# CHAPTER VI

# STATE LEGISLATURE

**SYNOPSIS**

Like the Central Government, a State Government also is of the parliamentary type and follows closely the model of the Central Government. Structurally the State Government may be resolved into three institutional components *viz.*, the legislative, as represented by the State Legislature; the executive, as represented by the Governor and the Council of Ministers; and the judicial, as represented by the High Court and the subordinate courts.

Generally speaking, the basic structure of the State Government follows closely the pattern of the Central Government, but, in the nature of things, there are some significant differences as well.

## A. CONSTITUTION OF A STATE LEGISLATURE

The State Legislature in Andhra Pradesh, Bihar, Maharashtra, Madhya Pradesh, Karnataka, and Uttar Pradesh is bi-cameral having two Houses. It is thus composed of the Governor, Legislative Council (Vidhan Parishad) and Legislative Assembly (Vidhan Sabha) [Art. 168].[1] In all other States, the State Legislature is unicameral having only one House and, therefore, it is composed of the Governor and Legislative Assembly (Vidhan Sabha).

Parliament *may* enact a law for either abolition or creation of Legislative Council in a State, if the Legislative Assembly therein passes a resolution to that effect by a majority of its total membership and by a majority of not less than two-thirds of its members present and voting [Art. 169(1)].

The Parliamentary law may contain such provisions to amend the Constitution as may be necessary to give effect to it [Art. 169(2)], and it will not be deemed to be an amendment of the Constitution for the purposes of Art. 368 [Art. 169(3)].[2]

---

**1.** Also see, The Legislative Councils Act, 1957.
**2.** For Art. 368, See, Ch. XLI, *infra.*

Thus, Art. 169(1) confers on the States having a second chamber, the right to abolish the same, and on the States not having a second chamber, the right to create one.

The use of the word 'may', in Art. 169(1) seems to give a discretion to Parliament to accept or reject the resolution of the Legislative Assembly of a State for abolition or creation of Legislative Council therein.

The idea of having a second chamber in the States was criticised in the Constituent Assembly on the ground that it was not democratic as it was not representative of the people, that it delayed legislative process and that it was an expensive institution. The idea of a second chamber was supported, however, on the ground that it would check hasty legislation by the popular chamber.[3]

The continued existence of the Legislative Council in a State is made dependent on the wishes of the State Legislative Assembly. Legislative Councils in the States seem to be a dying institution. The Legislative Councils in Tamil Nadu, West Bengal and Punjab have since been abolished.[4]

The Legislative Council of Andhra Pradesh which had been abolished by the Andhra Pradesh Legislative Council Abolition Act, 1985 was created again by the Andhra Pradesh Legislative Council Act, 2005. The abolition was sought to be justified by the then Government on the ground that the Legislative Council was redundant and its continuance was a drain on the State exchequer. It is more probable that the abolition was dictated by political considerations since the Legislative Council was dominated by the opposition party, it posed an obstacle to the passing of controversial legislation and policies. Significantly, when the opposition party came to power, the Legislative Council was revived in the State.

## B. COMPOSITION OF THE HOUSES

### (i) LEGISLATIVE COUNCIL

The total membership of a State Legislative Council cannot be less than 40, or more than one-third of the total membership in the Legislative Assembly [Art. 171(1)]. The Constitution thus fixes the minimum and the maximum limits regarding the strength of a Legislative Council. The actual strength of each House is however fixed by Parliament, which is as follows: Andhra Pradesh, 90; Bihar, 96; Maharashtra, 78; Madhya Pradesh, 90; Karnataka, 63; Uttar Pradesh, 108.[5]

"Until Parliament by law otherwise provides," a Legislative Council is composed as follows [Art. 171(3)]:

(*a*) 1/3 of its members are elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as may be specified by an Act of Parliament;

---

**3.** IV *CAD*, 670-688; VII *CAD*, 1303-1318; IX *CAD*, 31, 473-492; AUSTIN, *op, cit*., 158-163.

**4.** See, The Tamil Nadu Legislative Council Abolition Act, 1986; The West Bengal Legislative Council (Abolition) Act, 1969. See Ch. V (*supra*).

**5**. See section 10 read with Third Schedule of the Representation of People Act, 1950.

(*b*) 1/12 of its members are elected by electorates consisting of graduates of any University in India, of at least three years' standing, and residing within the State;[6]

(*c*) 1/12 of its members are elected by teachers of at least three years' standing in such educational institutions within the State, of a standard not lower than a secondary school, as Parliament may prescribe by law;

(*d*) 1/3 of its members are elected by the members of the State Legislative Assembly from amongst those who are not its member;

(*e*) the remainder, *i.e.*, 1/6 of its members are nominated by the Governor from amongst those who have a special knowledge or practical experience of literature, science, art, co-operative movement and social service [Art. 171(3)(*e*) and 171(5)].

The members of a Legislative Council under heads (*a*), (*b*) and (*c*), mentioned above, are chosen in such territorial constituencies as Parliament may prescribe by law. These as well as the members under head (*d*) are elected in accordance with the system of proportional representation by means of the single transferable vote [Art. 171(4)].

The purpose underlying the Governor's nominations under head (*e*) is to use the talents of such persons in the State as have achieved distinction in various fields and whose experience and advice may be of value to the State Legislature, but who have neither the time nor the inclination to contest elections.

All attempts hitherto made to bring the Governor's nominations within judicial purview have proved futile. A writ petition under Art. 226 by a member of the Assembly challenging the nomination of C. Rajgopalachari to the Madras Legislative Council in 1952 was rejected on the ground that the petitioner had no personal right "which can be said to have been infringed even in an indirect manner by nomination".[7]

In *Biman v. Dr. H C. Mookherjee*.[8] the Calcutta High Court dismissed an action brought personally against the Governor challenging nominations made by him to the Legislative Council because—

(1) under Art. 163,[9] except in cases where Governor is required to act in his discretion, he is to act on the advice of the Council of Ministers, and so it must be presumed that in making the nomination in question, he must have acted on the advice of the Council of Ministers;

(2) by reason of Art. 163(3), the advice tendered by the Ministers to the Governor cannot be enquired into by the Court;[10]

(3) by virtue of Art. 361,[11] the validity or invalidity of the nominations could not be inquired into by the court as this Article gives a complete protection to the Governor against a Court action.

---

**6.** Parliament may by law prescribe any other qualification as being equivalent to that of a graduate of a University.
**7.** *In re P. Ramamoorthi*, AIR 1953 Mad. 94.
**8.** 56 C.W.N. 651.
**9.** Ch. VII, *infra.*
**10.** *Infra*, Ch. VII; also, *supra*, Ch. III, Sec. B.
**11.** *Supra*, Ch. III, Sec. A.

In *Vidyasagar v. Krishna Ballabha*,[12] nominations were challenged on the ground that these had been made by the Chief Minister without referring the matter to the Governor. The Patna High Court rejected the contention. Under the Rules of Business,[13] it was not a matter which had to be referred to the Governor. The court could not go into the question of what advice was tendered to the Governor by the Council of Ministers.[14] The order of nomination had been properly authenticated. The court could not go into the question whether the members nominated had or had not the required qualifications under the Constitution.

In *Har Sharan v. Chandra Bhan*,[15] though the Allahabad High Court stated that the provision for nomination to the Legislative Council has not been made to enable a Minister to enter the Legislature by the backdoor, nevertheless, it refused to interfere, in the absence of an illegality as contrasted from impropriety. The Court however observed that although the Governor was not subject to its jurisdiction, a writ of *quo warranto* could yet be issued to the person nominated if his nomination was held to be illegal.[16]

It will thus be seen that membership of the Legislative Council is not on an elective basis by the people from territorial constituencies; it is by nomination, indirect election or by election from teachers' and graduates constituencies. The above-mentioned scheme of composition of a Legislative Council provides for representation in the House of a wide spectrum of interests. But this scheme is tentative in nature and Parliament may modify the same by law [Art. 171(2)]. Parliament may devise a different scheme for the composition of the upper houses in the States as may be thought necessary from time to time.

The Legislative Council is a continuing body. It is not subject to dissolution. As nearly as possible, one-third of its members retire every two years in accordance with the law of Parliament and their places are filled up by fresh elections or nominations, as the case may be. [Art. 172(2)].

### (ii) LEGISLATIVE ASSEMBLY

The Legislative Assembly is the popular chamber, elected directly by the people from territorial constituencies in the State on the basis of adult franchise once in five years. The House may be dissolved earlier. In an emergency, its life may be extended by Parliament by law [Art. 172(1)].[17]

Every citizen of India, not less than 18 years of age, and not suffering from any disqualification [Art. 326],[18] is eligible to be registered as a voter at an election for this House. Disqualifications arise either under the Constitution, or under a law passed by Parliament, or a State Legislature [Art. 326].[19]

---

**12.** AIR 1965 Pat. 321.
**13.** For "Rules of Business", see, Ch. VII, *infra.*
Also see, *supra,* Ch. III, Sec. E.
**14.** On this question, see, Ch. VII, *infra.*
**15.** AIR 1962 All 301.
**16.** For discussion on *Quo Warranto,* see, Ch. VIII, Sec. D, *infra.*
**17.** For Emergency Provisions, see, *infra*, Ch. XIII.
**18.** Also see, *infra,* Ch. XIX, under Elections.
**19.** See below.

The number of members in a Legislative Assembly may be 60 at the minimum and 500 at the maximum [Art. 170(1)].[20] To elect these members, the State is demarcated into territorial constituencies in such manner that the ratio between the number of members allotted to a constituency and the population therein, so far as practicable, is uniform throughout the State [Art. 170(2)].

Article 170(2) incorporates the principle of "fair and effective representation", or the broad democratic principle of "one person one vote". The constituencies ought to be, as far as possible of equal size although this principle cannot be applied with "arithmetical accuracy".[21]

Upon the completion of each census, the total number of seats in each Assembly, and the division of each State into territorial constituencies, are to be adjusted by such authority and in such manner as Parliament may by law prescribe [Art. 170(3)]. Such readjustment is not to affect representation in the Assembly until its dissolution. Provided that the readjustment shall take effect from such date as the President may, by order, specify.

Until such readjustment takes effect, any election to the Legislative Assembly may be held on the basis of the territorial constituencies existing before such readjustment. However, until the first census after the year 2026[22]. no readjustment of seats in the State Legislative Assembly or division of the State into territorial constituencies need be made [Proviso to Art. 170(3)]. This task is performed by the Delimitation Commission.[23]

Provisions have been made for reservation of seats in various Legislative Assemblies for Scheduled Castes and Scheduled Tribes [Arts. 332 and 334];[24] As regards the Anglo-Indian community, the Governor has authority to nominate one member of the community to the State Legislative Assembly of a State if he is of the opinion that the community needs representation in the Assembly and is not adequately represented therein [Art. 333].[25]

### (iii) QUALIFICATIONS AND DISQUALIFICATIONS FOR MEMBERSHIP

A person to be qualified for being chosen as a member in the State Legislature should be a citizen of India, and he should make and subscribe to an oath or affirmation in the prescribed form.[26] He should not be less than 30 years of age in

---

**20.** For the strength of each Assembly, see, the Second Schedule to the Representation of People Act, 1951.

**21.** *R.C. Poudyal v. Union of India,* AIR 1993 SC 1804, 1848 : 1994 Supp (1) SCC 324.

**22**. Substituted for "2000" with effect from 2002 by the Constitution (Eighty-fourth Amendment) Act, 2003.

**23.** *Supra*, Ch. II; *infra*, Ch. XIX, under Elections.

**24.** *Infra*, Ch. XXXV.

**25.** *infra*, Ch. XXXV.

**26.** The form of the oath is given in the Third Schedule to the Constitution. The oath emphasizes that the candidate for the House shall "bear true faith and allegiance to the Constitution of India as by law established" and that he "will uphold the sovereignty and integrity of India". The purpose underlying the oath is to ensure that only a person having allegiance to India is eligible for membership of the Legislature. The use of the expression "make and subscribe" does not imply that the candidate must either be literate or sufficiently educationally qualified so as to comprehend the Constitution. See infra *Baljeet Singh v. Election Commission of India,* AIR 2001 Del 1. The oath must be taken in the prescribed form otherwise it has to be assumed that the legislator has not taken the oath and has not duly entered upon the office. Thus an oath in the name of Sree Narayana Guru on the ground that he worshipped and considered Sree Narayana Guru as God does not conform to the constitutional mandate. *Haridasan Palayil v. The Speaker, Kerala Legislative Assembly,* AIR 2003 Ker 328 : 2003 (3) KLT 119 (DB).

case of the Legislative Council, and 25 years in case of the Assembly. In addition, he should also possess such other qualifications as are prescribed by the Constitution or a Parliamentary law [Arts. 173 and 191(1)(*e*)].

The necessary qualifications and disqualifications have been prescribed by Parliament in the Representation of the People Act, 1951. Thus, a person to fill an elective seat to a State Legislative Council has to be an elector for an Assembly constituency in that State, and to be qualified for the Governor's nomination, he should ordinarily be a resident in that State. For membership of the Assembly, he should be an elector for an Assembly constituency in the State. Also, he should be a member of a Scheduled Caste or Scheduled Tribe[27] if he wants to contest a seat reserved for such castes and tribes. A person belonging to such castes or tribes is not disqualified for being elected to a seat not reserved for them.

The grounds of disqualification laid down in the Act and the Constitution for membership of a State Legislature are similar to those laid down for Parliament.[28]

**(a) OFFICE OF PROFIT**

One such disqualification is holding of an office of profit, a concept which has already been discussed earlier [Art. 191(1)(a)].[29] It needs to be pointed out, however, that the spirit underlying this disqualification is being flouted in practice by the Chief Minister seeking to 'buy' dissidents in the party by appointing them to lucrative positions in public sector undertakings. As has already been discussed, technically, holding an office in such an autonomous undertaking is not regarded as holding an office under the State Government.

The office of the Chairman of Interim Council of Jharkhand Area Autonomous Council constituted by the State Government under the Jharkhand Area Autonomous Council Act, 1994, has been held to be an office of profit. The Government has complete control over the Council, the Chairman gets an honorarium of Rs. 1700/- per month and other allowances and perquisites.[30] He was getting more than compensatory allowance; Rs. 1700/- p.m. was pecuniary gain to the chairman.[31]

For the purpose of election of the Chairman to Rajya Sabha, the said disqualification could only be removed by Parliament by passing a law for the purposes.[32]

The chairman of one-man commission appointed by the Government of Karnataka was held to be holding an office of profit under Art. 191(1) as a provision

---

**27.** For further discussion on this topic, see, Ch. XXXV, *infra.*

**28.** *Supra.*Ch. II, Sec. D. A person who is disqualified would be conjointly disqualified for standing for election as well as for continuing as a member of the House to which he has been chosen. *Raveendran Nair v. R. Balakrishna Pillai*, High Court of Kerala O.P. Nos. 13013, 30001 and 34703 of 2001 and Election Petition No. 10 of 2001 Decided On: 01.03.2002 per B.N. SRIKRISHNA, C.J. AND G. SIVARAJAN, J).

**29.** See discussion under Art. 102(1)(a), Ch. II, Sec. D(a), *supra*. See also Achary: Law and Practice relating to Office of Profit (2006).

