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# UNIT 7 LEGISLATURE\*

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## 7.0 OBJECTIVES

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This unit examines the evolution, structure and functioning of the Indian Parliament. After going through this unit, you will be able to:

- Trace the evolution of modern legislature in India;
- Discuss the organisation and functions of the Parliament; and
- Explain parliamentary procedures

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## 7.1 INTRODUCTION

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The term legislature has been derived from the Latin word *lex*, which means a distinct kind of legal rule mainly of general application. This rule is named legislation, and the institution, which enacts it on behalf of the people is known as legislature. Essentially, there are two models of legislative structure: the Parliamentary and Presidential. In the parliamentary model, the executive is selected by the legislature from among its own members. Therefore, the executive is responsible to the legislature. The Presidential system is based on the theory of separation of powers and does not permit any person to serve simultaneously in both executive and legislature.

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\* Prof. Pralaya Kanungo, Centre for Political Studies, JNU, New Delhi, this Unit is adopted from course BPSE-212, Unit 10

In India, the legislature exists at two levels: at the union level, i.e. the Parliament of India, and the State level, i.e. State legislatures. The unit deals specifically with the Parliament of India. In sub-section 7.7, you will also read about the State legislature. The Parliament of India, which is the creation of the Constitution, is the supreme representative authority of the people. It is the highest legislative organ and the national forum for the articulation of public opinion.

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## 7.2 UNION LEGISLATURE

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Under the provision of Article 79, the Parliament of India consists of the President and the two Houses - the Lower House or Lok Sabha (House of the People) and the Upper House or Rajya Sabha (Council of States). While the Lok Sabha is subject to dissolution, the Rajya Sabha is a permanent chamber which cannot be dissolved. The office of the President also never remains vacant.

### 7.2.1 The President

While the American President is not a part of the Legislature (Congress), the President of India is an integral part of the Indian Parliament. However, he cannot sit and participate in the deliberations in any of the two Houses. The President of India performs certain important role vis-à-vis the Parliament. The President summons and prorogues the House from one session to another and has the power to dissolve the Lok Sabha. A bill can not become law without the President's assent even though the bill may be passed by both the Houses. The President also has the power to promulgate Ordinances when both the Houses are not in session. These Ordinances, though temporary in nature, have the same force and power as a law passed by Parliament. In Unit 8, we will examine the position and powers of the President of India in detail.

### 7.2.2 The Lok Sabha

The Lower House or the House of the People is popularly known as Lok Sabha. People of the country directly elect members of the Lower House. It includes not more than 530 members chosen by direct election from territorial constituencies in the States and not more 20 members to represent the Union Territories. Moreover, the President may nominate two members of the Anglo-Indian community if in his opinion the community is not adequately represented in the Lok Sabha.

The distribution of seats among the States is based on the principle of territorial representation, which means each State is allotted seats on the basis of its population in proportion to the total population of all the States. For the purpose of election, each state is divided into territorial units called constituencies which are more or less of the same size in terms of the population.

The members of the Lok Sabha are elected on the basis of the adult franchise; every adult who has attained 18 years of age is eligible to vote. The candidate who receives the largest number of votes gets elected. The tenure of the Lower House is five years. However, it can be dissolved earlier by the President.

To be a member of the Lok Sabha, a person should be the citizen of India and must have completed 25 years of age. The person must also possess all other qualifications that are prescribed by the law. A candidate is free to contest from

any parliamentary constituency of any States in India. The Constitution has laid down certain disqualifications for membership of parliament. A person can not be a member of both Houses of the Parliament. The candidate may contest from several seats. However, he/ she can have only one seat according to his/her choice despite being elected from more than one seat; If a person is elected from both the State Legislature and the Parliament, and if he does not resign from the State legislature within the defined time period, he/she will forfeit his seat in Parliament; A member should not hold any office of profit under the Central or State government except those that are exempted by a law of Parliament and should not have been declared as an insolvent or of unsound mind by a competent court. A member also gets disqualified on the following conditions such as when he remains absent from the sessions of the House for a period of sixty days without prior permission; or when he voluntarily acquires the citizenship of another country; or is under any acknowledgement of allegiance to a foreign state.

