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UNION AND STATE LEGISLATURE

UNION LEGISLATURE

Introduction:

The Parliament is the legislative organ of the Union government. It occupies a pre-eminent and central position in the Indian democratic political system due to adoption of the parliamentary form of government, also known as 'Westminster' model of government.

Articles 79 to 122 in Part V of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the Parliament.

ORGANISATION OF PARLIAMENT

Under the Constitution, the Parliament of India consists of three parts viz, the President, the Council of States and the House of the People. In 1954, the Hindi names 'Rajya Sabha' and 'Lok Sabha' were adopted by the Council of States and the House of People respectively.

The Rajya Sabha is the Upper House (Second Chamber or House of Elders) and the Lok Sabha is the Lower House (First Chamber or Popular House). The former represents the states and union territories of the Indian Union, while the latter represents the people of India as a whole.

Rajya Sabha

It consists of not more than 250 members. Out of these, 12 are nominated by the President for their special knowledge or practical experience in the fields of literature, science, art and social service.

The remaining 238 seats are allocated to various States and Union Territories. The number of seats allocated varies from State to State in proportion to their population. Elections to the Rajya Sabha are indirect.

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Members representing states are elected by elected members of legislative assemblies of the states in accordance with the system of proportional representation by means of single transferable vote and those representing Union Territories are chosen in such a manner as Parliament may by law prescribe.

The Rajya Sabha is not subject to dissolution. Its members are elected for a period of 6 years and one-third of its members retire on expiry of every second year.

The Vice-President of India is the ex-officio Chairman of the Rajya Sabha. In addition, the House elects a Deputy Chairman from among its members. The Deputy Chairman presides over the meeting of the House in the absence of the Vice-president.

Lok Sabha:

According to the constitution, the strength of Lok Sabha should not be more than 552 members - 530 members to represent States, 20 to represent Union Territories and not more than 2 members of Anglo-Indian Community to be nominated by the President, if in his opinion, that community is not adequately represented in the House.

The number of members of each State to be elected is determined on the basis of the population. At present, the Lok Sabha consists of 545 members. Term of the Lok Sabha, unless dissolved is five years.

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

The Presiding Officer of the Lok Sabha is the Speaker. He is elected by the House at its first meeting from among its own members. In addition, the House also elects a Deputy Speaker who discharges the duties of the Speaker during his absence or leave.

In order to be chosen as a member of Parliament, a person must be a citizen of India and not less than 30 years of age in case of the Rajya Sabha and not less than 25 years of age in case of the Lok Sabha. Additional qualifications may be prescribed by Parliament by law. A person can become a member of the Lok Sabha from any of the

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constituencies in the country. For the membership of the Rajya Sabha, he should be a registered voter in the State he represents.

SPEAKER:

The constitution provides for a Speaker and a Deputy Speaker for the Lok Sabha and a Chairman and a Deputy Chairman for the Rajya Sabha. The Speaker and the Deputy Speaker are chosen by the Lok Sabha from among its members. In the absence of the Speaker in the House, the Deputy Speaker discharges the functions of the Speaker.

Generally speaking, the position of the Speaker in India more or less corresponds to that of the Speaker of the House of Commons. His office is one of prestige and authority. He is the head of Lok Sabha. The smooth and orderly conduct of the business of the House is primarily his responsibility. Within the House and in all matters connected with the House, his word is final. He does not vote in the House except when there is an equality of votes.

Whenever, in the event of final disagreement between the Houses on a legislative measure a joint sitting is called, he presides over such a joint sitting and all the rules of procedure in such a sitting operate under his directions and orders.

The Speaker or Deputy Speaker of Lok Sabha vacates his office if he ceases to be a member of the House, he can resign by writing to the Deputy Speaker/Speaker and he can be removed by a resolution of the House, with 14 days' notice, passed by a majority of all the then members of the House. Irrespective of the dissolution of the House, the Speaker, however, continues in office until immediately before the first sitting of the new House.

Speaker Pro Term

As provided by the Constitution, the Speaker of the last Lok Sabha vacates his office immediately before the first meeting of the newly-elected Lok Sabha. Therefore, the President appoints a member of the Lok Sabha as the Speaker Pro Term.

Usually, the senior most member is selected for this. The President himself administers oath to the Speaker Pro Term.

Sessions of Parliament

According to the constitution, the Parliament has at least two sessions every year. The President summons the Parliament in a manner that the time gap between two sessions is not more than six months. In practice, the Parliament normally meets three times a year. These sessions are called:

- (a) budget Session which is normally summoned in February
- (b) Monsoon Session which ordinarily meets in July and
- (c) Winter Session, which commences in November.

