

**Introduction**

The Legislative Assembly, also called the Vidhan Sabha is analogous to Lok Sabha in the country, the Legislative Assembly functions in the same manner in a State as the Lok Sabha functions in the Parliament.

**Organisation of State Legislature****Article 168: Constitution of Legislatures in States.**

- (1) For every State there shall be a Legislature which shall consist of the Governor, and
- in the States of Andhra Pradesh, Telangana, Uttar Pradesh, Bihar, Maharashtra, Karnataka two Houses;
  - in other States, one House.
- (2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly, and where there is only one House, it shall be known as the Legislative Assembly.

There is no uniformity in State Legislatures. There are 6 States with bicameral Legislature out of 28 States in India:

- Andhra Pradesh
- Telangana
- Maharashtra,
- Karnataka,
- Uttar Pradesh,
- Bihar

State Legislature consist of à Governor, legislative assembly and legislative Council (in case of bicameral).

**Article 169: Abolition or creation of Legislative Councils in States.**

State Legislature can abolish a Legislative Council or create it, if the legislative assembly of the concerned State passes a resolution by a Special Majority to that effect. This Act of State Legislature is not to be deemed as an amendment of the Constitution for the purposes of Art. 368 and is passed like an ordinary piece of legislation (by Simple Majority).

**Composition of the Houses**

Article 170 of the Indian Constitution talks about the configuration of the Legislative Assemblies. On the other hand, the configuration of the Legislative Council is given in Article 171 of the Indian Constitution.

**Legislative Assembly****Qualifications [Article 173]**

To become a Member of Legislative Assembly a person must:

- be a citizen of India;
- have attained the age of 25 years;
- must not hold any office of profit.

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

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

**Composition of Legislative Assembly [Article 170]**

- The Legislative Assembly of State can have at most 500 constituencies and at least 60 constituencies.
- These constituencies would be represented by the members who would be selected through the process of direct election.
- However, the division of territorial constituencies would be determined in such a manner that it

becomes dependent on the population of that constituency. Here by the term “population” we mean population which has been published in the precedent census.

- ❑ The composition of the Legislative Assembly in any State can change according to the change in the population of that State. It is determined by the census of population.
- ❑ The territorial constituencies demarcation should be done as far as possible, such that the ratio between the population of each constituency and the number of seats allotted to it is the same all over the State.
- ❑ Apart from these general provisions, there are also special provisions with respect to the representation of Scheduled Caste and Scheduled Tribes.
- ❑ The Constitution provided for the reservation of seats for scheduled castes and scheduled tribes in the assembly of each State on the basis of population ratios. Originally, this reservation was to operate for ten years (i.e., up to 1960). But this duration has been extended continuously since then by 10 years each time. Now, under the 95th Amendment Act of 2009, this reservation is to last until 2020.
- ❑ However, there are several exceptions to the composition of the Legislative Assembly. For example, Mizoram, Sikkim, and Goa which has less than 60 constituencies.

### **Tenure**

The tenure or duration of the Legislative Assembly is mentioned in Article 172 of the Indian Constitution.

- ❑ The Legislative Assembly should work for a time period of five years. Its tenure starts from the day of its first meeting.
- ❑ However, it can be dissolved earlier by the special procedure established by the law.
- ❑ There can be an extension in the tenure of the Legislative Assembly. This can be done during the National Emergency.
- ❑ During the period of the National Emergency, the State Legislature can extend the tenure of the Legislative Assembly for a period of maximum one year. Also, this extension should not be more than six months after the proclamation has ceased to operate.

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### **Legislative Council**

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### **Composition of Legislative Council [Article 171]**

- ❑ The Legislative Council of a State Comprises not more than one-third of the total number of members in the Legislative Assembly of the State and in no case less than 40 members.
- ❑ However, in Jammu and Kashmir, the strength is only 36.
- ❑ The system of the composition of the Council as provided for in the Constitution is not final. The final power is given to the State Legislature of the Union.
- ❑ Legislative Council is a partly nominated and partly elected body, the election being an indirect one and in accordance with the principle of proportional representation by the single transferable vote. The members being drawn from various sources, the Council shall have a variegated composition.
- ❑ Broadly speaking 5/6 of the total number of members of the Council shall be indirectly elected and 1/6 will be nominated.
  - one-third of the total number of members of the Council would be elected by electorates consisting of members of local bodies like the municipalities and the district boards.
  - one-twelfth of the members would be elected by electorates comprising of graduates of the standing of three years dwelling in that particular State.
  - one-twelfth of the members would be elected by electorates consisting of teachers who have been in the teaching profession for at least 3 years in educational institutes in that State, which are not lower than secondary schools in the standard.
  - one-third would be elected by members of the Legislative Assembly from amongst people who are not Assembly members.
  - The rest would be nominated by the Governor from persons having knowledge or practical experience in matters like science, literature, cooperative movement, art and social service.

