

Introduction

Article 79 to 122 in part V deals with the organisation, composition, duration, officers, procedures, privileges and powers of Union Parliament at the centre level. It is the highest law-making body in the country. It is said to be a place where elected representatives from different regions sit together and make laws for the country with proper debates and discussions.

Composition of Parliament

Union Parliament is made up of:

- ❑ Council of States which is also known as Rajya Sabha.
- ❑ House of the People which is also called Lok Sabha.
- ❑ The President of the country.

Rajya Sabha

Strength of the House

- ❑ The Constitution provides that the Rajya Sabha shall consist of 250 members, of which 12 members shall be nominated by the President from amongst persons having special knowledge or practical experience in respect of such matters as literature, science, art and social service; and not more than 238 representatives of the States and of the Union Territories.
- ❑ Rajya Sabha, at present, has 245 seats. Of these, 233 members represent the States and the Union Territories, and 12 members are nominated by the President.

How members are elected and their tenure

- ❑ Elections to the Rajya Sabha are indirect; 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 the single transferable vote, and those representing Union Territories are chosen in such manner as Parliament may by law prescribe.
- ❑ Apart from the elected members, the President appoints 12 members from the fields of literature, science, art, and social service.
- ❑ Members of the Rajya Sabha are elected for a term of six years and then they can be re-elected.

Permanent House and Representation of States

- ❑ The Rajya Sabha is not subject to dissolution. Members of Rajya Sabha are elected in such a manner that they do not complete their tenure altogether; rather after every two years, one-third member complete their term and elections are held for those one-third seats only. Rajya Sabha never gets fully dissolved and hence, it is known as the permanent House of the Parliament.
- ❑ In the U.S.A, every state has equal representation in the Senate irrespective of size and population of the states, but in India, it is not the same. In India, states with larger size of population get more representatives than states with smaller population. For example, Uttar Pradesh (the most populated state) sends 31 members to Rajya Sabha; on the other hand, Sikkim (the least populated state) sends only one member to Rajya Sabha.
- ❑ The number of members to be elected from each State has been fixed by the fourth schedule of the Constitution.

Representation of Union Territories

- ❑ Representative of each Union territory in the Rajya Sabha are indirectly elected by the members of the electoral college specially constituted for this purpose. This election is also held in accordance with the system of proportional representation by means of single transferable vote.
- ❑ Out of the eight union territories, only three (Delhi, Puducherry and Jammu & Kashmir) have representation in Rajya Sabha. The population of other five Union territories are too small to have any representation in the Rajya Sabha.

Representation of Nominated Members

- ❑ President nominates 12 members to the Rajya Sabha from people who have special knowledge in the field of Arts, Literature, Science and Social Service.

Lok Sabha

Strength of the House

- ❑ The maximum strength of the House envisaged by the Constitution is now 552 of which, 530 members to

represent States, 20 to represent Union Territories, and not more than two members of the Anglo-Indian community to be nominated by the President, if, in his opinion, that community is not adequately represented in the House.

- ❑ The total elective membership of the Lok Sabha is distributed among States in such a way that the ratio between the number of seats allotted to each State and population of the State is, as far as practicable, the same for all States.
- ❑ The Lok Sabha at present consists of 545 members. Of these, 530 members are directly elected from the States and 13 from Union Territories, while two are nominated by the President to represent the Anglo-Indian community.
- ❑ After coming into effect of the Constitution (One Hundred and Fourth Amendment) Act, 2019, the provision of special representation of the Anglo-Indian community in the House of the People by nomination has not been extended further.
- ❑ Following the Constitution 84th Amendment Act, the total number of existing seats as allocated to various States in the Lok Sabha on the basis of the 1971 census, shall remain unaltered till the first census to be taken after the year 2026.

Election of members and tenure

- ❑ The Lok Sabha is composed of representatives of people chosen by the people from the territorial constituencies through direct election on the basis of adult suffrage. The members of Lok Sabha and the State Legislative Assemblies are directly elected by the people for the period of five years.
- ❑ However, before the completion of tenure, if the Lok Sabha is dissolved (no party forms government with majority), a fresh election will be conducted again.

Dissolution of House

- ❑ The term of the Lok Sabha, unless dissolved earlier, is five years from the date appointed for its first meeting. 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 extending in any case, beyond a period of six months after the proclamation has ceased to operate. Seventeen Lok Sabha's have been constituted so far.

System of elections to Lok Sabha

Territorial constituency

- ❑ The Constitution ensures uniformity of

representation in:

- (a) between the different states, and
- (b) between the different constituencies in the same state.

"Population" is ascertained at the preceding census of which the relevant figures have been published.

- ❑ The ratio between no. of seats in Lok Sabha and the population of each state, is the same for all states (it does not apply to a state having a population of less than 6mn).
- ❑ Each state is divided into territorial constituencies in a manner that the ratio between the population of each constituency and the no. of seats allotted to it is the same throughout the state.

Readjustment after each Census

- ❑ After every census, a readjustment is to be made in (a) division of each state into territorial constituencies, and (b) allocation of seats in the Lok Sabha to the states.
- ❑ The Delimitation Commission Acts were enacted by the Parliament, in 1952, 1962, 1972 and 2002 for this purpose.
- ❑ The 42nd Amendment Act of 1976 froze the allocation of seats in the Lok Sabha to the states and the division of each state into territorial constituencies till the year 2000 at the 1971 level.
- ❑ The voting age was reduced from 21 to 18 years by the 61st Constitutional Amendment Act, 1988.

Delimitation

- ❑ Under Article 82 of the Constitution, the Parliament by law enacts a Delimitation Act after every census.
- ❑ The ban on readjustment was extended for another 25 years (i.e., up to year 2026) by the 84th Amendment Act of 2001, with the same objective of encouraging population limiting measures. It also empowered the govt to undertake readjustment and rationalisation of territorial constituencies in the states on the basis of the population figures of 1991 census.
- ❑ Later, the 87th Amendment Act of 2003 provided for the delimitation of constituencies on the basis of 2001 census and not 1991 census. However, this can be done without altering the number of seats allotted to each state in the Lok Sabha.
- ❑ Delimitation of boundaries has been done 4 times till now i.e. in 1952, 1963, 1973 and 2002
Reservation of Seats for SCs and STs
- ❑ The reservation for SCs & STs in the Lok Sabha, is on the basis of population ratios.

- ❑ Originally, this reservation was to operate for 10 years (ie, up to 1960), but it has been extended continuously since then by 10 years each time.
- ❑ Under the 95th Amendment Act of 2009, this reservation is to last until 2020.
- ❑ SCs & STs, are elected by all the voters in a constituency, without any separate electorate. A member of SC & ST is not debarred from contesting a general seat.
- ❑ The 84th Amendment Act of 2001 provided for refixing of the reserved seats on the basis of the population figures of 1991 census.
- ❑ Later, the 87th Amendment Act of 2003 provided for the refixing of the reserved seats on the basis of 2001 census and not 1991 census.

Qualification for Membership of Parliament

Article 84, prescribes qualification to be chosen as a member of Parliament,

- ❑ a person must be a citizen of India
- ❑ not less than 30 years of age in the case of Rajya Sabha
- ❑ not less than 25 years of age in the case of Lok Sabha.
- ❑ he/she need to comply with other such qualifications as prescribed in any law by the Indian Parliament.

The Parliament has laid down the following additional qualifications in the Representation of People Act (1951).

1. He must be registered as an elector for a parliamentary constituency. This is same in the case of both, the Rajya Sabha and the Lok Sabha. In 2003, the requirement that a candidate running for the Rajya Sabha from a specific state must also be an elector in that state was dropped. In 2006, the Supreme Court upheld the constitutional validity of this change.
2. If he wishes to contest for a seat designated for someone from a Scheduled Caste or Scheduled Tribe in any State or Union Territory, he must belong to one of those groups. A member of a Scheduled Caste or Scheduled Tribe, however, may also contest for a seat that is not assigned to them.

Disqualification

Article 102, lays the grounds on which a legislator can be disqualified as a member of the Parliament.

Those grounds are:

- ❑ If he/she holds any office of profit under the Government of India or any of the states;
- ❑ If he/she is declared of unsound mind by a Court;

- ❑ If he/she is an undischarged insolvent;
- ❑ If he/she is not a citizen of India anymore;
- ❑ If he/she is disqualified by virtue of any law passed by the Parliament of India.

Disqualifications under the Representation of Peoples Act

- ❑ A member of Parliament can also be disqualified under the Representation of Peoples Act, 1956. This act was passed by the Parliament under Article 327 of the Indian Constitution, which provides for the procedure and the conduct to be followed during the election to Parliament and state legislatures.

Following are the grounds:

- ❑ If he/she is convicted for indulging in corrupt practices during the election or any other election-related offenses.
- ❑ If he/she is convicted under certain acts of Indian Penal Code, Unlawful Activities Prevention Act, Prevention of Terrorism Act 2002, etc.
- ❑ If he/she is convicted under any law that results for at least two years of imprisonment and will remain disqualified for a further 6 years after his release.
- ❑ He must not be a director or managing agent nor hold an office of profit in a corporation in which the government has at least 25 per cent share.
- ❑ If he/she is convicted under any law relating to drugs or dowry prevention.
- ❑ Dismissal from the government due to disloyalty or involvement in corrupt practices.
- ❑ If he/she fails to lodge their election expenses.

On the question whether a member is subject to any of the above disqualifications, the President'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 from being a member of Parliament if he is so disqualified on the ground of defection under the provisions of the Tenth Schedule. A member incurs disqualification under the defection law:

- if he voluntary gives up the membership of the political party on whose ticket he is elected to the House;
- if he votes or abstains from voting in the House contrary to any direction given by his political party;
- if any independently elected member joins any political party; and

- if any nominated member joins any political party after the expiry of six months.

The question of disqualification under the Tenth Schedule is decided by the Chairman in the case of Rajya Sabha and Speaker in the case of Lok Sabha (and not by the president of India). In 1992, the Supreme Court ruled that the decision of the Chairman/ Speaker in this regard is subject to judicial review.

Vacating of the Seats

Article 101 deals with a member of Parliament vacating his seat, in the following cases:

1. Double Membership

- A person cannot be a member of both Houses of Parliament at the same time. Thus, the Representation of People Act (1951) provides for the following:
 - a. If a person is elected to both the Houses of Parliament, he must intimate within 10 days in which House he desires to serve. In default of such intimation, his seat in the Rajya Sabha becomes vacant.
 - b. If a sitting member of one House is also elected to the other House, his seat in the first House becomes vacant.
 - c. If a person is elected to two seats in a House, he should exercise his option for one. Otherwise, both seats become vacant.
- Similarly, a person cannot be a member of both the Parliament and the state legislature at the same time. If a person is so elected, his seat in Parliament becomes vacant if he does not resign his seat in the state legislature within 14 days.

