# CHAPTER 14

# THE STATE LEGISLATURE

**The Bi-cameral and Uni-cameral Legislatures.**

THOUGH a uniform pattern of government is prescribed for the States, in the matter of the composition of the Legislature, the Constitution makes a distinction between the bigger and the smaller States. While the Legislature of every State shall include the Governor and, in some of the States, it shall consist of two Houses, namely, the Legislative Assembly and the Legislative Council, while in the rest, there shall be only one House, *i.e.*, the Legislative Assembly [*Art.* 168].

Owing to changes introduced since the inauguration of the Constitution, in accordance with the procedure laid down in Art. 169, the States having two Houses,[1] in 2008, are Andhra Pradesh;[2] Bihar; Maharashtra;[3] Karnataka and Uttar Pradesh[4] [*Art.* 168]. To these must be added Jammu & Kashmir, which has adopted a bi-cameral Legislature, by her own State Constitution.

**Creation and abolition of Second Chambers in States.**

It follows that in the remaining States,[1, 4] the Legislature is uni-cameral, that is, consisting of the Legislative Assembly only [*Art.* 168]. But the above list is not permanent in the sense that the Constitution provides for the *abolition* of the Second Chamber (that is, the Legislative Council) in a State where it exists as well as for the *creation* of such a Chamber in a State where there is none at present, by a simple procedure which does not involve an amendment of the Constitution. The procedure prescribed is a resolution of the Legislative Assembly of the State concerned passed by a special majority (that is, a majority of the total membership of the Assembly not being less than two-thirds of the members actually present and voting), followed by an Act of Parliament [*Art.* 169].

This apparently extraordinary provision was made for the States (while there was none corresponding to it for the Union Legislature) in order to meet the criticism, at the time of the making of the Constitution, that some of *our* States being of poorer resources, could ill afford to have the extravagance of two Chambers. This device was, accordingly, prescribed to enable each State to have a Second Chamber or not according to its own wishes. It is interesting to note that, taking advantage of this provision, the State of Andhra Pradesh, in 1957, *created* a Legislative Council, leading to the enactment of the Legislative Council Act, 1957, by Parliament. Through the same process, it has been abolished in 1985.[1]

On the other hand, West Bengal and Punjab have abolished their Second Chambers, pursuing the same procedure.[4]

**Composition of the Legislative Council.**

The size[5] of the Legislative Council shall vary with that of the Legislative Assembly,—the membership of the Council being not more than one-third of the membership of the Legislative Assembly but not less than 40. This provision has been adopted so that the Upper House (the Council) may not get a predominance in the Legislature [*Art.* 171(1)].

The system of composition of the Council as laid down in the Constitution is not final. The final power of providing the composition of this Chamber of the State Legislature is given to the Union Parliament [*Art.* 171(2)]. But until Parliament legislates on the matter, the composition shall be as given in the Constitution, which is as follows: It will be 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 by the Governor. Thus,—

(a) 1/3 of the total number of members of the Council shall be elected by electorates consisting of members of *local bodies,* such as municipalities, district boards.

(b) 1/12 shall be elected by electorates consisting of *graduates* of three years' standing residing in that State.

(c) 1/12 shall be elected by electorates consisting of persons engaged for at least three years in *teaching* in educational institutions within the State, not lower in standard than secondary schools.

(d) 1/3 shall be elected by members of the Legislative Assembly from amongst persons who are *not members* of the Assembly.

(e) The remainder shall be nominated by the Governor from persons having knowledge or practical experience in respect of such matters as literature, science, art, co-operative movement and social service (The courts cannot question the *bona fides* or propriety of the Governor's nomination in any case).

**Composition of the Legislative Assembly.**

The Legislative Assembly of each State shall be composed of members chosen by *direct* election on the basis of adult suffrage from territorial constituencies. The number of members of the Assembly shall be not more than 500 nor less than 60. The Assembly in Mizoram and Goa shall have only 40 members each.

There shall be a proportionately equal representation according to population in respect of each territorial constituency within a State. There will be a readjustment by Parliament by law, upon the completion of each census [*Art.* 170].

As stated already, the Governor has the power to nominate[6] *one* member of the Anglo-Indian community as he deems fit, if he is of opinion that they are not adequately represented in the Assembly [*Art.* 333]. Such reservation will cease on the expiration of sixty[7] years from the commencement of the Constitution [*Art.* 334].