### 7.2.3 The Rajya Sabha

According to Indian constitution, the Rajya Sabha or the Council of States is the house of representatives of the States. The Rajya Sabha or the Council of States consists of not more than 250 members out of which 12 members are nominated by the President from amongst persons having ‘special knowledge or practical experience in literature, science, art, and social service.’ The remaining members are elected by the members of the State Legislative Assemblies on the basis of the population of the state. Unlike Lok Sabha, Rajya Sabha adopts the method of indirect election. There is no uniformity in the members of representatives of the Council of States. It largely depends on the population of the state. It means that the state which have larger population has more representative in the house compared to the states which have small population). The number of representatives of the States to the Rajya Sabha varies from one (Nagaland) to 34 (Uttar Pradesh) depending upon the population of a state. The Council of States thus reflects the federal character by representing the States or the units of the federation.

Rajya Sabha is a continuing chamber as it is a permanent body not subject to dissolution. One-third of its members retire at the end of every two years, and elections are held for the vacant positions. A member of Rajya Sabha has a six-year term unless she/he resigns or is disqualified.

### 7.2.4 Special Powers of Rajya Sabha

It has every right to seek information on all matters which are exclusively in the domain of Lok Sabha. It has no power to pass a vote of no-confidence in the Council of Ministers. It also does not have much influence on the matters of Money Bill. However, the Constitution grants certain special powers to the Rajya Sabha. As the sole representative of the States, the Rajya Sabha enjoys two exclusive powers which are of considerable importance. First, under Article 249, the Rajya Sabha has power to pass a resolution by a majority of not less than two-thirds of members present and voting, declaring that it is ‘necessary or expedient in the national interest’. The matter in such resolution should belong to the State List. The law passed on the matter in the resolution shall be valid for one year. The second, Article 312 also provides special power to the Rajya Sabha to pass a resolution on another matter, i.e. to create one or more All India Services.

Like the resolution to be passed under Article 249, under Article 312 also, the resolution should be passed by two-third of members present and voting in the House. Thus, these special provisions make the Rajya Sabha an important component of Indian Legislature rather than just being an ornamental body. Its compact composition and permanent character provide continuity and stability in the system.

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## 7.3 PRESIDING OFFICERS

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Each house of the Parliament has a presiding officer. The Lok Sabha has a Speaker as its principal presiding officer and a deputy speaker to assist him and manages as presiding officer in the absence of the speaker. The Rajya Sabha is presided by the Chairperson, assisted by a deputy chairperson. The latter performs all the duties and functions of the former in case of his/her absence.

### 7.3.1 The Speaker

The position of the Speaker of the Lok Sabha is more or less similar to the Speaker of the English House of Commons. The office of the Speaker is a symbol of high dignity and authority. Once elected to the office, the speaker does not have affiliation to any party but works in an impartial manner. He/ She acts as the guardian of the rights and privileges of the members.

The Speaker has the power to ensure an orderly and efficient conduct of the proceedings of the House. He/She conducts the proceedings of the house, maintains order and decorum in the house and decides points of order, interprets and applies rules of the house. The Speaker's decision is final in all such matters. The Speaker certifies whether a bill is money bill or not and he/she also authenticates that the house has passed the bill before it is presented to the other House or the President of India for his assent. The Speaker in consultation with the leader of the house determines the order of business. He/she also decides on the acceptability of questions, motions and resolutions. The Speaker does not vote in the first instance but can exercise a casting vote in case of a tie. The Speaker appoints the chairpersons of all the Committees of the House and exercises control over the Secretarial staff of the house. The Speaker's conduct cannot be discussed in the House except in a substantive motion. His/Her salary and allowances are charged to the Consolidated Fund of India.

A special feature of the Speaker's office is that even when the House is dissolved, the Speaker does not vacate his/her office. He/She continues in office until the new House elects a new Speaker. In the absence of the Speaker, the Deputy Speaker presides the House.

### 7.3.2 Chairperson of Rajya Sabha

The Vice-President of India is the ex-officio chairperson of the Rajya Sabha. But during the period when the Vice-President acts a President or discharges the functions of the President, he/she does not perform the duties as a presiding officer of the Rajya Sabha. The Vice-President is elected by the members of both the Houses of Parliament assembled at a joint meeting, in accordance with the system of proportional representation by means of single transferable vote and the voting at such elections is by secret ballot. The Vice-President is not a member

of either House of Parliament or a House of the Legislature of any State. He holds office for a term of five years from the date on which he enters upon his office or until he resigns or is removed from his office by a resolution passed by a majority of members of the Rajya Sabha and agreed by the Lok Sabha. The functions and duties of the Chairperson of the Rajya Sabha are the same as those of the Speaker of the Lok Sabha.