2. Disqualification

- If a member of Parliament becomes subject to any of the disqualifications specified in the Constitution, his seat becomes vacant.
- Here, the list of disqualifications also includes the disqualification on the grounds of defection under the provisions of the Tenth Schedule of the Constitution.

3. Resignation

- A member may resign his seat by writing to the Chairman of Rajya Sabha or Speaker of Lok Sabha, as the case may be.
- The seat falls vacant when the resignation is accepted. However, the Chairman/ Speaker may not accept the resignation if he is satisfied that it is not voluntary or genuine.

4. Absence

- A House can declare the seat of a member vacant if he is absent from all its meetings for a period of sixty days without its permission.
- In calculating the period of sixty days, no account shall be taken of any period during which the House is prorogued or adjourned for more than four consecutive days.

5. Other cases

- A member has to vacate his seat in the Parliament:
 - if his election is declared void by the court;
 - if he is expelled by the House;
 - if he is elected to the office of President or Vice-President; and
 - if he is appointed to the office of governor of a state.
- If a disqualified person is elected to the Parliament, the Constitution lays down no procedure to declare the election void.
- This matter is dealt by the Representation of the People Act (1951), which enables the high court to declare an election void if a disqualified candidate is elected. The aggrieved party can appeal to the Supreme Court against the order of the high court in this regard.

Presiding officers of the Parliament

Each House of Parliament has its own presiding officer. There is a Speaker and a Deputy Speaker for the Lok Sabha and a Chairman and a Deputy Chairman for the Rajya Sabha.

Speaker

Historical Background

- ❑ The institutions of Speaker originated in India in 1921 under the provisions of the Government of India Act of 1919 (Montague-Chelmsford Reforms) and at that time, the Speaker was called the President.
- ❑ The Government of India Act of 1935 changed the nomenclatures of the President of the Central Legislative Assembly to the Speaker. However, the old nomenclature continued till 1947 as the federal part of the 1935 Act was not implemented.
- ❑ G.V. Mavalankar had the distinction of being the first Speaker.

Election and Tenure

- ❑ Article 93 of the Indian Constitution provides for the election of both the Speaker and the Deputy Speaker.

- ❑ The Speaker is elected by the Lok Sabha from amongst its members and whenever the office falls vacant, the Lok Sabha elects another member to fill the vacancy.
- ❑ The date of election of the Speaker is fixed by the President.
- ❑ Usually, the Speaker remains in office during the life of the Lok Sabha. However, he has to vacate his office earlier in any of the following three cases:
 - If he ceases to be a member of the Lok Sabha.
 - If he resigns by writing to the Deputy Speaker.
 - If he is removed by a resolution passed by a majority of all the members of the Lok Sabha.
- ❑ Such a resolution can be moved only after giving 14 days' advance notice and when such a resolution for the removal of the Speaker is under consideration of the House, he cannot preside at the sitting of the House, though he may be present.
- ❑ However, he can speak and take part in the proceedings of the House at such a time and vote in the first instance, though not in the case of an equality of votes.
- ❑ Whenever the Lok Sabha is dissolved, the Speaker does not vacate his office and continues till the newly-elected Lok Sabha meets.
- ❑ He/she adjourns the House or suspends the meeting in absence of a quorum. The quorum to constitute a meeting of the House is one-tenth of the total strength of the House.
- ❑ He/she does not vote in the first instance but can exercise a casting vote in the case of a tie.
- ❑ He/she presides over a joint sitting of the two Houses of Parliament and can allow a secret sitting of the House at the request of the Leader of the House.
- ❑ He/she decides whether a bill is a money bill or not and his decision on this question is final. When a money bill is transmitted to the Rajya Sabha for recommendation and presented to the President for assent, the Speaker endorses on the bill his certificate that it is a money bill.
- ❑ He/she decides the questions of disqualification of a member of the Lok Sabha, arising on the ground of defection under the provisions of the Tenth Schedule.
- ❑ He/she acts as the ex-officio chairman of the Indian Parliamentary Group which is a link between the Parliament of India and the various Parliaments of the world.
- ❑ He/she appoints the chairman of all the Parliamentary committees of the Lok Sabha and supervises their functioning and also is the chairman of the Business Advisory Committee, the Rules Committee, and the General-Purpose Committee.

Role of Speaker

- ❑ The Speaker is the head of the Lok Sabha, and its representative and is the guardian of powers and privileges of the members, the House as a whole, and its committees.
- ❑ He/she is the principal spokesman of the House, and his/her decision in all Parliamentary matters is final.
- ❑ The Speaker of the Lok Sabha derives the powers and duties from three sources, that is, the Constitution of India, the Rules of Procedure and Conduct of Business of Lok Sabha, and Parliamentary Conventions (residuary powers that are unwritten or unspecified in the Rules).

Power and Duties

- ❑ He/she maintains order and decorum in the House for conducting its business and regulating its proceedings, which is the primary responsibility and has final power in this regard.
- ❑ He/she is the final interpreter of the provisions of the Constitution of India, the Rules of Procedure and Conduct of Business of Lok Sabha, and the Parliamentary precedents, within the House.
- ❑ Casting Vote makes the position of Speaker impartial.
- ❑ He/she is given a very high position in the order of precedence (placed at seventh rank, along with the Chief Justice of India).

Recent Controversies

- ❑ Recently, the Supreme Court has ruled that the wisdom of the legislature in entrusting Speakers (of the state assembly or Parliament) with the responsibility of ruling on the disqualification of lawmakers who defect (shift parties) needs to be revisited. A panel has been constituted by the Lok Sabha Speaker on the issue.

Pro tem Speaker

- ❑ The Speaker of the legislative assembly vacates the office immediately before the first meeting of the newly elected house. Hence, President appoints the pro-tem Speaker to preside over the sittings of the house.
- ❑ Usually, the senior most member is elected as the pro-tem Speaker
- ❑ The President will administer the oath of the office for the pro-tem Speaker
- ❑ The main duty of the pro-tem Speaker is to administer the oath to the newly elected members. Pro-tem also enables the house to elect the new Speaker.
- ❑ When the house elects the new Speaker the office of the pro-tem Speaker ceases to exist.
- ❑ Hence the office of the pro-tem Speaker is a temporary one which will be in existence for few days.

Deputy Speaker

- ❑ Article 93 of the Constitution provides for the election of both the Speaker and the Deputy Speaker.
- ❑ The constitutional office of the Deputy Speaker of the Lok Sabha is more symbolic of Parliamentary democracy than some real authority.
- ❑ There is no need to resign from their original party though as a Deputy Speaker, they have to remain impartial.
- ❑ Both the Speaker and the deputy Speaker don't take any oath for office.
- ❑ Ananthasayanam Ayyangar was the first Deputy Speaker of the Lok Sabha.

Roles and functions:

- ❑ They act as the presiding officer in case of leave of absence caused by death or illness of the Speaker of the Lok Sabha.
- ❑ When he is the presiding officer of the house in absence of Speaker, he has same powers as the Speaker. He isn't subordinate to the Speaker but directly responsible to the house.

- ❑ However, if he is a member of a Parliamentary committee then he automatically becomes the chairman of the committee.

Election:

- ❑ Usually, the Deputy Speaker is elected in the first meeting of the Lok Sabha after the General elections from amongst the members of the Lok Sabha.
- ❑ It is by convention that position of Deputy Speaker is offered to opposition party in India.

Tenure and removal:

- ❑ They hold office until either they cease to be a member of the Lok Sabha or they resign.
- ❑ They can be removed from office by a resolution passed in the Lok Sabha by an effective majority of its members.
- ❑ He resigns by writing to the Speaker.

Panel of Chairpersons of Lok Sabha

- ❑ There is a constitution-mandated panel of 10 members to preside over the proceedings of the Lok Sabha in the absence of Speaker.
- ❑ 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 and has the same powers as the Speaker when so presiding. He/she 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 the House acts as the Speaker.
- ❑ But a member of the panel of chairpersons cannot preside over the House, when the office of the Speaker or the Deputy Speaker is vacant.
- ❑ During such time, the Speaker's duties are to be performed by such members of the House as the President may appoint for the purpose.

Chairman of Rajya Sabha

Article 89 of the Constitution of India provides provision for the Chairman and the Deputy Chairman of the Rajya Sabha. It states that the Vice- President of India shall be ex officio Chairman of the Council of States.

Power & function

- ❑ The Chairman of the Rajya Sabha is empowered to adjourn the House or to suspend its sitting in the event of the absence of quorum.

- ❑ The Tenth Schedule of the Constitution empowers the Chairman to determine the question as to disqualification of a member of the Rajya Sabha on the ground of defection;
- ❑ He does not take part in the deliberations of the House except in the discharge of his duties as the Presiding Officer.
- ❑ The Chairman may likewise, in the event that he thinks fit, call a sitting of the House before the date or hour to which it has been suspended, or whenever after the House has been adjourned sine die, however not prorogued by the President.
- ❑ The Chairman's consent is needed to raise a question of breach of privilege in the House.
- ❑ Parliamentary Committees, regardless of whether set up by the Chairman or by the House, work under the direction of the Chairman.
- ❑ He nominates members to different Standing Committees and the Department-related Parliamentary Committees. He is the Chairman of the Business Advisory Committee, the Rules Committee and the General Purposes Committee.
- ❑ It is the duty of the Chairman to interpret the Constitution and rules so far as matters in or relating to the House are concerned, and no one can enter into any argument or controversy with the Chairman over such interpretation.
- ❑ The maintenance of order in the House is the primary responsibility of the Chairman and, in accordance with the rules, he has been given all the necessary disciplinary powers for this purpose.
- ❑ When a Bill is passed by the Houses and is in control of the Rajya Sabha, the Chairman confirms the Bill with his signature prior to introducing it to the President for consent.
- ❑ Under the Press Council Act, 1978, the Chairman is one of the individuals from the Committee which chooses the Chairman of the Press Council.
- ❑ The Chairman may also, if there is a general consensus in the House, make an inquiry into a matter which was raised on the floor of the House or appoint a Committee of the House in respect thereof.

Deputy Chairman

- ❑ It is a constitutional position created under Article 89 of the Constitution, which specifies that Rajya Sabha shall choose one of its Members of Parliament to be the Deputy Chairman as often as the position becomes vacant.