### **Tenure:**

- ❑ The Legislative Council, like Legislative Council is a permanent House. It is never dissolved.
- ❑ The tenure of its members is six years.
- ❑ One-third of its members retire after every two years.

- ❑ The retiring members are eligible for re-election. In case of vacancy arising out of resignation or death by-election is held for the remaining period of such members' tenure.

### **Qualifications [Article 173]**

To become a member of the Legislative Council the person concerned should

- ❑ be a citizen of India;
- ❑ have attained the age of 30 years;
- ❑ not hold any office of profit.

### **Disqualifications (Article 191) :**

According to the constitution, a person shall be disqualified as Member of Legislative Assembly (MLA) or Member of Legislative Council (MLC) if:

- ❑ he holds any office of profit under the Government of India or a State or an office declared by a law of the State,
- ❑ any competent court declares any member to be of unsound mind,
- ❑ he is charge-sheeted, bankrupt or insolvent,
- ❑ he is not a citizen of India,
- ❑ has voluntarily acquired the citizenship of a foreign State or is under any acknowledgement of allegiance or adherence to a foreign State.

According to Schedule 10 (Anti-Defection Act), a person shall be disqualified as Member of Legislative Assembly (MLA) or Member of Legislative Council (MLC) if:

- ❑ an elected member voluntarily gives up his membership of a political party,
- ❑ an elected member votes or abstains from voting in such House contrary to any direction issued by his political party or anyone authorised to do so, without obtaining prior permission.

According to Representation of the People (RP) Act, 1951 a person shall be disqualified as Member of Legislative Assembly (MLA) or Member of Legislative Council (MLC) if:

- ❑ If he/she is convicted for indulging in corrupt practices during the election or any other election-related offenses.
- ❑ If he/she is convicted under certain acts of Indian Penal Code, Unlawful Activities Prevention Act, Prevention of Terrorism Act 2002, etc.
- ❑ If he/she is convicted under any law that results for at least two years of imprisonment and will remain disqualified for a further 6 years after his release.

- ❑ He must not be a director or managing agent nor hold an office of profit in a corporation in which the government has at least 25 per cent share.
- ❑ If he/she is convicted under any law relating to drugs or dowry prevention.
- ❑ Dismissal from the Government due to disloyalty or involvement in corrupt practices.
- ❑ If he/she fails to lodge their election expenses.

### **Vacation of Seats**

According to Article 190, in the following cases, a member of the state legislature vacates his seat:

#### **1. Double Membership:**

A person cannot be a member of both Houses of state legislature at one and the same time. If a person is elected to both the Houses, his seat in one of the Houses falls vacant as per the provisions of a law made by the state legislature.

#### **2. Disqualification:**

If a member of the state legislature becomes subject to any of the disqualifications, his seat becomes vacant.

#### **3. Resignation:**

A member may resign his seat by writing to the Chairman of legislative council or Speaker of legislative assembly, as the case may be. The seat falls vacant when the resignation is accepted.

#### **4. Absence:**

A House of the state legislature can declare the seat of a member vacant if he absents himself from all its meetings for a period of sixty days without its permission.

#### **5. Other Cases:**

A member has to vacate his seat in the either House of State Legislature,

- ❑ if his election is declared void by the court,
- ❑ if he is expelled by the House,
- ❑ if he is elected to the office of President or office of Vice-President and
- ❑ if he is appointed to the office of Governor of a State.

### **Oath (Article 188)**

Every member of either House of State Legislature, before taking his seat in the House, has to make and subscribe an oath or affirmation before the Governor or some person appointed by him for this purpose. In this oath, a member of the State Legislature swears:

- ❑ to bear true faith and allegiance to the Constitution of India;
- ❑ to uphold the sovereignty and integrity of India; and

- ❑ to faithfully discharge the duty of his office.

Under Article 193, Unless a member takes the oath, he cannot vote and participate in the proceedings of the House and does not become eligible to the privileges and immunities of the State Legislature. A person is liable to a penalty of ₹500 for each day he sits or votes as a member in a House:

- ❑ before taking and subscribing the prescribed oath or affirmation; or
- ❑ when he knows that he is not qualified or that he is disqualified for its membership; or
- ❑ when he knows that he is prohibited from sitting or voting in the House by virtue of any law made by State Legislature or the State Legislature.

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

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### ***Presiding Officers of State Legislature***

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#### ***The Speaker***

Article 178 gives the power to the Speaker to preside over the sessions of the Legislative Assembly of the State. Similar powers are given to the Speaker of the Legislative Assembly, as mentioned in Article 93 of the Indian Constitution. The Speaker is elected by the assembly itself from amongst its members and remains in office during the life of the assembly.

However, he vacates his office earlier in any of the following three cases:

- ❑ If he ceases to be a member of the assembly.
- ❑ If he resigns by writing to the deputy speaker.
- ❑ If he is removed by a resolution passed by a majority of all the members of the assembly. Such resolution can be moved only after giving 14 days advance notice.