**30.** *Daya Nand Sahay v. Shibu Soren,* AIR 2001 Pat 79; *Shibu Soren v. Dayanand Sahay,* (2001) 7 SCC 425.

**31.** *Divya Prakash v. Kultar Chand Rana,* AIR 1975 SC 1067 : (1975) 1 SCC 264; *Karbhari Bhimji Rohamare v. Shankar Rao Genuji Kolhe,* AIR 1975 SC 575 : (1975) 1 SCC 252.

**32.** See, *supra,* Ch. II, Sec. D(b).

for Rs. 5 lakhs was made in the State budget for defraying his expenses of pay and day to day expenses. This was much more than compensatory allowance.[33]

A clerk in Coal India Ltd. — a government owned company—does not hold an office of profit *under* the Government. The Government exercises no control on "appointment, removal, service conditions and functioning" of the person concerned.[34]

A teacher in a municipal school does not hold an office of profit under the State Government and so is not disqualified to contest election for the State Assembly.[35]

The State Legislature is authorised to declare by law that a particular office will not disqualify its holder from membership in the State Legislature [Art. 191(1)(a)].

The Haryana Legislature exempted the chairmen of improvement trusts, but not their members, from the disqualification of the office of profit. This was challenged. Rejecting the challenge, the Supreme Court said that Art. 191(1)(a) gives a wide power to the State Legislature to declare by law what office of profit shall not disqualify its holder from being a member of the Legislature, and "..... so long as this exemptive power is exercised reasonably and with due restraint and in a manner which does not drain out Art. 191(1)(a) of the real content or disregard any constitutional guarantee or mandate, the Court will not interfere".[36]

The legislature can retrospectively remove the disqualification arising because of holding of an office of profit.[37]

**(b) DECISION ON DISQUALIFICATION**

"If any question arises" whether a member of a House of a State Legislature has become subject to a disqualification or not, it is to be referred to the Governor whose decision thereon is final [Art. 192(1)]. Before giving his decision, however, the Governor is required to obtain the opinion of the Election Commission and is to act in accordance with it [Art. 192(2)].

The Supreme Court has emphasized in the case noted below[38] that under Art. 192(2), the opinion of the Election Commission is a *sine qua non* for the Governor to give a decision on the question whether or not the member concerned of a House of State Legislature has become subject to a disqualification. Under Arts. 191(1) and (2), once a question arises whether a member has incurred a disqualification, it is only the Governor who must decide it but only after taking the opinion of the Election Commission. It is the decision of the Governor taken in

---

**33**. *M.V. Rajashekaran v. Vatal Nagaraj,* (2002) 2 SCC 704 : AIR 2002 SC 742.

**34.** *Pradyut Bordoloi v. Swapan Roy,* AIR 2001 SC 296, 300 : (2001) 2 SCC 19.
Also see, *Aklu Ram Mahto v. Rajendra Mahto,* AIR 1999 SC 1259 : (1999) 3 SCC 541.

**35.** *Patel Pandurang Venkanagouda v. H.B. Shivalingappa,* AIR 2000 Knt. 78. See also *Sultan Sadik v. Sanjay Raj Subba,* (2004) 2 SCC 377 : AIR 2004 SC 1377.

**36.** *Bhagwandas v. State of Haryana,* AIR 1974 SC 2355 : (1975) 1 SCC 249. Also see, *Hedge, supra.*

**37.** *N. Ibomcha Singh v. L. Chandramani Singh,* AIR 1977 SC 682 : (1976) 4 SCC 291.

**38.** *Election Commission of India v. Subramanian Swamy (Dr.),* AIR 1996 SC 1810 : (1996) 4 SCC 104.
For comments on this case, see, *supra,* Ch. II, Sec. D(d).

accordance with the opinion of the Election Commission that is final. In effect and substance, the decision of the Governor must depend on the opinion of the Election Commission and none else, not even the Council of Ministers. Thus, in effect, the opinion of the Election Commission is decisive since the final order would be based solely on that opinion.[39] No Court has jurisdiction to interfere with this matter as it lies exclusively within the purview of the Governor and the Election Commission.[40]

The position is similar to that in case of Parliament. Therefore, whatever comments have been made earlier under Art. 103 are relevant to Art. 192.[41]

It may be noted that the above provision becomes applicable when a sitting member of the legislature becomes subject to a disqualification after his election.

If, however, a disqualified person is elected as a member of the State Legislative Assembly, his election can be challenged through an election petition in the High Court.[42] When a person is not qualified to be elected a member, there is no doubt that the election tribunal has got to declare his election to be void.

If a member becomes subject to a disqualification after election, then the procedure laid down in Art. 192 needs to be followed. But what happens when a person lacking in the basic and fundamental qualification, prescribed by the Constitution for membership of the State Legislative Assembly, is elected to the House and no election petition is moved against him challenging his election. The person in question knows that he is disqualified and yet he sits in the House and votes as a member. Under Art. 193, he is subject to a penalty of Rs. 500 per day for knowingly sitting in the House while being disqualified.[43] But the Constitution has prescribed no machinery to recover the penalty from him. In these circumstances, the Supreme Court has ruled that the High Court can, under Art. 226, declare that the concerned member is not entitled to sit in the House and restrain him from functioning as a member thereof.[44]

### (iv) ANTI-DEFECTION LAW

Reference may be made to the discussion on Anti-Defection Law in Ch. II which applies not only to the membership of a House of Parliament but also to the membership of a House of State Legislature.[45]

The fact remains that the problem of defection has been much more rampant in the States leading to government instability. For example, the Committee of Governors, reporting in 1971, pointed out that in the States, defection became very widespread after the elections of 1967. From March 1967 to August 1970, there were 1240 defections in the States, and most of these defections took place because of the promise of reward of office, or were engineered by other "means

---

**39.** Also see, *Brundaban v. Election Comm.*, AIR 1965 SC 1892 : 1965 (3) SCR 53; *Election Commission of India v. N.G. Ranga*, AIR 1978 SC 1609 : (1978) 4 SCC 181.

**40.** *R. Sivasankara Mehra v. Election Commission*, AIR 1968 Mad. 234.

**41.** *Supra*, Ch. II, Sec. D(d).

**42.** See, *infra*, Ch. XIX, Sec. D.

**43.** See, *infra.*

**44.** *K. Venkatachalam v. A. Swamickan*, AIR 1999 SC 1723 : (1999) 4 SCC 526.
On Writs and Election Matters, see, *infra*, Ch. XIX.
On Art. 226, see, Ch. VIII, Secs. D and E. *infra.*

**45**. *Supra*, Ch. II, Sec. F.

not too honourable". Many governments fell because of defections which denote selfish, unprincipled political manoeuvring on the part of the defectors. Ultimately, the Anti-Defection Law was passed to discourage defections both at the National as well as the State level.

But, as already stated, this law has not proved very effective in checking defections at the State level. The present law suffers from several weaknesses, *e.g.*, its provisions regarding splits and mergers of the parties are defective because while individual defection is punished under it, collective defection is condoned in the name of split in the party; there is no provision in the law to cover the situation when a political party expels its member or members; Speakers in State Legislatures who have power to decide the question of defection usually play a partisan, rather than a neutral or an objective, role as the decision-maker under the law.[46]

Two members set up by AIADMK were elected to the TN Legislative Assembly in 1991. They were later expelled by the party and they, thus, became "unattached members" of the Assembly. They then joined another party, *viz.*, MDMK. The Speaker declared these members as having incurred the disqualification under Schedule X and they thus ceased to be members of the House.

The members challenged the Speaker's decision but the Supreme Court rejected their contention. The Court held that if a person belonging to a political party which had set him up as a candidate gets elected to the House, and thereafter joins another political party for whatever reasons, either because of his expulsion from the party, or otherwise, he is deemed to have voluntarily given up his membership of the political party and he, thus, incurs the disqualification.

This would be so even if the candidate voluntarily leaves the party which supported his candidature for election and contests the election as an independent candidate.[47]

The term "unattached member" has no relevance or significance for purposes of Schedule X. An elected member continues to belong to that party by which he was set up as a candidate for election as such. This is so notwithstanding that he was thrown out or expelled from that party.[48] This proposition prevents the expelled member from escaping the rigour of the Anti-defection law.

When a person who has been thrown out or expelled from the party which set him up as a candidate and got elected, joins another party, it certainly amounts to his voluntarily giving up the membership of his original party.

## (v) OTHER INCIDENTS OF MEMBERSHIP

### (a) SIMULTANEOUS MEMBERSHIP

No one can be a member of both Houses of a State Legislature simultaneously. The State Legislature is authorised to enact a law to provide for the vaca-

---

**46.** See, *supra*, Ch. II, Sec. F.

**47.** *Mahachandra Prasad Singh (Dr.) v. Chairman, Bihar Legislative Council*, (2004) 8 SCC 747 : (2004) 8 SCALE 549.

**48.** *G. Viswanathan v. Speaker, T.N., Legislative Assembly*, AIR 1996 SC 1060 : (1996) 2 SCC 353.

Also, *W.N. Singh v. Speaker, Manipur Legislative Assembly*, AIR 2002 Gau 58.

tion by a person, who is chosen a member of both Houses, of his seat in one of the Houses [Art. 190(1)].

No person can be a member of the Legislatures of two or more States simultaneously. If a person is so chosen, then, at the expiration of such period as may be specified in the rules made by the President, his seat in all the State Legislatures becomes vacant, unless he has previously resigned his seat in all but one of the Legislatures [Art. 190(2)].[49] This does not prevent persons who are Members of the Rajya Sabha from being elected to the State Legislative Assembly provided they are elected to the State Assembly within a period of six months of their election.[50]

No person can be a member of a State Legislature and of a House of Parliament simultaneously [Art. 101(2)].[51]

**(b) TERMINATION OF MEMBERSHIP**

A member of the Legislative Council may resign his seat by writing to the Chairman; and that of the Legislative Assembly by writing to the Speaker [Art. 190(3)(b)].

Before the Constitution (Thirty-third) Amendment Act, 1974, was enacted,[52] when a member tendered his resignation, the Speaker/Chairman had no option, and the member's seat fell vacant automatically.[53] But by XXXIII amendment, the position has been changed. The seat now falls vacant when the resignation is accepted by the Speaker/Chairman, and he cannot accept it, if from the information received or otherwise, and after making such inquiry as he thinks fit, the Speaker/ Chairman is satisfied that the resignation is not voluntary or genuine. Thus, if a member resigns under any pressure or duress, the resignation is not effective.

A House may declare a member's seat vacant if he absents himself from all its meetings for a period of sixty days, without the permission of the House. In computing this period of sixty days, no account is taken of any period during which the House is prorogued or adjourned for more than four consecutive days [Art. 190(4)].

A member vacates his seat in a House if he becomes subject to any disqualification [Art. 190(3)(a)]. This is a mandatory provision.[54]

**(c) TAKING OF OATH**

Before a member takes his seat in the House, he has to make and subscribe, before the Governor or some person appointed by him for this purpose, an oath or affirmation in the prescribed form [Art. 188].[55]

---

**49.** Cl. 3 of the Prohibition of Simultaneous Membership Rules, 1950, prescribes a time-limit of 10 days from the publication of the last of the results for this purpose; *supra,* Ch. II, Sec. E(a).
**50.** *Ashok Pandey v. K. Mayawati, (*2007) 10 SCC 16, at page 17 : AIR 2007 SC 2259.
**51.** *Supra*, Ch. II, Sec. E(a).
**52.** For this Amendment, See, *infra,* Ch. XLII.
**53.** *Surat Singh Yadava v. Sudama Pd.,* AIR 1965 All 535.
**54.** See, under Art. 192, *supra.*
**55.** *Supra*; *Gour Chandra v. Public Prosecutor,* AIR 1963 SC 1198 : 1963 Supp (2) SCR 447.

The oath emphasizes that the member shall bear faith and allegiance to the Constitution of India as by law established and that he will uphold the sovereignty and integrity of India and further that he will faithfully discharge the duty as a member of the Assembly/Council as the case may be.

It is compulsory for a member to take an oath or make an affirmation. Without doing so, he cannot function as a member of the House.[56]

A candidate for election to Lok Sabha [Art. 84(a)] and for a State Assembly [Art. 173(a)] has to *make and subscribe* an oath or affirmation. Similarly, a member of any of these Houses, has to *make and subscribe* an oath or affirmation before taking his seat in the House [Arts. 99 and 188]. The Delhi High Court has refused to infer or imply from the words "make and subscribe" an oath or affirmation any educational qualification for membership of a House. The court has rejected the argument that these Articles must be read in a manner that persons who are unable to comprehend the requirement of making and subscribing the oath or affirmation are ineligible to become members of a House. The court negatived the argument.[57]

**(d) PENALTY**

A person becomes liable to a penalty of five hundred rupees for each day he sits or votes as a member of the State Legislature: (*i*) without taking the prescribed oath; or (*ii*) when he knows that he is not qualified, or is disqualified, to be a member of the House; or (*iii*) when he knows that he is prohibited from sitting or voting as a member by any law made by Parliament or the State Legislature.

The penalty so incurred by the person may be recovered as a debt due to the State [Art. 193].

**(e) SALARIES FOR MEMBERS**

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 by law [Art. 195].

## C. MEETING OF STATE LEGISLATURE

**(a) SUMMONING**

The Supreme Court in *Rameshwar Prasad (VI) v. Union of India*[58] held that the constitution of any Assembly can only be under Section 73 of the Representation of People Act, 1951. Construing Article 188 of the Constitution it was held that the Assembly comes into existence even before its first sitting commences and is deemed to be duly constituted on issue of notification under Section 73 of the Representation of People Act, 1951.

Normally, the Government is formed by the party commanding the required majority in a State. However the issue has become more complex with the number of political parties in the fray**.** If a political party with the support of other political parties or other MLAs stakes claim to form a Government and satisfies the Governor about its majority to form a stable Government, the Governor can-

**56.** *K. Anbazhagan v. Secretary, T.N. Legislative Assembly, infra.*
**57.** *Baljeet Singh v. Election Commission of India,* AIR 2001 Delhi 1.
**58.** (2006) 2 SCC 1 : AIR 2006 SC 980.

not refuse formation of the Government and override the majority claim because of his subjective assessment that the majority was cobbled together by illegal and unethical means.[59]

The Governor summons a House to meet at such time and place as he thinks fit. It is now a well settled convention that the Governor summons the House not of his own accord but only when advised to do so by the Council of Ministers.[60]

It is the Council of Ministers which provides business for a session of the Legislature, and, therefore, it follows that for the Governor to act otherwise than in accordance with such advice in the matter of summoning a House of Legislature would be without purpose.

Six months should not intervene between the last sitting in one session of the House and the date for its first meeting in the next session [Art. 174(1)].[61]

**(b) GOVERNOR'S ADDRESS**

At the commencement of the first session of the Legislative Assembly after each general election, and each year thereafter, the Governor is required to address the Legislative Assembly, or both Houses assembled together if a State has two Houses, and inform the Legislature of the causes of its summons [Art. 176(1)].[62]

Like the President's address to Parliament, the Governor's address to the State Legislature also is prepared by the Cabinet.[63] Each House is obligated to provide in its rules of procedure for allotment of time for discussing the Governor's address [Art. 176(2)].[64]

Besides, the Governor is also authorised to address any House, or both Houses assembled together, any time and to require the attendance of the members for that purpose [Art. 175(1)].[65]

The constitutional provision, mentioned above, regarding the Governor's address to the first session of the Legislature has been held to be mandatory. Without the completion of this formality, the Legislature cannot be said to have legally met. The courts have emphasized that the Governor's speech is not an idle formality as its purpose is to announce the executive policies and the legislative programme and, therefore, it serves as a springboard for discussions in the Legislature, either for approval or disapproval of administrative policies.