Who can be a deputy chairman?

- ❑ The Deputy Chairman is elected by the Rajya Sabha itself from amongst its members.
- ❑ Whenever the office of the Deputy Chairman falls vacant, the Rajya Sabha elects another member to fill the vacancy.
- ❑ The Deputy Chairman vacates his office in any of the following three cases:
 - if he ceases to be a member of the Rajya Sabha;
 - if he resigns by writing to the Chairman;
 - if he is removed by a resolution passed by a majority of all the members of the Rajya Sabha. Such a resolution can be moved only after giving 14 days' advance notice.

Functions:

- ❑ The Deputy Chairman performs the duties of the Chairman's office when it is vacant or when the Vice-President acts as President or discharges the functions of the President.
 - ❑ He also acts as the Chairman when the latter is absent from the sitting of the House. In both the cases, he has all the powers of the Chairman.
 - ❑ The Deputy Chairman also plays a critical role in ensuring the smooth running of the House.
- Powers:**
- ❑ The Deputy Chairman is not subordinate to the Chairman. He is directly responsible to the Rajya Sabha.
 - ❑ The Deputy Chairman is entitled to a regular salary and allowance which are fixed by Parliament and are charged on the Consolidated Fund of India.

Election Procedure:

- ❑ For electing the Deputy Chairman any Rajya Sabha MP can submit a motion proposing the name of a colleague for this constitutional position. The motion has to be seconded by another MP.
- ❑ Additionally, the member moving the motion has to submit a declaration signed by the MP whose name s/he is proposing stating that the MP is willing to serve as the Deputy Chairperson if elected. Each MP is allowed to move or second only one motion.
- ❑ Then the majority of the House decides who gets elected as the Deputy Chairperson.
- ❑ However, if the political parties arrive at a consensus candidate, then that MP will be unanimously elected as the Deputy Chair.

Panel of Vice-Chairmen:

- ❑ The Chairman shall, from time to time, nominate

from amongst the members of the Council a panel of not more than six Vice-Chairmen, any one of whom may preside over the Council in the absence of the Chairman and the Deputy Chairman when so requested by the Chairman, or in his absence, by the Deputy Chairman.

- ❑ A Vice-Chairman nominated under sub-rule (1) shall hold office until a new panel of Vice-Chairmen is nominated.

Leaders in Parliament

Leader of the House

The term "Leader of the House" is defined in the Lok Sabha and Rajya Sabha Rules of Procedure. The Leader of the House is usually a Minister nominated by the Government to oversee the administration of government business in the Legislative Assembly. The Leader of the House in the Rajya Sabha is the majority party's leader and parliamentary chairperson and is usually a cabinet minister or another nominated minister.

- ❑ The Leader of the House is in charge of scheduling government meetings and conducting business in the House.
- ❑ The Rajya Sabha Rules do not allow for this office, which is not enshrined in the constitution.
- ❑ Leader of the House in Lok Sabha is the Prime Minister by default if she/he is a member of the Lok Sabha.
- ❑ The Leader of the House also acts as the majority party's parliamentary chairperson.
- ❑ If the Prime Minister is not a member of Parliament's Lower House, she or he might appoint another minister to serve as Leader of the House.

Leaders of Opposition

- ❑ The Leaders of Opposition is leader of the largest party that has not less than one-tenth of the total strength of the house.
- ❑ It is a statutory post defined in the Salaries and Allowances of Leaders of Opposition in Parliament Act, 1977.

Significance of the office:

- ❑ Leaders of Opposition is referred to as the 'shadow Prime Minister'.
- ❑ She/he is expected to be ready to take over if the government falls.
- ❑ The Leaders of Opposition also plays an important role in bringing cohesiveness and effectiveness to the opposition's functioning in policy and legislative work.
- ❑ Leaders of Opposition plays a crucial role in bringing

bi-partisanship and neutrality to the appointments in institutions of accountability and transparency – CVC, CBI, CIC, Lokpal etc.

Reforms that are needed

- ❑ There arises a problem when no party in opposition secures 55 or more seats. In such situations, the numerically largest party in the opposition should have the right to have a leader recognised as leader of the opposition by the speaker.
- ❑ Besides, the 10% formulation is inconsistent with the law 'Salaries and Allowances of Leaders of Opposition in Parliament Act, 1977' which only says that the largest opposition party should get the post.

Whip

- ❑ The concept of the whip was inherited from colonial British rule. It is used in parliamentary parlance often for floor management by political parties in the legislature.
- ❑ A whip is a written order that political party issue to its members for being present for an important vote, or that they vote only in a particular way.
- ❑ They are crucial in maintaining the links between the internal organisation of the party inside the Parliament. A whip is also an important office-bearer of the party in the Parliament.
- ❑ In India, all parties can issue a whip to their members. Parties appoint a senior member from among their House contingents to issue whips. This member is called a Chief Whip, and he/she is assisted by additional Whips.

Constitutional status: The office of 'whip', 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.

Non-applicability of Whip: There are some cases such as Presidential elections where whips cannot direct a Member of Parliament (MP) or Member of Legislative Assembly (MLA) on whom to vote.

Types of Whips

- ❑ The One-line whip to inform the members about a vote. It allows a member to abstain in case they decide not to follow the party line.
- ❑ The Two-line whip is issued to direct the members to be present in the House at the time of voting. No special instructions are given on the pattern of voting.
- ❑ The Three-line whip is issued to members directing

them to vote as per the party line. It is the strictest of all the whip.

Functions of Whip

- ❑ The whip plays a crucial role in ensuring the smooth and efficient conduct of business on the floor of the House.
- ❑ He is charged with the responsibility of ensuring the attendance of his party members in large numbers and securing their support in favour of or against a particular issue.
- ❑ He ensures discipline among party members in the House.
- ❑ He identifies the signs of discontent among MPs and informs the respective leaders of their party.
- ❑ He or she acts as a binding force in the party and responsible for maintaining the internal party organisation in the Parliament.

Violation of whip: If an MP violates his party's whip, he faces expulsion from the House under the Anti Defection Act. The only exception is when more than a third of legislators vote against a directive, effectively splitting the party.

Sessions of the Parliament

- ❑ A Session is the period of time between the meeting of a Parliament and its prorogation. During the course of a Session, either House may adjourn to such date as it pleases.
- ❑ In general, the sessions are as follows:
 - Budget session (February to May)
 - Monsoon session (July to September)
 - Winter session (November to December)
- ❑ **Budget Session**
 - The budget session was usually held from February to May every year.
 - It is considered to be a highly crucial session of the Parliament.
 - The Budget is usually presented on the last working day of the month of February.
 - Here, the members discuss the various provisions of the budget and matters concerning taxation, after the finance minister presents the budget.
 - The budget session is generally split into two periods with a gap of one month between them.
 - This session every year starts with the President's Address to both Houses.

Monsoon Session

- The monsoon session is held in July to September every year.
- This is after a break of two months after the budget session.
- In this session, matters of public interest are discussed.

Winter Session

- The winter session of Parliament is held in mid-November to mid-December every year.
- It is the shortest session of all.
- It takes up the matters that could not be considered upon earlier and makes up for the absence of legislative business during the second session of the Parliament.

How is a Parliament Session convened?

- ❑ The Constitution provides that the President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit. There should not be a gap of more than six months between two Sessions of the Parliament.
- ❑ The fixation of dates of summoning and prorogation of the two Houses of Parliament is one of the functions assigned to the ministry of parliamentary affairs under the Government of India (Allocation of Business) Rules made by the President.
- ❑ After assessing the time likely to be required for transaction of government business and for discussion on topics of public interest as may be demanded from time to time by members of Parliament, the ministry of parliamentary affairs places a note before the Cabinet Committee on Parliamentary Affairs for making a recommendation as to the date of the commencement of a Session of Parliament and its likely duration.
- ❑ The recommendation, if approved by the Prime Minister, is submitted by the ministry to the President for approval of the commencement of a Session.
- ❑ The President summons the House exercising the powers conferred upon him by clause (1) of Article 85 of the Constitution. It states that: "The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session."
- ❑ Following this, the Secretary-General issues a summons to each member of the House.

Terminologies Used in Parliamentary Sessions

Summoning of Parliament:

- ❑ Summoning is the process of calling all members of the Parliament to meet. The President summons each House of the Parliament from time to time. The gap between two sessions of the Parliament cannot exceed 6 months, which means the Parliament meets at least two times in one year.

Adjournment:

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

Prorogation:

- ❑ Prorogation is the end of session and not the dissolution of the house (in case of Lok Sabha, as Rajya Sabha does not dissolve). It is done by the President of India.

Recess:

- ❑ The period between the prorogation of Parliament and its reassembly in a new Session is termed as a recess.
Quorum:
- ❑ Quorum refers to the minimum number of the members required to be present for conducting a meeting of the house.
- ❑ The Constitution has fixed one-tenth strength as quorum for both Lok Sabha and Rajya Sabha.
- ❑ Thus, to conduct a sitting of Lok Sabha, there should be at least 55 members present while to conduct a sitting of Rajya Sabha, there should be at least 25 members present.

Dissolution

- ❑ A dissolution ends the very life of the existing House, and a new House is constituted after general elections are held.
- ❑ Rajya Sabha, being a permanent House, is not subject to dissolution. Only the Lok Sabha is subject to dissolution.
- ❑ The dissolution of the Lok Sabha may take place in either of two ways:

- ***Automatic dissolution:*** On the expiry of its tenure of five years or the terms as extended during a national emergency.
- ***Order of President:*** If President is authorized by Council of Ministers, he can dissolve Lok Sabha, even before the end of the term. He may also dissolve Lok Sabha if Council of Ministers loses confidence and no party is able to form the government. Once the Lok Sabha is dissolved before the completion of its normal tenure, the dissolution is irrevocable.

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

The position with respect to lapsing of the Bill are as follows:

When does a Bill lapse?

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

When does a Bill not lapse?

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

- ❑ A Bill that is pending in the Rajya Sabha but is not passed by the Lok Sabha.
 - ❑ Bills that have cleared both the Houses but are pending assent from the President.
 - ❑ If the president has notified the holding of a joint sitting before the dissolution of Lok Sabha.
 - ❑ A bill passed by both Houses but returned by the president for reconsideration of Rajya Sabha.
 - ❑ Pending bills and all pending assurances that are to be examined by the Committee on Government Assurances.
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Joint Session of Parliament (Article 108):

- ❑ The Constitution of India provides for the joint sitting of the Parliament's two Houses, the Lok Sabha and the Rajya Sabha, in order to break any deadlock between the two.
- ❑ The joint sitting is called by the President. Such a session is presided over by the Speaker, and in his/her absence, by the Deputy Speaker of the Lok Sabha.
- ❑ In the absence of both, it is presided over by the Deputy Chairman of the Rajya Sabha.
- ❑ If any of the above are not present, any other member of the Parliament can preside by consensus of both the Houses.