The decision of the Speaker cannot be challenged in a court of law.

#### ***Functions/ Powers of the Speaker are as follows:***

- ❑ The most important function of the Speaker is to preside over the sessions of the Legislative Assembly and also to maintain discipline and order in the assembly He/she does not participate in the debate of the assembly.
- ❑ Only votes when there is a condition of a tiebreak.
- ❑ He sees whether there is a necessary quorum. He adjourns the assembly or suspends the meeting in the absence of a quorum and maintains order and decorum in the assembly for conducting its business and regulating its proceedings.

- ❑ He can allow a secret sitting of the house at the request of the leader of the house.
- ❑ He decides the questions of disqualification of a member of the assembly, arising on the ground of defection under the provisions of the Tenth Schedule of the Constitution.
- ❑ He appoints the Chairman of all the committees of the assembly and supervises their functioning. He himself is the Chairman of the Business Advisory Committee, the Rules Committee and the General-Purpose Committee.
- ❑ He has the power to suspend or to expel the member for his/ her unruly behaviour.
- ❑ Within the assembly, the Speaker is the master. He has the power to decide whether the Bill is a Money Bill or not.

#### ***Deputy Speaker***

- ❑ Like the speaker, the Deputy Speaker is also elected by the assembly itself from amongst its members.
- ❑ He is elected after the election of the Speaker has taken place.
- ❑ He vacates his office earlier in any of the following three cases:
  - If he ceases to be a member of the assembly.
  - If he resigns by writing to the speaker.
  - If he is removed by a resolution passed by a majority of all the members of the assembly. Such resolution can be moved only after giving 14 days advance notice.

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

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

#### ***Chairman of the Legislative Council***

The working of the Legislative Council is quite complex. The process of membership, the appointment of its head and the power of the Legislative Council is also quite difficult to understand.

According to Article 182 of the Indian Constitution, the Legislative Council must choose its two members as Chairman and Deputy Chairman.

The Chairman is elected by the Council itself from amongst its members. It also mentions that the Legislative Council must choose the Chairman and Deputy Chairman of the Legislative Council as soon as their office becomes vacant.

The offices of Chairman and Deputy Chairman become vacant very often. However, the reason for their removal/ resignation is mentioned in Article 183 of the constitution. The reasons are as follows:

- ❑ If he ceases to be a member of the assembly.
- ❑ If he resigns by writing to the Deputy Chairman.
- ❑ If he is removed by a resolution passed by a majority of all the members of the assembly. Such resolution can be moved only after giving 14 days advance notice.

**Power of Chairman of Legislative Council**

- ❑ His powers and functions are comparable to the Speaker of the Assembly with few exceptions. The speaker has one special power which is not enjoyed by the Chairman. The speaker decides whether a bill is a Money Bill or not and his decision on this question is final.

**Deputy Chairman of Legislative Council**

- ❑ Like the Chairman, the Deputy Chairman also elected by the Council itself from amongst its members.
- ❑ He is elected after the election of the Chairman has taken place.
- ❑ He vacates his office earlier in any of the following three cases:
  - If he ceases to be a member of the assembly.
  - If he resigns by writing to the Chairman.
  - If he is removed by a resolution passed by a majority of all the members of the assembly. Such resolution can be moved only after giving 14 days advance notice.

**Powers of Deputy Chairman of Legislative Council**

According to Article 184 of Indian Constitution

- ❑ While the office of Chairman is vacant, the duties of the office shall be performed by the Deputy Chairman or, if the office of Deputy Chairman is also vacant, by such a member of the Council as the Governor may appoint for the purpose.
- ❑ During the absence of the Chairman from any sitting of the Council the Deputy Chairman or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

<b>Difference between Legislative Assembly and Legislative Council</b>		
<b>Criteria</b>	<b>Legislative Assembly</b>	<b>Legislative Council</b>
Number of members	Minimum: 60 members Maximum: 500 members	Minimum: 40 members; Maximum: There has been no upper limit set here.
Dissolution	It is dissolved every 5 years.	It cannot be dissolved as it is permanent in nature.
Composition	It is in accordance with Article 170 of the Indian Constitution.	It is in accordance with Article 171 of the Indian Constitution.
House	It is the lower house of the State Legislature.	It is the upper house of the State Legislature.
Election	Members are directly elected through universal suffrage and secret ballot.	Members are elected indirectly through proportional representation and nomination by the Governor.
Presiding officer	Speaker is the presiding officer.	Chairman is the presiding officer.
Presence	Every Indian State and union territory (except the ones governed directly by the Union Government) have a legislative assembly.	Only six Indian States have a legislative Council- Bihar, Maharashtra, Karnataka, Uttar Pradesh, Andhra Pradesh and Telangana.
Age	Must be 25 years or above.	Must be 30 years or above.
Age	Must be 25 years or above.	Must be 30 years or above.
Tenure	MLA's bear office for a term of 5 years.	MLC's bear office for a term of 6 years.