In the First session of the year i.e. Budget Session, the President addresses both the Houses of Parliament assembled together. In this session besides other work, the Railway Budget and the General Budget are also discussed and adopted.

Functions of Parliament

1. Parliament of India has the functions of legislation
2. Overseeing of administration
3. Passing of budget
4. Ventilation of public grievances
5. Discussion of various subjects like development plans, international relations and national policies.

Distribution of powers between the Union and States, followed in the constitution, emphasizes in many ways general predominance of Parliament in legislative field. Apart from wide-range of subjects even in normal times Parliament can, under certain circumstances, assume legislative power, a subject falling within the sphere exclusively reserved for the States.

Parliament is also vested with powers to impeach President and to remove judges of Supreme Court and High Court. Chief Election Commissioner and Comptroller and Auditor-General in accordance with the procedure laid down in the constitution.

All legislations require consent of both Houses of Parliament. In case of money bills, however, the will of the Lok Sabha prevails. Money Bills can be delayed by the Rajya Sabha only for 14 days. Delegated legislation is also subject to review and control by Parliament.



Besides power to legislate, the constitution vests in Parliament power to initiate amendment of the constitution. Article 368 deals with the power Of the Parliament amend the constitution and the procedure there of.

The Parliament exercises control over the executive through asking questions and supplementary questions, moving motions of adjournment, discussing and passing resolutions, discussing and passing censure motion or vote of no-confidence.

Functions of Parliament are not only varied in nature, but considerable in volume. Time at its disposal is limited. It can therefore, give close consideration to all legislative and other matters that come up before it. A good deal of business is, therefore, transacted in Committees.

Salaries and Allowances

Members of either House of Parliament are entitled to receive such salaries and allowances as may be determined by Parliament, and there is no provision of pension in the Constitution. However, Parliament has provided pension to the members.

Panel of Chairpersons of Lok Sabha

Under the Rules of Lok Sabha, the Speaker nominates from amongst the members a panel of not more than ten chairpersons. Any of them can preside over the House 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 chairpersons is nominated. When a member of the panel of chairpersons is also not present, any other person as determined by House acts as the Speaker.

Difference between Lok Sabha and Rajya Sabha

1. Members of Lok Sabha are directly elected by the people (eligible voters). Members of Rajya Sabha are elected by the elected members of State Legislative Assemblies in accordance with the system of proportional representation by means of single transferable vote. The normal life of every Lok Sabha is 5 years only while Rajya Sabha is a permanent body

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2. Lok Sabha is the House to which the Council of Ministers is responsible under the constitution. Money Bills can only be introduced in Lok Sabha. Also, it is Lok Sabha which grants the money for running the administration of the country.
 3. Rajya Sabha has special powers to declare that it is necessary and expedient in the national interest that Parliament may make laws with respect to a matter in the State List or to create by law one or more all India services common to the Union and the States.

Secretariat of Parliament

Each House of Parliament has separate secretarial staff of its own, though there can be some posts common to both the Houses. Their recruitment and service conditions are regulated by Parliament. The secretariat of each House is headed by a secretary-general. He is a permanent officer and is appointed by the presiding officer of the House.

Whip

Though the offices of the leader of the House and the leader of the Opposition are not mentioned in the Constitution of India, they are mentioned in the Rules of the House and Parliamentary Statute respectively. The office of 'whip', on the other hand, is mentioned neither in the Constitution of India nor in the Rules of the House nor in a Parliamentary Statute. It is based on the conventions of the parliamentary government.

SESSIONS OF PARLIAMENT

Summoning

The president from time to time summons each House of Parliament to meet. But, the maximum gap between two sessions of Parliament cannot be more than six months. In other words, the Parliament should meet at least twice a year.

There are usually three sessions in a year, viz,

1. The Budget Session (February to May);
2. The Monsoon Session (July to September); and
3. The Winter Session (November to December).



Adjournment

A sitting of Parliament can be terminated by adjournment or adjournment sine die or prorogation or dissolution (in the case of the Lok Sabha). An adjournment suspends the work in a sitting for a specified time, which may be hours, days or weeks.

Adjournment Sine Die

Adjournment sine die means terminating a sitting of Parliament for an indefinite period. In other words, when the House is adjourned without naming a day for reassembly, it is called adjournment sine die

Prorogation

The presiding officer (Speaker or Chairman) declares the House adjourned sine die, when the business of a session is completed. Within the next few days, the President issues a notification for prorogation of the session. However, the President can also prorogue the House while in session.