Voting in the House

All decisions in Parliament are taken by voting by MPs, whether it relates to extending working hours or passing a Bill.

- ❑ Voice voting is the preferred method of decision making by Indian Parliament. MPs in favour of a decision call out "Ayes" and those opposed say "Noes".
- ❑ The Speaker then takes a call on which voices were louder and conveys the decision of the House.
- ❑ The rules of procedure of Lok Sabha do not mandate recording of votes of MPs for every decision taken. Voice voting does not reveal the individual positions taken by MPs.

Language in Parliament (Article 120)

- ❑ Constitution of India has declared that business in Parliament shall be transacted in Hindi or in English.
- ❑ Presiding officers may permit any member who cannot adequately express himself in Hindi or in English to address the House in his mother-tongue.

Rights of Ministers and Attorney General

Article 88 states that: Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.

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

- ❑ the proceedings of either House
- ❑ any joint sitting of the Houses
- ❑ any committee of Parliament to which he may be named a member
- ❑ But by virtue of this article, he/she shall not be entitled to vote in the discussions.

- ❑ For Instance, Ministers who are elected to the Lok Sabha participate in the discussion in Rajya Sabha and certain Parliamentary committees. However, they are not entitled to vote where they are not authorized to.

Lame-Duck Session

In Parliament a lame duck session is conducted after election of new members but before they are installed. This refers to a session in which the members participate for last time because of failure to re-election. Members of existing Lok Sabha who could not get re-elected to the new Lok Sabha are called Lame Ducks. The word is widely used in USA.

Devices of Parliamentary Proceedings

Parliament is divided into two major bodies, they are Rajya Sabha and Lok Sabha. Apart from these two houses we also have President as the head assisted by the Prime Minister and his council of ministers. The functioning of the Rajya Sabha is divided into majorly pre-lunch and post-lunch sessions which again have two parts each. The pre-lunch session includes the Zero Hour and the question hour while the post-lunch session includes the Debates and the Legislative business meetings which includes all kinds of discussions relating to the national and the state needs.

The Zero Hour

- ❑ Zero hour is the hour in which the most important and urgent matters are raised and addressed. The MPs have to give notice before 10 am to the chairman on the day of the sitting about such a question that needs to be raised. The notice that is given by the MP should also state the subject and the urgency to be raised in the zero hours. After this, the Chairman decides whether to allow the matter to be raised or not.
 - ❑ Zero Hour is an Indian parliamentary innovation. The phrase does not find mention in the rules of procedure. The concept of Zero Hour started organically in the first decade of Indian Parliament, when MPs felt the need for raising important constituency and national issues.
 - ❑ Although Zero Hour is not specified in any Rule Book, presiding officers of both houses have worked to control it and make it more effective throughout the years.
 - ❑ The Presiding officers in the Parliament regulate the zero by setting rules to streamline the process.
 - ❑ In the Lok Sabha, Question Hour comes first, followed by Zero Hour, however in the Rajya Sabha, it is the other way around.
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- ❑ The Difference between Zero Hour and Question Hour is the Ministers are not bound to reply in the Zero Hour.

The Question Hour

- ❑ The question hour is the transparency technique of the parliamentarians. This question hour is from 12 pm to 1 and it is used to hold the government accountable for their actions. Everything relating to the policies, and the other details have to be put up in this hour so that there remains the essence of democracy while the policies are framed and also remains the accountability and the transparency and accountability among the members of the parliament.
- ❑ During question hour, Members of Parliament ask questions from ministers and hold them accountable for the functioning of their ministries.
- ❑ The questions that MPs ask are designed to elicit information and trigger suitable action by ministries.
- ❑ The first hour of every parliamentary sitting is termed as Question hour.
- ❑ It is mentioned in the Rules of Procedure of the House.
- ❑ During this time, the members ask questions and the ministers usually give answers.
- ❑ The questions can also be asked to the private members (MPs who are not ministers).
- ❑ Question Hour in both Houses is held on all days of the session. But there are two days when an exception is made:
 - There is no Question Hour on the day the President addresses MPs from both Houses in the Central Hall.
 - Question Hour is not scheduled on the day the finance minister presents the Budget.

Members have a right to ask questions to elicit information on matters of public importance within the special cognizance of the Ministers concerned. The questions are of four types: —

(i) Starred Questions- A Starred Question is one to which a member desires an oral answer from the Minister in the House and is required to be distinguished by him/her with an asterisk. Answer to such a question may be followed by supplementary questions by members. The list of these questions is printed in green colour.

(ii) Unstarred Questions- An Unstarred Question is one to which written answer is desired by the member and is deemed to be laid on the Table of the House by Minister. Thus, it is not called for oral answer in

the House and no supplementary question can be asked thereon. The list of these questions is printed in white colour.

(iii) Short Notice Questions- A member may give a notice of question on a matter of public importance and of urgent character for oral answer at a notice less than 10 days prescribed as the minimum period of notice for asking a question in ordinary course. Such a question is known as 'Short Notice Question'. The list of these questions is printed in light pink colour.

(iv) Questions to Private Members- A Question may also be addressed to a Private Member (Under Rule 40 of the Rules of Procedure and Conduct of Business in Lok Sabha), provided that the subject matter of the question relates to some Bill, Resolution or other matter connected with the business of the House for which that Member is responsible. The procedure in regard to such questions is same as that followed in the case of questions addressed to a Minister with such variations as the Speaker may consider necessary.

Debates

- ❑ This part of the procedure and the functioning of the parliament is the essence of the parliament functioning. The intellectual phase of the parliamentarians begins here at this stage. The parliamentarian's debate regarding the policies to be made for the future prospects and the ongoing policies.

Types of Debates-

- ❑ In the post-lunch session, there are types of debates that take place such as the short-term discussions, half an hour discussions and the special mention discussions and the motions afterwards are the key to the Indian Parliament.

Legislation and the Law-Making Process

- ❑ Legislation is an important part of the Parliamentarians and Legislations are the reason for the law being in force. This is also an important part of the parliamentary function.
- ❑ The Law-Making Process- all the bills and the ordinances will be formed and discussed in the house of the parliament and once the bills are approved by both the houses, the act is formed and then the law comes into being.

Motions in Parliament

- ❑ The term 'motion' in its wide sense means any proposal made for the purpose of eliciting a decision of the House. In order to ascertain the will of the House in regard to a matter before it, every question

to be decided by the House must be proposed by a member in the form of a motion.

- ❑ Motions are, in fact, the basis of all Parliamentary proceedings. Any matter of importance/public interest can be the subject-matter of a motion.

All motions moved in the House are classified into three broad categories:

(1) Substantive Motion — It is a self-contained independent proposal submitted for the approval of the House and drafted in such a way as to be capable of expressing a decision of the House. For example, all Resolutions are substantive motions. The conduct of persons in high authority can only be discussed on a substantive motion drawn in proper terms. Motions for the election of the Deputy Chairman in Rajya Sabha, Motion of Thanks on the President's Address are examples of substantive motions.

(2) Substitute Motion — Motions moved in substitution of the original motion for taking into consideration a policy or situation or statement or any other matter. Amendments to substitute motions are not permissible.

(3) Subsidiary Motion — It is a motion which depends upon or relates to another motion or follows upon some proceedings in the House. By itself it has no meaning and is not capable of stating the decision of the House without reference to the original motion or proceedings of the House. Subsidiary Motions are further divided into three:

(a) Ancillary Motion: A motion which is recognised by the practice of the House as the regular way of proceeding with various kinds of business. The following are examples of ancillary motions:

- That the Bill be taken into consideration.
- That the Bill be passed.

(b) Superseding Motion: A motion which, though independent in form, is moved in the course of debate on another question and seeks to supersede that question. In that class fall all the dilatory motions. The following motions are superseding motions in relation to the motion for taking into consideration a Bill:

- That the Bill be recommitted to a Select Committee.
- That the Bill be recommitted to a Joint Committee of the Houses.
- That the Bill be re-circulated for eliciting further opinion thereon.
- That the consideration of the Bill or the debate on the Bill be adjourned sine die or

to some future date.

(c) Amendment: A subsidiary motion which interposes a new process of question and decision between the main question and its decision. Amendments may be to the clause of a Bill, to a Resolution or to a Motion. The objective of an amendment is either to modify a question before the House with a view to increasing its acceptability, or to present to the House a different proposition as an alternative to the original question.

General Rules for Parliamentary Motions

As per Rules of Procedure and Conduct of Business of the Houses: -

- ❑ No discussion on a matter of general public importance can take place except on a motion made with the consent of the Speaker/Chairman as the case may be.
- ❑ Notice of motion must be given in writing addressed to the Secretary-General.
- ❑ There are certain parameters for the admissibility of the motion.
- ❑ The Chairman/Speaker decides the admissibility of the motions as per the parameters.
- ❑ Motions on matters pending before tribunals or commissions are not admitted.
- ❑ The Chairman/Speaker allots time for discussion on the matter raised in the motion.
- ❑ On the allotted day the Chairman/Speaker may put every question necessary to determine the decision of the House on the original question.
- ❑ The Speaker/Chairman may prescribe a time limit for speeches on the motion.

Types of motions in Indian Parliament

There are various types of motions which are as under: -

- ❑ Censure Motion
- ❑ No Confidence Motion
- ❑ Confidence Motion
- ❑ Call-Attention Motion
- ❑ Adjournment Motion
- ❑ Cut Motions
- ❑ Privilege Motion
- ❑ Motion of Thanks
- ❑ Dilatory Motion
- ❑ No-Day-Yet-Named Motion

Censure motion

- ❑ Censure motion is moved by the opposition against a

specific policy of the government or against a minister or against the whole council of ministers. It can be moved only in the lower house of the parliament. The motion should be specific and self-explanatory so as to record the reasons of the censure precisely and briefly.

- ❑ No leave of the House is required to move a censure motion. If it is passed, the Council of Minister is bound to seek the confidence of the Lok Sabha as early as possible.