### Check Your Progress Exercise 1

**Note:** 1) Use the space below for your answers.

2) Check your answers with the model answers given at the end of this unit.

1) What are the qualifications and disqualifications for a member of Indian Parliament?

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2) What are the powers of Speaker of the Lok Sabha?

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## 7.4 LEGISLATIVE PROCEDURE

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Law making is the primary function of the legislature. The Constitution of India prescribes the following stages of the legislative procedure:

The first stage of legislation is the introduction of a bill which embodies the proposed law and is accompanied by the “Statement of Objects and Reasons”. The introduction of the bill is also called the first reading of the bill. There are two types of bills: ordinary bills and money bills. A bill other than money or financial bill may be introduced in either House of Parliament and requires passage in both the Houses before it can be presented for the President’s assent. A bill may be introduced either by a minister or a private member. Every bill that is introduced in the House has to be published in the Gazette. Normally, there is no

debate at the time of introduction of a bill. The member who introduces the bill may make a brief statement indicating broad the aims and objects of the bill. If the bill is opposed at this stage, one of the members opposing the bill may be permitted to give his reasons. After this, the question is put to the vote. If the House is in favour of the introduction of the bill, then it goes to the next stage.

In the second stage, there are four alternative courses: first, after its introduction, a bill may be taken into consideration; second, it may be referred to a Select Committee of the House; third, it may be referred to a Joint Committee of both the Houses; and fourth, it may be circulated for the purpose of soliciting public opinion. While the first three options are generally adopted in the case of routine legislation, the last option is resorted to only when the proposed legislation is likely to arouse public controversy and agitation.

The day one of these motions is carried out, the principles of the bill and its general provisions may be discussed. If the bill is taken into consideration, Amendments to the bill and clause by clause consideration of the provisions of the bill is undertaken. If the bill is referred to the Selection Committee of the House, it considers the bill and submits its report to the House. Then the clauses of the bill are open to consideration and amendments are admissible. This is the most time-consuming stage. Once the clause by clause consideration is over and every clause is voted, the second reading of the bill comes to an end.

In the third stage, the member in charge moves that “the bill be passed”. At the third reading, the progress of the bill is quick as normally only verbal or purely formal amendments are moved, and discussion is very brief. Once all the amendments are disposed, the bill is finally passed in the House where it was introduced. Thereafter, it is transmitted to the other House for its consideration

When the bill comes up for consideration of the other House, it has to undergo all the stages which has undergone in the House where it was originally introduced. There are three options before this House: first, it may finally pass the bill as sent by the originating House; second, it may reject the bill altogether or amend it and return to the originating House; and, third, it may not take any action on the bill and if more than six months passes after the date of receipt of the bill, it is considered as rejection.

The originating House now considers the returned bill in the light of the amendments. If it accepts these amendments, it sends a message to the other House to this effect. If it does not accept these amendments, then the bill is returned to the other House with a message to that effect. In case, both the Houses do not come to an agreement; the President convenes a joint-sitting of the two Houses. The disputed provision is finally adopted or rejected by a simple majority of vote of those who are present and voting.

A bill that is finally passed by both the Houses is presented with the signature of the Speaker to the President for his assent. This is normally the last stage. If the President gives the assent, the bill becomes an Act and is placed in the Statute Book. If the President withholds his assent, there is an end to the bill. The President may also return the bill for the reconsideration of the Houses with a message requesting them to reconsider it. If, however, the Houses pass the bill again with or without amendments and the bill is presented to the President for his assent for the second time, the President has no power to withhold his assent.

Thus, law-making is a long, cumbersome and time-consuming process; it becomes difficult to pass a bill within a short time. Proper drafting of the bill saves time, and skilful soliciting of opposition support makes the task easier.

### **7.4.1 Money Bills**

Finance bill may be said to be any bill which relates to revenue and expenditure. But the finance bill is not a money bill. Article 110 states that no bill is a money bill unless it is certified by the Speaker of the Lok Sabha. A money bill cannot be introduced in the Rajya Sabha. Once a money bill is passed by the Lok Sabha, it is transmitted to the Rajya Sabha. The Rajya Sabha cannot reject a money bill. It must, within a period of fourteen days from the date of receipt of the bill, return the bill to the Lok Sabha which may thereupon either accept or reject all or any of the recommendations. If the Lok Sabha accepts any of the recommendations, the money bill is deemed to have been passed by both Houses. Even if the Lok Sabha does not accept any of the recommendations, the money bill is deemed to have been passed by both the Houses without any amendments. If a money bill passed by the Lok Sabha and transmitted to the Rajya Sabha for its recommendations is not returned to it within fourteen days, it is deemed to have been passed by both the Houses at the expiry of the said period in the original form.