The inaugural session of the Assembly is held to have begun from the day the Governor addresses it. But if the Governor comes to the Legislature and is not able to complete his speech because of disturbances within the House, and the speech is laid on the Table of the House and the Governor walks out of the House, or where the Governor, instead of reading the entire speech, reads some portions of it from the beginning and some from the end, and the House takes the

---

**59.** *Ibid* at page 130.
**60.** For discussion on "Council of Ministers" in a State, see, Ch. VII, *infra.*
**61.** See, *supra,* Ch. II, Sec. G(a).
**62.** *Supra,* Ch. II, Sec. G(E).
**63.** *Ibid.*
**64.** Also See, *Karpoori Thakur v. Abdul Ghafoor,* AIR 1975 Pat 1.
**65.** *Supra,* Ch. II, Sec. G(b).

speech as read,[66] then the Governor having made due attempt to perform the duty cast on him, his failure to complete the speech only amounts to a procedural irregularity which is curable under Art. 212.[67]

The Constitution makes no provision to meet the contingency arising out of a Governor's unavoidable absence due to illness on the occasion of opening the Legislature. In such a situation, in 1967, the Speaker of the Andhra Pradesh Assembly read the Governor's address. The Speaker ruled that in situations for which the Constitution or the rules make no provision, it is necessary to create conventions, use discretion and wisdom as to what should be done. Simply because the address was read by the Speaker it did not cease to be the Governor's address.[68]

Apart from his right to address the Houses, the Governor also enjoys the right to send messages to any House. The House to which such a message is sent has to consider, with all convenient despatch, any matter required by the message to be taken into consideration [Art. 175(2)].

How the Governor's power to send messages to the House can be used is illustrated in *K.A. Mathialagan v. P. Srinivasan*.[69] The Governor convened the Assembly and in a message prescribed the agenda for the first meeting of the Assembly. This was, of course, done on the advice of the Ministry. The Speaker however permitted a censure motion to be moved against the Ministry. This was not an item within the periphery of the message sent by the Governor and so normally could not be taken up for discussion.

The Madras High Court held that the message of the Governor was a directive and a mandate as to the subjects to be discussed in the Assembly session, and it was "the primordial duty of the Speaker as the holder of office under the Constitution to obey such a mandate and act in accordance with the itemised agenda therein." He ought not to have allowed the no confidence motion against the Ministry to be moved at that stage before he began transacting the business as set out in the Governor's message.

**(c) PROROGATION**

The Governor may prorogue a House at any time [Art. 174(2)(a)].[70] The Governor exercises this power on the advice of the Council of Ministers.

*State of Punjab v. Sat Pal Dang*[71] is an extremely interesting case on the point.[72] On the eve of the adoption of the State Budget and passing of the Appropriation Bill, the Speaker adjourned the House for two months on the plea that there was disorder in the House. It was however suspected that the Speaker had done this to thwart a move to pass a vote of no-confidence against him. The adjournment led to a crisis because in the absence of the appropriations being made by the Legislature, the State Government could not withdraw any money from

---

**66.** *Syed Abdul v. State of West Bengal Leg. Ass.*, AIR 1966 Cal. 363; *Yogendra Nath v. State*, AIR 1967 Raj 123.
**67.** Also, *infra*, Sec. H(d).
**68.** *Jl. of Parl. Inf.*, 69 (1967).
**69.** AIR 1973 Mad. 371.
**70.** For effects of prorogation, See, *supra*, Ch. II, Sec. I(a).
**71**. AIR 1969 SC 903 : (1969) 1 SCR 478.
**72.** AIR 1969 SC 903 : 1969 (1) SCR 478.

the Consolidated Fund of the State, and there was thus a danger of the government machinery coming to a standstill. To set matters right, the Governor had to intervene. He prorogued the House and summoned it to meet a week later.

The action of the Governor in proroguing and summoning the House was challenged but the Supreme Court upheld the same. The Court pointed out that "Article 174(2)(a) which enables the Governor to prorogue the legislature does not indicate any restrictions on this power". The power is "untrammelled" by the Constitution, and that the Governor had exercised his power to get rid of the Speaker's adjournment order and to put back the constitutional machinery of the State into life. Governor's action was perfectly understandable as an emergency had arisen. There was no abuse of power by him and no *mala fides* on his part.

Implicit, however, in this remark of the Court is the suggestion that the Governor does not enjoy an absolute discretion to prorogue the House and there may be circumstances when prorogation may be questioned on the ground of want of good faith and abuse by him of his constitutional powers.

The Supreme Court refused to endorse the Madras High Court's observation in an earlier case[73] that the Governor can prorogue the Legislature at any time he pleases and there is nothing wrong in his proroguing the House with a view to issuing an ordinance. However, from a practical point of view, it will be difficult in a situation to prove want of *bona fides* on the part of the Governor for, as stated above, he acts in this matter on ministerial advice.[74]

In *Mathialagan*,[75] the Speaker adjourned the Assembly for three weeks but, in the meantime, the Governor prorogued the Assembly. The Speaker filed a writ petition in the Madras High Court challenging the Governor's order. Rejecting the petition, the court ruled that in proroguing the Assembly, the Governor is bound to act on the aid and advice tendered by the Chief Minister. Further, the court ruled that, in all the circumstances, the Governor, "far from being actuated by *mala fides* or lack of *bona fides*¸prorogued the Assembly *bona fide* and duly, in order to get rid of such an adjournment". According to the Constitution, "the Governor is bound on the matter of prorogation by the advice of the Chief Minister."[76]

**(d) MISCELLANEOUS PROVISIONS**

The quorum of a House has been fixed at 10 members, or 1/10th of its total number of members, whichever is greater. The State Legislature may make a law to change this rule. When there is no quorum in the course of a meeting, the presiding officer should either adjourn the House, or suspend its meeting until there is a quorum.[77]

Generally, matters are decided in a House by a majority of votes of the members present and voting at a sitting. The Speaker or the member presiding does not vote in the first instance, but has a casting vote in case of equality of votes

---

**73.** *In re Veerabhadrayya*, AIR 1950 Mad 243.
**74.** See, *Bijayananda v. President of India*, AIR 1974 Ori. 52; *infra*, under "Speaker", Sec. D.
**75.** *K.A. Mathialagan v. Governor*, AIR 1973 Mad. 198.
**76.** *Ibid.*, at 220.
**77.** Arts. 189(3) & 189(4); also *supra*, Ch. II, Sec. G(d).

[Art. 189(1)].[78] However, a special, instead of the simple, majority is needed to decide a few matters, *e.g.*, removal of the Speaker or the Deputy Speaker of the Assembly,[79] or the Chairman or the Deputy Chairman of the Council.[80]

A House is entitled to function in spite of any vacancy in its membership [Art. 189(2)]. Any proceedings in a House will be valid notwithstanding that a person not qualified or entitled to do so, sat or voted or otherwise participated in its proceedings [Art. 189(2)].

Subject to the provisions of the Constitution, a House is empowered to make rules for regulating its procedure and conduct of its business [Art. 208(1)].[81] Thus, a House has been given power to make rules to regulate its proceedings. But this power is subject to the Constitution. This means that a House cannot make any rule for regulating its procedure and for conduct of its business which may be inconsistent with the Constitution.

In a State having a bicameral Legislature, the Governor, after consulting the Speaker of the Assembly and the Chairman of the Legislative Council, may make rules regarding the procedure to be followed for communication between the two Houses [Art. 208(3)].

The business of a State Legislature is to be transacted in the official language or languages of the State, or in Hindi, or in English. With the permission of the presiding officer, a member, who cannot adequately express himself in any of these languages, may address the House in his mother-tongue [Art. 210(1)].

It has been provided in the Constitution that after 15 years of the commencement of the Constitution, English would drop out unless the State Legislature otherwise provides by law [Art. 210(2)]. For the States of Himachal Pradesh, Manipur, Meghalaya and Tripura, this time-limit has been fixed at 25 years. For the States of Arunachal Pradesh, Goa and Mizoram, this time limit has been fixed at forty years.[82]

Every Minister as well as the Advocate-General[83] has a right to speak in, and otherwise participate in the proceedings of, the Legislature, or any of its committees of which he may be named a member. He shall not, however, be entitled to vote under this provision [Art. 177].

## D. OFFICERS OF STATE LEGISLATURE

### (a) SPEAKER/DEPUTY SPEAKER

The position of the Speaker/Deputy Speaker *vis-a-vis* the State Legislative Assembly is similar to that of the Speaker/Deputy Speaker of the Lok Sabha.[84] As

---

**78.** History was made in the Kerala Legislature on February 9, 1982, when the Speaker used his casting vote 7 times in one day in favour of the Government—6 times to defeat opposition amendments to the motion of thanks to the Governor's address and once to get the motion passed by the House.
**79.** See below, Sec. D.
**80.** *Ibid.*
**81.** Also, *supra*, Ch. II, Sec. L(i)(c).
**82.** Also see, Ch. XVI, *infra.*
**83.** See, *infra*, Ch. VII, Sec. E.
**84.** *Supra*, Ch. II, Sec. H.

regards the office of the Speaker, the Madras High Court has observed as follows:[85]

> "The office of Speaker being obviously an office resulting from election or choice, the person so chosen holds the office during the pleasure of the majority. As a Speaker is expected to be a friend of every member and be circumspect in all respects, it is an office of reverence as total impartiality is the basic requisite of the office. The Speaker is undoubtedly a servant of the House, not its Master and the authority transmitted to him by the House is the authority of the House itself which he exercises in accordance with the mandates, interests and well being of the House....."

A State Legislative Assembly has a Speaker and a Deputy Speaker. Both are chosen by the House from amongst its members [Art. 178].

The Deputy Speaker performs the duties of the office of the Speaker when it is vacant. If, however, the office of the Deputy Speaker is also vacant at the time, the Speaker's duties are performed by a member of the House whom the Governor may appoint for the purpose till any of the offices is filled by election [Art. 180(1)].

The Deputy Speaker also acts as the Speaker when he is absent from the House. When both the Speaker and the Deputy Speaker are absent from the House, such person as may be determined by the rules of procedure of the House, and in the absence of such person, such other person as may be determined by the House, acts as the Speaker [Art. 180(2)].

The Speaker/ Deputy Speaker vacates his office as soon as he ceases to be a member of the House [Art. 179(a)]. If the House is dissolved, the Speaker does not vacate his office until immediately before the first meeting of the House after dissolution [Proviso to Art. 179]. The Speaker/Deputy Speaker may resign his office by writing to each other [Art. 179(b)].

The Speaker/Deputy Speaker may be removed from office by a resolution of the House passed by a majority of all the then members of the Assembly. Such a resolution can be moved only after at least 14 days' notice has been given of the intention to move it [Art. 179(c)].

When a no-confidence resolution is under consideration in the House against the Speaker/Deputy Speaker, he does not preside at such sitting of the House though he may be present [Art. 181(1)], but he has a right to speak and take part in the proceedings of the Assembly and he can even vote [Art. 181(2)]. Commenting on this constitutional provision, the Madras High Court has observed in *Mathialagam*:[86]

> "*Eo instanti* when such a resolution comes up for consideration there is a deemed vacancy under the provision of the Constitution and the Speaker even though he is physically present is said to be constitutionally absent and cannot therefore be the presiding officer of the Assembly from that moment."

The Gauhati High Court has ruled that under Arts. 179(c) and 181(2), noted above, the resolution for removing the Speaker has to be considered by the House and the Speaker has no power to reject such a motion. If the Speaker so desires,

---

**85.** *K.A. Mathialagam v. P. Srinivasan,* AIR 1973 Mad 371, 376.
**86.** *Ibid,* at 382.

he has the opportunity to defend himself in the House against the allegations made against him.[87]

The power to consider or reject such a motion vests in the Assembly and not the Speaker. The members of the Assembly have a constitutional right to move a motion for the removal of the Speaker of the Assembly from his office. By rejecting the motion, the Speaker exceeded his powers under the Constitution and violated the right of the members of the Assembly.

The Speaker/Deputy Speaker receives such salaries and allowances as may be fixed by the Legislature by law, and pending that, as specified in the Second Schedule to the Constitution [Art. 186]. The salaries *etc*. are not subject to the annual vote of the Legislature but are charged on the Consolidated Fund of the State [Art. 202(3)(b)][88].

The office of the Speaker is of great honour. He presides over the sittings of the House and represents the dignity of the House. The following provisions in the Constitution promote the independence and impartiality of the Speaker:

(1) Speaker's salary and allowances are charged on the Consolidated Fund of the State [Art. 202(3)(b)].[89]

(2) Speaker does not vote in the first instance whenever there is voting in the House. He only exercises a casting vote in the case of an equality of votes [Art. 189(1)].[90]

(3) He can be removed from office only by a resolution of the House passed by a special majority in the House [Art. 179(*c*)].[91]

At times, the Speaker's office in the States has become the focal point of controversy, because often the Speaker plays, not an impartial, but a partisan, role. This is illustrated by the following several episodes.

The Governor of Bengal dismissed the U.F. Ministry headed by Mukherjea and installed the Ghosh Ministry.[92] At the first sitting of the Assembly convened thereafter, the Speaker ruled that the new Ministry was unconstitutional. His argument was that the Assembly was the only competent authority to decide whether or not a Ministry can remain in office, only the Assembly can make or unmake the Ministry and that the Governor was only the registering authority. He, therefore, ruled that he could not recognise the new Ministry.

According to the Speaker, dismissal of the Mukherjea Ministry, appointment of the Ghosh Ministry and the summoning of the House on the advice of Chief Minister Ghosh were unconstitutional and invalid as these had been effected behind the back of the House. He adjourned the House *sine die* without permitting it to express its confidence, or lack of it, in the newly installed Ministry.

Undoubtedly, such a ruling is untenable and goes beyond the Speaker's jurisdiction as it is not for him, but for the House as a whole, to recognise or derognise the Ministry. There does not appear to be any instance in the parliamentary

---

**87.** *Nipamacha Singh v. Secretary, Manipur Leg. Ass.*, AIR 2002 Gau 7.
**88.** See, *infra*, Sec. F(ii), under "Financial Procedure".
**89.** *Ibid*.
**90.** See, footnote 78, *supra*.
**91.** See, footnote 86, *supra*.
**92.** For details see, *infra*, Ch. VII.

history when a Speaker has taken upon himself the task of deciding whether a government is legal or not, or which government ought to be in office.

The Ministry neither derives authority from the Speaker nor it is answerable in any way to him. Formally, the Ministry derives its authority from the Governor who appoints it and, effectively, from the House to whom it is collectively responsible. The responsibility of the Ministry to the House can be effected only when the Assembly is allowed to function. It is a travesty of the situation that while, on the one hand, the Speaker insists that the House makes or unmakes the Ministry, on the other hand, he makes it impossible for the House to function and give it an opportunity to express its views on the matter.