No Confidence motions

- ❑ This motion is introduced in the Lok Sabha by the opposition. It is a motion expressing want of confidence in the Council of Ministers. No-confidence motions are subject to following restrictions, namely:—
 - leave to make the motion shall be asked for by the member when called by the Speaker;
 - the member asking for leave shall, that day give to the Secretary-General a written notice of the motion which such member proposes to move.
- ❑ If the Speaker is of opinion that the motion is in order, he shall read the motion to the House and request those members who are in favour of leave being granted to rise in their places. At least fifty members are required to rise if the leave is to be granted. The motion has to be taken up within 10 days from the date on which leave is asked for. After the discussion, the Speaker puts every question necessary to determine the decision of the House on the motion. A Government can be dismissed by passing a direct vote on a no-confidence motion.

Confidence motion

- ❑ It is also called “trust vote”. Confidence motions have evolved as a counter by the government when it wants to demonstrate its majority. There is no special provision in the rules for a confidence motion — such a motion is moved as an ordinary motion. In recent times, when no party has had a clear majority, the President has appointed a prime minister who he believed had the majority support. This person is expected to prove his majority through a confidence motion.
- ❑ If both, the motion for no-confidence and a motion for confidence are tabled, the speaker is to give precedence to government business and take the motion of confidence.
- ❑ If the prime minister loses a motion of confidence, he is obliged to resign, and the President should try to

identify another person who enjoys the confidence of the Lok Sabha.

Call attention motion

- ❑ A member may, with the previous permission of the Speaker, call the attention of a Minister to any matter of urgent public importance by moving a motion. The Minister may make a brief statement or ask for time to make a statement at a later hour or date. The number of call-attention motion is restricted to two motions by one member in a single sitting.

Adjournment motion

- ❑ A motion for an adjournment of the business of the House for the purpose of discussing a definite matter of urgent public importance may be made with the consent of the Speaker.
- ❑ The Adjournment motion if admitted leads to setting aside the normal business of the House for discussing the matter mentioned in the motion. The motion shall be restricted to a specific matter of recent occurrence involving the responsibility of the Government of India.

Cut motions

- ❑ A cut motion is a special power vested in members of the Lok Sabha to oppose a demand being discussed for specific allocation by the government in the Finance Bill as part of the Demand for Grants.
- ❑ If the motion is adopted, it amounts to a no-confidence vote, and if the government fails to jot up numbers in the lower House, it is obliged to resign according to the norms of the House.
- ❑ A motion may be moved to reduce the amount of a demand in any of the following ways:
 - **Policy Cut Motion:** It is moved so that the amount of the demand be reduced to Re.1 representing disapproval of the policy underlying the demand. The discussion shall be confined to the specific point or points mentioned in the notice and it shall be open to members to advocate an alternative policy.
 - **Economy Cut Motions:** It is moved so that the amount of the demand will be reduced by a specified amount representing the economy that can be affected. Such specified amount may be either a lump sum reduction in the demand or omission or reduction of an item in the demand.
 - **Token Cut Motions:** It is moved so that the amount of the demand is reduced by Rs.100 expresses a specific grievance which is within the sphere of the responsibility of the Government of India.

The discussion on this motion is confined to the particular grievance specified in the motion.

- ❑ It can be moved only in Lok Sabha.

Privilege motion

- ❑ The Constitution grants certain powers, privileges and immunities to the Parliament, its members and committees. Such powers and privileges are regulated as per laws made by the House.
- ❑ A privilege motion is introduced by the opposition against a minister in case the minister has misled the House by providing false information. Its purpose is to censure the concerned minister.
- ❑ A privilege motion can be moved against a non-member as well as a member.

Motion of Thanks

- ❑ A formal motion moved in the House expressing its gratitude for the Address delivered by the President under Article 87(1) of the Constitution to both Houses of Parliament assembled together.
- ❑ It provides an opportunity for the discussion of the matters referred to in the Address. Members can move amendments to the Motion of Thanks.
- ❑ The discussion on the Motion of Thanks is concluded by the reply of the Prime Minister or any other Minister.

Dilatory Motion

- ❑ A motion for the adjournment of the debate or a motion to retard or delay the progress of the business under consideration of the House. The debate on a dilatory motion must be restricted to the matter of such motion.
- ❑ If the Chairman is of opinion that such a motion is an abuse of the Rules of the House, he may either forthwith put the question thereon from the Chair or decline to propose the question.

No Day Yet Named motion

- ❑ If the Speaker admits notice of a motion and no date is fixed for the discussion of such motion, it is called No-Day-Yet-Named motion.
- ❑ The Speaker may, after considering the state of business in the House and in consultation with the Leader of the House or on the recommendation of the Business Advisory Committee allot a day or days or part of a day for the discussion of any such motion.

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. It is usually raised by an opposition member in order to control the government. It is an extraordinary device as it suspends the proceedings before the House. No debate is allowed on a point of order.

Note: Motions such as No Confidence Motion, Adjournment Motion and Censure Motion are admissible only in Lok Sabha.

Legislative Process in Parliament

The basic function of Parliament is to make laws. All legislative proposals have to be brought in the form of Bills before Parliament. A Bill is a statute in draft and cannot become law unless it has received the approval of both the Houses of Parliament and the assent of the President of India.

The process of law making begins with the introduction of a Bill in either House of Parliament. A Bill can be introduced either by a Minister or a member other than a Minister. In the former case, it is called a Government Bill and in the latter case, it is known as a Private Member's Bill.

A Bill undergoes three readings in each House, i.e., the Lok Sabha and the Rajya Sabha, before it is submitted to the President for assent.

Parliament makes laws in skeletal form and the executive has to make detailed rules and regulations within framework of the law. This is called delegated legislation; executive legislation or subordinate legislation

Types of Bills

There are four different kinds of Bills that are passed in the Parliament of India. They can be classified as:

- ❑ Ordinary Bills
- ❑ Money Bills
- ❑ Finance Bill
- ❑ Constitutional Amendment Bills

Ordinary Bills

These are the bills that are concerned with any matters related to the law, which does not include matters related to finance. There are five stages through which an ordinary bill becomes a law.

First reading: Member asks for the leave of the house to introduce the bill. If the leave is granted, he introduces title and objectives, the bill is published in the

gazette of India. If bill is published before its introduction leave of the house isn't needed. No debates or voting takes place.

Second reading: The Second Reading involves detailed scrutiny of bill which consists of following steps:

(A) Stage of General Discussion: Here printed copies of the bill are given to all house members. The house can take the bill for immediate consideration or at a fixed date. It can be referred to a select committee or a joint committee of both houses. It can be circulated for public opinion.

(B) Committee Stage: A committee scrutinizes the bill and amends it if needed. A detailed clause by clause review is done. Committee submits report to the house.

(C) Consideration Stage: The house examines the bill in detail. Each clause is examined and voted upon. Amendment if succeeded is added to the bill.

Third reading: The entire bill is discussed and voted; no amendments are allowed at this stage. If the bill is passed by a simple majority, then it's authenticated by the presiding officer and goes to the second house.

Bill in the Second House: In the second house also, the bill passes through all the three stages. Second house has following alternatives:

- ❑ Pass as sent by first House (the bill can be either passed without amendment);
- ❑ pass with amendments to the first house for reconsideration;
- ❑ rejects the bill altogether;
- ❑ no action is taken.

If the first house rejects the amendments or second house rejects bills or no action is taken for six months then a deadlock is deemed to have taken place and a joint sitting is called by the president. A bill needs to be passed by a simple majority.

Assent of the President: After being passed by both the house the bill is sent to the President for his assent. Here the president has following alternatives:

- ❑ Give his assent
- ❑ Withhold his assent
- ❑ Send bill for reconsideration.

If the President gives assent, then bill becomes an Act. If president withhold his assent, the bill ends. If the president returns the bill for reconsideration, if both houses pass it again with or without amendments then this time the president must have to give his assent.

Joint Sitting

Joint sitting is an extraordinary machinery provided by the Constitution aimed to maintain a much-needed synergy between the two houses of the Parliament. President of India may after consultation with the chair of the Rajya Sabha and the Speaker of Lok Sabha may make rules for procedure of joint session of parliament.

Occasions when Joint Session of Parliament is summoned:

As per Article 108 of Constitution, a Joint session of Parliament can be summoned in the following situation:

- ❑ To resolve deadlock when any house of the Parliament passes a bill and when the other House rejects this bill, or
- ❑ The houses do not agree on the amendments made to the bill, or
- ❑ More than six months elapsed with the bill being received by the other House without it being passed. However, in calculating the period of six months, those days are not considered when house is prorogued or adjourned for more than 4 consecutive days.

Reason for holding joint session:

The makers of the Constitution of India anticipated situations of deadlock between the Rajya Sabha and the Lok Sabha. Therefore, the Constitution of India provides for Joint sitting of both Houses to resolve this deadlock. Further, joint session reflects the importance of Rajya Sabha as a check on hasty legislations by the government. Since 1950, the provision regarding the joint sitting of the two Houses has been invoked only thrice. The bills that have been passed at joint sittings are:

- ❑ Dowry Prohibition Bill, 1960.
- ❑ Banking Service Commission (Repeal) Bill, 1977.
- ❑ Prevention of Terrorism Bill, 2002.

Joint sitting is notified by the president after which no house can proceed on the bill. Speaker or in his absence deputy speaker or in his absence deputy chairman of RS presides over the joint sitting. If he is also absent the any member in the joint sitting can preside as chosen by the members present. Joint sitting can't be done for money bills or constitution amendments.

In a joint sitting no new amendments can be made except

- i. if these amendments have caused disagreement between the two houses OR
- ii. have been made necessary due to the delay in passing the bill.

A bill needs to be passed by a simple majority.

Exceptions to Joint Session: According to the Indian

Constitution, there are two exceptions when a joint sitting cannot be summoned. They are for the following bills:

- ❑ **Money Bill:** Under the Constitution of India, money bills require approval of the Lok Sabha only. Rajya Sabha can give suggestions to Lok Sabha, which it is not required to accept. Even if Rajya Sabha doesn't pass a money bill within 14 days, it is deemed to have been passed by both the Houses of Parliament after expiry of the above period. Therefore, there is no need of summoning a joint session in the case of money bills.
- ❑ **Constitution Amendment Bill:** As per Article 368, the Indian Constitution can be amended by both houses of parliament by 2/3rd majority. In case of disagreement between both houses, there is no provision to summon joint session of parliament.