**Article 174: Sessions of the State Legislature, prorogation and dissolution**

1. The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.
2. The Governor may from time to time-
  - a. prorogue the House or either House;
  - b. dissolve the Legislative Assembly.

**Summoning of State Legislature:**

- ❑ Summoning is the process of calling all members of the State Legislature to meet. The Governor

summons each House of the State Legislature from time to time. The gap between two sessions of the State Legislature cannot exceed 6 months, which means the State Legislature meets at least two times in one year.

### **Adjournment:**

- ❑ Adjournment terminates the sitting of the House which meets again at the time appointed for the next sitting. The postponement may be for a specified time such as hours, days or weeks.
- ❑ If the meeting is terminated without any definite time/date fixed for the next meeting, it is called Adjournment sine die.
- ❑ The power of adjournment as well as adjournment sine die lies with the presiding officer (speaker or Chairman) of the House.

### **Prorogation:**

- ❑ Prorogation is the end of session and not the dissolution of the house (in case of Legislative Assembly, as Legislative Council does not dissolve). It is done by the Governor of State.

### **Recess:**

- ❑ The period between the prorogation of State Legislature and its reassembly in a new Session is termed as a recess.

### **Quorum:**

- ❑ Quorum refers to the minimum number of the members required to be present for conducting a meeting of the house.
- ❑ The Constitution has fixed one-tenth strength as quorum for both Legislative Assembly and Legislative Council.

### **Dissolution**

- ❑ A dissolution ends the very life of the existing House, and a new House is constituted after general elections are held.
- ❑ Legislative Council, being a permanent House, is not subject to dissolution. Only the Legislative Assembly is subject to dissolution.
- ❑ The dissolution of the Legislative Assembly may take place in either of two ways:
  - **Automatic dissolution:** On the expiry of its tenure of five years or the terms as extended during a national emergency.
  - **Order of Governor:** If Governor is authorized by Council of Ministers, he can dissolve Legislative

Assembly, even before the end of the term. He may also dissolve Legislative Assembly if Council of Ministers loses confidence and no party is able to form the government. Once the Legislative Assembly is dissolved before the completion of its normal tenure, the dissolution is irrevocable.

**Note:** When the Legislative Assembly is dissolved, all business including bills, motions, resolutions, notices, petitions and so on pending before it or its committee's lapse.

According to Article 196, the position with respect to lapsing of the Bill are as follows:

### **When does a Bill lapse?**

- ❑ A Bill that originates in the Legislative Assembly and remains pending in the Lower House itself is considered lapsed with the dissolution of the House.
- ❑ A Bill that originates and is passed by the Legislative Council (in bicameral State), but is pending in the Legislative Assembly also lapses with the dissolution of the Lower House.
- ❑ Bills that originate and are passed in the Legislative Assembly but are pending in the Legislative Council (in bicameral State) are also considered lapsed.
- ❑ Bill that originates and is passed in the Legislative Council (in bicameral State) but is returned with amendments to the Upper House by the Legislative Assembly and then does not get the clearance of the Legislative Council is considered to have lapsed on the date of dissolution of the Lower House.

### **When does a Bill not lapse?**

There are instances when certain Bills, despite the dissolution of the Lower House, are not considered to have lapsed.

- ❑ A Bill that is pending in the Legislative Council (in bicameral State) but is not passed by the Legislative Assembly.
- ❑ Bills that have cleared both the Houses (in bicameral State) but are pending assent from the Governor.
- ❑ A bill passed by legislative Assembly or both Houses (in bicameral State) but returned by the Governor for reconsideration of Legislative Council.
- ❑ Pending bills and all pending assurances that are to be examined by the Committee on Government Assurances.

### **Article 175: Right of Governor to address and send messages to the House or Houses.**

1. The Governor may address the Legislative Assembly
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or, in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members.

2. The Governor may send messages to the House or Houses of the Legislature of the State, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

#### **Article 176: Special address by the Governor.**

1. At the commencement of the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year, the Governor shall address the Legislative Assembly or, in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the causes of its summons.
2. Provision shall be made by the rules regulating the procedure of the House or either House for the allotment of time for discussion of the matters referred to in such address.

#### **Voting in the House (Article 189)**

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

#### **Language in State Legislature (Article 210)**

- Constitution of India has declared that business in State Legislature shall be transacted in Hindi or in English.
- Presiding officers may permit any member who cannot adequately express himself in Hindi or in English to address the House in his mother-tongue.
- The State Legislature is authorised to decide whether to continue or discontinue English as a floor language after the completion of fifteen years from the commencement of the Constitution (i.e., from

1965).

- In case of Himachal Pradesh, Manipur, Meghalaya and Tripura, this time limit is twenty-five years and that of Arunachal Pradesh, Goa and Mizoram, it is forty years.