Dissolution

Rajya Sabha, being a permanent House, is not subject to dissolution. Only the Lok Sabha is subject to dissolution. Unlike a prorogation, a dissolution ends the very life of the existing House, and a new House is constituted after 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 one-tenth of the total number of members in each House including the presiding officer. If there is no quorum during a meeting of the House, it is the duty of the presiding officer either to adjourn the House or to suspend the meeting until there is a quorum.

Language in Parliament

The Constitution has declared Hindi and English to be the languages for transacting business in the Parliament. However, the presiding officer can permit a member to address the House in his mother-tongue.

In both the Houses, arrangements are made for simultaneous translation. Though English was to be discontinued as a floor language after the expiration of fifteen years

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from the commencement of the Constitution (that is, in 1965), the Official Languages Act (1963) allowed English to be continued along with Hindi.

Lame-duck Session

It refers to the last session of the existing Lok Sabha, after a new Lok Sabha has been elected. Those members of the existing Lok Sabha who could not get re-elected to the new Lok Sabha are called lame-ducks.

DEVICES OF PARLIAMENTARY PROCEEDINGS

Question Hour

The first hour of every parliamentary sitting is slotted for this. During this time, the members ask questions and the ministers usually give answers. The questions are of three kinds, namely, starred, unstarred and short notice.

- A starred question (distinguished by an asterisk) requires an oral answer and hence supplementary questions can follow.
- An unstarred question, on the other hand, requires a written answer and hence, supplementary questions cannot follow.
- A short notice question is one that is asked by giving a notice of less than ten days. It is answered orally.

Zero Hour

Unlike the question hour, the zero hour is not mentioned in the Rules of Procedure. Thus, it is an informal device available to the members of the Parliament to raise matters without any prior notice. The zero hour starts immediately after the question hour and lasts until the agenda for the day (semiregular business of the House) is taken up. In other words, the time gap between the question hour and the agenda is known as zero hour. It is an Indian innovation in the field of parliamentary procedures and has been in existence since 1962.

Motions

No discussion on a matter of general public importance can take place except on a motion made with the consent of the presiding officer. The House expresses its decisions or opinions on various issues through the adoption or rejection of motions

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moved by either ministers or private members. The motions moved by the members to raise discussions on various matters fall into three principal categories:

1. **Substantive Motion:** It is a self-contained independent proposal dealing with a very important matter like impeachment of the President or removal of Chief Election Commissioner.
2. **Substitute Motion:** It is a motion that is moved in substitution of an original motion and proposes an alternative to it. If adopted by the House, it supersedes the original motion.
3. **Subsidiary Motion:** It is a motion that, by itself, has no meaning and cannot state the decision of the House without reference to the original motion or proceedings of the House. It is divided into three subcategories:
 - (a) Ancillary Motion: It is used as the regular way of proceeding with various kinds of business.
 - (b) Superseding Motion: It is moved in the course of debate on another issue and seeks to supersede that issue.
 - (c) Amendment: It seeks to modify or substitute only a part of the original motion.

Closure Motion: It is a motion moved by a member to cut short the debate on a matter before the House. If the motion is approved by the House, debate is stopped forthwith and the matter is put to vote. There are four kinds of closure motions:

- (a) Simple Closure: It is one when a member moves that the 'matter having been sufficiently discussed be now put to vote'.
- (b) Closure by Compartments: In this case, the clauses of a bill or a lengthy resolution are grouped into parts before the commencement of the debate. The debate covers the part as a whole and the entire part is put to vote.
- (c) Kangaroo Closure: Under this type, only important clauses are taken up for debate and voting and the intervening clauses are skipped over and taken as passed.
- (d) Guillotine Closure: It is one when the undiscussed clauses of a bill or a resolution are also put to vote along with the discussed ones due to want of time (as the time allotted for the discussion is over).

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Privilege Motion: It is concerned with the breach of parliamentary privileges by a minister. It is moved by a member when he feels that a minister has committed a breach of privilege of the House or one or more of its members by withholding facts of a case or by giving wrong or distorted facts. Its purpose is to censure the concerned minister.

Calling Attention Motion: It is introduced in the Parliament by a member to call the attention of a minister to a matter of urgent public importance, and to seek an authoritative statement from him on that matter. Like the zero hour, it is also an Indian innovation in the parliamentary procedure and has been in existence since 1954. However, unlike the zero hour, it is mentioned in the Rules of Procedure.