The Speaker is an officer of the House; his function is to ensure smooth and orderly working of the House. He has no inherent power of his own under the Constitution and, therefore, he cannot arrogate to himself to do what, under the Constitution, is the function of the House. It is for the House, and not the Speaker, to recognise a Ministry or not. In this case, the Speaker was, in effect, seeking to paralyse the House and thwarting it from functioning.

It is a well accepted rule that the Speaker does not give a ruling upon a constitutional question nor decide a question of law. Such questions are meant for decision in the courts and not on the floor of the Legislature.[1] The Speaker gives ruling only on procedural matters. But here he sought to decide a substantive question of constitutional law relating to the Governor's discretionary power[2] and not merely a procedural question. It is also a well established practice that the Speaker does not give a ruling unless the matter is raised on the floor of the House, but the Bengal Speaker gave the ruling *suo motu* without the matter having been raised by a member on the floor of the House.

To tide over the crisis created by the Speaker's action, the Governor prorogued the House and reconvened it after some time, but the Speaker adjourned the House again on the same plea. A constitutional deadlock was thus created which ultimately led to the imposition of the President's rule in Bengal.[3]

A similar constitutional deadlock was sought to be created by the Speaker in Punjab.[4] On the eve of transaction of financial business, the Speaker adjourned the House for two months and, thus, made it impossible to pass the budget. The Governor then prorogued the House, issued an ordinance banning its adjournment without completing the financial business pending before it, and reconvened the House. When the House met, the Speaker reiterated his earlier ruling, held the ordinance illegal, and sought to adjourn the House again. But the House did not disperse and continued its proceedings under the Deputy Speaker and transacted the financial business.

---

**1.** MUKHERJEA, *PARLIAMENTARY PROCEDURE*, 353.
In contrast to the Bengal Speaker, the Punjab Speaker displayed correct attitude when he ruled on December 6, 1967, in the House that he was not concerned with disputing the action of the Governor in appointing the Chief Minister and stated, "If it is felt that the Governor had misused his discretionary powers, the remedy lies with the President and not with the Speaker".

**2.** On Governor's Discretionary Powers, See, Ch. VII, Sec. C, *infra.*

**3.** *Infra,* Ch. XIII, Sec. B.

**4.** *Supra.*

When later the validity of the Appropriation Act was challenged, the Supreme Court held the Act to be constitutionally valid.[5] In the course of its judgment, the Court made certain pungent remarks against the behaviour of the Speaker. The Court characterised the Speaker's second attempt to adjourn the House as null and void. The Court held as unfounded the claim that whatever the Speaker's ruling, it must be treated as final. Points of order can only be raised in relation to interpretation and enforcement of procedural matters. His ruling on the validity of the ordinance could not to be regarded as final or binding. An ordinance can be set at naught by a resolution of the House disapproving it as the Constitution provides.[6] The Speaker was not competent to give such a ruling and it was "utterly null and void and of no effect". The Speaker "acted contrary to law and the injunction of the Constitution".

The above episodes bring in sharp focus the position of the Speaker. Being an officer of the House, he should help and not hinder its proper functioning. The Speaker is the servant and not the master of the House. He is only the spokesman of the House but could not arrogate to himself its powers and functions. The Speaker should not act in a manner so as to interfere with the rights either of the Executive or the Legislature. Such actions on the part of the Speakers make them politically controversial, their impartiality and neutrality questionable, and this injures not only the Speaker's office but the whole parliamentary edifice.

The main bone of contention is the scope of the Speaker's power to adjourn the House. In the Bengal and Punjab situations, the Speaker used this power to paralyse the working of the House. It is, therefore, necessary that suitable conventions be evolved to regulate the functioning of the Speakers as the Constitution, not envisaging that a Speaker would ever adopt an activist role and seek to paralyze the House on which he presides, contains only skeleton provisions concerning this office.

A Committee of the Speakers appointed by the Speaker of the Lok Sabha has said that the powers conferred on the Speaker are intended to enable him to function in the interest of the House. He should not so interpret his powers as to act independently of the House, or to override its authority, or nullify its decisions. "The Speaker is a part of the House, drawing his powers from the House for the better functioning of the House and, in the ultimate analysis, servant of the House not its master."[7] The Committee has suggested that the Speaker should not raise any matter on his own and give his decision on it; he should give his ruling only when a point of order has been raised on the floor of the House, and after he has heard the members, if necessary. The Committee has put the matter in the proper perspective.

Nevertheless, such controversies are not at an end even after the above report. The Speaker of the Tamil Nadu Assembly also sought to play an activist role in 1971 which led to his removal. A few members of the ruling D.M.K. Party crossed the floor. The Speaker advised the Chief Minister to resign and hold fresh elections to the House. The Chief Minister claimed that he was in a major-

---

**5.** *State of Punjab v. Satpal Dang*, AIR 1969 SC 903 : 1969 (1) SCR 478; *supra.*

**6.** See, *infra*, Ch. VII, Sec. D(ii)(c), for discussion on this topic.

**7.** Reports of the Committee of Presiding Officers presented at the Speakers' Conference, October 6, 1968.

ity. Thereupon the Speaker adjourned the House for a few days to give time to the Chief Minister to consider his suggestion to dissolve the Assembly.

The Madras High Court in *K.A. Mathialagan v. The Governor*[8] characterised the adjournment as not "a proper or *bona fide* exercise of the power of adjournment" by the Speaker as the ruling party was in majority in the House and there was a good deal of work to be transacted. The Court rightly emphasized that the question of continued confidence of the people in a ruling party having a majority in the Assembly can be and is normally tested only on the floor of the Assembly itself.

**(b) CHAIRMAN OF THE LEGISLATIVE COUNCIL**

The presiding officer of a State Legislative Council is known as the Chairman. There is also a Deputy Chairman. These two offices correspond to the offices of the Chairman/Deputy Chairman of the Rajya Sabha.[9]

The Chairman/Deputy Chairman are chosen from amongst the members of the Council [Art. 182], and get such salaries as are fixed by law. The Deputy Chairman performs the duties of the office of the Chairman when that office is vacant [Art. 184(1)]. He acts as Chairman when he is absent from any sitting of the Council [Art. 184(2)].

They vacate their offices when they cease to be members of the House [Art. 183(a)]. Any of them can resign his office by writing to the other [Art. 183(b)]. Each can be removed from his office by a resolution passed by the House by a majority of all its members. Such a resolution can be moved after giving at least 14 days' notice [Art. 183(c)]. In addition to these two conditions laid down in the Constitution, it is open to the House concerned to impose any other condition for moving such resolution. Therefore, it is valid for a House to lay down that such a resolution can be moved only if a certain number of members favour its being moved.[10]

The Chairman/Deputy Chairman does not preside over the sitting of the House when a resolution for his removal is under consideration [Art. 185(1)]. He can however speak and participate in the proceedings of the House and also vote in the first instance [Art. 185(2)].

**(c) SECRETARIAT FOR THE LEGISLATURE**

A House of the State Legislature has its separate secretarial staff. In a bicameral State, it is possible to have posts common to both Houses [Art. 187(1)]. The State Legislature may by law regulate the terms of recruitment and conditions of service of the Staff [Art. 187(2)]. Pending passage of such a law, the Governor may make rules for the purpose after consulting the Speaker, or the Chairman, as the case may be [Art. 187(3)].

## E. DISSOLUTION OF THE HOUSE

The question of dissolution of the Lok Sabha has already been discussed earlier.[11] As regards the dissolution of a State Legislative Assembly, to a great ex-

---

**8.** AIR 1973 Mad 198.
For a note on "Powers of the Speaker" see, 16, *J.I.L.I.* 130 (1974).
**9.** *Supra*, Ch. II, sec. H(b).
**10.** *A.J. Faridi v. Chairman, U.P. Leg. Council*, AIR 1963 All 75, 78.
**11.** *Supra*, Ch. II, Sec. I(c).

tent, the position corresponds with the Lok Sabha, and much of what has been said earlier is relevant here also, but some divergences are also noticeable in the case of the State Assemblies.

Article 174(2)(b) merely says that the Governor may from time to time dissolve the Legislative Assembly. The Supreme Court has ruled that neither the Legislature nor its members have any constitutional right to have it undissolved till the expiry of the term specified in Art. 172(1), *i.e.,* five years from the date it holds its first meeting.[12]

The Constitution is silent as to when, and in what circumstances, the Governor may dissolve the House. This matter is, therefore, to be regulated by conventions which might evolve in course of time.

The following two propositions appear to be well settled in this regard:

(1) The Governor may not dissolve the House *suo motu*, without ministerial advice to that effect.[13]

(2) The Governor does not automatically accept the advice of his Council of Ministers to dissolve the House. The matter falls within the area of discretion of the Governor.[14]

A Chief Minister having a majority support can get a dissolution of the House as and when he wants, but dissolution in such circumstances is rather uncommon for a Chief Minister in such a happy position would ordinarily want to enjoy his full term, except when he senses some dissatisfaction in his party and wants to have a show down with the dissidents by calling for fresh elections. But dissolution of the House in other situations raises problems, for example, it remains uncertain whether the Governor may dissolve the House on the advice of a Chief Minister who has lost his majority in the House. The position remains uncertain. There have been cases when dissolution has been refused in such a situation.

In 1953, in Travancore-Cochin (now Kerala), the House was dissolved following the defeat of the Congress Ministry. The Ministry remained in office as a caretaker government till fresh elections were held. But this precedent was not followed in 1955. There was a minority P.S.P. Ministry in office. The Congress Party supported it without participating in the Ministry. But when the Congress withdrew its support and the Ministry was defeated in the House, the Chief Minister sought a dissolution of the House but it was refused. The Congress was invited to form the Ministry. The refusal to dissolve the House was criticised by some political groups as being constitutionally improper and wrong. But, some people justified it on the ground that the Assembly had been elected only a year back, and that the outgoing Ministry from its inception was in a minority, having only 18 followers in a House of 118, and that there was a reasonable prospect of an alternative stable Ministry being formed.

Controversy on the question of dissolution became sharpened after 1967. Before 1967, the Congress Party enjoyed a monopoly of power both at the Centre and the States. In such a context, not many difficulties arose in the working of the Constitution as many problems were sorted out at party level. This state of affairs

---

**12.** *State of Punjab v. Satya Pal*, AIR 1969 SC 903, 911 : 1969 (1) SCR 478.
**13.** On this point, see, Ch. VII, Sec. C(c) *infra.*
**14**. On Governor's Discretion, see, *infra*, Ch. VII, Sec. C.

however underwent a sea-change when after the Fourth General Elections, the Congress Party lost its monopoly of power, and multi-party coalition governments were installed in many States. The coalition governments suffered from a lack of internal cohesion, from stresses and strains and instability, because the constituent parties had disparate programmes, policies and outlook.

The process of adjustment in the wake of the break of Congress monopoly of power would have been difficult in any case, but things became more difficult because of the distressing phenomenon of defection, people forswearing allegiance to their party and joining another party with the sole motive of becoming Ministers.[15] This made the State Governments all the more unstable. A question thus arose from time to time whether a Chief Minister, who had a majority to start with as the head of a coalition government, or one party government, but who found himself in a minority by reason of a few of his supporters changing their loyalty, could seek a dissolution of the State Assembly.

A good deal of public discussion has taken place on the question whether a defeated Chief Minister could seek a dissolution. There is a sizable body of opinion that the British conventions are irrelevant to India because of the peculiar phenomenon of defection which is unknown to England, and also because of the multi-party system in India as against a two party system in Britain.

Within a few days of the general elections in 1967, the Congress Ministries in Haryana and Uttar Pradesh lost their majority support because of defections, but both the Chief Ministers resigned without seeking dissolution of the House. After some time, the Congress Ministry in Madhya Pradesh was threatened by defections. The Chief Minister did toy with the idea of seeking dissolution of the House. A good deal of public discussion took place at the time on the question whether a Chief Minister who had lost his majority could seek a dissolution. On the basis of conventions prevailing in Britain, perhaps, the Chief Minister would have got a dissolution. But, as stated above, a sizable body of opinion, particularly the non-Congress parties, regarded the British conventions as irrelevant to India. However, the matter did not crystallise at the time as the Chief Minister resigned without formally asking the Governor to dissolve the House.

In 1967, the ruling alliance, a combination of Jan Sangh and Akali Dal, lost its majority in the Punjab Assembly because of defection of a few Akali members. The Governor refused to accept the advice of the outgoing Chief Minister to dissolve the House, and invited the leader of the defectors to form the government as he claimed that he had been assured support by the Congress and thus had a majority support in the Assembly. The Governor publicly asserted that he was not bound to accept the advice of the outgoing Chief Minister because it was tendered after he had lost majority support in the Assembly, and it was pointless to hold fresh elections and incur enormous expenditure when a stable ministry could be formed.

On the whole, therefore, the position in the State appears to be that the advice of a Chief Minister, who loses his majority, to dissolve the House is not binding on the Governor who would take into account the totality of circumstances and exercise his judgment and discretion and could refuse to dissolve the House if he feels that there is a good prospect for a stable alternative government being

---

**15.** S.C. KASHYAP, *THE POLITICS OF DEFECTION* (1969).

formed. It is only when the Governor is satisfied that no other party, or combination of parties, can possibly form a stable government that he would dissolve the House and keep the resigning Ministry in office as a caretaker government till fresh elections are completed. As an alternative, the Governor could recommend President's rule under Art. 356, in which case the Ministry would quit and the Governor would administer the State as the agent of the President,[16] and the legislature could either be dissolved, or kept in suspended animation pending the emergence of a new government. Usually, this is the expedient resorted to whenever a ministry falls, and no alternative ministry appears feasible. All political groups perfer this course of action as none of them wants that a caretaker ministry of one political party should remain in office during the election period.

It is however open to question whether the practice as it has come to be is healthy? Should the Governor not be bound by the advice of the outgoing Chief Minister? Should the expedient of the President's rule be resorted to in such a situation? Dissolution is a democratic way to settle the complexion of the ministry. It may also serve as a disciplining technique for the members of the Legislature who may desist from defection if they know that the House would be dissolved and they would be required to seek re-election if the ministry falls.[17] This may, in the long run, result in governmental stability and the parliamentary system may be the better for it. To set up an alternative ministry by rewarding the defectors with ministerships amounts to putting a premium on defections which may ultimately damage the democratic fabric. On the other hand, there is the question of public apathy towards frequent elections. There is also the question of expenses on holding frequent elections.

Another question worth considering is whether the Chief Minister alone, or the Cabinet, should give advice for dissolution. The question assumes importance in the context of a coalition government comprising many parties. If dissolution is made a matter for the Cabinet to decide then it means that all partners in the government will have to agree for dissolution. This may make dissolution somewhat difficult as all parties in the coalition may not like to face mid-term poll. But if it is for the Chief Minister alone to recommend dissolution, then he may give advice without consulting others.

In Britain, the prerogative to advise dissolution vests in the Prime Minister alone. In India, however, it remains a moot point whether the Governor should accept the Chief Minister's advice without ascertaining the views of other parties in the Cabinet. In 1970, the Kerala Assembly was dissolved on the advice of the Chief Minister alone although he was heading a coalition ministry and he did not consult his other partners. The other parties were taken by surprise and they criticised the dissolution as unjustified. It is a moot point whether this can be taken as a precedent for the future.