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## **7.5 PARLIAMENTARY PRIVILEGES**

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Parliamentary privileges are certain rights which assure free and efficient functioning of the members of Parliament. There are two types of privileges for the members of Parliament: enumerated and unenumerated. The enumerated privileges are: i) Freedom of speech in each House of the Parliament, ii) Immunity from proceedings in any Court in respect of anything said or any vote cast, iii) Immunity of liability in respect of publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings, iv) Freedom from arrest in civil cases for duration of the session for a period of 40 days before and after the session, and v) Exemption from attending as a witness in a Court. The unremunerated privileges empowers the Indian Parliament to punish a person, whether a member or a non-member, in the case of contempt of Parliament.

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## **7.6 PARLIAMENTARY DEVICES TO CONTROL THE EXECUTIVE**

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One of the important functions of the Parliament is to control the executive. A number of mechanisms are available to it for this purpose. The rules of procedure and conduct of business in Parliament provide that unless the presiding officers are otherwise direct, every sitting begins with the Question Hour, which is available for asking and answering questions. Asking question is an inherent parliamentary right of all the members irrespective of their party affiliations. The real object of the member in asking the question is to point out the shortcomings of the administration, to ascertain the thinking of the government in formulating its policy and where the policy already exists, in making suitable modifications in that policy.

In case, the answer given to a question does not satisfy the member who raised it and if he/she feels the need for detailed 'explanation in public interest', he/she may request the presiding officer for a discussion. The presiding officer can allow discussion, usually in the last half an hour of a sitting.

Members can, with the prior permission of the presiding officer, call the attention of a Minister to any matter of public importance and request the Minister to make a statement on the subject. The Minister may either make a brief statement immediately or may ask for time to make the statement at a later hour or date.

The adjournment motion is intended to draw the attention of the house to a recent matter of urgent public importance having serious consequences for the country, and regarding which a motion or a resolution in the proper notice will be too late. Adjournment motion is an extraordinary procedure which, if admitted, leads to setting aside the normal business of the House for discussing a definite matter of public importance. Adoption of an adjournment motion amounts to the censure of the government. Besides these devices, Parliament exercises control over the executive through various house committees. You will read about them in the next sub-section.

### **7.6.1 Parliamentary Committees**

The accountability of the Executive to the Parliament and the Parliament's right to oversee, and scrutinise the way in which the executive functions are accepted as a matter of routine. . But in practice, it is difficult for parliament to undertake thorough scrutiny of details of the functioning of the executive on daily basis. Parliament has solved this problem by establishing a series of committees. These committees have necessary powers to scrutinise the working of the different departments of the government.

Among the important Committees, which scrutinise the government's works, particularly in the area of public finances, two committees need special mention: Public Accounts Committee and Estimates Committee. These two and other Committees are expected to keep an eye on the executive. They ensure an effective and comprehensive examination of all the proposed policies. Often, Committees provides an ideal context for discussing controversial and sensitive matters in impartial manner, away from the glare of publicity. They provide a useful forum for the utilisation of experience and ability that may otherwise remain untapped. They also constitute a valuable training ground for future ministers and presiding officers.

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## **7.7 STATE LEGISLATURE**

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The State legislature consists of the Governor and the Legislative Assembly. In many aspects, state legislatures are similar to the Parliament of India. However, all state legislatures do not have both houses, Legislative Assembly (Vidhan Sabha) and Legislative Council (Vidhan Parishad). The state legislatures which have both houses are known as bicameral, and those which have only one house, i.e. Vidhan Sabha are known as uni-cameral. The choice of having unicameral or bicameral legislature was left to the states. It depended on the assessment of a state whether it wanted to have both houses or only one (Vidhan Sabha). The principal reason for not having both houses has generally been financial. Some states found it difficult to maintain cost of two houses. They preferred to have



only one house of the state legislature. Very few states (seven out of twenty nine) have opted to have bicameral legislature consisting of the Legislative Assembly (Vidhan Sabha) and the Legislative Council (Vidhan Parishad). As of 2019, Andhra Pradesh, Bihar, Karnataka, Maharashtra, Telangana and Uttar Pradesh have legislative councils. In 2019, Jammu and Kashmir is divided into two Union Territories. Jammu and Kashmir and Laddakh with the Jammu and Kashmir having assembly and Laddakh without it.