The duration of the Legislative Assembly is five years, but—

**Duration of the Legislative Assembly.**

(i) It may be dissolved sooner than five years, by the Governor.[8]

(ii) The term of five years may be extended in case of a Proclamation of Emergency by the President. In such a case, the Union Parliament shall have the power to extend the life of the Legislative Assembly up to a period not exceeding six months after the Proclamation ceases to have effect, subject to the condition that such extension shall not exceed one year at a time [*Art.* 172(1)].

**Duration of the Legislative Council.**

The Legislative Council shall not be subject to dissolution. But one-third of its members shall retire on the expiry of every second year [*Art.* 172(2)]. It will thus be a permanent body like the Council of States, only a fraction of its membership being changed every third year.

A Legislative Assembly shall have its Speaker and Deputy Speaker, and a Legislative Council shall have its Chairman and Deputy Chairman, and the provisions relating to them are analogous to those relating to the corresponding officers of the Union Parliament.

**Qualifications for membership of the State Legislature.**

A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he—

(a) is a citizen of India;

(b) is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament [*Art.* 173].

Thus, the Representation of the People Act, 1951, has provided that a person shall not be elected either to the Legislative Assembly or the Council, unless he is himself an elector for any Legislative Assembly constituency in that State.

**Disqualifications for membership.**

The disqualifications for membership of a State Legislature as laid down in Art. 191 of the Constitution are analogous to the disqualifications laid down in Art. 102 relating to membership of either House of Parliament. Thus,—

A person shall be disqualified for being chosen as, and for being a member of the Legislative Assembly or Legislative Council of a State if he—

(a) holds any office of profit under the Government of India or the Government of any State, other than that of a Minister for the Indian Union or for a State or an office declared by a law of the State not to disqualify its

holder (many States have passed such laws declaring certain offices to be offices the holding of which will not disqualify its holder for being a member of the Legislature of that State);

(b) is of unsound mind as declared by a competent court;

(c) is an undischarged insolvent;

(d) is not a citizen of India or has voluntarily acquired the citizenship of a foreign State or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) is so disqualified by or under any law made by Parliament (in other words, the law of Parliament may disqualify a person for membership even of a State Legislature, on such grounds as may be laid down in such law). Thus, the Representation of the People Act, 1951, has laid down some grounds of disqualification, *e.g.,* conviction by a court, having been found guilty of a corrupt or illegal practice in relation to election, being a director or managing agent of a corporation in which Government has a financial interest (under conditions laid down in that Act).

Article 192 lays down that if any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned above, the question shall be referred to the Governor of that State for decision who will act according to the opinion of the Election Commission. His decision shall be final and not liable to be questioned in any court of law.

**Legislative procedure in a State having Bi-cameral Legislature, as compared with that in Parliament.**

The legislative procedure in a State Legislature having two Chambers is broadly similar to that in Parliament, save for differences on certain points to be explained presently.

I. *As regards Money Bills,* the position is the same. The Legislative Council shall have no power save to make recommendations to the Assembly for amendments or to withhold the Bill for a period of 14 days from the date of receipt of the Bill. In any case, the will of the Assembly shall prevail, and the Assembly is not bound to accept any such recommendations.

It follows that there cannot be any deadlock between the two Houses at all as regards Money Bills.

II. *As regards Bills other than Money Bills,* too, the only power of the Council is to interpose some *delay* in the passage of the Bill for a period of time (3 months) [*Art.* 197(1)(b)] which is, of course, larger than in the case of Money Bills. The Legislative Council of a State, thus, shall not be a revising but mere *advisory* or *dilatory* Chamber. If it disagrees to such a Bill, the Bill must have *second journey* from the Assembly to the Council, but ultimately the view of the Assembly shall prevail and in the second journey, the Council shall have no power to withhold the Bill for more than a month [*Art.* 197(2)(b)].

**Legislative Council compared with Council of States.**

Herein the procedure in a State Legislature differs from that in the Parliament, and it renders the position of the Legislative Council even weaker than that of the Council of the States. The difference is as follows:

**Provisions for resolving deadlock between two Houses.**

While disagreement between the two Houses of Parliament is to be resolved by a *joint sitting*, there is *no such provision* for solving differences between the two Houses of the State Legislature,—in this latter case, the will of the lower House, *viz.*, the Assembly, shall ultimately prevail and the Council shall have no more power than to interpose some delay in the passage of the Bill to which it disagrees.

