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## UNIT 5 (A) LEGISLATURE

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### Introduction

India adopted a democratic system of governance. Institutions of democracy in India in fact had begun to grow during the colonial rule itself. The provisions of democracy found their place in the Government of India Acts of 1909, 1919, and 1935. Following independence, deliberations in the Constituent Assembly led to the country becoming Republic with Indian Constitution coming into effect on January 26<sup>th</sup> 1950. India opted for the Parliamentary form of government with the nation state adapting the principles of sovereign, socialist, secular, democratic republic.

In a Parliamentary democracy, sovereignty of the nation is upheld by ‘legislature’ (Parliament). The Constituent Assembly continued, as the provisional Parliament of India till a new Parliament was constituted under the provisions of the new Constitution. The first elected Parliament came into being in May, 1952, after the first general election was held during that year.

Legislature is a general term, which subsumes specific names like Parliament, Congress, National Assembly, and such others. It is called by different names in different countries such as, ‘Diet’ in Japan, ‘Cortes’ in Spain, ‘Jatiya Sangshad’ in Bangladesh, and such others. In case of India, the legislature at the Union level is called Parliament. We shall be using the term Parliament in this Unit.

This Unit shall familiarize you with the importance and role of Parliament in the Indian context. To begin with, we shall be discussing about the importance of Parliament in Indian governance.

### Importance of Parliament

The importance of legislature has been highlighted by Lord Bryce<sup>1</sup> (1921) in his work, ‘Modern Democracies’. He found legislatures constituted an indispensable part of the government machinery in democracies.... Michael Ameller has emphasized that in a democratic set up, the Parliament lays down basic principles for the executive to apply in implementing programmes of government and the Judiciary to use them, as frame of reference. K.R. Narayanan (1992), the former President of India, acknowledged Parliament and the State Legislatures, as supreme institutions. He mentioned that “Parliament and legislatures constitute the head and front of the body-politics in India. They are the institutional embodiments of the audacious experiment in democracy by the founding fathers of our republic.”

The first elected Parliament came into being in May, 1952, after the first general election was held during that year. Parliament in India, occupies a position of preeminence and over the years, it has carved out a niche for itself by becoming a forum through, which the citizens of the country articulate and realize their aspirations on one hand and ventilate their grievances and seek solutions to their problems, on the other. It is the supreme representative body of the people

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<sup>1</sup> Lord Bryce was a British academic, jurist, historian, and liberal politician

mentioned by Kashyap. Thus, it can be said that among the three organs of the state, as, legislature takes precedence over the other two.

Our founding fathers made provisions for the working of Parliamentary democracy by way of Articles 79 to 123 in the Constitution of India. These articles provide for the composition of the Parliament, the qualifications of members of the Parliament, the tenure of the two houses, their sessions, prorogation and dissolution, their officials and their roles, and conduct of business; and the legislative and financial procedures. The following discussion explains all these aspects in detail.

### **Composition**

The Indian Constitution provides for a bicameral Parliament, which has, as its Executive Head the President of India and two Houses known, as the upper House (Rajya Sabha) and the House of people (Lok Sabha)<sup>2</sup>. The Rajya Sabha is referred, as upper house and Lok Sabha, as lower house of the Parliament. As the government is federal in nature, there was unanimity among the framers of our Constitution to achieve a balance between the indirect representation of people in the lower house; and the representation of federal units, that is, the states in the upper house. Hence the rationale for having two houses, one representing the people, as a whole; and other the federal units.

The President is an integral part of the Parliament. The President is elected by both Houses of Parliament and thereby considered as the Chief Executive and every business of the government is carried out in the President's name.

We will now discuss the composition of the Rajya Sabha and Lok Sabha individually.

#### **Composition of Rajya Sabha**

1. Rajya Sabha is composed of not more than 250 members, of whom (a) 12 members shall be nominated by the President; and (b) the remaining (that is 238 members) shall be representatives of the States and the Union Territories elected by the method of indirect election (Art.80).
2. The 12 nominated members shall be chosen by the President from amongst persons having 'special knowledge or practical experience in literature, science, art, and social service'. The Constitution thus adopts the principle of nomination for giving distinguished persons a place in the upper Chamber.
3. The representatives from each State shall be elected by the elected members of the Legislative Assembly of the respective State in accordance with the system of proportional representation by means of the single transferable vote system.<sup>3</sup>
4. The representatives of the Union Territories shall be chosen in a manner, as prescribed by the Parliament. Parliament prescribes representatives of Union Territories to be indirectly elected by members of an electoral college<sup>4</sup> of

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<sup>2</sup> We will be using the term 'Rajya Sabha' and 'Lok Sabha' in the Unit.

<sup>3</sup> Single transferable vote system is a proportional voting system designed to achieve or approach proportional representation through voters ranking candidates in multi-seat constituencies.

that Territory, in accordance with the system of proportional representation by means of single transferable vote system.

Federal representation to the Rajya Sabha has a large variance in terms of 1 member from the State of Nagaland to that of 31 members from the State of Uttar Pradesh reflecting the federal nature of our country.

### **Composition of Lok Sabha**

The Lok Sabha has a variegated composition. The Constitution prescribes for composition given, as follows:

- 1) Not more than 530 representatives are to be elected by people of States. The representatives from the states shall be directly elected by the people of the states on the basis of adult suffrage. Every citizen, who is not less than 18 years of age and is not otherwise disqualified e.g., by reason of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to vote. There will be no reservation of seats for any minority community other than the scheduled castes and scheduled tribes.
- 2) Not more than 20 representatives of Union Territories will be directly elected, as per law prescribed by the parliament for the purpose.
- 3) Not more than 2 members of the Anglo-Indian community, nominated by the President, if he/she is of opinion that the Anglo-Indian community is not adequately represented in the House of People.

