

Chapter - 15

STATE LEGISLATURE

Articles 168 to 212 in Part VI of the constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the state legislature.

ORGANISATION OF STATE LEGISLATURE

There is no uniformity in the organisation of state legislatures. Most of the states have an unicameral system, while others have a bicameral system. At present (2009), only six states have two Houses (bicameral). These are Andhra Pradesh, Uttar Pradesh, Bihar, Maharashtra, Karnatak and Jammu and Kashmir.

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

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

COMPOSITION OF TWO HOUSES

Composition of Assembly

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

Nominated Member : The governor can nominate one member from the Anglo-Indian community, if the community is not adequately represented in the assembly.

Territorial Constituencies : For the purpose of holding direct elections to the assembly, each state is divided into territorial constituencies. The demarcation of these constituencies is done in such a manner that the ratio between the population of each constituency and the number of seats allotted to it is the same throughout the state.

Readjustment after each census : After each census, a readjustment is to be made in the (a) total number of seats in the assembly of each state and (b) the division of each state into territorial constituencies. The Parliament is empowered to determine the authority and the manner in which it is to be made. Accordingly, Parliament has enacted the Delimitation Commission Acts in 1952, 1962, 1972 and 2002 for this purpose.

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

Composition of Council

Strength : Unlike the members of the legislative assembly, the members of the legislative council are indirectly elected. The maximum strength of the council is fixed at one-third of the total strength of the assembly and the minimum strength is fixed at 40.

Manner of Election : Of the total number of members of a legislative council:

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

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

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

DURATION OF TWO HOUSES

Duration of Assembly

Like the Lok Sabha, the legislative assembly is not a continuing chamber. Its normal term is five years from the date of its first meeting after the general elections. The expiration of the period of five years operates as automatic dissolution of the assembly.

Duration of Council

Like the Rajya Sabha, the legislative council is a continuing chamber, that is, it is a permanent body and is not subject to dissolution. But, one-third of its members retire on the expiration of every second year. So, a member continues as such for six years.

MEMBERSHIP OF STATE LEGISLATURE

1. Qualifications

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

- (a) He must be a citizen of India.
- (b) He must make and subscribe before the person authorised by the election commission an oath or affirmation according to the form prescribed in the Third Schedule.
- (c) He must be not less than 30 years of age in the case of the legislative council not less than 25 years of age in the case of the legislative assembly.
- (d) He must possess other qualifications prescribed by Parliament.

2. Disqualifications

- (a) if he holds any office of profit under the Union or state government (except that of a minister or any other office exempted by state legislature).

- (b) if he is of unsound mind and stands so declared by a court,
- (c) if he is an undischarged insolvent,
- (d) if he is not a citizen of India or has voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of allegiance to a foreign state, and
- (e) if he is so disqualified under any law made by Parliament.

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

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

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

4. Vacation of Seats

- (a) **Double Membership :** A person cannot be a member of both Houses of state legislature at one and the same time.
- (b) **Disqualification :** If a member of the state legislature becomes subject to any of the disqualifications, his seat becomes vacant.
- (c) **Resignation :** A member may resign his seat by writing to the Chairman of legislative council or Speaker of legislative assembly, as the case may be. The seat falls.
- (d) **Absence :** A House of the state legislature can declare the seat of a member vacant if he absents himself from all its meeting for a period of sixty days without its permission.
- (e) **Other Cases :**
 - (i) if his election is declared void by the court,
 - (ii) if he is expelled by the House,
 - (iii) if he is elected to the office of president or office of vice-president, and
 - (iv) if he is appointed to the office of governor of a state.

PRESIDING OFFICERS OF STATE LEGISLATURE

Each House of state legislature has its own presiding officer. There is a Speaker and a Deputy Speaker for the legislative assembly and Chairman and a Deputy Chairman for the legislative council.

Speaker of Assembly

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

Usually, the Speaker remains in office during the life of the assembly.