This difference of treatment in the two cases is due to the adoption of two different principles as regards the Union and the State Legislatures. (a) As to Parliament,—it has been said that since the Upper House represents the federal character of the Constitution, it should have a status better than that of a mere dilatory body. Hence, the Constitution provides for a joint sitting of both Houses in case of disagreement between the House of the People and the Council of States, though of course, the House will ultimately have an upper hand, owing to its numerical majority at the joint sitting. (b) As regards the two Houses of the State Legislature, however, the Constitution of India adopts the English system founded on the Parliament Act, 1911, *viz.*, that the Upper House must eventually give way to the Lower House which represents the will of the people. Under this system, the Upper House has no power to obstruct the popular House other than to effect some delay. This democratic provision has been adopted in *our* Constitution in the case of the State Legislature inasmuch as in this case, no question of federal importance of the Upper House arises.

The provisions as regards Bills *other than Money Bills* may now be summarised:

**Comparison of procedure in Parliament and State Legislature.**

(a) *Parliament.* If a Bill (other than a Money Bill) is passed by one House and (i) the other House rejects it or does not return it within six months, or (ii) the two Houses disagree as to amendment, the President may convene a joint sitting of the Houses, for the purpose of finally deliberating and voting on the Bill. At such joint sitting, the vote of the *majority of both Houses present and voting shall prevail* and the Bill shall be deemed to have been passed by both Houses with such amendments as are agreed to by such majority; and the Bill shall then be presented for his assent [*Art.* 108].

(b) *State Legislature.* (i) If a Bill (other than a Money Bill) is passed by the Legislative Assembly and the Council (a) rejects the Bill, or (b) passes it with such amendments as are not agreeable to the Assembly, or (c) does not pass the Bill within *3 months* from the time when it is laid before the Council,—the Legislative Assembly may again pass the Bill with or without further amendments, and transmit the Bill to the Council again [*Art.* 197(1)].

If on this second occasion, the Council—(a) again rejects the Bill, or (b) proposes amendments, or (c) does not pass it *within one month* of the date

on which it is laid before the Council, the Bill shall be deemed to have been passed by both Houses, and then presented to the Governor for his assent [*Art.* 197(2)].

In short, in the State Legislature, a Bill as regards which the Council does not agree with the Assembly, shall have two journeys from the Assembly to the Council. In the first journey, the Council shall not have the power to withhold the Bill for more than three months and in the second journey, not more than one month, and at the end of this period, the Bill shall be deemed to have been passed by both the Houses, even though the Council remains altogether inert [*Art.* 197].

(ii) The foregoing provision of the Constitution is applicable only as regards Bills *originating in the Assembly.* There is no corresponding provision for Bills originating in the Council. If, therefore, a Bill passed by the Council is transmitted to the Assembly and rejected by the latter, there is an end to the Bill.

The relative positions of the two Houses of the Union Parliament and of a State Legislature may be graphically shown as follows:

I. As regards *Money Bills, the position* is similar at the Union and the States:

(a) A Money Bill cannot originate in the Second Chamber or Upper House (*i.e.*, the Council of States or the Legislative Council).

(b) The Upper House (*i.e.,* the Council of States or the Legislative Council) has no power to amend or reject such Bills. In either case, the Council can only make recommendations when a Bill passed by the lower House (*i.e.,* the House of the People or the Legislative Assembly, as the case may be) is transmitted to it. It finally rests with the lower House to accept or reject the recommendations made by the Upper House. If the House of the People or the Legislative Assembly (as the case may be) does not accept any of the recommendations, the Bill is deemed to have been passed by the Legislature in the form in which it was passed by the lower House and then presented to the President or the Governor (as the case may be), for his assent. If the lower House, on the other hand, accepts any of the recommendations of the Upper House, then the Bill shall be deemed to have been passed by the Legislature in the form in which it stands after acceptance of such recommendations.

On the other hand, if the Upper House does not return the Money Bill transmitted to it by the Lower House, within a period of 14 days from the date of its receipt in the Upper House, the Bill shall be deemed to have been passed by the Legislature, at the expiry of the period of 14 days, and then presented to the President or the Governor, as the case may be, even though the Upper House has not either given its assent or made any recommendations.

(c) There is no provision for resolving any deadlock as between the two Houses, as regards Money Bills, because no deadlock can possibly arise. Whether in Parliament or in a State Legislature, the

will of the lower House (House of the People or the Legislative Assembly) shall prevail, in case the Upper House does not agree to the Bill as passed by the lower House.