The Legislative Assembly of each State is composed of members chosen by direct election on the basis of adult suffrage from territorial constituencies. The size of the Assembly varies from a minimum of 60 to no more than 500. The duration of the Legislative Assembly is for five years.

The membership of the Legislative Council shall not be less than 40 but not more than one-third of the total membership of the Assembly. The House is composed of partly elected and partly nominated members. Normally, 1/6 of total members are nominated by the Governor, and the rest are indirectly elected on a complicated formula involving graduates, educators and members of the Assembly. The role of legislative councils, where they exist, are considered as weaker than the legislative assemblies compared with the Status of the Council of States vis-a-vis the House of the People. It may be considered as unnecessary due to some reasons: A) The very nature of the composition of the Legislative Council makes its position weak, being partly elected and partly nominated, and representing various interests; B) Its survival depends on the will of the Assembly, as the latter has the power to abolish the Second Chamber by passing a resolution. C) The Council of Ministers is responsible only to the Assembly and not to the Council. D) As regard, any ordinary bill originating in the Assembly, the Council's position is very weak for it can only delay its passage for a limited period. Hence, the second chamber of the State legislature is not a revising body, but a mere dilatory body.

The legislative process in the State Assembly is similar to that in the Parliament with one significant exception. The Governor can reserve any bill passed by the State legislature for the consideration of the President. Particularly in one case, it is obligatory on the Governor to reserve the bill, i.e., when the bill is derogatory to the powers of the High Court. If the President directs the Governor to return the Bill for reconsideration, the Legislature must reconsider the bill within six months, and if it is passed again, the bill is presented to the President again. But it shall not be obligatory on the President to give his assent. Thus, it is clear that once the Governor reserves a bill for the President, its subsequent enactment remains with the President and the Governor has no further role in it. Since the Constitution does not put any time limit on the President either to declare his assent or withhold, the President can keep the bill in cold storage for an indefinite period without revealing his intention.

### Check Your Progress Exercise 2

**Note:** 1) Use the space below for your answers

2) Check your answers with the model answers given at the end of this unit.

1) What is Question Hour?

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2) Bring out the significance of adjournment motion.

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## 7.8 LET US SUM UP

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The Parliament of India, the supreme legislative organ in the country, has a long historical background. The Parliament consists of the President, the Lok Sabha and the Rajya Sabha. To get elected to the Parliament, one has to fulfil certain qualifications prescribed by the Constitution and the Parliament. Members of the Parliament have certain privileges to enable them to function better. Each house has its presiding officer to conduct the meetings of the House and to protect the dignity and honour of the House.

The primary function of the Parliament is to enact laws and to hold the Council of Ministers responsible for its policies and criticises the policies wherever necessary. It also has the powers to amend the constitution and to impeach the President. There are several Committees appointed from among its members for effective functioning. Devices like the question hour, adjournment motion, calling attention motion, etc. are available for Parliament to check the government. The passing of the budget as an important function of the Parliament, provides an opportunity to scrutinise the activities of the government.

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## 7.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

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### Check Your Progress Exercise -1

- 1) To be a member of the Lower House of the Parliament (Lok Sabha), a person should have completed 25 years of age; and for being the member of the Upper House of Parliament, a person should have completed 30 of age; for being members of the both Houses, a person should be a citizen of India. A person gets disqualified to be a member of the either House of Parliament, if as an MP he/she is absent from meetings in the House for more than 60 days without the permission of the Speaker of the Lok Sabha or Chairman of the Rajya Sabha, holds an office of profit under Government of India, is found to be of unsound mind, is declared insolvent, acquires citizenship of another country or is under any acknowledgement of allegiance to a foreign state. A member elected to the State Assembly forfeits his/her membership of Parliament if he/she does not resign from the State Assembly within a specified period.
- 2) The Speaker of Lok Sabha has wide and extensive powers. These include power to preside over the sitting of Lok Sabha, to conducts the Lok Sabha proceedings, to maintain order in the house and determine the order of business in the house. He/she also acts as spokesperson of the house, interprets and applies rules of the House, and authenticates bills, certifies, Money Bills- etc

### Check Your Progress Exercise-2

- 1) The first hour of the sitting of a house that is available for asking and answering questions.
- 2) It is an extraordinary procedure to call the attention of the House to a matter of grave importance and affecting the whole country. Normal business is set aside to discuss the motion. And adoption of this motion amounts to the censure of the government.