The position regarding dissolution of the Assembly at the State level remains uncertain and, so far, it has been more a matter of political expediency. There is, therefore, need for proper conventions to take root in this area. A Committee of the Governors appointed by the President has reported on this question: "If a Chief Minister who enjoys majority support advises dissolution, the Governor must accept the advice, but if he advises dissolution after losing his majority, the

---

**16.** *Infra*, Ch. XIII, Sec. B.
**17.** *Supra*, under "Anti-defection Law, Sec. B(iv); Ch. II, Sec. F."

Governor need accept the advice only if the Ministry suffers a defeat on question of major policy and the Chief Minister wishes to appeal to the electorate for a mandate on that policy. In the case of a Chief Minister heading a single party government which has been returned by the electorate in absolute majority, if the ruling party loses its majority because of defection by a few members, and the Chief Minister recommends dissolution so as to enable him to make a fresh appeal to the electorate, the Governor may grant a dissolution. The mere fact that a few members of the party have defected does not necessarily prove that the party has lost the confidence of the electorate. If there is a no-confidence motion against a Ministry, and the Chief Minister instead of facing the Assembly, advises the Governor to dissolve the Assembly, the Governor need not accept such advice, but should ask the Chief Minister to get the verdict of the Assembly on the no-confidence motion."[18]

The report maintains that in a multi-party system as it obtains in India, the Governor should weigh all the factors carefully before taking his decision. The position would however greatly improve if the curse of defection could be contained in some way.[19] As already observed,[20] even the Anti-Defection Law which applies to the States as well has failed to curb defections and needs to be strengthened.

On the whole, it may be said that there is reluctance to hold frequent elections as this is an expensive proposition and ordinarily dissolution of the House is refused if it is possible to install an alternative government. In October, 1997, when the Waghela Government in Gujarat lost its majority because of withdrawal of support by the Congress Party, the Governor refused to accept Chief Minister Waghela's advice to dissolve the House. Instead, the Governor gave him one week to prove his majority in the House. Ultimately Waghela resigned and a new government was installed under a new leader from Waghela's party and the Congress Party agreed to support it from outside without participating in the Government.

A contrary situation arose in Goa in 2000. When there was a likelihood of the BJP party losing its majority, the Council of Ministers advised the Governor to dissolve the House which he did. The dissolution was set aside by a learned single judge holding that the Governor was not obliged to accept the advice of the Council of Ministers for the mere asking and should have made an enquiry whether an alternative viable Government could be formed, the reasons for the Council of Ministers seeking dissolution and whether it was really necessary to put a heavy burden on the State Exchequer by holding another election mid-way in the life of the Assembly.[21]

The formal constitutional provisions regarding dissolution of the State Assembly and Lok Sabha are similar in phraseology. An interesting question to consider, therefore, is whether similar conventions should operate at both levels, or whether conventions for dissolution of State Legislatures may differ in some respects from the conventions operating at the Centre in this regard. For several

---

**18.** *Report*, (1971), 53-60.
**19.** See, Anti-Defection Law, *supra*, Ch. II, Sec. F., Sec. B(iv).
**20.** *Ibid*.
**21.** *Jeetendra Deshprabhu v. The Governor of Goa, Raj Bhavan, Goa* (Writ Petition Nos. 84 and 88 of 2002 decided on 8-5-2002 in The High Court of Bombay at Goa).

reasons, it may be said that exactly same conventions need not operate at both levels. There are several differences between the position of the Centre and the States, *viz*.:

(1) While the Governor has, the President does not have, any discretionary power.[22]

(2) Further, while the Governor is a nominee of, and is answerable to, the Central Government, the President is not answerable to any higher authority.

(3) Lastly, while a State can be placed under the President's rule, the Centre cannot be so placed and there a Council of Ministers must always remain in office.[23]

Therefore, it can plausibly be argued that the position of the President differs a great deal from that of the Governor in this respect.[24]

## F. FUNCTIONS OF THE STATE LEGISLATURE

The State Legislature performs similar functions for the State as does Parliament for the whole of India. It makes laws, levies taxes, sanctions funds for the public expenditure and criticises and controls the State Executive.

### (i) LEGISLATION

A Bill pending in the Legislature does not lapse because of prorogation of the House [Art. 196(3)].[25] When the Assembly is dissolved—

(*i*) a Bill pending in the Legislative Council, which has not been passed by the Legislative Assembly, does not lapse [Art. 196(4)];

(*ii*) a Bill pending in the Legislative Assembly, or which having been passed there is pending with the Legislative Council, lapses [Art. 196(5)];

(*iii*) a Bill passed by the Legislative Council and pending in the Assembly will lapse;

(*iv*) a Bill passed by the Legislative Assembly, when there is only one House, or passed by both Houses in a bi-cameral Legislature, and pending assent of the Governor or of the President does not lapse.[26]

In the area of Legislation, the procedure followed in a State Legislature is practically similar to that followed in Parliament.[27]

An ordinary Bill, other than a Money or Financial Bill, can originate in either House [Art. 196(1)]. In a bi-cameral Legislature, a Bill is passed only when both Houses agree to it [Art. 196(2)].

---

**22.** *Infra*, next Chapter; also see, Ch. III, *supra*.
**23.** See, Ch. III, Sec. A(iii), *supra.*
**24.** *Infra*, Chs. VII and XIII.
Also see, M.P. JAIN, Propriety of Dissolution of Lok Sabha, *V JI. of. Const. & Parl. Studies*, 302 (1971)
**25.** *State of Bihar v. Kameshwar*, AIR 1952 SC 252 : 1952 SCR 889.
**26.** *Purushottam Nambudri v. State of Kerala*, AIR 1962 SC 694.
**27.** *Supra*, Ch. II, Sec. G.

If a Bill passed by the Legislative Assembly is rejected by the Legislative Council; or, it does not pass it within three months from the date the Bill is laid before it; or, the Council passes it with certain amendments which the Assembly does not accept, then the Assembly may pass the Bill again, and transmit the same to the Legislative Council. If the Council rejects the Bill again, or does not pass it within one month from the date on which it is laid before it; or, it passes the Bill with amendments not acceptable to the Assembly, then the Bill is deemed to have been passed by both Houses in the form in which it was passed by the Assembly for the second time with such amendments, if any, as have been made or suggested by the Council and have been agreed to by the Assembly [Art. 197(1) and (2)].

The Legislative Council thus acts as a revising chamber and can hold up legislation for a short time but ultimately the will of the Legislative Assembly prevails. The procedure to resolve differences between the two Houses in a State differs from the mechanism of joint session provided for in case of Parliament.[28] The State Legislative Council has thus been given much less importance than Rajya Sabha.

**(a) GOVERNOR'S ASSENT**

A Bill passed by the Assembly, or by both Houses in case of a bi-cameral Legislature, is presented to the Governor who has several alternatives:

(*i*) he may give his assent to the Bill; or

(*ii*) he may withhold his assent therefrom, or

(*iii*) he may return it to the Legislature for reconsideration, or

(*iv*) he may reserve it for the consideration of the President.

In case (*iii*), the Governor may request the Legislature to consider the desirability of introducing such amendments as the Governor might suggest. It is the duty of the Legislature to reconsider the Bill accordingly, and if it is passed again by the House, or both Houses, with or without amendments, and presented to the Governor again for assent, he "shall not withhold assent therefrom" [Art. 200, First Proviso]. This is similar to the provision dealing with Presidential assent to the Bills passed by Parliament.[29]

In accordance with the system of parliamentary democracy, in cases (i), (ii) and (iii), the Governor acts on the advice of his Cabinet[30]; only in case (iv), he acts in his discretion.[31]-[32]

---

**28.** *Supra*, Ch. II, Sec. J(i)(b).
**29.** *Supra*, Ch. II, Sec. J(i)(c).
**30.** On this point, see, Ch. VII, Sec. B, *infra.*
**31.** *Ibid.*
**32.** Between 2006 and 2007, several States sought to introduce similar amendments to the Freedom of Religion Act operative in their States. When the Amendment Bills were sent to the respective Governor of these States, they met with dissimilar responses. The Chhattisgarh Governor referred the Bill to the Attorney-General of India for his legal opinion. Similarly the advice of the Solicitor General of India was sought by the Governor of Madhya Pradesh on the Bill. The Governors of Himachal Pradesh and Orissa assented to the Bill without protest. The Governor of Gujarat returned the Bill to the Legislative Assembly for reconsideration. The Government then withdrew the Bill of 2006 in 2008.

The Constitution does not impose any time limit within which the Governor has to make any of the above-mentioned declarations. There is no means to compel the Governor to make a declaration if he keeps a Bill pending before him indefinitely. The scheme of Art. 200 shows that a Bill pending the assent of the Governor does not lapse as a result of the dissolution of the State Assembly.[33]

When the Governor reserves a Bill for Presidential consideration, the enactment of the Bill then depends on the assent or refusal of assent by the President. In case of a reserved Bill, the President may either assent to, or withhold his assent from, the Bill, or may return it back with a message to the Legislature for reconsideration and may even suggest amendments to be made therein. The Bill is then reconsidered within a period of six months from the date of receipt of the message, and if it is again passed by the Houses, or the House, with or without amendments, it is presented again to the President for his consideration [Art. 201].

Nothing is said as to what the President may do thereafter but, presumably, he may follow the same course as explained above. It does not appear that there is any obligation on the President to give his assent to the Bill sent to him after reconsideration. Art. 201 does not prescribe any time-limit within which the President has to come to his decision on a Bill referred to him for assent. The scheme of Art. 201 shows that a Bill reserved by the Governor for Presidential assent does not lapse as a result of the dissolution of the State Assembly. It goes without saying that the term 'President' used in Arts. 200 and 201 stands for the Central Government.

An example of this procedure is provided by the Kerala Agrarian Relations Bill. The Kerala Legislature passed the Bill in 1959, but the Governor reserved it for the President's assent.[34] Meanwhile, the Kerala Legislature was dissolved and fresh elections held. Thereafter, the President sent back the Bill for reconsideration by the Legislature in the light of amendments suggested by him. The Assembly passed the Bill incorporating the suggested modifications and thereafter it received the Presidential assent. This incident shows that a Bill pending assent of the Governor or the President does not lapse by dissolution of the State Legislature. A Bill passed by a Legislature can be reconsidered and amended by the successor Legislature.[35]

The Gujarat Legislature passed the Gujarat Secondary Education Bill In 1973. It was presented to the Governor for his assent. As the Bill provided for temporary take-over of the management of a school in public interest, the Governor reserved the Bill for the assent of the President. The Central Government felt that as the minority institutions were not exempted from the take-over clause, it came in conflict with Art. 30[36] The Central Government accordingly suggested modification of the Bill through an ordinance. The State Government forwarded the draft of the ordinance and the President gave his assent both to the Bill and the ordinance.[37]

---

**33.** *P. Nambudiri v. State of Kerala,* AIR 1962 SC 694, 701-702 : 1962 Supp (1) SCR 753.
**34.** *Supra*.
**35.** *P. Nambudiri v. State of Kerala,* AIR 1962 SC 694 : 1962 Supp (1) SCR 753.
**36.** On Art. 30, see, *infra*, Ch. XXX, Sec. C.
**37.** See, *Bharat Sevashram Sangh v. State of Gujarat,* AIR 1987 SC 494 : (1986) 4 SCC 51.

Another model of giving of Presidential assent to a state Bill is furnished by the fact situation in *In re The Kerala Education Bill*.[38] The Bill had been reserved for Presidential assent by the Governor of Kerala. The President referred the Bill to the Supreme Court for an advisory opinion and then sent the Bill back to the State for necessary amendments in the Bill by the State Legislature in the light of the Supreme Court's opinion.[39]

Article 200 obligates the Governor to reserve a Bill for President's consideration if, in his 'opinion', it so derogates from the powers of the High Court as to endanger the position which that court is designed to fill by the Constitution. Several constitutional provisions require assent of the Centre to State Bills for their validation.

The circumstances in which a Bill may be reserved by the Governor for Presidential assent are discussed later.[40]

The power of the Governor to reserve a Bill for the President's consideration is discretionary. It is the Governor's discretion whether he should reserve the Bill for the consideration of the President. He can do so whenever he feels that the State Bill goes against the larger interests of the State, or the country as a whole. In this way, the Governor acts as a link between the Union and the States and thereby the Centre is able to keep some control over the functioning of the State Legislatures.[41]

Only a Bill passed by the State Legislature can be reserved for the President's consideration. The Governor cannot give his assent to a Bill passed by the Legislature and then reserve it for President's assent.[42] Similarly, on receiving the President's assent, the Bill becomes law and the Governor's assent is no longer required.[43] The Supreme Court has declared that "the assent of the President is not justiciable".[44]

### (ii) FINANCIAL PROCEDURE

The scheme of Legislative control of finance in a State is a close replica of the system prevalent at the Centre.[45]

Under Art. 265, no tax can be levied except by authority of law. No appropriations can be made except by law passed in the prescribed manner. No money is granted, no tax is increased, and no Money or Financial Bill, or an amendment thereto, can be introduced or moved in the Legislature, except on the recommendation of the Governor [Art. 207(1)]. Governor's recommendation is not needed for moving an amendment for reducing or abolishing a tax. Because of Art. 255,

---

**38.** AIR 1958 SC 996; *supra*, Ch. IV, Sec. F.
**39.** Also see, *infra*, Ch. X, Sec. J.
**40.** See, Ch. VIII; Ch. X, Sec. K., *infra*. Also see, *supra*, Sec. F(i); *infra*, Ch. XXXII.
**41.** For discussion on the Governor's discretionary powers, see, *infra*, Ch. VII, Sec. C.
**42.** *Salubai v. Chandu*, AIR 1966 Bom. 194.
**43.** *State of Bihar v. Kameshwar*, AIR 1952 SC 252 : 1952 SCR 889.
**44.** *Hoechst Pharmaceuticals Ltd. v. State of Bihar*, AIR 1983 SC 1019 : (1983) 4 SCC 45; *Bharat Sevashram Sangh v. State of Gujarat*, *supra*, footnote 37.
**45.** *Supra*, Ch. II, Sec. J(ii).

if the Bill is passed without the Governor's recommendation, the defect is cured when the Governor later gives his assent to the Bill.[46]

In a uni-cameral Legislature, passage of a Money Bill does not present much difficulty. In a bi-cameral Legislature, the Legislative Assembly prevails over the Legislative Council in financial matters, *e.g.*, Money Bill is introduced in the Assembly and not in the Legislative Council [Arts. 198(1) and 207(1)].

After the Money Bill is passed by the Assembly, it is sent to the Council for its consideration and recommendations. It has 14 days to do so from the date it receives the Bill. The Assembly is authorised to accept or reject these recommendations [Art. 198(2)]. If the Assembly accepts any recommendation, the Money Bill is deemed to have been passed in the modified form [Art. 198(3)]. If it rejects all recommendations [Art. 198(4)], or, if the Council fails to return the Bills to the Assembly within 14 days [Art. 198(5)], the Bill is deemed to have been passed by both Houses in the form in which it was originally passed by the Assembly.