II. *As regards Bills other than Money Bills*:

| *Parliament* | *State Legislature* |
|---|---|
| (a) Such Bills may be introduced in either House of Parliament. | (a) Such Bills may be introduced in either House of a State Legislature. |
| (b) A Bill is deemed to have been passed by Parliament only if both Houses have agreed to the Bill in its original form or with amendments agreed to by both Houses. In case of disagreement between the two Houses in any of the following manner, the deadlock may be solved only by a joint sitting of the two Houses, if summoned by the President. | (b) The Legislative Council has no co-ordinate power, and in a case of disagreement between the two Houses, the will of the Legisative Assembly shall ultimately prevail. Hence, there is no provision for a joint sitting for resolving a deadlock between the two Houses. |
| (c) The disagreement may take place if a House, on receipt of a Bill passed by the other House— (i) rejects the Bill; or (ii) proposes amendments as are not agreeable to the other House; or (iii) does not pass the Bill within six months of its receipt of the Bill. | (c) A disagreement between the two Houses may take place if the Legislative Council, *on receipt of a Bill passed by the Assembly*— (i) rejects the Bill; or (ii) makes amendments to the Bill, which are not agreed to by the originating House; or (iii) does not pass the Bill within three months from the date of its receipt from the originating House. While the period for passing a Bill received from the lower House is six months in the case of the Council of States, it is three months only in the case of the Legislative Council. |
| (d) In a case of disagreement, a passing of the Bill by the House of the People, a second time, cannot over-ride the Council of States. The only means of resolving the deadlock is a joint sitting of the two Houses. But if the President, in his discretion, does not summon a joint sitting, there is an end of the Bill and, thus, the Council of States has effective power, subject to a joint sitting, of preventing the passing of a Bill. | (d) In case of such disagreement, a passing of the Bill by the Assembly for a second time is sufficient for the passing of the Bill by the Legislature, and if the Bill is so passed and transmitted to the Legislative Council again, the only thing that the Council may do is to withhold it for a period of one month from the date of its receipt of the Bill on its second journey. If the Council either rejects the Bill again, or proposes amendments not |

*Parliament* *State Legislature*

agreeable to the Assembly or allows one month to elapse without passing the Bill, the Bill shall be deemed to have been passed by the State Legislature in the form in which it is passed by the Assembly for the second time, with such amendments, if any, as have been made by the Council and as are agreed to by the Assembly.

(e) The foregoing procedure applies *only* in the case of disagreement relating to a Bill *originating in the Legislative Assembly.*

In the case of a Bill originating in the Legislative Council and transmitted to the Assembly, after its passage in the Council, if the Legislative Assembly either rejects the Bill or makes amendments which are not agreed to by the Council, there is an immediate end of the Bill, and no question of its passage by the Assembly would arise.

**Utility of the Second Chamber in a State.**

It has been clear that the position of Legislative Council is inferior to that of the Legislative Assembly so much so that it may well be considered as a surplusage.

(a) The very composition of the Legislative Council, renders its position weak, being partly elected and partly nominated, and representing various interests.

(b) Its very existence depends upon the will of the Legislative Assembly, because the latter has the power to pass a resolution for the abolition of the second Chamber by an Act of Parliament.

(c) The Council of Ministers is responsible only to the Assembly.

(d) The Council cannot reject or amend a Money Bill. It can only withhold the Bill for a period not exceeding 14 days or make recommendations for amendments.

(e) As regards ordinary legislation (*i.e.,* with respect to Bills other than Money Bills), too, the position of the Council is nothing but subordinate to the Assembly, for it can at most interpose a delay of four months (in two

journeys) in the passage of a Bill originating in the Assembly and, in case of disagreement, the Assembly will have its way without the concurrence of the Council.

In the case of a Bill originating in the Council, on the other hand, the Assembly has the power of rejecting and putting an end to the Bill forthwith.

It will thus be seen that the second Chamber in a State is not even a revising body like the second Chamber in the Union Parliament which can, by its dissent, bring about a deadlock, necessitating a joint sitting of both Houses to effect the passage of the Bill (other than a Money Bill). Nevertheless, by reason of its composition by indirect election and nomination of persons having special knowledge, the Legislative Council commands a better calibre and even by its dilatory power, it serves to check hasty legislation by bringing to light the shortcomings or defects of any ill-considered measure.