#### **Rights of Ministers and Advocate General**

**Article 177 States that:** Every Minister and the Advocate-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of State Legislature of which he may be named a member; but shall not by virtue of this article be entitled to vote.

Every Minister and Advocate General of India shall have the right to speak in and otherwise participate in:

- the proceedings of either House
- any committee of State Legislature to which he may be named a member
- But by virtue of this article, he/she shall not be entitled to vote in the discussions.
- For instance, Ministers who are elected to the Legislative Assembly participate in the discussion in Legislative Council and certain State Legislature committees. However, they are not entitled to vote where they are not authorized to.

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### **Legislative Procedure in the State Legislature**

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#### **Ordinary Bills**

- With regards to ordinary bills, the procedure is same as Parliament. The bills go through three readings and if it is passed by a simple majority, it goes directly to the Governor [unicameral legislature] or to the second chamber [bicameral legislature]. With respect to ordinary bills, the legislative assembly is highly powerful than the Lok Sabha.
- If the legislative Council rejects the bill or passes it with amends or takes no action for three months, the bill goes to the legislative assembly again.
- The assembly may pass it again with or without amends. Then the bill goes to the legislative Council where, Legislative Council has following alternatives:
  - Accept the bill, or
  - Reject the bill, or
  - Amend the bill or
  - Take no action on bill
- After one month bill is sent back to legislative assembly. But this time the bill is deemed to have been passed in the form passed by the legislative assembly in the second time.

- ❑ Ordinary bill, after it is passed by the assembly or by both the Houses in case of a bicameral legislature, is presented to the Governor for his assent. There are four alternatives before the Governor:
  - he may give his assent to the bill;
  - he may withhold his assent to the bill;
  - he may return the bill for reconsideration of the House or Houses; and
  - he may reserve the bill for the consideration of the President.
- ❑ If the Governor gives his assent to the bill, the bill becomes an Act. If the Governor withholds his assent to the bill, the bill ends and does not become an Act. If the Governor returns the bill for reconsideration and if the bill is passed by the House or both the Houses again, with or without amendments, and presented to the Governor for his assent, the Governor must give his assent to the bill. Thus, the Governor enjoys only a suspensive veto.
- ❑ When a bill is reserved by the Governor for the consideration of the President, the President has following alternatives:
  - either give his assent to the bill or
  - withhold his assent to the bill or
  - return the bill for reconsideration of the House or Houses of the State Legislature.
- ❑ When a bill is so returned, the House or Houses have to reconsider it within a period of six months. The bill is presented again to the Presidential assent after it is passed by the House or Houses with or without amendments. It is not mentioned in the Constitution whether it is obligatory on the part of the President to give his assent to such a bill or not.
- ❑ There is no provision for joint sittings to resolve deadlocks. Thus, the legislative Council can only withhold a bill for 4 months [3 months in first instance and 1 month in second]. Also, if a bill passed by legislative Council is disapproved by legislative assembly, then the bill ends.

### **Money Bill**

- ❑ No money bill can be introduced without the Governor's recommendation.
- ❑ Such a bill is a government bill and can be introduced only by a Minister. No private member can introduce money bill.
- ❑ According to Article 198, money bill can be introduced only in legislative assembly. The bill if passed goes to the legislative Council. The Council can only discuss it and make recommendation. It has to return bill in 14 days.
- ❑ The assembly may reject or accept such recommendations. The bill is then given to Governor for assent.
- ❑ When a Money Bill is presented to the Governor, he has following alternatives:
  - he may either give his assent, or
  - withhold his assent, or
  - reserve the bill for Presidential assent but cannot return the bill for reconsideration of the State Legislature.
- ❑ Normally, the Governor gives his assent to a money bill as it is introduced in the State Legislature with his prior permission.
- ❑ President can do the following with the bill sent to him by the Governor:
  - give his assent or
  - withhold his assent
- ❑ But neither Governor nor President can return the bill for reconsideration.

### ***Constitutional Amendment referred for ratification by States:***

- ❑ If constitutional amendment bill is referred to State Legislatures for assent, it is considered by both houses of State Legislature.
  - ❑ In this case, will of the legislative assembly prevails. If the legislative Council rejects the amendment; the assembly can pass it again as in case of ordinary bill.
  - ❑ Governor in the matter of constitutional amendment referred for ratification by States has following alternatives with him:
    - give his assent, or
    - withhold his assent, or
    - send the bill back to State Legislature for reconsideration, or
    - send it for President's consideration.
  - ❑ If the bill sent for reconsideration is passed by both houses with or without amendments the Governor has to give his assent to it [Suspensive veto].
  - ❑ If the bill is reserved for President's assent, but is returned to State Legislature for reconsideration and the State Legislature pass it again, it isn't obligatory for the President to give his assent to the bill. President can return a State bill any number of times.
  - ❑ Approval of ordinances of the Governor also has the domination of legislative assembly.
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## ***Powers and Functions of the State Legislature***