Adjournment Motion:

It is introduced in the Parliament to draw attention of the House to a definite matter of urgent public importance, and needs the support of 50 members to be admitted. As it interrupts the normal business of the House, it is regarded as an extraordinary device. It involves an element of censure against the government and hence Rajya Sabha is not permitted to make use of this device. The discussion on an adjournment motion should last for not less than two hours and thirty minutes.

The right to move a motion for an adjournment of the business of the House is subject to the following restrictions:

- It should raise a matter which is definite, factual, urgent and of public importance.
- It should not cover more than one matter; it should be restricted to a specific matter of recent occurrence and should not be framed in general terms.
- It should not raise a question of privilege,
- It should not revive discussion on a matter that has been discussed in the same session,
- It should not deal with any matter that is under adjudication by court and
- It should not raise any question that can be raised on a distinct motion.



No-Confidence Motion

The Lok Sabha can remove the ministry from office by passing a no-confidence motion. The motion needs the support of 50 members to be admitted.

Motion of Thanks

The first session after each general election and the first session of every fiscal year is addressed by the president. In this address, the president outlines the policies and programmes of the government in the preceding year and ensuing year.

No-Day-Yet-Named Motion

It is a motion that has been admitted by the Speaker but no date has been fixed for its discussion.

Point of Order

A member can raise a point of order when the proceedings of the House do not follow the normal rules of procedure. A point of order should relate to the interpretation or enforcement of the Rules of the House or such articles of the Constitution that regulate the business of the House and should raise a question that is within the cognizance of the Speaker.

Half-an-Hour Discussion

It is meant for discussing a matter of sufficient public importance, which has been subjected to a lot of debate and the answer to which needs elucidation on a matter of fact.

Short Duration Discussion

It is also known as two-hour discussion as the time allotted for such a discussion should not exceed two hours. The members of the Parliament can raise such discussions on a matter of urgent public importance.

Special Mention

A matter which is not a point of order or which cannot be raised during question hour, half-an hour discussion, short duration discussion or under adjournment motion, calling attention notice or under any rule of the House can be raised under the special mention in the Rajya Sabha.



LEGISLATIVE PROCEDURE IN PARLIAMENT

The legislative procedure is identical in both the Houses of Parliament. Every bill has to pass through the same stages in each House. Bills introduced in the Parliament are of two kinds: public bills and private bills (also known as government bills and private members' bills respectively).

The bills introduced in the Parliament can also be classified into four categories:

1. Ordinary bills, which are concerned with any matter other than financial subjects.
2. Money bills, which are concerned with the financial matters like taxation, public expenditure, etc.
3. Financial bills, which are also concerned with financial matters (but are different from money bills).
4. Constitution amendment bills, which are concerned with the amendment of the provisions of the Constitution.

Ordinary Bills

Every ordinary bill has to pass through the following five stages in the Parliament before it finds a place on the Statute Book:

1. First Reading

An ordinary bill can be introduced in either House of Parliament. Such a bill can be introduced either by a minister or by any other member. The member who wants to introduce the bill has to ask for the leave of the House. When the House grants leave to introduce the bill, the mover of the bill introduces it by reading its title and objectives. No discussion on the bill takes place at this stage.

2. Second Reading

During this stage, the bill receives not only the general but also the detailed scrutiny and assumes its final shape. Hence, it forms the most important stage in the enactment of a bill.

(a) Stage of General Discussion:

The printed copies of the bill are distributed to all the members. The principles of the bill and its provisions are discussed generally, but the details of the bill

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are not discussed. At this stage, the House can take any one of the following four actions:

- (i) It may take the bill into consideration immediately or on some other fixed date;
- (ii) It may refer the bill to a select committee of the House;
- (iii) It may refer the bill to a joint committee of the two Houses; and
- (iv) It may circulate the bill to elicit public opinion.

A Select Committee consists of members of the House where the bill has originated and a joint committee consists of members of both the Houses of Parliament.

(b) Committee Stage:

The usual practice is to refer the bill to a select committee of the House. This committee examines the bill thoroughly and in detail, clause by clause. It can also amend its provisions, but without altering the principles underlying it. After completing the scrutiny and discussion, the committee reports the bill back to the House.

(c) Consideration Stage:

The House, after receiving the bill from the select committee, considers the provisions of the bill clause by clause. Each clause is discussed and voted upon separately. The members can also move amendments and if accepted, they become part of the bill.