**(a) MONEY BILL**

A Money Bill is one which contains *only* provisions dealing with the following matters;

(*a*) the imposition, abolition, remission, alteration or regulation of any tax;

(*b*) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any obligations undertaken by the State;

(*c*) the custody of the Consolidated Fund or the Contingency Fund, and payment of money into, or withdrawal from, these Funds;

(*d*) the appropriation of money out of the Consolidated Fund of the State;

(*e*) charging of any expenditure on the Consolidated Fund, or increasing the amount of any charged expenditure;

(*f*) the receipt of money on account of the Consolidated Fund, or the Public Account of the State, or the custody, or issue of such money; or

(*g*) any matter incidental to any of the above matters [Art. 199(1)].[47]

A Bill or amendment is not regarded as a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for payment of fees for licences or service rendered or deals with taxation by a local authority [Arts. 199(2) and 207(2)]. This clause makes it clear that a Bill imposing a 'fee' and not a 'tax' is a financial Bill and not a Money Bill.[48] The difference between a 'fee' and a 'tax' is discussed later.[49]

A Money Bill is not introduced in the Assembly without the Governor's recommendation [Art. 207(1)]. The decision of the Speaker on the question whether a particular Bill is a Money Bill or not is final [Art. 199(3)]. A certificate from

**46.** *Balai Chand v. K.K. Chakrawarti,* AIR 1966 Cal. 81.
**47.** See, *supra,* Ch. II, Sec. J(ii)(c).
**48.** *Kewal v. State of Punjab,* AIR 1980 SC 1008 : (1980) 1 SCC 416.
**49.** See, *infra,* Ch. XI, Sec. H.

the Speaker is endorsed on a Money Bill to the effect that it is a Money Bill when it is transmitted to the Legislative Council and when it is presented to the Governor for assent [Art. 199(4)].

**(b) SPEAKER'S CERTIFICATE**

The Supreme Court has held in *State of Punjab v. Sat Pal Dang*[50] that the requirement of the Speaker's certificate on the Money Bill [Art. 199(4)] is directory and not mandatory, and, in the absence of the Speaker, the Deputy Speaker could grant the certificate.

In the instant case, the validity of the Appropriation Act was challenged on the ground *inter alia* that it bore the certificate from the Deputy Speaker and not the Speaker. The Court however held that in the absence of the Speaker, the Deputy Speaker validly acts as the Speaker of the Assembly;[51] that the constitutional provision regarding the Speaker's certificate is only directory and not mandatory and so the validity of the proceedings in the House could not be called into question as it was merely an irregularity of procedure.[52]

In the absence of the Speaker's certificate on a Money Bill, there appears to be no constitutional difficulty in treating it as an ordinary Bill and passing it through the Legislative Council accordingly. The Speaker's certificate entitles the Bill to receive a treatment different from what it would otherwise receive as an ordinary Bill in the Legislative Council and at the Governor's hands.

A Financial Bill, *i.e.*, a Money Bill with something else added to it, can originate in the Legislative Assembly only. It is, however, to be passed like an ordinary Bill. A Money Bill, or a Financial Bill, or, an amendment thereto, except an amendment for reducing or abolishing a tax, cannot be moved or introduced without the Governor's recommendation [Art. 207].

**(c) GOVERNOR'S ASSENT**

Like an ordinary Bill, a Money Bill also needs Governor's assent to become a law. The position in this connection is the same as in case of an ordinary Bill, except that the Governor cannot refer back a Money Bill for reconsideration by the Legislature. He either assents, or refuses to assent, or reserves it for Presidential assent. Similarly, the President cannot refer it back for reconsideration by the Legislature. He either gives or refuses to give his assent to the Money Bill. A Financial Bill stands on the same level as an ordinary Bill in this respect [Arts. 200 and 201].

## (iii) LEGISLATIVE CONTROL ON APPROPRIATIONS

**(a) CONSOLIDATED FUND**

Just as at the Centre, so in a State, legislative control on appropriations is secured through the Consolidated Fund.[53]

---

**50.** AIR 1969 SC 903 : 1969 (1) SCR 478; *supra.*
**51.** *Supra*, Sec. D.
**52.** *Infra*, Sec. H(d).
**53.** *Supra*, Ch. II, Sec. J(ii).

Money can be withdrawn from this Fund only under appropriations made by law, passed in accordance with the procedure laid down in the Constitution for this purpose [Arts. 204(3) and 266(3)].

The Consolidated Fund is formed of all revenue received and all loans raised by the State Government; all money received by the State Government in repayment of loans [Art. 266(1)], and any fees or other money taken by the High Court [Art. 229(3)]. The State Legislature may regulate by law all matters relating to the Fund [Art. 283(2)].

**(b) PUBLIC ACCOUNT**

All moneys, other than those placed in the Consolidated Fund, received by the State Government [Art. 266(2)], or an officer employed in connection with the affairs of the State, or by any court, are credited to the Public Account of the State [Art. 284].

**(c) CONTINGENCY FUND**

The State Legislature can also create a Contingency Fund by passing a law to that effect [Art. 267(2)].

**(d) EXPENDITURE CHARGED ON CONSOLIDATED FUND**

The following items of expenditure are *charged* on the Consolidated Fund [Art. 202(3)]:

(1) the emoluments and allowances of the Governor and other expenditure relating to his office;
(2) the salaries and allowances of the Speaker and Deputy Speaker of the Assembly, and those of the Chairman and the Deputy Chairman of the Council;
(3) debt charges for which the State Government is responsible;
(4) salaries and allowances of the High Court Judges;
(5) sums needed to satisfy any judgment, decree or award of any Court or arbitral tribunal;
(6) any other expenditure declared by the Constitution or the State Legislature by law to be so charged.

In the last category fall the following:

(a) the administrative expenses of the High Court, including all salaries, allowances and pensions payable to its officers and servants [Art. 229(2)];[54]

(b) expenses of the State Public Service Commission, including salaries, allowances and pensions payable to its members or staff [Art. 322].[55]

**(e) ANNUAL APPROPRIATIONS**

The stages and procedure in respect of annual appropriations for a State are similar to those laid down for Parliament.[56]

---

**54.** *Infra*, Ch. VIII.
**55**. *Infra*, Ch. XXXVI, Sec. K.
**56.** For details see, *supra*, Ch. II, Sec. J(ii).

The first stage is the presentation of the Budget by the Executive [Art. 202(2)]. Next, demands for grants are submitted to the Assembly for approval. The estimates of expenditure charged on the Consolidated Fund are open to discussion in the Legislature, but are not subject to vote [Art, 203(1)]. The House has power to assent, or to refuse to assent, or reduce any demand for grant [Art. 203(2)]. No demand for grant can be made except on the Governor's recommendation' {Art. 203(3)], which, in effect, means that only a Minister may move a demand for grant in the Assembly. Members may move cut motions. Demands are also discussed but not voted upon, in the Legislative Council.

After approval of the grants by the Assembly, a Bill is introduced to provide for the appropriation out of the Consolidated Fund of all money required to meet the grants, and the expenditure charged on the Consolidated Fund [Art. 204(1)]. The appropriations contained in the Bill cannot exceed the amount shown in the Budget. No amendment can be proposed to this Bill so as to vary the amount or alter the destination of any grant previously agreed to by the Assembly or to vary the amount of any expenditure charged on the Consolidated Fund. The decision of the person presiding as to whether an amendment is admissible or not under this clause is final [Art. 204(2)].

In a State with a bi-cameral Legislature, the Appropriation Bill goes before both Houses. Being a Money Bill, however, the power of the Legislative Council to deal with it is restricted.

No tax can be levied or collected without due authority of the Legislature expressed in the form of an Act. Supplementary, additional or excess grants, votes on account, votes of credit and exceptional grants can be made by a State Legislature in the same way as by Parliament [Arts. 205 and 206].[57]

Any Bill which, on being brought into operation after enactment, involves an expenditure from the State's Consolidated Fund, is not to be passed by a House without the Governor recommending to the House the consideration of the Bill [Art. 207(3)]. This gives to the Council of Ministers control over expenditure.

A State Legislature may, for timely completion of financial business, regulate by law the procedure of the House or Houses of Legislature in relation to any financial matter [Art. 209]. The purpose of this provision is to speed financial business in the legislature so that any attempts to delay such business may be avoided. An ordinance prohibiting adjournment of a House, except on a motion passed by a majority in the House, until the completion of financial business has been held to be valid. The ordinance was necessary to undo the power of the Speaker to adjourn the House on the eve of the consideration of financial business and thus throwing the governmental machinery into confusion.[58]

**(f) COMPTROLLER AND AUDITOR-GENERAL**

Lastly, the Comptroller and Auditor-General of India exercises the same functions with respect to financial matters in a State as he does with respect to the Centre.[59]

---

**57.** *Supra*, Ch. II, Sec. J(ii)(b).
**58.** *State of Punjab v. Satpal Dang, supra*.
**59.** *Supra*, Ch. II, Sec. J(ii)(s).

The accounts of the State are to be kept in such form, as he may prescribe, with the Presidential approval. He submits the audit reports in relation to the State accounts to the Governor who then causes these reports to be laid before the State Legislature [Art. 151(2)].[60]

(iv) DELIBERATION AND DISCUSSION

Like Parliament, the State Legislature also performs the function of discussing and debating public issues, controlling State Government, and shaping and moulding its polices.

Some of these occasions are provided by the Constitution itself, as for example, discussion on the Governor's address [Art. 176],[61] Budget and Demands for Grants through the mechanism of cut-motions [Art. 203].[62] Apart from these, the rules of procedure of the Houses provide for interpellations, adjournment, motions, resolutions *etc*., much on the same pattern as in Parliament.[63]

## G. RELATION BETWEEN THE TWO HOUSES *INTER SE*

### (a) NON-MONEY BILLS

This problem arises in a State having bi-cameral Legislature.

In the area of ordinary legislation, the two Houses have co-extensive power; a non-Money Bill may originate in either House and it becomes law only when both Houses pass it in the same form. In case of an inter-House deadlock, the Legislative Assembly ultimately prevails.[64] The Legislative Council cannot do more than hold up the passage of a Bill for some time.

The procedure to resolve differences between the two Houses in a State differs from the mechanism of joint session provided for in case of Parliament.[65] The State Legislative Council has thus been given much less importance than the Rajya Sabha.[66]

The pattern of relationship between the two Houses in a State in non-money matters is designed on the same lines as in Britain, with this difference, however, that whereas in Britain it needs at least a year for the House of Commons to by-pass the House of Lords, no such minimum time-limit has been fixed in case of a State. After the Legislative Council disagrees with the Assembly regarding a particular Legislative measure, the latter may re-enact the same at any time thereafter, and the Legislative Council can then hold up a Bill for a maximum period of one month [Art. 197].[67]

The purpose of having a Legislative Council is not to veto a Bill passed by the Assembly but to revise and reconsider it after allowing an interval of reflection and thought on the Bill in question.

---

**60.** *Ibid.*
**61.** *Supra*, Sec. C(b).
**62.** *Supra*, Ch. II, Sec. J(ii).
**63.** *Supra*, Ch. II, Sec. J(iii).
**64.** *Supra*, Sec. F(i).
**65.** *Supra*, Ch. II, Sec. J(i)(b).
**66.** IX *CAD*, 45, 59.
**67.** *Supra*, Sec. F(i).

**(b) MONEY BILLS**

Like Rajya Sabha, the State Legislative Council plays only a subsidiary role in financial matters, the power of purse having been concentrated in the Assembly.

A Money Bill can originate only in the Assembly; the Council is not authorised to effect any changes therein; it can only make recommendations which the Assembly is free to accept or reject; the maximum time allowed to the Council to make its recommendations is 14 days and, finally, whether a Bill is a Money Bill or not is to be decided finally by the Speaker [Art. 199].[68] Even a Financial Bill can originate only in the Assembly [Art. 207].[69]

**(c) CONTROL OF THE EXECUTIVE**

In the area of control of the Executive, the dominant power lies in the Assembly to which the Council of Ministers is constitutionally responsible [Art. 164(2)].[70]

An interesting constitutional question was raised in Bihar in 1968, *viz.*, whether a motion censuring the Council of Ministers can be moved in the Legislative Council in view of the fact that the Council of Ministers was responsible to the Lower House and not the Upper House. The Chairman held that Art. 164(2) merely indicates the constitutional position of the Ministry *vis-a-vis* the Assembly, and does not bar the Upper House from passing a censure motion against the Ministry, or criticising the conduct of the Ministry or expressing disapproval of the policy of the Ministry. The Council passed the resolution disapproving the policies of the Ministry and calling upon it to resign or, in the alternative, requesting the Governor to dismiss the Ministry, but the resolution had no operative force; neither did the Ministry resign nor was it dismissed by the Governor.

**(d) ORDINANCES**

Both Houses have co-ordinate powers as regards a Governor's ordinance which is to be laid before both Houses and which ceases to operate if a resolution disapproving it is passed by the Assembly which is agreed to by the Legislative Council [Art. 213(2)(a)].[71]

**(e) ABOLITION OF LEGISLATURE COUNCIL**

As already pointed out, it lies within the power of the Legislative Assembly to have the Legislative Council abolished.[72]

## H. LEGISLATIVE PRIVILEGES

Article 194 is a verbatim reproduction of Art. 105. Therefore, the privileges of a House of a State Legislature correspond with those of the Houses of Parliament.[73] Accordingly, the discussion held earlier on Parliamentary Privileges is

---

**68.** *Supra*, Sec. F(ii).
**69.** *Ibid.*
**70.** *Infra*, Ch. VII.
**71.** *Infra*, Ch. VII, Sec. D(ii)(c).
**72.** *Supra*, Sec. B(i).
**73.** *Supra*, Ch. II, Sec. L.

fully relevant to the privileges of a State Legislature. In fact, many cases cited earlier arose in the sphere of State Legislatures under Art. 194.

**(a) FREEDOM OF SPEECH**

Like Art. 105(1), Art. 194(1) specifically guarantees freedom of speech in the State Legislature. This is to ensure that the elected representatives of the people are able to have their full say on all issues being discussed in the legislature. The Allahabad High Court has held that so long as a Legislator is detained under a valid detention order, he or she has no right to participate in the session of the House and cannot consequently claim any of the rights or privileges available to legislators in the House.[74]

Article 194(2), like Art. 105(2), immunizes a member of a legislature from any proceedings in any Court for anything said or any vote given in the Legislature or a Committee thereof.

The freedom of speech is subject to the provisions of the Constitution subject to the restriction that no discussion is to take place in a House regarding the conduct of a Supreme Court or a High Court Judge in the discharge of his duties [Art. 211].[75] The rules and standing orders relating to the procedure of a House may also curtail the freedom of speech within the House [Art. 194(1)].

The Karnataka High Court has ruled in *Subbiah*[76] that breach of Art. 211 on the floor of the House is a matter not for the court but for determination by the presiding officer of the House. Two members of the Karnataka Legislative Assembly, espousing the cause of general public filed a writ petition in the High Court alleging that a member of the Legislative Council (respondent 2) had made derogatory remarks against the High Court Judges on the floor of the House and, thus, violated Art. 211. The petitioners therefore requested the court to issue a writ directing the Chairman of the Legislative Council (respondent 1) to produce the records of the proceedings of the Council relating to the objectionable remarks and further requested the court to quash the same. The High Court held that the matter was not actionable in the court, and, therefore, it could not call for the records of the House.