Financial Bills

They are of three types:

- ❑ Money bills (Article 110)
- ❑ financial bills – I (Article 117(1))
- ❑ Financial bills – II (Article 117(2))

Money Bills

These are the bills that deal with the matter related to the money under Art 110 of the Constitution of India. This Article states that any provision that deals with

- ❑ Provisions of taxation;
- ❑ Borrowing by the union government;
- ❑ appropriation of funds from the consolidated fund of India;
- ❑ Payment into or withdrawal from consolidated fund or contingency fund of India;
- ❑ Declaration of amount charged on consolidated fund or increasing this amount;
- ❑ Audit of accounts of union or states;
- ❑ receipts of money on account of consolidated fund or public account of India or custody or issue of such money; is deemed to be a money bill.

Money bills can be introduced only in Lok Sabha and only after the president's recommendation. It is a government bill and can be introduced only by a minister.

When it is passed by the Lok Sabha and transmitted to the Rajya Sabha. The Rajya Sabha has to pass the Money Bill to the Lok Sabha in a period of 14 days from its receipt date. It may return it with or without recommendations. The Lok Sabha can accept or reject the recommendations. If the Rajya Sabha fails to return the Bill after the completion of 14 days, the Bill will be deemed to have been passed by both the Houses of

the Parliament at the expiry of the 14 days in the same form it was passed by the Lok Sabha. And then it goes to the president for his assent. The Speaker of the House, certifies a bill as a Money Bill, and the decision of the speaker becomes the final verdict and cannot be changed or challenged in the court.

Finance Bill I

Finance Bill- I under Article 117 (1) can contain matters of money bills [all or some] but have to also contain provisions of general legislation.

A financial bill (I) is similar to a money bill as

- ❑ both of them can be introduced only in the Lok Sabha and not in the Rajya Sabha and
- ❑ both of them can be introduced only on the recommendation of the president.

In all other respects, a financial bill (I) is governed by the same legislative procedure applicable to an ordinary bill. Hence, it can be either rejected or amended by the Rajya Sabha except that an amendment other than for reduction or abolition of a tax cannot be moved in either House without the recommendation of the president.

In case of a disagreement between the two Houses over such a bill, the president can summon a joint sitting of the two Houses to resolve the deadlock.

Finance Bill II

Finance Bill II under Article 117(2) contains provisions involving expenditure from the Consolidated Fund of India, but does not include any of the matters mentioned in Article 110.

It is treated as an ordinary bill and in all respects; it is governed by the same legislative procedure which is applicable to an ordinary bill. Hence, financial bill II can be introduced in either House of Parliament and recommendation of the President is not necessary for its introduction.

The only special feature of this bill is that it cannot be passed by either House of Parliament unless the President has recommended to that House the consideration of the bill.

Constitutional Amendment Bills

The power vested by the Constitution to the Parliament to amend the Bills gives the right to make amendments in the Constitution. These can be introduced in both the houses of the Parliament. The power vests in the parliament for its introduction, but not in the legislatures of the States. These Bills can be introduced by a Minister or a Private Member and do not require the recommendation of the President. There are three kinds of constitutional amendment bills:

- ❑ Bills that the Parliament needs to pass by a simple majority.
- ❑ Bills that the Parliament needs to pass by a special majority.
- ❑ Bills that the Parliament needs to pass by a special majority but also needs to be ratified by the State Legislatures by not less than one half of them.

Annual Financial Statement or Budget

The term 'Budget' is not mentioned in Indian Constitution; the corresponding term used is 'Annual Financial Statement'. According to Article 112 of the Indian Constitution, the Union Budget of a year is referred to as the Annual Financial Statement (AFS).

It is a statement of the estimated receipts and expenditure of the Government in a financial year (which begins on 01 April of the current year and ends on 31 March of the following year).

The Railway budget was separated from the general budget in 1924 on the recommendations of Acworth Committee Report (1921), but in 2017 the central government merged the railway budget into the general budget. Hence there is now only one budget for the Government of India.

What are the constitutional requirements which make Budget necessary?

Article 265: provides that 'no tax shall be levied or collected except by authority of law'. [ie. Taxation needs the approval of Parliament.]

Article 266: provides that 'no expenditure can be incurred except with the authorisation of the Legislature' [ie. Expenditure needs the approval of Parliament.]

Article 112: President shall, in respect of every financial year, cause to be laid before parliament, an Annual Financial Statement.

The Budget Contains:

- ❑ Estimates of revenue and capital receipts,
- ❑ Ways and means to raise the revenue,
- ❑ Estimates of expenditure,
- ❑ Details of the actual receipts and expenditure of the closing financial year and the reasons for any deficit or surplus in that year, and
- ❑ The economic and financial policy of the coming year, i.e., taxation proposals, prospects of revenue, spending program, and introduction of new schemes/projects.

In Parliament, the Budget is enacted through six stages:

The Budget Division of the Department of Economic

Affairs in the Finance Ministry is the nodal body responsible for preparing the Budget.

- ❑ Presentation of Budget
- ❑ General discussion
- ❑ Scrutiny by Departmental Committees
- ❑ Voting on Demands for Grants
- ❑ Passing of Appropriation Bill and Finance Bill.

A. *Presentation of budget:* Conventionally the budget is presented by the finance minister in the Lok Sabha on last working day of February. Since 2017 the presentation of budget has advanced to 1st of February. The budget can be presented in parts, and each part shall be dealt with as if it were a budget. Finance minister gives a budget speech and at the end of it; the budget is laid before both houses. Rajya Sabha can only discuss it and has no power to vote on the demands for grants. Economic survey is presented one day or few days before the presentation of the budget.

B. *General discussions:* Only the general principles of budget or the budget as a whole can be discussed. No motions of reduction of grants or votes can be made. Finance minister has the right of reply at end of discussion. This happens in both houses.

C. *Scrutiny by dept committees:* An in-depth scrutiny of demand for grants by department is made by each departmental standing committee of parliament. Three to four weeks are given for this and the house remains in recess. The standing committees make a report to the house at the end.

D. *Voting on the demand for grants:* The Member of Parliament of Lok Sabha study and vote on each demand for grant. The Lok Sabha only can vote on demand for grants and no voting is allowed on the expenditure charged on the consolidated fund of India. Member of Parliament can move motion for reduction of a grant called CUT Motions

Cut Motion

- ❑ ***Policy cut:*** Reduces allocation of grant to Re. 1 to indicate disapproval to a policy.
- ❑ ***Token cut:*** Reduce amount by Rs.100 to ventilate specific grievance
- ❑ ***Economy cut:*** Reduction by specific amount to suggest economic use of funds.

26 days are allotted for discussions and voting of the demand for grants at the last day all remaining demands are put to vote and disposed. This is

referred to as “Guillotine”.

E. Appropriation bill and Finance bills: The appropriation bill contains voted demand for grants and also expense charged on the consolidated fund of India. No amendments can be made on these in any house. After the bill receives assent of the president it becomes appropriation act. This allows expense from the consolidated fund.

Finance bill is also presented containing provisions for taxation. It is like a money bill however amendment can be moved seeking to reduce or remove a tax. This allows taxes to be levied. The Finance Act legalises the income side of the budget and completes the process of the enactment of the budget.

Other Grants:

1. **Supplementary grant:** It is granted if the amount authorized by the parliament through the appropriation act to be expended for a particular service for the current financial year is found to be insufficient for the purpose of that year.
2. **Additional Grant:** It is granted when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the Budget for that year. In additional grant, extra amount is needed that wasn't dealt with earlier.
3. **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 year. The demands for excess grants are made after the expenditure has actually been incurred and after the financial year to which it relates, has expired. All cases involving such excesses are brought to the notice of parliament by the Comptroller and Auditor General through his report on the appropriation accounts. The excesses are then examined by the Public Accounts Committee which makes recommendations regarding their regularisation in its report to the House.
4. **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 stand with the details ordinarily given in an annual financial statement.
5. **Exceptional Grants:** It is granted for an exceptional purpose which forms no part of the current service of any financial year.
6. **Token Grant:** It is granted when funds to meet proposed expenditure on a new service can be made available by re-appropriation, a demand for the

grant of a token sum may be submitted to the vote of the House and, if the House assents to the demand, funds may be so made available.

Supplementary, additional, excess and exceptional grants and vote of credit follows the same procedure as the enactment of the budget.

Demand for grants can be made only on recommendation of the president.

Funds

The constitution provides for three types of funds for the central government. These are:

1. **Consolidated Fund of India (Article 266):** It is a fund of the government of India, in which all receipts are credited and all payments are debited. It includes
 - (i) All revenues received by the Government of India
 - (ii) All loans raised by the government by the issue of treasury bills, loans or ways and means advances
 - (iii) Money received by the Government in repayment of loans

No money out of the Consolidated Fund of India shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution. That means, the payment can be made out of the Consolidated Fund of India only with approval of the parliament.

2. **Public Account of India (Article 266):** All other public money received by or on behalf of the Government of India shall be entitled to the public account of India. The payment out of this account can be made without parliament appropriation as it is operated by executive action. Public account includes provident fund deposits, saving bank deposits, judicial deposits etc.
3. **Contingency Fund of India (Article 267):** The constitution provides the parliament to establish a Contingency Fund of India. The parliament established Contingency Fund of India in 1950. This fund is placed at the disposal of the president to enable advances to be made by him out of such fund for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by the parliament. This fund is operated by executive action.

Changes Introduced Recently

- ❑ Advancement of Budget presentation to February 1 (earlier presented on the last working day of February)

- ❑ Merger of Railway Budget with the General Budget
- ❑ Doing away with plan and non-plan expenditure.
 - **Plan Expenditure:** All expenditures done in the name of planning (i.e., Five Year Plans) were called plan expenditures. For example, expenditure on electricity generation, irrigation, and rural developments, construction of roads, bridges, canals, etc.
 - **Non-plan Expenditure:** All expenditures other than plan expenditure were known as non-plan expenditure. For example, interest payments, pensions, statutory transfers to States and Union Territories governments, etc.

Expenses

- ❑ Expenditure on revenue account should be separated from other expenditure. Also, expenditure charged on the consolidated fund should be separated from the expense made from the fund.
- ❑ Parliament can reduce or abolish a tax but can't increase it.
- ❑ Demand for grants can be made only on recommendation of the president.
- ❑ Expenditures are of two types
 - charged upon the Consolidated Fund of India (non-votable, only discussed)
 - made from the Consolidated Fund of India (votable)

Charged expense is non votable but can only be discussed by parliament.

Expense charged upon the Consolidated Fund of India:

It includes salaries, pensions or expenses of President, UPSC, CAG, Supreme Court judge, Pensions of High Court judges, Presiding or deputy presiding officer of Lok Sabha and Rajya Sabha, debt of the Govt of India, amounts to satisfy any judgments, expense declared by parliament to be charged on the fund.