3. Third Reading:

At this stage, the debate is confined to the acceptance or rejection of the bill as a whole and no amendments are allowed, as the general principles underlying the bill have already been scrutinized during the stage of second reading.

If the majority of members present and voting accept the bill, the bill is regarded as passed by the House. Thereafter, the bill is authenticated by the presiding officer of the House and transmitted to the second House for consideration and approval.

A bill is deemed to have been passed by the Parliament only when both the Houses have agreed to it, either with or without amendments.

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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.

There are four alternatives before this House:

- (a) it may pass the bill as sent by the first house (i.e., without amendments);
- (b) it may pass the bill with amendments and return it to the first House for consideration;
- (c) it may reject the bill altogether; and
- (d) it may not take any action and thus keep the bill pending.

If the second House passes the bill without any amendments or the first House accepts the amendments suggested by the second House, the bill is deemed to have been passed by both the Houses and the same is sent to the president for his assent.

On the other hand, if the first House rejects the amendments suggested by the second House or the second House rejects the bill altogether or the second House does not take any action for six months, a deadlock is deemed to have taken place.

To resolve such a deadlock, the president can summon a joint sitting of the two Houses. If the majority of members present and voting in the joint sitting approves the bill, the bill is deemed to have been passed by both the Houses.

5. Assent of the President Every bill after being passed by both Houses of Parliament either singly or at a joint sitting, is presented to the president for his assent. There are three alternatives before the president:

- (a) he may give his assent to the bill; or
- (b) he may withhold his assent to the bill; or
- (c) he may return the bill for reconsideration of the Houses.

If the president gives his assent to the bill, the bill becomes an act and is placed on the Statute Book. If the President withholds his assent to the bill, it ends and does not become an act. If the President returns the bill for reconsideration and if it is passed by both the Houses again with or without amendments and presented to the President for his assent, the president must give his assent to the bill. Thus, the President enjoys only a “suspensive veto.”

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Money Bills:

Article 110 of the Constitution deals with the definition of money bills. It states that a bill is deemed to be a money bill if it contains 'only' provisions dealing with all or any of the following matters:

1. The imposition, abolition, remission, alteration or regulation of any tax;
2. The regulation of the borrowing of money by the Union government;
3. The custody of the Consolidated Fund of India or the contingency fund of India, the payment of moneys into or the withdrawal of money from any such fund.

Financial Bills

Financial bills are those bills that deal with fiscal matters, that is, revenue or expenditure. However, the Constitution uses the term 'financial bill' in a technical sense.

Financial bills are of three kinds:

1. Money bills—Article 110
2. Financial bills (I)—Article 117 (1)
3. Financial bills (II)—Article 117 (3)

JOINT SITTING OF TWO HOUSES

Joint sitting is an extraordinary machinery provided by the Constitution to resolve a deadlock between the two Houses over the passage of a bill. A deadlock is deemed to have taken place under any one of the following three situations after a bill has been passed by one House and transmitted to the other House:

1. if the bill is rejected by the other House;
2. if the Houses have finally disagreed as to the amendments to be made in the bill;
3. if more than six months have elapsed from the date of the receipt of the bill by the other House without the bill being passed by it.

BUDGET IN PARLIAMENT

The Constitution refers to the budget as the 'annual financial statement'. In other words, the term 'budget' has nowhere been used in the Constitution. The budget is a statement of the estimated receipts and expenditure of the Government of India in a financial year.

◆.....◆ **Charged Expenditure**

The budget consists of two types of expenditure—the expenditure ‘charged’ upon the Consolidated Fund of India and the expenditure ‘made’ from the Consolidated Fund of India. The charged expenditure is non-voteable by the Parliament, that is, it can only be discussed by the Parliament, while the other type has to be voted by the Parliament.

Stages in Enactment

The budget goes through the following six stages in the Parliament:

1. Presentation of budget.
2. General discussion.
3. Scrutiny by departmental committees.
4. Voting on demands for grants.
5. Passing of appropriation bill.
6. Passing of finance bill.

Other Grants

In addition to the budget that contains the ordinary estimates of income and expenditure for one financial year, various other grants are made by the Parliament under extraordinary or special circumstances:

Supplementary Grant

It is granted when the amount authorized by the Parliament through the appropriation act for a particular service for the current financial year is found to be insufficient for that year.

Additional Grant

It is granted when a need has arisen during the current financial year for additional expenditure upon some new service not contemplated in the budget for that year.