The Court pointed out that Art. 212(1) immunizes the proceedings of a House to be challenged on the ground of irregularity of procedure and it is not open to the court to issue a notice to the presiding officer of the House when the proceeding in which it is issued is itself outside the pale of determination by the courts. The question whether a member has contravened Art. 211 while speaking in the House is one for determination by the presiding officer of the House. "Hence, the question of sending for the records and quashing any such proceedings does not arise". Following the Supreme Court's opinion in *Keshav Singh,*[77] the High Court also observed in *Subbiah*:

> "If a Judge in the discharge of his duties passes an order or makes observations which in the opinion of the House amounts to contempt, and the House proceeds to take action against the Judge in that behalf, such action on the part of the House cannot be protected or justified by any specific provision made by

**74.** *Raghu Raj Pratap Singh alias Raja Bhaiya v. State of U.P,* 2003 (3) AWC 2106.
**75.** *Keshav Singh's* case, *supra,* Ch. II, Sec. L(i)(a).
**76.** *A.K. Subbiah v. State of Karnataka Legislative Council,* AIR 1979 Kant 24, 32.
**77.** *Supra,* footnote 75.

> the latter part of Art. 194(3)..... The conduct of a Judge in relation to the discharge of his duties cannot be the subject-matter of action in exercise of the powers and privileges of the House".[78]

The proposition laid down by the Supreme Court in *P.V. Narsimha Rao v. State*, (CBI/SPE)[79] and in *Raja Ram Pal v. Speaker, Lok Sabha*[80] in relation to the members of Lok Sabha also applies to the members of the State Legislature.

**(b) PUBLICATION**

Like Art. 105(2), Art. 194(2) lays down that no person is to be liable to any proceedings in any court in respect of the publication under the authority of a House of any report, paper, votes or proceedings.[81]

Article 361(A) immunizes from any Court action publication in a newspaper of a substantially true report of proceedings in a House, unless the publication is proved to have been made with malice. The same immunity applies to broadcasting.[82]

**(c) POWER TO MAKE RULES**

Like Art. 118(1), Article 208(1) empowers each House of the State Legislature to make rules for regulating, subject to the provisions of the Constitution, its procedure and the conduct of its business.[83]

**(d) INTERNAL AUTONOMY**

Internal autonomy is conceded to each House of the State Legislature. The validity of any proceedings in the State Legislature cannot be questioned on the ground of 'any alleged irregularity of procedure' [Art. 212(1)].

In *M.S.M. Sharma v. Dr. Krishna Sinha*,[84] the Apex Court has observed that the validity of the proceedings inside the Legislature of a State could not be called in question on the ground that the procedure laid down by the law had not been strictly followed. Art. 212 of the Constitution is a complete answer to any such contention. The court has observed:

> "No court can go into those questions which are within the special jurisdiction of the Legislature itself, which has power to conduct its own business."

Under Art. 212(1), the immunity from judicial interference is confined to matters of irregularity of procedure. No immunity can be claimed if the proceedings are held without jurisdiction, *e.g.*, contrary to any mandatory constitutional or legal provision.[85] If the proceedings in the Legislature are attacked on the ground of illegality or unconstitutionality, judicial review thereof is not barred by Art. 212.[86]

---

**78.** AIR 1979 Kant, 24 at 30.
**79.** AIR 1998 SC 2120; *supra*, Ch. II.
**80**. (2007) 3 SCC 184 : (2007) 2 JT 1.
**81.** *Supra*, Ch. II, Sec. L(i)(b).
**82.** *Supra*, Ch. II.
**83.** *Supra*, Ch. II, Sec. L(i)(c).
**84.** AIR 1960 SC 1186 : (1961) 1 SCR 96 : (1961) 2 SCJ 73.
**85.** *Kihota v. Zachilhu*, AIR 1993 SC 412 : 1992 Supp (2) SCC 651. Also, *State of Kerala v. Sudarsan Babu*, AIR 1984 Ker. 1.
**86.** *Om Parkash Chautala v. State of Haryana*, AIR 1998 P & H 80, at 83.

As the Supreme Court has observed in *Keshav Singh*:[87]

> "Art. 212(1) seems to make it possible for a citizen to call in question in the appropriate court of law, the validity of any proceedings inside the legislative chamber, if his case is that the said proceedings suffer not from mere irregularity of procedure, but from an illegality. If the impugned procedure is illegal and unconstitutional, it would be open to be scrutinised in a court of law, though such scrutiny is prohibited if the complaint against the procedure is not more than this that the procedure was irregular".

Thus, the proceedings inside the legislature cannot be challenged in the court on the ground that they have not been carried on in accordance with the rules of business. The House can depart from its own rules of procedure at its own discretion. Where the body has been given complete powers to regulate its own procedure it has by implication also the power to waive or condone the breach of its procedural rules.[88] The working of this principle can be illustrated by the following two cases:

1. In *State of Bihar v. Kameswar Singh*,[89] the original Bill relating to the Bihar Land Reforms Act was signed and authenticated by the Speaker. It contained an endorsement by the Speaker that the Bill was passed by the Assembly on 5-4-1950. The official report of the proceedings prepared later did not mention that the motion to pass the Bill was put to the House and carried.

The Supreme Court ruled that such omission could not, in the face of the explicit statement by the Speaker endorsed on the bill, be taken to establish that the Bill was not put to the House and carried by it. In any case, the omission to put the motion formally to the House, even if true, was a mere irregularity of procedure because the overwhelming majority of the members present and voting were in favour of carrying the motion.

2. In *Mangalore Ganesh Beedi Works v. State of Mysore*,[90] the Supreme Court ruled that the validity of a taxing measure cannot be challenged on the ground that it offends Arts. 197 to 199[91] and the procedure laid down in Art. 202 of the Constitution as Art. 212 prohibits the validity of any proceedings in a State Legislature being called in question on the ground of any alleged irregularity of procedure.

No officer or member of the State Legislature in whom powers are vested by or under the Constitution for regulating procedure, or the conduct of business, or for maintaining order in the Legislature, is to be subject to the jurisdiction of any court in respect of the exercise by him of those powers [Art. 212(2)]. The operation of this constitutional provision is illustrated by the following case.

A member of the Kerala Legislative Assembly was prevented from entering the Assembly hall. The guard was acting under the Speaker's order. The member brought an action against the guard who invoked Arts. 212(2) and 194 to bar

---

**87.** *In re* under Art. 143 (*Keshav Singh*), AIR 1965 SC 745 : 1965 (1) SCR 413; *supra*, Ch. II, Sec. L(ii)(g) and (iv).

**88.** *Rajnarain v. Atmaram Govind*, AIR 1954 All 319; *Piarelal Singh v. State of Madhya Pradesh*, AIR 1955 Nag. 11; *K.A. Mathialagan v. P. Srinivasan*, AIR 1973 Mad at 385; *S.V. Sirsat v. Leg. Ass. of State of Goa*, AIR 1996 Bom 10.

**89.** AIR 1952 SC 252 : 1952 SCR 889.

**90.** AIR 1963 SC 589 : 1963 Supp (1) SCR 275.

**91.** See, *supra*, for these provisions, under "Functions of the State Legislature, Sec. F.

Court's jurisdiction to take cognisance of any incident which may have taken place within the Legislative Assembly.

The High Court quashed the proceedings against the guard arguing that the persons deployed by the Speaker for maintaining law and order in the Assembly fall within the purview of Art. 212(2). The House and the Speaker can act only through these officers. As the Court observed: "An officer carrying out the orders of the Speaker within the precincts of the House is protected by the provisions contained in the Constitution. Such actions are beyond the cognisance of ordinary courts."[1]

Article 212(2), as is clear from its language, protects only exercise of powers vested in an officer under the Constitution. It does not protect from challenge before the court exercise of any power by such officer which is not vested in him under the Constitution.[2]

**(e) SUSPENSION OF A MEMBER**

Legislative history was made by the Tamil Nadu Assembly on Dec. 22, 1986, when it expelled 10 of its members (belonging to the opposition Party) from the House and declared their seats vacant.[3] These members had earlier burnt copies of the Constitution in public in the course of an agitation. The resolution passed by the House stated that by their act the members had violated the oath they had taken under Art. 188 of the Constitution,[4] and that by their conduct, they had brought down the esteem and dignity of the Constitution as well as the House and its members as their act was not in tune with the stature and standards expected of members of Legislative Assembly (M.L.A.'s) and, therefore, the House considered them ineligible to be its members.

There is no doubt that a House has power of discipline over its members and also has power to expel a member from the House rendering his seat vacant therein.[5] Members have been expelled from Parliament and State Legislatures but for personal misconduct within the House and not for political action. These members had committed an offence under the Prevention of Insults to National Honour Act, 1971, but it does not impose disqualification from membership as a punishment. There is however a danger that the majority party in the House may invoke the power of expulsion of minority party members for political reasons. Such a step would be anti-democratic. To avert such a danger, it is necessary to observe great caution, care and self-discipline by the majority party in the Legislature in using such a power. Because of Art. 212, it may be extremely difficult to challenge the exercise of such power in a court.[6]

The matter of expulsion of members was brought before the Madras High Court in *K. Anbazhagan v. Secy., T.N. Legislative Assembly*.[7] The High Court dismissed the writ petitions filed by the expelled members challenging their expulsion from the Assembly. The court ruled that the ground of expulsion of the

---

**1.** *Raghunath Panicker v. Kujala Shankappan,* AIR 1987 Ker 159, 163.
**2.** *Nipamacha Singh v. Secy., Manipur Legislative Assembly,* AIR 2002 Gau. 7. Also see, *supra.*
**3.** On the power of expulsion, see, *supra,* Ch. II, Sec. L(ii)(c).
**4.** *Supra,* Sec. B(v)(c).
**5.** *Supra,* Ch. II, Sec. L(ii)(c).
**6.** *Supra.*
**7.** AIR 1988 Mad 277.

members was that their conduct was considered to be derogatory to the dignity of the Constitution as well as that of the Assembly and the members were considered unfit to be members of the Assembly. The House of Commons has the power of expulsion to punish a member in exercise of its disciplinary control over the members with a view to see that such of the members who are unfit, in the opinion of the House, to continue to be its members are expelled from the House. The House can exercise such a power for an action of the member which the House considers to be a misconduct even though it was committed outside the House. Accordingly, the State Assembly also enjoys such a power under Art. 194(3).

It was contended in the instant case that, as the resolution to expel the members was passed by the House without the concerned members having been given an opportunity to put forth their case before the House, the procedure was illegal, arbitrary and the resolution violated Arts. 14 and 21, and, therefore, it was not protected from the court scrutiny under Art. 212. But the court rejected the contention saying that the whole purpose of Art. 212(1) is to shut out any enquiry into the validity of a proceeding in the Assembly on the ground of a defect in procedure. "Absence of opportunity to the person who is likely to be affected by the effect of the decision of the Assembly is undoubtedly a decision which may suffer from irregularity in procedure. The constitutional mandate cannot however be ignored and the Constitution makers clearly intended that the Legislature would not be answerable to a court in the matter of its proceedings on the ground of validity of procedure."

The decision of the Madras High Court is no longer good law and must be taken to have been impliedly overruled by the Supreme Court's decision in *Raja Ram Pal*'s case which for the first time in its history *directly* dealt with the expulsion from membership of the legislature[8] which has now held that Articles 122 and 105 do not foreclose judicial review in cases of "gross illegality or violation of constitutional provisions" . Since any action taken in contravention of natural justice is violative of fundamental rights guaranteed by Articles 14, 19 and 21 of the Constitution if it is shown that no opportunity of hearing was given to the legislator before expulsion, the decision would be susceptible to being set aside by court.[9] A single judge of the Karnataka High Court has held that judicial review is not available at a stage prior to the Speaker/Chairman's decision and a *quia timet* action is not permissible.[10]

A House of the Legislature has power to suspend a member for the whole of its session. Such an order automatically comes to an end when the House is prorogued for when the House is prorogued, all pending business in the House lapses.[11]

---

**8.** (2007) 3 SCC 184 at p. 413 : (2007) 2 JT 1.

**9.** *Ibid* at page 435. For further discussion see supra Ch. II Note L.

**10.** *A.K. Subbaiah v. The Chairman, Karnataka Legislative Council,* AIR 2007 Kant145 : 2007 (5) Kar L J 554.

**11.** Also see, *Jai Singh Rathi v. State of Haryana,* AIR 1970 Punj 379; *Hardwari Lal v. Election Commission of India,* ILR (1977) 2 P & H 269; *Om Prakash Chautala v. State of Haryana,* AIR 1998 P & H 80.

On prorogation of the House, see, *supra,* Sec. C(c).

**(f) LAW TO DEFINE PRIVILEGES**

Like Art. 105(3), Art. 194(3) authorises the State Legislature to make a law to define the powers, privileges and immunities of each House, its members and the committees. Until, however, so defined, the privileges are to be the same as those enjoyed by the House and its committees and members immediately before the coming into force of S. 26 of the Constitution (Forty-fourth) Amendment Act, 1978.[12] There is no such law till date. However the Supreme Court has in its decision in *Raja Ram Pal* made legislative privileges subject to judicial review so that like a statute passed by the legislature they cannot prevail against Fundamental Rights.

**(g) MISCELLANEOUS PROVISIONS**

Under Art. 194(4), which is akin to Art. 105(4), [13] privileges are available not only to the members of the Legislature but to all those who have a right to speak, or otherwise to participate, in the proceedings of a House or any committee thereof, such as Ministers and the Advocate-General of the State [Art. 177].

A point of interest which arises in case of a State Legislature, but not Parliament, may be noted. Suppose a newspaper in Bombay commits contempt of the U.P. Assembly by publishing some material derogatory to it. Can the Assembly issue a warrant to enforce the presence of the Editor before it to answer the charge of its contempt, Bombay being outside the territorial jurisdiction of the U.P. Assembly?

It has been held in *Homi Mistry v. Nafisul Hasan*,[14] that the Assembly could do so as no territorial limitation has been placed on the power conferred by Art. 194(3). The Union of India is not formed of independent States surrendering part of their jurisdiction to the Centre and reserving part of the jurisdiction to themselves. It is inconceivable that although the privilege could be exercised against a citizen of India within the State, a citizen outside the State could assail the dignity of the House with impunity.

**(h) LEGISLATURE—COURT CONTROVERSY**

During the last fifty years since the inauguration of the Constitution, there have arisen several cases pertaining to legislative privileges at the State level raising unnecessary controversies between the Courts and the Houses of State Legislatures.

Reference has already been made to the *Keshav Singh* case where an acute controversy arose on a privilege issue between the Allahabad High Court and the U.P. Legislative Assembly.[15] The controversy was defused when the question was referred to the Supreme Court for its advisory opinion under Art. 143.[16]

The Andhra Pradesh Legislative Council decided to summon the chief editor of a newspaper to the bar of the House to be admonished on March 28, 1984, as he had been held guilty of committing breach of privilege of the House as derogatory comments had been made against the House in his paper. Instead of

---

**12.** *Supra*, Ch. II, Sec. L(v) for comments on this provision.
**13.** *Supra*, Ch. II, Sec. L.
**14.** ILR 1957 Bom 218, 238-9.
**15.** See, *supra*, Ch. II, Sec. L(iv).
**16.** See, *supra*, Ch. IV, Sec. F. on Art. 143.

complying with the summons, the editor approached the Supreme Court for relief. The Court issued a show-cause notice to the Council, and also passed an interim order to the effect that the editor ought not to be arrested in pursuance of any process or warrant, if issued by the Council.