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### ***Law Making Function***

- ❑ The primary function of the State Legislature, like the Union Parliament, is law-making. The State Legislature is empowered to make laws on State List and Concurrent List.
- ❑ The Parliament and the Legislative Assemblies have the right to make the laws on the subjects mentioned in the Concurrent List. But in case of contradiction between the Union and State law on the subject the law made by the Parliament shall prevail.
- ❑ Bills are of two types-
  - Ordinary bills and
  - Money bills.
- ❑ Ordinary bills can be introduced in either of the Houses (if the State Legislature is bicameral), but Money bill is first introduced in the Legislative Assembly. After the bill is passed by both Houses, it is sent to the Governor for his assent. The Governor can send back the bill for reconsideration. When this bill is passed again by the Legislature, the Governor has to give his assent.
- ❑ The Governor can issue an Ordinance on the State subjects when legislature is not in session. The Ordinances have the force of law. The Ordinances issued are laid before the State Legislature when it reassembles. It ceases to be in operation after the expiry of six weeks, unless rejected by the Legislature earlier. The Legislature passes a regular bill, to become a law, to replace the ordinance. This is usually done within six weeks after reassembly of Legislature.

### ***Financial Powers***

- ❑ The State Legislature keeps control over the finances of the State. A money bill is introduced first only in the Legislative Assembly.
- ❑ The money bill includes authorisation of the expenditure to be incurred by the government, imposition or abolition of taxes, borrowing, etc. The bill is introduced by a Minister on the recommendations of the Governor. The money bill cannot be introduced by a private member.
- ❑ The Speaker of the Legislative Assembly certifies that a particular bill is a money bill. After a money bill is passed by the Legislative Assembly, it is sent to the Vidhan Parishad. It has to return this bill within

14 days with, or without, its recommendations.

- ❑ The Legislative Assembly may either accept or reject its recommendations. The bill is deemed to have been passed by both Houses. After this stage, the bill is sent to the Governor for his assent. The Governor cannot withhold his assent, as money bills are introduced with his prior approval.

### ***Control over the Executive***

- ❑ Like the Union Legislature, the State Legislature keeps control over the executive. The Council of Ministers is responsible to Legislative Assembly collectively and remains in the office so long as it enjoys the confidence of the Legislative Assembly.
- ❑ The Council of Ministers is removed if the Legislative Assembly adopts a vote of no-confidence, or when it rejects a government bill.
- ❑ In addition to the no-confidence motion, the Legislature keeps checks on the government by asking questions and supplementary questions, moving adjournment motions and calling attention notices.

### ***Electoral Functions***

- ❑ The elected members of the Legislative Assembly are members of the Electoral College for the election of the President of India. Thus, they have their say in the election of the President of the Republic. The members of the Legislative Assembly also elect members of the Rajya Sabha from their respective States.
- ❑ One-third members of the Legislative Council (if it is in existence in the State) are also elected by the members of the Legislative Assembly. In all these elections, members of the Legislative Assembly cast their votes in accordance with single transferable vote system.

### ***Constitutional Functions***

- ❑ An Amendment requires special majority of each House of the Parliament and ratification by not less than half of the States relating to Federal subjects.
  - ❑ The resolution for the ratification is passed by State Legislatures with simple majority. However, a constitutional amendment cannot be initiated in the State Legislature.
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## Comparison between Legislative Procedure in Parliament and State Legislature

### With Regard to other Bills except Money Bill

Parliament	State Legislature
Bills may be proposed by either House of Parliament.	Bills may be proposed by either House of State Legislature.
A Minister or a private member may present it.	A Minister or a private member may present it.
has to go through first, second and third reading in the originating House.	It has to go through first, second and third reading in the originating House.
Only when both Houses agree to it, with or without amendments, it is considered as passed by Parliament. In the event of a deadlock between the two Houses, only a joint sitting of the two Houses, summoned by the President, can resolve the deadlock.	In case of disagreement between two houses, the will of the Legislative Assembly takes precedence. As a result, there is no provision of Joint sitting to resolve deadlock.
The deadlock may occur if <ul style="list-style-type: none"> <li>• one house passes the bill and the other house rejects it, or</li> <li>• one house proposes amendments that the other house does not agree with.</li> <li>• If the house does not pass the Bill within six months of receiving it.</li> </ul>	The deadlock may occur if <ul style="list-style-type: none"> <li>• one house passes the bill and the other house rejects it, or</li> <li>• one house proposes amendments that the other house does not agree with.</li> </ul>
In the Rajya Sabha, the time limit for passing a Bill received from the Lok Sabha is six months.	In the Legislative Council, the time limit for passing a Bill received from the Legislative Assembly is three months.
In the event of disagreement, a joint sitting of the two Houses is the only way to resolve the deadlock. However, if the President does not convene a joint sitting at his discretion, the Bill becomes null and void, and Rajya Sabha thus has the effective capacity to block a Bill from being passed.	In the event of a disagreement, passage of the Bill by the Legislative Assembly for a second time is sufficient for passage by the State Legislature.  If the Bill is transmitted to the Legislative Council again after it has been passed, the Council's only option if it is not in agreement with the bill is to withhold it for one month from the date of its reception on its second journey.  If the Council rejects the Bill again or suggests revisions that the Legislative Assembly rejects, or allows one month to pass without passing the Bill, the Bill is presumed to have been passed by the State Legislature in the form in which it is passed for the second time by the Legislative Assembly.