Excess Grant

It is granted when money has been spent on any service during a financial year in excess of the amount granted for that service in the budget for that year. It is voted by the Lok Sabha after the financial year.

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Vote of Credit

It is granted for meeting an unexpected demand upon the resources of India, when on account of the magnitude or the indefinite character of the service, the demand cannot be stated with the details ordinarily given in a budget. Hence, it is like a blank cheque given to the Executive by the Lok Sabha.

Exceptional Grant

It is granted for a special purpose and forms no part of the current service of any financial year.

Token Grant

It is granted when funds to meet the proposed expenditure on a new service can be made available by reappropriation. A demand for the grant of a token sum (of Re 1) is submitted to the vote of the Lok Sabha and if assented, funds are made available.

Funds

The Constitution of India provides for the following three kinds of funds for the Central government:

1. Consolidated Fund of India (Article 266)

It is a fund to which all receipts are credited and all payments are debited. In other words,

- (a) all revenues received by the Government of India;
- (b) all loans raised by the Government by the issue of treasury bills, loans or ways and means of advances; and
- (c) all money received by the government in repayment of loans forms the Consolidated Fund of India.

All the legally authorised payments on behalf of the Government of India are made out of this fund. No money out of this fund can be appropriated (issued or drawn) except in accordance with a parliamentary law.

2. Public Account of India (Article 266)

All other public money (other than those which are credited to the Consolidated Fund of India) received by or on behalf of the Government of India shall be credited to the Public Account of India.

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This includes provident fund deposits, judicial deposits, savings bank deposits, departmental deposits, remittances and so on. This account is operated by executive action, that is, the payments from this account can be made without parliamentary appropriation. Such payments are mostly in the nature of banking transactions.

3. Contingency Fund of India (Article 267)

The Constitution authorized the Parliament to establish a 'Contingency Fund of India', into which amounts determined by law are paid from time to time. Accordingly, the Parliament enacted the contingency fund of India Act in 1950.

This fund is placed at the disposal of the president, and he can make advances out of it to meet unforeseen expenditure pending its authorization by the Parliament. The fund is held by the finance secretary on behalf of the president. Like the public account of India, it is also operated by executive action.

STATE LEGISLATURE

Introduction:

Articles 168 to 212 in Part VI of the Constitution deal with the organization, 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 a unicameral system, while others have a bicameral system.

At present, only six states have two Houses (bicameral). These are Andhra Pradesh, Telangana, Uttar Pradesh, Bihar, Maharashtra, Karnataka and. 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 legislative council (Vidhan Parishad) is the upper house (second chamber or house of elders), while the legislative assembly (Vidhan Sabha) is the lower house (first chamber or popular house).

Legislative Council

The Legislative council is a mere ornamental chamber and its very existence is depending on the will of the Legislative Assembly. Under the constitution, the Legislative Council can be created or abolished by a simple Act of Parliament on the recommendation of the state concerned under Article 169.

Creation of Legislative council

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 (i.e., by simple majority).

Composition

The members of the Legislative Council shall not be more than one-third of the total members of the Legislative Assembly, but not less than forty. The Legislative Council of Tamil Nadu had 63 members.

Normally, it is constituted by a mixture of direct election, indirect election and nomination. Elections to the Legislative Council are to be held by the system of proportional representation by single transferable vote system in the following manner

- (a) 1/3 members shall be elected by the Legislative Assembly
- (b) 1/3 members shall be elected by the municipalities, district boards and other local authorities as specified by parliament by law.
- (c) 1/12 members shall be elected by the graduate's constituencies.
- (d) 1/12 members shall be elected by the teacher's constituencies; and
- (e) 1/6 members are nominated by the Governor From amongst persons who have distinguished themselves in the fields of literature, art, science, social service and cooperative movement.

Qualifications and term

According to the Constitution, a person should have the following qualifications for the election to the Legislative Council.

- (i) He must be a citizen of India.
- (ii) He must have attained 30 years of age. and
- (iii) He must possess such other qualifications as may be laid down by parliament.

Relating to the term of the Legislative Council, it is a continuing body, not subject to dissolution. Like the Rajya Sabha of Parliament, its one-third members retire after every two years. A member of the Council has a six-year term and he may be re-elected to the council.

Functions and powers

1. Ordinary bills may be introduced in this Legislative Council.
2. It ratifies the money bills passed by the legislative Assembly.
3. It can delay 14 days on money bills and 30 days on ordinary bills passed by the Legislative Assembly.
4. It elects its Chairman and the Deputy Chairman amongst the members.
5. It constitutes various committees for various business and
6. It ratifies the ordinances promulgated by the Governor.