Multifunctional Role of Parliament

In the 'Indian politico-administrative system', the Parliament occupies a central position and has a multifunctional role. It enjoys extensive powers and performs a variety of functions towards the fulfilment of its constitutionally expected role. Its powers and functions can be classified under the following heads:

- ❑ Legislative Powers and Functions
- ❑ Financial Powers and Functions
- ❑ Executive Powers and Functions
- ❑ Judicial Powers and Functions

- ❑ Amending Powers
- ❑ Electoral Powers and Functions
- ❑ Other powers and functions.

Legislative Powers and Functions

- ❑ The Parliament legislates on all matters mentioned in the Union List and the Concurrent List.
- ❑ In the case of the Concurrent List, where the state legislatures and the Parliament have joint jurisdiction, the union law will prevail over the states unless the state law had received the earlier presidential assent. However, the Parliament can any time, enact a law adding to, amending, varying or repealing a law made by a state legislature.
- ❑ The Parliament can also pass laws on items in the State List under the following circumstances:
- ❑ If Emergency is in operation, or any state is placed under President's Rule (Article 356), the Parliament can enact laws on items in the State List as well.
- ❑ As per Article 249, the Parliament can make laws on items in the State List if the Rajya Sabha passes a resolution by $\frac{2}{3}$ majority of its members present and voting, that it is necessary for the Parliament to make laws on any item enumerated in the State List, in the national interest.
- ❑ As per Article 253, it can pass laws on the State List items if it is required for the implementation of international agreements or treaties with foreign powers.
- ❑ According to Article 252, if the legislatures of two or more states pass a resolution to the effect that it is desirable to have a parliamentary law on any item listed in the State List, the Parliament can make laws for those states.

Financial Powers and Functions

- ❑ No tax can be levied or collected and no expenditure can be incurred by the Executive except under the authority and with the approval of Parliament. Hence, the budget is placed before the Parliament for its approval. The enactment of the budget by the Parliament legalises the receipts and expenditure of the government for the ensuing financial year.
 - ❑ The Parliament also scrutinises government spending and financial performance with the help of its financial committees.
 - ❑ These include public accounts committee, estimates committee and committee on public undertakings. They bring out the cases of illegal, irregular, unauthorised, improper usage and wastage and extravagance in public expenditure.
-

- ❑ Therefore, the parliamentary control over the Executive in financial matters operates in two stages:
- ❑ Budgetary control, that is, control before the appropriation of grants through the enactment of the budget; and
- ❑ Post-budgetary control, that is, control after the appropriation of grants through the three financial committees.
- ❑ The budget is based on the principle of annuity, that is, the Parliament grants money to the government for one financial year.
- ❑ If the granted money is not spent by the end of the financial year, then the balance expires and returns to the Consolidated Fund of India. This practice is known as the 'rule of lapse'. It facilitates effective financial control by the Parliament as no reserve funds can be built without its authorisation. However, the observance of this rule leads to heavy rush of expenditure towards the close of the financial year. This is popularly called as 'March Rush'.

Executive Functions (Control over the Executive)

In the parliamentary form of government, the executive is responsible to the legislature. Hence, the Parliament exercises control over the executive by several measures.

- ❑ By a vote of no-confidence, the Parliament can remove the Cabinet (executive) out of power. It can reject a budget proposal or any other bill brought by the Cabinet. A motion of no-confidence is passed to remove a government from office.
- ❑ The MPs (Members of Parliament) can ask questions to the ministers on their omissions and commissions. Any lapses on the part of the government can be exposed in the Parliament.
- ❑ The Parliament appoints a Committee on Ministerial Assurances that sees whether the promises made by the ministers to the Parliament are fulfilled or not.
- ❑ Other devices that are used to have a control over the executive are as follows:
 - ❑ Adjournment motions
 - ❑ Censure Motions
 - ❑ Cut motions

Judicial Powers and Functions

The judicial powers and functions of the Parliament include the following:

- ❑ It can impeach the President for the violation of the Constitution.
- ❑ It can remove the Vice-President from his office.
- ❑ It can recommend the removal of judges (including chief justice) of the Supreme Court and the high

courts, chief election commissioner, comptroller and auditor general to the president.

- ❑ It can punish its members or outsiders for the breach of its privileges or its contempt.
- ❑ The Parliament has the power to amend the Constitution of India. Both Houses of the Parliament have equal powers as far as amending the Constitution is concerned. Amendments will have to be passed in both the Lok Sabha and the Rajya Sabha for **them to be effective**.

Electoral Functions

- ❑ The Parliament takes part in the election of the President and the Vice President.
- ❑ The electoral college that elects the President comprises of, among others, the elected members of both Houses.
- ❑ The President can be removed by a resolution passed by the Rajya Sabha agreed to by the Lok Sabha.

Other Powers

- ❑ Issues of national and international importance are discussed in the Parliament. The opposition plays an important role in this regard and ensures that the country is aware of alternate viewpoints.
- ❑ A Parliament is sometimes talked of as a 'nation in miniature'.
- ❑ In a democracy, the Parliament plays the vital function of deliberating matters of importance before laws or resolutions are passed.
- ❑ The Parliament has the power to alter, decrease or increase the boundaries of states/UTs.
- ❑ The Parliament also functions as an organ of information. The ministers are bound to provide information in the Houses when demanded by the members.

Ineffectiveness of Parliamentary Control

The parliamentary control over government and administration in India is more theoretical than practical. In reality, the control is not as effective as it ought to be. The following factors are responsible for this:

- ❑ The Parliament has neither time nor expertise to control the administration which has grown in volume as well as complexity.
- ❑ Parliament's financial control is hindered by the technical nature of the demands for grants. The parliamentarians being laymen cannot understand them properly and fully.
- ❑ The legislative leadership lies with the Executive and it plays a significant role in formulating policies.

- ❑ The very size of the Parliament is too large and unmanageable to be effective.
- ❑ The majority support enjoyed by the Executive in the Parliament reduces the possibility of effective criticism.
- ❑ The financial committees like Public Accounts Committee examines the public expenditure after it has been incurred by the Executive. Thus, they do post mortem work.
- ❑ The increased recourse to 'guillotine' reduced the scope of financial control.
- ❑ The growth of 'delegated legislation' has reduced the role of Parliament in making detailed laws and has increased the powers of bureaucracy.
- ❑ The frequent promulgation of ordinances by the president dilutes the Parliament's power of legislation.
- ❑ The Parliament's control is sporadic, general and mostly political in nature.
- ❑ Lack of strong and steady opposition in the Parliament, and a setback in the parliamentary behaviour and ethics, have also contributed to the ineffectiveness of legislative control over administration in India.

Position of Rajya Sabha

The Constitutional position of the Rajya Sabha (as compared with the Lok Sabha) can be studied from three:

- ❑ Where Rajya Sabha is equal to Lok Sabha.
- ❑ Special Powers of the Lok Sabha-
- ❑ Special Powers of the Rajya Sabha-

Equal Status with Lok Sabha

In the following matters, the powers and status of the Rajya Sabha are equal to that of the Lok Sabha:

- ❑ Introduction and passage of financial bills involving expenditure from the Consolidated Fund of India.
- ❑ Introduction and passage of ordinary bills.
- ❑ Introduction and passage of Constitutional amendment bills.
- ❑ Election and removal of the Vice-President. However, Rajya Sabha alone can initiate the removal of the vice-president. He is removed by a resolution passed by the Rajya Sabha by an effective majority (which is a type of special majority) and agreed to by the Lok Sabha by a simple majority.
- ❑ Election and impeachment of the president.
- ❑ Making recommendation to the President for the removal of Chief Justice and judges of Supreme Court and high courts, chief election commissioner and comptroller and auditor general.
- ❑ Approval of ordinances issued by the President.
- ❑ Selection of ministers including the Prime Minister. Under the Constitution, the ministers including the Prime Minister can be members of either House. However, irrespective of their membership, they are responsible only to the Lok Sabha.
- ❑ Approval of proclamation of all three types of emergencies by the President.
- ❑ Enlargement of the jurisdiction of the Supreme Court and the Union Public Service Commission.
- ❑ Consideration of the reports of the constitutional bodies like Finance Commission, Union Public Service Commission, comptroller and auditor general, etc.

Special Powers of the Lok Sabha-

- ❑ The Rajya Sabha cannot remove the council of ministers by passing a no-confidence motion. This is because the Council of ministers is collectively responsible only to the Lok Sabha. But, the Rajya Sabha can discuss and criticise the policies and activities of the government
- ❑ The responsibility with the collective note is a thing to be considered and the Lok Sabha enjoys special powers with respect to the "Collective Responsibility" of the government in the financial matters.
- ❑ A Money Bill can be introduced only in the Lok Sabha and not in the Rajya Sabha.
- ❑ Rajya Sabha cannot amend or reject a Money Bill. It should return the bill to the Lok Sabha within 14 days, either with recommendations or without recommendations.
- ❑ A financial bill, not containing solely the matters of Article 110, also can be introduced only in the Lok Sabha and not in the Rajya Sabha. But, with regard to its passage, both the Houses have equal powers.
- ❑ The Lok Sabha can either accept or reject all or any of the recommendations of the Rajya Sabha. In both the cases, the money bill is deemed to have been passed by the two Houses.
- ❑ The Speaker of Lok Sabha presides over the joint sitting of both the Houses.
- ❑ The final power to decide whether a particular bill is a Money Bill or not is vested in the Speaker of the Lok Sabha.
- ❑ The Lok Sabha with greater number wins the battle in a joint sitting except when the combined strength of the ruling party in both the Houses is less than that of the opposition parties.
- ❑ A resolution for the discontinuance of the national

emergency can be passed only by the Lok Sabha and not by the Rajya Sabha.

- ❑ Rajya Sabha can only discuss the budget but cannot vote on the demands for grants (which is the exclusive privilege of the Lok Sabha).
- ❑ All the financial bills and the money bills are passed by the Lok Sabha and not the Rajya Sabha.
- ❑ The Indian Constitution provides that the Council of Ministers shall be collectively responsible to the Lok Sabha and the power to control the finances also lies with the Lok Sabha.

Special Powers of Rajya Sabha

The Rajya Sabha has been given four exclusive or special powers that are not enjoyed by the Lok Sabha:

- ❑ It can authorise the Parliament to make a law on a subject enumerated in the State List (Article 249).
- ❑ It alone can initiate a move for the removal of the Vice-President. In other words, a resolution for the removal of the vice-president can be introduced only in the Rajya Sabha and not in the Lok Sabha (Article 67).
- ❑ It can authorise the Parliament to create new All-India Services common to both the Centre and states (Article 312).
- ❑ If a proclamation is issued by the President for imposing national emergency or president's rule or financial emergency at a time when the Lok Sabha has been dissolved or the dissolution of the Lok Sabha takes place within the period allowed for its approval, then the proclamation can remain effective even if it is approved by the Rajya Sabha alone (Articles 352, 356 and 360).