Disregarding the Court order, the Chairman of the Council asked the Commissioner of Police to produce the editor before the House on the 28th March. This brought the Council and the Court in a position of confrontation. On March 27, the Court passed another order that the Commissioner of Police should not arrest, and should not cause the arrest to be made. In view of the difficult situation in which he was placed, the Commissioner sought clarification from the Council Chairman who reiterated his earlier stand of producing the editor before the bar of the House for implementing the decision of the House to admonish him. The Chairman also directed that the Council Secretary should not receive any summons or notice from the Supreme court.

The Police Commissioner adopted the course of handing over to the editor the Council Secretary's communication which required him to produce the editor before the House. The Commissioner told the editor that he was not arresting him. "If you come on your own, you are welcome." The controversy was ultimately defused for the time being by the Governor proroguing the Council on the advice of the Chief Minister on March 30, 1984.

In *A.M. Paulraj v. Speaker, T.N. Legislative Assembly*,[17] a full bench of the Madras High Court has had occasion to consider certain aspects of privileges of the Legislative Assembly. The petitioner, an editor of a magazine, was sentenced to seven days' simple imprisonment by the Eighth Tamil Nadu Legislative Assembly for contempt of the Seventh Assembly. He challenged the Assembly's decision through a writ petition under Art. 226.[18]

The Speaker of the Assembly refused to receive the notice sent by the Court of the admission of the writ petition. Commenting on this aspect of the matter, the Court observed that the refusal to receive even a court notice of filing of a writ petition under Art. 226 by a person who has been punished for a breach of privilege is based on a misapprehension that the admission and hearing of such a petition amounts to an affront to the Legislature and that there is a confrontation between the High Court and the Legislature. "Such an impression is, in our view, wholly unjustified. Indeed the maintainability of a petition under Art. 226 of the Constitution challenging the decision of a House of Legislature sentencing a citizen to imprisonment for contempt of the House has clearly been upheld by the Supreme Court in *Keshav Singh.* When such a petition is filed, the conflict is not between the High Court and the Legislature but between the citizen and the Legislature. When a citizen approaches the Court contending that as a result of a committal to prison by the Legislature for breach of privilege his Fundamental Right under Art. 21 has been violated, such a petition cannot be thrown out at the very threshold merely on the ground that the decision of a House on an issue of privilege is being challenged." In the instant case, the High Court requested the Advocate General to assist the Court and he did so.

---

**17.** AIR 1986 Mad 248.
**18.** For discussion on Art. 226, see, *infra*, Ch. VIII.

Ultimately, after hearing the arguments of the Advocate General and the petitioner's lawyer, the High Court dismissed the petition on merits and made the following points in its judgment:

(1) A writ petition is maintainable challenging the decision of a House of a Legislature sentencing a citizen to imprisonment for contempt of the House.

(2) A House can take cognisance of the contempt of the previous House, the reason being that the State Legislature is a continuing institution notwithstanding the fact that the Assembly is dissolved from time to time and new members are being elected.

(3) The question of punishment for a breach of privilege is a matter exclusively within the jurisdiction of the Legislature;

(4) Art. 212 forecloses any scrutiny by the court into the procedure adopted by the House. The validity of the proceedings inside the Legislature cannot be called in question on the ground that the procedure laid down by the law has not been strictly followed. "The decision of the Assembly cannot be challenged on the ground that there was any irregularity in the procedure. Art. 212 creates an express bar against a challenge to any proceedings of the Legislature on the ground of alleged irregularity of procedure".

(5) When a person is punished with imprisonment under Art. 194(3) in accordance with the rules made by the Legislature under Art. 208(1), it is in accordance with Art. 21.[19]

The contention of the petitioner in the instant case was that he was not heard by the Assembly before passing the resolution to punish him for contempt. Treating this as a matter of mere procedure, the Court ruled that it was covered by Art. 212. The rules made under Art. 208 do not provide for any such hearing.

The criticism expressed by the author in the earlier edition of this book was two fold:

One, fair hearing is a part of natural justice and failure to provide natural justice is now regarded not as a matter of procedural irregularity but as going to the jurisdiction of the authority making the decision.[20] If this view is applied then the failure to giving a hearing to the concerned person can be regarded as affecting its jurisdiction to punish, and this is certainly not protected by Art. 212.

Two, after the *Maneka Gandhi* case, Art. 21 does not now envisage *any* procedure, but such procedure as is reasonable.[21] Imprisoning a person without giving him a hearing cannot certainly be regarded as a reasonable procedure. Therefore, the rules of a Legislature which fail to provide for an opportunity of being heard to the affected person before sentencing him to a term of imprisonment for contempt of the Legislature do not measure up to the requirements of Art. 21. Art. 212 protects irregularity in procedure of a Legislature but certainly not a breach of his Fundamental Right under Art. 21.

---

**19.** On Art. 21, see, Ch. XXVI, *infra.*

**20.** JAIN, A *TREATISE ON ADMINISTRATIVE LAW*, I, 450. *et. seq*; JAIN, *CASES AND MATERIALS ON INDIAN ADM. LAW*, I, Ch. XI.

**21.** See, *infra*, Ch. XXVI, Sec. D, for discussion on this case.

That the criticism was justified is borne out by the decision of the Supreme Court in *Raja Ram Pal*.[22]

Again, two cases of tri-partite conflict between the Press, Court and the Legislature arose in Tamil Nadu in 1992. The privileges committee of the Tamil Nadu Assembly found the editor of a newspaper guilty of breach of privilege of the House for publishing an alleged incident and certain proceedings in the House on February 5, 1992. The Speaker directed the editor to appear before the bar of the House on April 27 for being reprimanded. The editor approached the Supreme Court with a writ petition and the Court issued a notice on May 1 to the Secretary, Legislative Assembly, to appear before the Court on May 5, with some information. On May 4, 1992, the Assembly adopted a resolution directing the Secretary not to respond to the Court summons to appear before it, but offered to provide the Court information through the government counsel.

Proceedings for contempt of the House were initiated against Sunil, the Madras correspondent of the Illustrated Weekly published from New Delhi, following publication of an article written by him on Tamil Nadu Assembly in a September issue. The House took the view that the article sought to present the proceedings of the House in a "pejorative and prejudicial slant." Sunil expressed regret to the House, but still on April 10, 1992, the House directed Sunil to be present before the bar of the House on April 20 for being reprimanded. As Sunil did not appear before the House, a warrant for his arrest was issued by the Speaker.

Sunil approached the Supreme Court and on April 24, 1992, the Court in an interim order, stayed the execution of the arrest warrant and also stayed the notice dated April 10, issued by the Speaker directing Sunil to appear before the bar of the House. On April 27, an announcement was made in the T.N. Assembly that the warrant of arrest against Sunil would be executed despite the Supreme Court's stay order. On May 7, the Court clarified that its interim order of April 24 staying the warrant of arrest of Sunil, by necessary implication, interdicted, any assertion of powers to arrest Sunil by any police or other official. The Court also directed the Police Commissioner, Delhi, to give protection to Sunil and prevent infraction of the Court's order. The Court also expressed its confidence and hope that the authorities in consonance with their duty would act in "aid, authority and dignity" of the apex Court as envisaged by Art. 144 of the Constitution.[23] On the other hand, the Speaker pleaded in the House that under Art. 212, the validity of the proceedings could not be questioned.

A significant case pertaining to the legislative privileges arose in Tamil Nadu in 1987. On March 25, 1987, a weekly published a cartoon which, it was alleged, denigrated the MLAs. On March 28, the Speaker made a statement in the House holding the editor guilty of the breach of privilege and demanding the editor to publish an apology in the weekly failing which summary sentence would be passed by the House itself. On April 4, 1987, the House passed a resolution sentencing the editor to undergo three months' rigorous imprisonment. He was arrested the same day but was released after two days. In the meantime, the editor filed a writ petition in the Madras High Court and challenged the resolution as unconstitutional and also demanded compensation for the flagrant violation of his

**22.** See Chapter II Sec. L for discussion of the case.
**23.** *Supra*, Ch. IV, Sec. I.

Fundamental Rights in imposing the three months' rigorous imprisonment on him.

After considering the matter in the light of the past judicial decisions in the area of legislative privileges, a full bench of the High Court laid down the following propositions: in *S. Balasubramanian v. State of Tamil Nadu*:[24]

(1) The Constitution is the basic and fundamental law of the land; it reigns supreme and the "rights, powers and privileges" of the various limbs of the state are subject to its provisions.

(2) The final authority to interpret the Constitution and to settle constitutional controversies belongs to the Supreme Court and the High Courts. These courts have been constituted as the sentinels of both the Constitution and the democracy as well as the fundamental rights of the citizens.

(3) The legislatures have to function within the limits of constitutional provisions; adjudication of any controversy as to whether legislative authority has been exceeded or fundamental rights have been contravened is "solely and exclusively" left to the Judicature. Therefore, inevitably, the decision about the construction of Art. 194(3), the privileges, powers and immunities claimed or action taken in vindication thereof "cannot be said to be in the exclusive domain or of the sole arbitral or absolute discretion of the House of legislature".

(4) Of course, the courts having regard to their own self-imposed limits would honour the sentiments particularly keeping in view the plenary powers of the Legislature within the constitutionally permitted limits so long as such action of the Legislature does not result in the negation of the fundamental rights guaranteed to the people. The court observed in this connection:[25]

> "The all powerful postures or claims of sky-high powers or suzerain claims of sovereignty or over-lordism are to be brushed aside as nothing but fossil of the tyrannical and anarchical past and not in keeping tune with the basic and fundamental principle of rule of law, the bedrock of the Constitution or the democratic ideals which are the avowed object of the Republic ushered in by the Constitution of India. The contentions to the contrary have no basis or recognition of law and do not have the merit of acceptance by the courts in this country."

(5) No person can be deprived of his life or personal liberty except according to procedure established by law (Art. 21) and the state shall not deny to any person equality before law and the protection of law (Art. 14). Consequently, no law or procedure laid down by law or the action taken thereunder can be arbitrary or irrational or oppressive and the requirements of compliance with the principles of natural justice are implicit in Art. 21 and every action of the state has to be tested on the anvil of Arts. 14, 19 and 21 read together. No immunity can be claimed from the scrutiny of this Court to see whether any Act or ac-

**24.** AIR 1995 Mad 329.
**25.** *Ibid*, at 343.

tion of the legislature as in the case of the other limb of the State, violates the above stated cardinal principles.

(6) In the instant case, the alleged guilt of the editor had been decided and pronounced upon by the Speaker himself and declaration made by him to that effect even before any opportunity to show cause or hearing was given to him. "*Suo motu* the Speaker of the House has power only to refer the question to the privileges committee and not to record a verdict on the very question. The High Court observed in this connection:[26]

> "There had been, in our view, gross violation of law as also the principles of natural justice in dealing with the case of the petitioner and punishing him with imprisonment and the entire procedure adopted in this case smacks of arbitrariness and oppressiveness besides the same being most unreasonable. While denying the personal liberty of the petitioner, a citizen of this country, even the elementary procedure established by law does not appear to have been adhered to."

Thus, the Court concluded that, in the instant case, Fundamental Rights of the petitioner under Arts. 14, 19 and 21[27] were grossly violated in imposing three months' imprisonment and, accordingly, "the condemnation of the petitioner as also the punishment imposed are declared to be unconstitutional and null and void." The court also awarded the petitioner a token compensation of Rs. 1000 for infringement of his right under Art. 21.

On March 22, 1999, a member of the Opposition in the Tamil Nadu Legislative Assembly assaulted a Minister. In the evening, the member was imprisoned for a week on a warrant issued by the Speaker. On March 23, a *habeas corpus* petition was moved on behalf of the concerned member in the Madras High Court under Art. 226. The High Court granted interim bail to the member and ordered his release from the prison. The Judges who heard the petition felt that no one could be sentenced to jail without being given a hearing. They also felt that since the arrest followed a criminal action, the matter should have been referred to an appropriate court. The bench made it clear that it was not interfering with the decision of the House suspending the member from the House for the rest of the ongoing session.

At first, the Speaker reacted strongly to the High court order and said that he would not take cognisance of it. On March 23, while the member's case was being argued in the Court, the Assembly passed a resolution holding the member guilty of contempt of the House and sentenced him to 15 days imprisonment. On March 24, the Speaker relented. The member was released from the prison in pursuance of the court order for his bail but he was rearrested a few minutes later under the Assembly resolution. A fresh *habeas corpus* petition was filed in the High Court seeking the release of the member and challenging the resolution passed by the Assembly.

---

**26.** *Ibid,* 345.

**27.** For discussion on Art. 14, see, Ch. XXI, *infra;* on Art. 19, see, Ch. XXIV, *infra;* for Art. 21, see, *infra,* Ch. XXVI, Secs. B, C, D, E and F.

In the meantime, the Speaker accepted that his order issued by him *suo motu* on March 22, ordering member's imprisonment was flawed because he had issued it in his individual capacity as the Speaker. He also made it clear that neither he nor any of the Assembly staff members would accept any notice or summons from the High Court on the matter. He also observed that challenging the Assembly resolution in the court "would definitely affect the sovereignty of the House and I will challenge it."[28]

The Madras High Court again ordered the release of the member on bail after suspending the Assembly's resolution. The Speaker who had earlier declared that he would not brook any interference from the court in implementing the Assembly resolution again relented, chose not to challenge the court order and, accordingly, the member was released from the prison. Thus, a confrontation between the High Court and the Assembly was averted for the time being as the Speaker chose to accept the court order releasing the member on bail.[29] The Speaker told the House that he did not wish a confrontation with the judiciary and that the court order granting bail to the member was only an interim order. The Speaker went on to observe that the legislature and the judiciary are two limbs of the democracy and, therefore, one should not demolish the sovereignty of the other.

Questions regarding the permissible limits of legislative privileges, the role of the courts in this area, the relation between legislative privileges and Fundamental Rights have been arising from time to time creating unnecessary tensions between the courts and the legislatures. This problem needs to be solved so that the court-legislature tensions which result in ugly incidents from time to time may be avoided.[30]

The only viable course to protect the press and the people is to have a central legislation defining legislative privileges. This matter has been hanging fire since the famous *Keshav Singh* case,[31] in 1964. It may be still better to add an appendix to the Constitution defining legislative privileges as a central law on the subject may not be constitutionally viable. The alternative suggested in the earlier edition of amending Arts 105 and 194 making legislative privileges subject to Fundamental Rights and judicial review, may no longer be necessary given the decision of the Supreme Court in *Raja Ram Pal*.

It needs to be appreciated that a legislature exercises its privileges against the same people who have elected it. This can be regarded as an anti-democratic action on the part of a democratic legislature. It needs to be remembered that the function of privileges in early days in Britain was to make the House of Commons immune from royal interference. But to-day legislatures use their privileges not for protection against the executive but to stifle criticism by the people. To a great extent, the claim of privilege by a democratically elected legislature borders on being undemocratic and anti-people. At times, the majority party in a House uses the issue of privileges as a political weapon to beat the minority.

---

**28.** *The Hindustan Times*, dated, March 25, 99, p. 1.
**29.** *The Times of India*, dated March 26, 99, p. 10.
**30.** Reference may be made in this connection to a study by the author entitled *Parliamentary Privileges and the Press* (1984) published by the Indian Law Institute, New Delhi.
**31.** *Supra*, Ch. II, Sec. I.