If a bill is introduced and passed in the Rajya Sabha, it has equal power in the case of ordinary bills and constitution amendment bills.	If the Legislative Council originates, enacts, and forwards a Bill to the Legislative Assembly, and the Legislative Assembly either rejects the Bill or makes amendments that are unacceptable to the Legislative Council, the Bill is terminated immediately.
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### With Regard to Money Bill

#### With Regard to other Bills except Money Bill

Parliament	State Legislature
Only the Lok Sabha can introduce it, not the Rajya Sabha.	Only the Legislative Assembly can introduce it, not the Legislative Council.
It can only be introduced on the President's recommendations.	It can be introduced only on the Governor's recommendations
It can only be proposed by a Minister and not by a private member.	It can only be proposed by a Minister and not by a private member.
The Rajya Sabha cannot reject it or amend it. Within 14 days, it should be returned to the Lok Sabha, either with or without recommendations.	The Legislative Council cannot reject it or amend it. Within 14 days, it should be returned to the Legislative Assembly, either with or without recommendations.
The Lok Sabha can accept or reject all or any of the Rajya Sabha's recommendations.	The Legislative Assembly can accept or reject all or any of the Legislative Council's recommendations.
If the Lok Sabha accepts any suggestions given by the Rajya Sabha, the bill is considered to have been passed in its modified form by both Houses.	If the Legislative Assembly accepts any suggestions given by the Legislative Council, the bill is considered to have been passed in its modified form by both Houses.
If the Lok Sabha rejects a proposal, the bill is considered to have been passed in the same form by both Houses.	If the Legislative Assembly rejects a proposal, the bill is considered to have been passed by both Houses in the same form as passed by the Legislative Assembly.

### *Limitation on the Powers of the State*

#### *Legislature by Parliament*

The powers of law-making by the Legislature are limited in the following manner:

- ❑ State Legislature can make a law on the subjects listed in the State List and also the Concurrent List. But in case, the State law on a subject in the Concurrent list is in conflict with the Union law, the law made by the Parliament shall prevail.
- ❑ The Governor of the State may reserve his assent to a bill passed by the State Legislature and send it for the consideration of the President. It is compulsory in

case the powers of Structure of Government the High Court are being curtailed. In some other cases, prior approval of the President for introducing the bill in the Legislature is essential such as, for imposition of restriction on the freedom of trade and commerce within the State or with other States.

- ❑ The Parliament has the complete control on the entire State List at the time when the national emergency has been declared (under Art. 352), although the State Legislature remains in existence and continues to perform its functions. In case of breakdown of constitutional machinery (under Art. 356) after fall of popular Government in the State, the President's rule is imposed. The Parliament then acquires the power to make laws for that State, for the period of constitutional emergency.
- ❑ The Parliament can also make laws on a subject of the State list in order to carry on its international responsibility. If the Rajya Sabha adopts a resolution by two-thirds majority to this effect, on its own or at the request of two or more States, the Parliament can enact laws on a specified subject of the State list.
- ❑ Fundamental rights also impose limitations on the powers of the State Legislature. It cannot make laws which violate the rights of the people. Any law passed by the State Legislature can be declared void by the High Court or Supreme Court if it is found unconstitutional as violate of the fundamental rights.

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### ***Position of Legislative Council***

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#### ***Equivalent to the Legislative Assembly***

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

- ❑ Introduction and passage of ordinary bills. However, in case of disagreement between the two Houses, the will of the assembly prevails over that of the Council.
- ❑ Approval of ordinances issued by the Governor.
- ❑ Selection of Ministers including the Chief Minister. Under the Constitution the, Ministers including the Chief Minister can be members of either House of the State Legislature. However, irrespective of their membership, they are responsible only to the assembly.
- ❑ Consideration of the reports of the constitutional bodies like State Finance Commission, State public service commission and Comptroller and Auditor General of India.
- ❑ Enlargement of the jurisdiction of the State public service commission.