Generally, the Legislative Council is a mere ornamental body and hence it is considered as weak house. It does not take part in the election of the president or in the ratification of the Constitutional Amendment Bills.

In short, the Legislative Council is powerless in relation to the Legislative Assembly. To call it a Second Chamber or Upper House of a state legislature is a misnomer. As already stated, Legislative Council is not in the Legislature of Tamil Nadu. Hence, Tamil Nadu has the unicameral legislature

2. Legislative assembly

In every state, the legislature means the legislative Assembly, even in the State where the legislative council exists. Actually, the Legislative Assembly is the first chamber or Lower House of the state legislature. Tamil Nadu legislature has only one house known as Legislative Assembly.

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Composition

According to Article 170 of the Constitution, the Legislative Assembly of a state shall consist of not more than 500 and not less than 50 members. However, the parliament has the power to fix the minimum strength of a Legislative Assembly through the amendment of the constitution.

The Legislative Assembly of Tamil Nadu consists of 235 members out of which 234 members are directly elected by the people from the constituencies on the basis of adult franchise and one member is nominated by the Governor from the Anglo-Indian community. However, seats shall be reserved in the house for the scheduled castes and scheduled tribes.

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

Qualifications

A Person seeking election to the Legislative Assembly should have the following qualifications.

- (i) He must be a citizen of India.
- (ii) He must have attained 25 years of age and,
- (iii) He must possess such other qualifications as may be prescribed by the parliament by law.

Oath

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:

- (a) to bear true faith and allegiance to the Constitution of India;
- (b) to uphold the sovereignty and integrity of India; and
- (c) to faithfully discharge the duty of his office.

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.

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A person is liable to a penalty of 500 for each day he sits or votes as a member in a House:

- (a) before taking and subscribing the prescribed oath or affirmation; or
- (b) when he knows that he is not qualified or that he is disqualified for its membership; or
- (c) when he knows that he is prohibited from sitting or voting in the House by virtue of any law made by Parliament 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.

4. Vacation of Seats

In the following cases, a member of the state legislature vacates his seat:

- (a) **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.
- (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 vacant when the resignation is accepted.
- (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:** A member has to vacate his seat in the either House of state legislature,
 - (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,
 - (iv) if he is appointed to the office of governor of a state.

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Tenure

Normally, the term of the Legislative Assembly is five years except the state of Jammu and Kashmir where it has six years duration. However, it may be dissolved by the Governor at any time as result of the presidential order promulgated under Article 356 which is called as the state emergency.

But, in case of National Emergency under Article 352, the tenure of the Legislative Assembly can be extended by parliament but not beyond one year at a time. Yet, fresh elections must take place within six months after the proclamation is withdrawn. Besides, the Chief Minister may voluntarily come forward to recommend for the dissolution of the Assembly to the Governor even before the expiry of the tenure.

Disqualifications

Under the Constitution, a person shall be disqualified for being chosen as and for being a member of the legislative assembly or legislative council of a state:

- (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.

Accordingly, the Parliament has prescribed a number of additional disqualifications in the Representation of People Act (1951). These are similar to those for Parliament. These are mentioned here:

1. He must not have been found guilty of certain election offences or corrupt practices in the elections.
2. He must not have been convicted for any offence resulting in imprisonment for two or more years. But, the detention of a person under a preventive detention law is not a disqualification.
3. He must not have failed to lodge an account of his election expenses with in the time.

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4. He must not have any interest in government contracts, works or services.
 5. 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.
 6. He must not have been dismissed from government service for corruption or disloyalty to the state.
 7. He must not have been convicted for promoting enmity between different groups or for the offence of bribery.
 8. He must not have been punished for preaching and practicing social crimes such as untouchability, dowry and sati.

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.

Powers and Functions

The Legislative Assembly is a multi-functional political institution.

It exercises the following powers and functions.

1. Making a law on any subject included in the State List as well as in the concurrent List, subject to the restraints imposed by the constitution.
2. Making and un-making the government.
3. Controlling the finances of the state.
4. Introducing the Money Bills and passing them.
5. Giving approval or disapproval to a Constitutional (Amendment) Bills passed by the parliament and referred to the states by the president for ratification.