When a Bill is presented before the Governor after its passage by the Houses of the Legislature, it will be open to the Governor to take any of the following steps:

**Governor's power of veto.**

(a) He may declare his *assent* to the Bill, in which case, it would become law at once; or,

(b) He may declare that he withholds his assent to the Bill, in which case the Bill fails to become a law; or,

(c) He may, in the case of a Bill other than a Money Bill, return the Bill with a message.

(d) The Governor may reserve[9] a Bill for the consideration of the President. In one case reservation is compulsory, *viz.*, where the law in question would derogate from the powers of the High Court under the Constitution.

In the case of a Money Bill, so reserved, the President may either declare his assent or withhold his assent. But in the case of a Bill other than a Money Bill, the President may, instead of declaring his assent or refusing it, direct the Governor to *return* the Bill to the Legislature for reconsideration. In the latter case, the Legislature must reconsider the Bill within six months and if it is passed again, the Bill shall be presented to the President again. But it shall not be obligatory upon the President to give his assent in this case too [*Art.* 201].

It is clear that a Bill which is reserved for the consideration of the President shall have no legal effect until the President declares his assent to it. But no time limit is imposed by the Constitution upon the President either to declare that he assents or that he withholds his assent. As a result, it would be open to the President to keep a Bill of the State Legislature pending at his hands for an indefinite period of time, without expressing his mind.

It should also be noted that there is a third alternative for the President which was demonstrated in the case of the Kerala Education Bill, *viz.*, that when a reserved Bill is presented to the President he may, for the purpose of deciding whether he should assent to, or return the Bill, refer to the Supreme Court, under

Art. 143, for its advisory opinion where any doubts as to the constitutionality of the Bill arise in the President's mind.

**Veto Powers of President and Governor, compared.**

The veto powers of the President and Governor may be presented graphically, as follows:

| *President* | *Governor* |
|---|---|
| (A) 1. May assent to the Bill passed by the Houses of Parliament. | 1. May assent to the Bill passed by the State Legislature. |
| 2. May declare that he withholds his assent, in which case, the Union Bill fails to become law. | 2. May declare that he withholds his assent, in which case, it fails to become law. |
| 3. In case of a Bill other than a Money Bill, may return it for reconsideration by Parliament, with a message to both Houses. If the Bill is again passed by Parliament, with or without amendments, and again presented to the President, the President shall have no other alternative than to declare his assent to it. | 3. In case of a Bill other than a Money Bill, may return it for reconsideration by the State Legislature, with a message. If the Legislature again passes the Bill with or without amendments, and it is again presented to the Governor, the Governor shall have no other alternative than to declare his assent to it. |
| | 4. Instead of either assenting to, withholding assent from, or returning the Bill for reconsideration by the State Legislature, Governor may *reserve* a Bill for consideration of the President, in any case he thinks fit. |
| | Such reservation is, however, obligatory if the Bill is so much derogatory to the powers of the High Court that it would endanger the constitutional position of the High Court, if the Bill became law. |
| (B) In the case of a State Bill reserved by the Governor for the President's consideration (as stated in para 4 of col. 2): | |
| (a) If it is a Money Bill, the President may either declare that he assents to it or withholds his assent to it. | |
| (b) If it is a Bill other than a Money Bill, the President may— | |
| (i) declare that he assents to it or that he withholds his assent from it, or | |

| *President* | *Governor* |
|---|---|
| (ii) return the Bill to the State Legislature with a message for reconsideration, in which case, the State Legislature must reconsider the Bill within six months, and if it is passed again, with or without amendments, it must be again presented, *direct*, to the President for his assent, but the President is *not* bound to give his assent, even though the Bill has been passed by the State Legislature, for a second time. | Once the Governor reserves a Bill for the President's consideration, the subsequent enactment of the Bill is in the hands of the President and the Governor shall have no further part in its career. |

The Governor's power to make Ordinances [*Art.* 213], having the force of an Act of the State Legislature, is similar to the Ordinance-making power of the President in the following respects :

**Ordinance-making power of Governor.**

(a) The Governor shall have this power only when the Legislature, or both Houses thereof, are not in session;

(b) It is not a discretionary power, but must be exercised with the aid and advice of ministers;

(c) The Ordinance must be laid before the State Legislature when it re-assembles, and shall automatically cease to have effect at the expiration of six weeks from the date of re-assembly, unless disapproved earlier by that Legislature.

(d) The Governor himself shall be competent to withdraw the Ordinance at any time.