#### ***Unequal with the Legislative Assembly***

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

- ❑ The Council does not participate in the election of the President of India and representatives of the State in the Rajya Sabha.
- ❑ The Council has no effective say in the ratification of a constitutional amendment bill.
- ❑ A Money Bill can be introduced only in the assembly and not in the Council.
- ❑ The Council cannot amend or reject a money bill. It should return the bill to the assembly within 14 days, either with recommendations or without recommendations.
- ❑ The assembly can either accept or reject all or any of the recommendation of the Council. In both the cases, the money bill is deemed to have been passed by the two Houses.
- ❑ The final power to decide whether a particular bill is a money bill or not is vested in the Speaker of the assembly.
- ❑ The final power of passing an ordinary bill also lies with the assembly. At the most, the Council can detain or delay the bill for the period of four months–three months in the first instance and one month in the second instance.
- ❑ The Council can only discuss the budget but cannot vote on the demands for grants (which is the exclusive privilege of the assembly).
- ❑ The Council cannot remove the Council of Ministers by passing a no-confidence motion. This is because, the Council of Ministers is collectively responsible only to the assembly.
- ❑ When an ordinary bill, which has originated in the Council and is sent to the assembly, if rejected by the assembly, the bill ends and becomes dead.
- ❑ The existence of the Council depends on the assembly. The Council can be abolished by the Parliament on the recommendation of the assembly.

#### ***Rajya Sabha v/s Legislative Council***

- ❑ The position of the Legislative Council is much weaker than the position of the Rajya Sabha.
  - ❑ The Rajya Sabha has equal powers with the Lok Sabha in every matters except financial matters and control over the Government.
  - ❑ The Legislative Council is subordinate to the assembly in all respects. Thus, the dominance of the assembly over the Council is fully established.
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□ Though both the Council and the Rajya Sabha are second chambers, the Constitution of India has given the legislative Council lesser power compared to Rajya Sabha due to the rationale mentioned below:

- The Rajya Sabha consists of the representatives of the States and thus reflect the federal element of the polity. By defending State interests from the Centre's excessive involvement, it helps to keep the federal system balanced. It must therefore function as an efficient revising body rather than only an advising or ineffective entity like the Legislative Council. On the other hand, a Legislative Council's matter does not involve the question of federal significance.
- The Council is made up of a variety of people. It is made up of variously elected members who represent various interests, as well as some nominated members. Its ineffectiveness as a revising body is a result of its very makeup, which weakens its position. The Rajya Sabha, on the other hand, has a uniform makeup. It is made up primarily of elected members and only represents the States (only 12 out of 250 are nominated).
- The position given to the Council is consistent with democratic ideals. The popular house of the legislature should prevail over the legislative Council.

The Council has been referred to as a "secondary chamber;" "costly ornamental luxury," "white elephant," etc. by detractors who have taken into account its weakness and less important position and role. The Legislative Council, according to the opponents, has functioned as a haven for individuals who lost the assembly elections. Despite having fewer authority than the assembly, the usefulness of legislative Council can be justified by the following:

1. By including provisions for review and consideration, it checks the assembly's rushed, flawed, reckless, and poorly thought-out legislation.
2. It makes it easier for prominent specialists and professionals who are ineligible for direct elections to be represented. To represent these people, the Governor proposes one-sixth of the Council members.

The Legislative Council nevertheless commands a higher calibre due to its indirect election system and nomination of individuals with specialised knowledge, and even with its dilatory power, it serves to check hasty legislation by drawing attention to the flaws or defects of any ill-considered measure.

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### *Privileges of State Legislatures*

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Article 194 of the Indian constitution talks about the powers, privileges, etc, of the House of Legislatures and of the members and committees thereof.

#### *Collective Privileges*

The privileges belonging to each House of Parliament collectively are:

- The ability to publish reports, debates, and proceedings, as well as the ability to prevent others from doing so. It can publish truthful reports of Parliamentary proceedings without the House's authorization under the freedom of the press. However, in the case of a House meeting held in secret, this right of the press does not apply.
- Keep strangers out of the gathering and organize covert sessions to address vital issues.
- Make rules to govern its own procedure and commercial activity, as well as to adjudicate on such issues.
- Right to immediate notification of a member's arrest, custody, conviction, imprisonment, and release.
- Initiate inquiries and compel a person's attendance.
- The courts are not allowed to investigate a House's or its committees' proceedings.
- Without the consent of the Presiding officer, no one (whether a member or an outsider) can be arrested, and no legal process (civil or criminal) can be served within the House's boundaries.

#### *Individual Privileges*

The privileges belonging to the members individually are:

- During the session of Parliament, from 40 days before the beginning to 40 days after the finish, no member may be arrested in a civil proceeding. If he is arrested, he must be released to let him attend the Session. But a member can be arrested in a criminal proceeding, but the detaining authority must notify the House the reason, time, place of his detention.
- In Parliament, members have the right to free expression. No member of Parliament or its committees is accountable in any court for anything said or voted in Parliament or its committees. This independence is limited by the Constitution's provisions as well as the norms and standing orders that govern Parliament's functioning.
- Members of Parliament are exempt from jury duty when Parliament is in session. They have the right to decline to give evidence and testify in court.