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6. Considering the reports submitted by the Tamil Nadu Public Service Commission, Auditor General and others.
 7. Constituting various committees for various business.
 8. Electing its Speaker and the Deputy speaker.
 9. Initiating for no-confidence motion against the ruling government, and
 10. Participating in the election of the president of India.

The above stated powers belong to the Legislative Assembly alone. Thus, in theory and practice, the Legislative Assembly has enormous powers. Hence, the Members of Legislative Assembly (MLAs) have more powers and functions rather than the Members of Legislative Council (MLCs). But, in Tamil Nadu we have MLAs and not MLCs.

As far as other important offices of the legislature are concerned, the Legislative Assembly elects its Speaker and the Deputy speaker. As such, the Legislative Council elects its Chairman and the Deputy chairman. Above all, the Advocate General is the only non-member of the state legislature who has the right and power to take part in the proceedings of the legislature, as the Attorney General of the Union Government.

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

1. if he ceases to be a member of the assembly;
2. if he resigns by writing to the deputy speaker; and
3. if he is removed by a resolution passed by a majority of all the then members of the assembly. Such a resolution can be moved only after giving 14 days advance notice.

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.

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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 can allow a 'secret' sitting of the House at the request of the leader of the House.
 6. He decides whether a bill is a Money Bill or not and his decision on this question is final.
 7. 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. Like the Speaker, the Deputy Speaker remains in office usually during the life of the assembly.

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

1. if he ceases to be a member of the assembly;
2. if he resigns by writing to the speaker; and
3. if he is removed by a resolution passed by a majority of all the then members of the assembly. Such a 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 chairmen. Any one of them can preside over the assembly in the absence of the Speaker or the Deputy

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Speaker. He has the same powers as the speaker when so presiding. He holds office until a new panel of chairmen is nominated.

Chairman of Council

The Chairman is elected by the council itself from amongst its members.

The Chairman vacates his office in any of the following three cases:

1. if he ceases to be a member of the council;
2. if he resigns by writing to the deputy chairman; and
3. if he is removed by a resolution passed by a majority of all the then members of the council. Such a resolution can be moved only after giving 14 days advance notice.

As a presiding officer, the powers and functions of the Chairman in the council are similar to those of the Speaker in the assembly. However, 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.

As in the case of the Speaker, the salaries and allowances of the Chairman are also fixed by the state legislature. They are charged on the Consolidated Fund of the State and thus are not subject to the annual vote of the state legislature.

Deputy Chairman of Council

Like the Chairman, the Deputy Chairman is also elected by the council itself from amongst its members. The deputy chairman vacates his office in any of the following three cases:

1. if he ceases to be a member of the council;
2. if he resigns by writing to the Chairman; and
3. if he is removed by a resolution passed by a majority of all the then members of the council. Such a resolution can be moved only after giving 14 days advance notice.

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

The Chairman nominates from amongst the members a panel of vice chairman.

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Any one of them can preside over the council in the absence of the Chairman or the Deputy Chairman. He has the same powers as the chairman when so presiding. He holds office until a new panel of vice-chairmen is nominated.

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, i.e., the state legislature should meet at least twice a year. A session of the state legislature consists of many sittings.

Adjournment

An adjournment suspends the work in a sitting for a specified time which may be hours, days or weeks. Adjournment sine die means terminating a sitting of the state legislature for an indefinite period. The power of the adjournment as well as adjournment sine die lies with the presiding officer of the House.

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 Newhouse is constituted after the general elections are held.

The position with respect to lapsing of bills on the dissolution of the assembly is mentioned below:

1. A Bill pending in the assembly lapses (whether originating in the assembly or transmitted to it by the council).
2. A Bill passed by the assembly but pending in the council lapses.
3. A Bill pending in the council but not passed by the assembly does not lapse.

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4. A Bill passed by the assembly (in a unicameral state) or passed by both the houses (in a bicameral state) but pending assent of the governor or the President does not lapse.
 5. A Bill passed by the assembly (in a unicameral state) or passed by both the Houses (in a bicameral state) but returned by the president for reconsideration of House (s) does not lapse.

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 one-tenth of the total number of members of the House (including the presiding officer), whichever is greater.

Language in State Legislature

The Constitution has declared the official language(s) of the state or Hindi or English, to be the languages for transacting business in the state legislature. However, the presiding officer can permit a member to address the House in his mother-tongue.

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

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.

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Questions:

1. Briefly highlight the election procedure of the Legislative Council of the state.
2. What are the eligibility criteria to be elected as Member of Parliament?
3. Write a short note on Cut motions.