(e) The scope of the Ordinance-making power of the Governor is co-extensive with the legislative powers of the State Legislature, and shall be confined to the subjects in Lists II and III of Sch. VII.

But as regards repugnancy with a Union law relating to a *concurrent* subject the Governor's Ordinance will prevail notwithstanding repugnancy, if the Ordinance had been made in pursuance of 'instructions' of the President.

The peculiarity of the Ordinance-making power of the Governor is that he cannot make Ordinances without 'instructions' from the President if—

(a) A Bill containing the same provisions would under the Constitution have required the previous sanction of the President for the introduction thereof into the Legislature;[10] or (b) the Governor would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President;[11] or (c) an Act of the Legislature of the State containing the same provisions would under this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President[12] [*Art.* 213].

**Ordinance-making power of President and Governor, compared.**

The Ordinance-making powers of the President and a Governor may be graphically presented as follows:

| *President* | *Governor* |
|---|---|
| 1. Can make Ordinance only when either of the two Houses of Parliament is not in session. | 1. Can make Ordinance only when the State Legislature or either of the two Houses (where the State Legislature is bi-cameral) is not in session. |
| The President or Governor must be satisfied that circumstances exist which render it necessary for him to take immediate action. | |
| | But Governor cannot make an Ordinance relating to three specified matters, without instructions from President (see *above*). |
| 2. Ordinance has the same force and is subject to the same limitations as an Act of Parliament. | 2. Ordinance has the same force and is subject to the same limitations as an Act of the State Legislature. |
| | But as regards repugnancy with a Union law relating to a Concurrent subject, if the Governor's Ordinance has been made in pursuance of 'instructions of the President', the Governor's Ordinance shall prevail as if it were an Act of the State Legislature which had been reserved for the consideration of the President and assented to by him. |
| 3. (a) Must be laid before both Houses of Parliament when it re-assembles. | 3. (a) Must be laid before the Legislative Assembly or before both Houses of the State Legislature (where it is bi-cameral), when the Legislature re-assembles. |
| (b) Shall cease to operate on the expiry of six weeks from the re-assembly of Parliament or, if, before that period, resolutions disapproving the Ordinance are passed by both Houses, from the date of the second of such resolutions. | (b) Shall cease to operate on the expiry of six weeks from the re-assembly of the State Legislature or, if before the expiry of that period, resolutions disapproving the Ordinance are passed by the Assembly or, where there are two Houses the resolution passed by |

| *President* | *Governor* |
|---|---|
| | the Assembly is agreed to by the Council, from the date of the passing of the resolution by the Assembly in the first case, and of the agreement of the Council in the second case. |

**Privileges of a State Legislature.**

The privileges of the Legislature of a State are similar to those of the Union Parliament inasmuch as the constitutional provisions [*Arts.* 105 and 194] are identical. The question of the privileges of a State Legislature has been brought to the notice of the public, particularly in relation to the power of the Legislature to punish for contempt and the jurisdiction of the Courts in respect thereof. Though all aspects of this question have not yet been settled, the following propositions may be formulated from the decisions of the Supreme Court:

(a) Each House of the State Legislature has the power to punish for breach of its privileges or for contempt.

(b) Each House is the sole judge of the question whether any of its privileges has, in particular case, been infringed, and the Courts have no jurisdiction to interfere with the decision of the House on this point.

The Court cannot interfere with any action taken for contempt unless the Legislature or its duly authorised officer is seeking to assert a privilege not known to the law of Parliament; or the notice issued or the action taken was without jurisdiction.

(c) No House of the Legislature has, however, the power to create for itself any new privilege not known to the law and the Courts possess the power to determine whether the House in fact possesses a particular privilege.

(d) It is also competent for a High Court to entertain a petition for *habeas corpus* under Art. 226 or for the Supreme Court, under Art. 32, challenging the legality of a sentence imposed by a Legislature for contempt on the ground that it has violated a fundamental right of the petitioner and to release the prisoner on bail, pending disposal of that petition.

(e) But once a privilege is held to exist, it is for the House to judge the occasion and its manner of exercise. The Court cannot interfere with an *erroneous* decision by the House or its Speaker in respect of a breach of its privilege.

## New States added since 1950.

Apart from those States which have merely changed their names (*e.g.*, Madras has changed its name to *Tamil Nadu;* Mysore to *Karnataka;* United Provinces was renamed Uttar Pradesh immediately after the adoption of the Constitution), there has been an addition of various items in the list of States in the First Schedule to the Constitution, by reason of which a brief note should be given as to the *new* items to make the reader familiar as to their identity.