An analysis of the above points makes it clear that the position of the Rajya Sabha in our constitutional system is not as weak as that of the House of Lords in the British constitutional system nor as strong as that of the Senate in the American constitutional system. Except in financial matters and control over the council of ministers, the powers and status of the Rajya Sabha in all other spheres are broadly equal and coordinate with that of the Lok Sabha.

Parliamentary Privileges (Article 105)

Parliamentary privilege is the total of specific rights enjoyed by each House collectively and by members of each House individually, which outweigh those owned by other groups or persons and without which they could not execute their tasks.

Some privileges are based purely on Parliamentary law and custom, while others are governed by statute.

Background

- ❑ The origins of Parliamentary powers in India can be traced back to 1833 when the governor-council generals were expanded to include a fourth member following the 1833 Charter Act. A new form of legislative apparatus was created. This created the groundwork for an institution that, through time, evolved into a full-fledged legislative body.
- ❑ After the Indian Councils Act of 1909 permitted for indirect election to the legislature, the official opposition to the assembly's privileges was lessened.
- ❑ Freedom of speech in the legislature was guaranteed under the Government of India Act of 1935.
- ❑ Some of Parliament's privileges, as well as those of its members and committees, are now enshrined in the Constitution, and certain legislation and rules of procedure govern the House; others are still dependent on House of Commons precedents.
- ❑ The primary articles of India's Constitution dealing with Parliamentary privileges are 105 and 122, while the state-specific provisions are 194 and 212.

Sources

The five sources of the privileges are:

- ❑ Constitutional provisions
- ❑ Various laws made by Parliament
- ❑ Rules of both the Houses
- ❑ Parliamentary conventions
- ❑ Judicial interpretations

Parliamentary Privileges

- ❑ Parliamentary privileges (Art 105 & 194) are special rights, immunities, exemptions enjoyed by the members of the two houses of Parliament and their committees.
- ❑ These rights are also given to those individuals who speak and participate in any committee of the Parliament, which includes the Attorney General of India and the Union Ministers.
- ❑ President, who is integral part of the parliament, does not enjoy these.
- ❑ Article 105 (3) was amended by the Constitution 44th Amendment and now has two aspects.
 - Powers, privileges and immunities of each Houses of Parliament, its Members and Committees shall be such as may be defined by Parliament by law in time.

- Till such powers, privileges and immunities are defined by Parliament, shall be the same as that enjoyed by the House of Commons as on 26th January 1950.

Types of Parliamentary Privileges in India

Collective Privileges

The privileges belonging to each House of Parliament collectively are:

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

Individual Privileges

The privileges belonging to the members individually are:

- ❑ During the session of Parliament, from 40 days before the beginning to 40 days after the finish, no member may be arrested. This privilege is only granted in civil matters; it is not granted in criminal or preventive detention situations.
- ❑ In Parliament, members have the right to free expression. No member of Parliament or its committees is accountable in any court for anything said or voted in Parliament or its committees. This independence is limited by the Constitution's provisions as well as the norms and standing orders that govern Parliament's functioning.
- ❑ Members of Parliament are exempt from jury duty when Parliament is in session. They have the right to

decline to give evidence and testify in court.

Freedom of Publication - Article 361-A

- ❑ Article 361-A was added by the Constitution 44th Amendment which says that no person shall be liable to any proceedings, civil or criminal in any Court of law in respect of any publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or Legislative Assembly, unless the publication is proved to have been made with malice. A similar immunity is extended to broadcast on air. Newspapers were not immune to publications of parliamentary proceedings prior to 44th Amendment Act.
- ❑ In the famous Searchlight case, the Supreme Court ruled that publication of inaccurate or mashed versions of speeches delivered in the House or misreporting the proceedings amounts to breach of privilege.
- ❑ The Court held that publication of those parts of proceedings by a newspaper which were expunged by the House amounts to breach of privilege of the House and the offending party can take action in spite of protection from Article 361A.
- ❑ The Supreme Court also held that the House can impose a prohibition on publication of any debates, proceedings even if such prohibitions amounted to violation of freedom of speech and expression under Article 19 (1)(a).

Parliamentary Privileges - Provisions related Internal Autonomy

- ❑ Article 122 (1) grants immunity on the same lines to internal functioning of the House. The validity of any proceedings in Parliament cannot be called into question on the ground of alleged irregularity or procedure.
- ❑ Article 122 (2) further says that officers of Parliament who regulate its procedure and maintain order are not subject to the jurisdiction of any court while exercising those powers. Thus, the House of Parliament is free from judicial control in its functioning.
- ❑ Speaker cannot be sued for damages for any action taken against a member including that of arrest. A High Court or Supreme Court cannot issue a writ under Article 226 or Article 32 to restrain the functioning of the House or legislation even though the subject of legislation is ultra vires. Only when a

Bill becomes a law after the President's assent, the Courts can decide upon its constitutionality.

- ❑ Thus, the House enjoys immunity from judicial process and such courtesy is also extended to the Committee of the House as a committee is one of its parts through which a House functions. However, illegality or unconstitutionality of a procedure can be inquired into by a Court of Law.

What is a breach of privilege?

A breach of privilege is a violation of any of the privileges of MPs/Parliament. Among other things, any action 'casting reflections' on MPs, parliament or its committees could be considered a breach of privilege. This may include publishing of news items, editorials or statements made in newspaper/magazine/TV interviews or in public speeches

Advantages of Parliamentary Privileges

- ❑ It lowers tensions, fosters goodwill, and encourages collaboration between the two branches of government: The parliamentary system of governance is beneficial because it fosters cooperation between the executive and legislative branches of government.
- ❑ Faster and more efficient decision-making: The legislative and executive branches of government, as well as the parliamentary system, are linked together to allow for faster and more efficient decision-making.
- ❑ The fusion of the legislature and the executive to run a cabinet system of government in a parliamentary system of government means that less personnel and cost are required. Unlike a presidential system, where all the arms of government are separated and occupied by different sets of people.
- ❑ It encourages good governance: The Parliamentary form of government also promotes good governance for the successful management of the country because the individual and collective duty provided to the parliament would inspire all members of the cabinet to work hard. Accountability and transparency are also ensured.

Issues with Parliamentary privileges

- ❑ While a parliamentary system may appear to constantly support good governance, it can also make parliamentarians overly strong and arrogant, which can lead to political power abuse. Members of parliament will become supreme and untouchable as a result of the legislative system.
- ❑ Because he is directly elected as Prime Minister as

the leader of his party in a parliamentary system of government, the prime minister is loyal to his party rather than the people of the country. As a result, he will be more loyal to his party than to his people.

- ❑ Without a doubt, in a parliamentary system of government, the prime minister's tenure is always in doubt because the parliament can fire him at any time with a "vote of no confidence." This could result in a crisis, segregation, or governance instability.
- ❑ Members of the cabinet may be overburdened with double duties as a result of the convergence of legislative and executive powers, and certain ministers may be unable to cope.
- ❑ Finally, while the parliamentary system necessitates persons to perform both legislative and executive tasks, it is crucial to remember that a minister's lack of specialty may result in inefficiencies in one arm of government's control.

Measures need to be taken

Need to Codify Parliamentary Privileges - Thus, there is a stringent need to codify privileges, powers, and immunities of the House. It will provide proper guidelines to be followed and remove uncertainties that currently prevail. In a democracy, free speech and rule of law should be the norm, not the exception.

Special Powers of the Parliament

Parliamentary Group

The Indian Parliamentary Group is an autonomous body formed in the year 1949 in pursuance of a motion adopted by the Constituent Assembly (Legislative) on 16th August, 1948.

Composition of the Indian Parliamentary Group

- ❑ All members of the Parliament are eligible to join the IPG.
- ❑ Former members of Parliament can join the organisation as associate members. Associate members, on the other hand, have limited rights. They do not have the right to be represented at International Parliamentary Union (IPU) and Commonwealth Parliamentary Association (CPA) meetings and conferences. They are also ineligible for travel discounts offered by certain CPA branches to members.

- ❑ The Group's ex-officio president is the Speaker of the Lok Sabha.
- ❑ The ex-officio vice-presidents of the Group are the Deputy Speaker of the Lok Sabha and the Deputy Chairman of the Rajya Sabha. The Group's ex-officio secretary-general is the secretary-general of the Lok Sabha.
- ❑ Under the aegis of the IPG, visiting chiefs of state and governments of foreign nations deliver addresses to members of Parliament, as well as speeches by renowned people.
- ❑ On a national and international level, legislative seminars and symposia are held on a regular basis.
- ❑ Members of the Group are provided letters of introduction to the Secretaries of the IPU National Groups and Secretaries of the CPA branches when they travel overseas. The Indian Mission at the counters is likewise well-informed, allowing them to provide assistance and common courtesy.

Objectives

The aims of the IPG are as follows:

- ❑ To encourage personal contact between members of India's Parliament.
- ❑ To research issues of public interest that are likely to be brought before the legislature; to organise seminars, talks, and orientation courses; and to publish information for the Group's members.
- ❑ Members of the parliament will give lectures on political, defence, economic, social, and educational issues.
- ❑ Arrange for a few members of the committee to go to other countries in order to create links with other parliaments throughout the world.
- ❑ The Indian Parliamentary Delegations may only include members of the Parliament Group who have served for at least six months at the time of the delegation's formation.

Significance

Functions

The functions of the Indian Parliamentary Group are as follows:

- ❑ The group serves as a link between the Indian Parliament and other parliaments throughout the world. This contact is maintained with foreign parliaments through goodwill missions, delegations, and other means.
 - ❑ In today's globalised society, inter-parliamentary connections are extremely important. The world today is troubled by various issues, and the challenges that a parliament faces now may be replaced by other ones tomorrow.
 - ❑ As a result, it is critical that a link exists between various parliaments around the world to allow for open and honest debate.
 - ❑ India maintains this contact by exchanging delegations, goodwill missions, documents, and other items with foreign parliaments through the Indian Parliamentary Group's machinery (IPG).
 - ❑ The IPG serves as the Indian Branch of the Commonwealth Parliamentary Association (CPA), which is part of the Commonwealth of Nations, as well as the National Group of the Inter-Parliamentary Union (IPU).
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