The Speaker has the following powers and duties:

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

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

Deputy Speaker of Assembly

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

SESSIONS OF STATE LEGISLATURE

Summoning

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

Adjournment

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

Prorogation

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

Dissolution

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

Quorum

Quorum is the minimum number of members required to be present in the House before it can transact any business. It is ten members or onetenth of the total number of members of the House (including the presiding officer), which-ever is greater.

LEGISLATIVE PROCEDURE IN STATE LEGISLATURE

Ordinary Bills

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

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

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

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

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

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

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

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

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

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

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

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

Assent of the President : When a bill is reserved by the governor for the consideration of the President, the President may either give his assent to the bill or withhold his assent to the bill or return the bill for reconsideration of the House or Houses of the state legislature. When a bill is so returned, the House or Houses have to reconsider it within a period of six months. The bill is presented again to the presidential assent after it is passed by the House or Houses with or without amendments. It is not mentioned in the Constitution whether it is obligatory on the part of the president to give his assent to such a bill or not.

Money Bills

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

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

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

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

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

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

When a money bill is reserved for consideration of the President, the president may either give his assent to the bill or withhold his assent to the bill but cannot return the bill for reconsideration of the state legislature.

PRIVILEGES OF STATE LEGISLATURE

Privileges of a state legislature are a sum of special rights, immunities and exemptions enjoyed by the Houses of state legislature, their committees and their members. They are necessary in order to secure the independence and effectiveness of their actions.

<i>Sl. No.</i>	<i>Name of the State/Union Territory</i>	<i>Number of Seats in Legislative Assembly</i>	<i>Number of Seats in Legislative Council</i>
I.	States		
1.	Andhra Pradesh	294	90
2.	Arunachal Pradesh	60	—
3.	Assam	126	—
4.	Bihar	243	75
5.	Chhattisgarh	90	—
6.	Goa	40	—
7.	Gujarat	182	—
8.	Haryana	90	—
9.	Himachal Pradesh	68	—
10.	Jammu and Kashmir	87	36
11.	Jharkhand	81	—
12.	Karnataka	224	75
13.	Kerala	140	—
14.	Madhya Pradesh	230	—
15.	Maharashtra	288	78
16.	Manipur	60	—
17.	Meghalaya	60	—
18.	Mizoram	40	—
19.	Nagaland	60	—
20.	Orissa	147	—
21.	Punjab	117	—
22.	Rajasthan	200	—
23.	Sikkim	32	—
24.	Tamil Nadu	234	—
25.	Tripura	60	—

26.	Uttarakhand	70	—
27.	Uttar Pradesh	403	100
28.	West Bengal	294	—
II.	Union Territories		
1.	Delhi	70	—
2.	Puducherry	30	—

*Seme of the
Nate/Union Territory*

*Number of seats in the House
after the Delimitation in 2008*

	<i>Total</i>	<i>Reserved for the Scheduled Castes</i>	<i>Reserved for the Scheduled Tribes</i>
I. States			
1. Andhra Pradesh	294	48	19
2. Arunachal Pradesh	60	—	59
3. Assam	126	8	16
4. Bihar	243	38	2
5. Chhattisgarh	90	10	29
6. Goa	40	1	—
7. Gujarat	182	13	27
8. Haryana	90	17	—
9. Himachal Pradesh	68	17	3
10. Jammu & Kashmir	—	—	—
11. Jharkhand	81	9	28
12. Karnataka	224	36	15
13. Kerala	140	14	2
14. Madhya Pradesh	230	35	47
15. Maharashtra	288	29	25
16. Manipur	60	1	19
17. Meghalaya	60	—	55
18. Mizoram	40	—	38
19. Nagaland	60	—	59
20. Orissa	147	24	33
21. Punjab	117	34	—
22. Rajasthan	200	34	25
23. Sikkim	32	2	12
24. Tamil Nadu	234	44	2
25. Tripura	60	10	20
26. Uttarakhand	70	13	2
27. Uttar Pradesh	403	85	—
28. West Bengal	294	68	16
II. Union Territories			
1. Delhi	70	12	—
2. Puducherry	30	5	—