**Andhra Pradesh.** The State of 'Andhra' was created by the Andhra State Act, 1953, comprising certain areas taken out of the State of Madras, and it was renamed 'Andhra Pradesh' by the States Reorganisation Act, 1956.

**Gujarat.** The Bombay Reorganisation Act, 1960 split up the State of Bombay into two States, Gujarat and Maharashtra.

**Kerala.** The State of Kerala was created by the States Reorganisation Act, 1956, in place of the Part B State of Travancore-Cochin of the original Constitution.

**Maharashtra.** See under Gujarat, *above.*

**Nagaland.** Nagaland was created a separate State by the State of Nagaland Act, 1962, by taking out the Naga Hills-Tuensang area out of the State of Assam.

**Haryana.** By the Punjab Reorganisation Act, 1966, the 17th State of the Union of India was constituted by the name of Haryana, by carving out a part of the territory of the State of Punjab.

**Karnataka.** The State of Mysore was formed by the States Reorganisation Act, 1956, out of the original Part B State of Mysore. It has been renamed, in 1973, as *Karnataka.*

**Himachal Pradesh.** Some of the Union Territories had, of late, been demanding promotion to the status of a State. Of these, Himachal Pradesh became the fore-runner on the enactment of the State of Himachal Pradesh Act, 1970, by which Himachal Pradesh was added as the 18th State in the list of States, and omitted from the list of Union Territories, in the First Schedule of the Constitution.

**Manipur and Tripura.** In the same manner, Manipur and Tripura were lifted up from the status of Union Territories (original Part C States), by the North-Eastern Areas (Reorganisation) Act, 1971.

**Meghalaya.** Meghalaya was initially created a 'sub-State' or 'autonomous State' within the State of Assam, by the Constitution (22nd Amendment) Act, 1969, by the insertion of Arts. 241 and 371A. Subsequently, it was given the full status of a State and admitted in the 1st Schedule as the 21st State, by the North-Eastern Area (Reorganisation) Act, 1971.

**Sikkim.** As has been explained earlier, Sikkim (a Protectorate of India) was given the status of an 'associate State' by the Constitution (35th Amendment) Act, 1974, and thereafter added to the 1st Schedule as the 22nd State, by the Constitution (36th Amendment) Act, 1975.

**Mizoram.** By the State of Mizoram Act, 1986, Mizoram was elevated from the status of a Union Territory to be the 23rd State in the 1st Schedule of the Constitution.

**Arunachal Pradesh.** By a similar process, statehood was conferred on the Union Territory of Arunachal Pradesh, by enacting the State of Arunachal Pradesh Act, 1986.

**Goa.** Goa was separated from Daman and Diu and made a State, by the Goa, Daman and Diu Reorganisation Act, 1987.

**Chhattisgarh** Chhattisgarh was carved out of the territories of the Madhya Pradesh by the Madhya Pradesh Reorganisation Act, 2000.

**Uttarakhand** Initially, Uttaranchal was created out of the territories of the Uttar Pradesh by the Uttar Pradesh Reorganisation Act, 2000. It was renamed as Uttarakhand by the Uttaranchal (Alteration of Name) Act, 2006.

**Jharkhand** Jharkhand was created by carving out a part of the territories of the Bihar by the Bihar Reorganisation Act, 2000.

