.

*A person cannot be a member of both the Parliament and the state legislature at the same time. If a person is so elected, his seat in Parliament becomes vacant if he does not resign his seat in the state legislature within 14 days.*

- If for a period of sixty days a member of either House of Parliament is **absent without permission of the House** from all meetings thereof, the **House may declare his seat vacant**:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

**Disqualification of Members:** Decision of disqualification (for matters under article 102, except tenth schedule) shall be taken by the president after obtaining mandatory opinion of Election Commission of India. President shall **act according to the opinion of Election Commission** and his decision shall be final.

Ways through which a member can be disqualified:

1. Annulment of election
2. Held Guilty of offences and as per provisions of Representation of People Act
3. On Grounds of Anti Defection.
4. Others: on advice of election commission of India.