## REFERENCES

1. (a) The Legislative Council in Andhra Pradesh has been abolished by the Andhra Pradesh Legislative Council (Abolition) Act, 1985. (b) By reason of s. 8(2) of the Constitution (7th Amendment) Act, 1956, Madhya Pradesh shall have a second House (Legislative Council) only after a notification to this effect has been made by President. No such notification having been made so far, Madhya Pradesh is still having one Chamber. (c) The Legislative Council of Tamil Nadu has been abolished in August, 1986, by passing the Tamil Nadu Legislative Council (Abolition) Act, 1986.
2. Revived by the Andhra Pradesh Legislative Council Act, 2005 (1 of 2006).
3. Maharashtra has been created out of Bombay, by the Bombay Reorganisation Act, 1960.
4. West Bengal has abolished its Legislative Council w.e.f. 1-8-1969 by a notification under the West Bengal Legislative Council (Abolition) Act, 1969, and Punjab has abolished its Legislative Council, under the Punjab Legislative Council (Abolition) Act, 1969.
5. See Table XV for membership of the State Legislatures.
6. The number of Anglo-Indian members so nominated by the Governor of the several States as in September, 1990, was as follows : Andhra 1; Bihar 1; Karnataka 1; Kerala 1; Madhya Pradesh 1; Tamil Nadu 1; Maharashtra 1; Uttar Pradesh 1; West Bengal 1. The present position is not available.
7. The original period of ten years has been extended to sixty years, gradually by the Constitution (8th Amendment) Act, 1959, the 23rd Amendment Act, 1969, the 45th Amendment Act, 1980, the 62nd Amendment Act, 1989 and the 79th Amendment Act, 1999.
8. In this context, we should refer to the much-debated question as to whether the Governor has any discretion to dissolve the Assembly without or against the advice of the Chief Minister, or through the device of suspending the State Legislature under Art. 356. In the general election to the *Lok Sabha*, held in March, 1977, the Congress Party was routed by the Janata Party. It was urged by the Janata Government at the Centre that in view of this verdict, the Congress Party had no moral right to continue in power in 9 States, viz., Bihar, Haryana, Himachal Pradesh, M.P., Orissa, Punjab, Rajasthan, U.P., West Bengal. In pursuance of this view, the Union Home Minister (Mr. Charan Singh) issued on, 18-4-1977, an 'appeal' to the Chief Ministers of these 9 States to advise their respective Governors to dissolve the Assemblies and hold an election in June, 1977 (while their extended term would have expired in March, 1978). But the Congress Party advised the Chief Ministers not to yield to this appeal or pressure, and contended that the proposition that the English Sovereign can dissolve Parliament without the advice of the Prime Minister was wrong and obsolete and that the Crown's prerogative in this behalf had been turned into a privilege of the Prime Minister. In short, under the British Parliamentary system which had been adopted under the Indian Constitution, a Governor could not dissolve the Assembly contrary to the advice of the Chief Minister of the State. It was also urged that Art. 356 was not intended to be used for such purposes.

The question was eventually taken to the Supreme Court by some of the affected States by way of a suit (under Art. 131) against the Union of India. The suit was dismissed by a Bench of 7 Judges, at the hearing on the prayer for temporary injunction, though the Judges gave separate reasons in 6 concurring judgments [*State of Rajasthan* v. *Union of India*, AIR 1977 S.C. 1361]. The Judges agreed on the following points: (i) The reasons behind an Executive decision to dissolve the Legislature are *political* and not justiciable in a court of law. (ii) So also is the question of the President's satisfaction for the purpose of using the power under Art. 356,—unless it was shown that there was no satisfaction at all or the satisfaction was based on extraneous grounds [paras 59, 83 (BEG. C.J.); 124 (CHANDRACHUD, J.); 144 (BHAGWATI & GUPTA J.J.); 170 (GOSWAMI, J.); 179 (UNTWALIA, J.); 206 (FAZAL ALI, J.)]. All the Judges held that on the facts on the record, it was not possible to hold that the order of the President under Art. 356, suspending the constitutional system in the relevant States was actuated by *mala fides* or extraneous considerations.

Exercise of power under Art. 356 was received again by a 9-Judge Bench of the Supreme Court in *S.R. Bommai* v. *Union of India*, (1994) 3 S.C.C. 1. Explaining the *Rajasthan* case it has laid down the following points: (i) Proclamation under Art. 356 is subject to judicial review but to a limited extent, *e.g.* whether there was any material, whether it was relevant, whether *mala fide* etc. (ii) Till the proclamation is approved by Parliament it is not permissible for the President to take any irreversible action (such as dissolution of the House) under Art. 356(1)(a), (b), or (c). (iii) Even if approved by the Parliament the Court may order *status quo ante* to be restored. (iv) If the ruling party in the State suffers a defeat in election to the Lok Sabha it will not be a ground for exercise of power under Art. 356.

9. The entire function of reservation and veto is discretionary and non-justiciable [*Hoechst Pharmaceuticals* v. *State of Bihar*, AIR 1953 S.C. 1019 (*para* 89)].
10. E.g., An Ordinance imposing reasonable restrictions upon inter-State trade or co nmerce [*Art.* 304, Proviso].
11. E.g., An Ordinance which might affect the powers of the Union [*Art.* 220].
12. E.g., An Ordinance affecting powers of the High Court [2nd Prov. on to *Art.* 200].