Owing to these provisions the entire country is divided into suitable territorial constituencies for purpose of holding elections to the lower house. The territorial constituencies are bifurcated in a manner that the ratio of the population in each constituency stands represented to the number of seats allotted to.

### **Qualifications**

The qualifications that are required in order to be chosen, as a member of Parliament, are given below:

- 1) The person must be a citizen of India.
- 2) He/she must be not less than 30 years of age to be a member of Rajya Sabha; and not less than 25 years of age in case of Lok Sabha.

Additional qualifications can be prescribed by Parliament by law.

A person stands to be disqualified on the basis of either of the grounds, as a member of either House of Parliament, if he/she:

- 1) holds an office of profit under the Government of India or Government of any State, other than an office exempted by Parliament by law.
- 2) Has an unsound mind and stands so declared by a competent court.
- 3) Is insolvent.
- 4) Is not a citizen of India or has voluntarily acquired citizenship of a foreign

<sup>4</sup> Electoral College is a body of electors.

State or is under acknowledgement of allegiance or adherence to a foreign power.

5) Is disqualified by or under any law of the Parliament.

### **Duration of Term of Houses**

Rajya Sabha is a permanent body and not subject to dissolution. Only 1/3 of its members retire on the expiration of every second year. An election is conducted to fill-in 1/3 of its members in the beginning of every third year. The order of retirement of the members is governed by the Rajya Sabha (Term of Office of Members) Order, 1952.

On the other hand, Lok Sabha is elected for a period of 5 years, but it can also be dissolved before the completion of its term by the President. Also, its normal term can get extended by an Act during an emergency period. However, there is a limit to this extension. The Act lays down that the extension cannot be made for a period exceeding one year at a time and also such an extension cannot continue beyond a period of six months after the emergency ceases to operate.

### **Sessions**

The President has the power to summon, prorogue, and dissolve the lower house. The Constitution requires the President to summon each of the Houses at such intervals that six months shall not intervene between the last sitting of the House in one session and the date appointed for its first sitting in the next session. The net result of this provision is that Parliament must meet at least twice a year and not more than six months shall lapse between the date on, which the House is prorogued and the next session is commenced.

It would, in this context, be proper to understand certain terms used in relation to the Parliament. Transaction of business takes place when the Parliament is in session. Within a session, there are a number of daily sittings on different important areas. There may be adjournments that do not put an end but merely postpones the further transaction of business for a specified time that may be hours, days or weeks. While prorogation merely terminates a session, dissolution brings down the term of the lower house to an end, calling for a fresh election.

### **Activity**

Express your views on Parliamentary any elections in our country. (cost factor, representative factor especially gender and disadvantaged groups etc.) .

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## **PRESIDING OFFICIALS**

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There are presiding officials for each House, as mentioned below:

### **Speaker**

Each of the Houses has its own presiding official and secretarial staff. There will be a Speaker, as a presiding officer of the Lok Sabha. Lok Sabha, in its first sitting, will choose two members from the House to be the Speaker and Deputy Speaker respectively.

The main job of the Speaker is to preside over the sessions. The Speaker will have the final power to maintain order when the Lok Sabha is in session and to interpret its Rules of Procedure. The Speaker's conduct in regulating the procedure or maintaining order in the House will not be subject to any court's jurisdiction.

In the absence of a quorum, it will be the duty of the Speaker to adjourn the House or to suspend the meeting, until the quorum is fulfilled.

Also, he/she will not vote in the first instance, but shall exercise a casting vote in case of a tie. The absence of vote in the first instance is to make the position of the Speaker impartial; and the casting vote is there to resolve an impasse.

Besides presiding over the House, the Speaker enjoys certain powers unlike the Chairperson of the Rajya Sabha. These are:

- 1) The Speaker shall preside over a joint sitting of the two Houses of Parliament.
- 2) When a Money Bill is passed from the lower house to the upper house, the Speaker shall endorse a certificate on the Bill of it being a Money Bill. With this, the subsequent procedure in the passage of the Bill will be governed, as per the provisions relating to the passage of the Money Bills.

The term of the Speaker or Deputy Speaker is co-terminus with the Lok Sabha. However, the office may terminate early also, if he/she ceases to be a member of the House or resigns or is removed from office by a resolution, passed by a majority of all the members of the House. However, such a resolution shall not be moved unless 14 days notice has been given of the intention to move the resolution. While a resolution for his/her removal is under consideration, the Speaker shall not preside the session of the House. However, he/she will retain the right to speak and take part in the proceedings of the House.

When the office of Speaker is vacant or the Speaker is absent from a sitting of the House, the Deputy Speaker will preside, except when a resolution for his/her own removal is under consideration.

### **Chairperson**

In the Rajya Sabha, the Chairperson is the presiding officer. While in the Lok Sabha, the Speaker is elected by the members from among themselves, the Chairperson of the Rajya Sabha is an ex-officio position. The Vice President of India is the ex-officio Chairperson of the Rajya Sabha and is Presiding Officer of the House so long, as he does not officiate, as the President of India during a casual vacancy in that office. When the Chairperson has to officiate, the Deputy Chairperson performs the duty of the presiding officer. The Chairperson's term is co-terminus to the office of the Vice-President.

The functions of the Chairperson in the Rajya Sabha are similar to those of the Speaker of the Lok Sabha except that the Speaker has certain special powers of certifying a Money Bill, or presiding over a joint sitting of the two Houses.

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## ROLE OF PARLIAMENT

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Indian Parliament is constituted, as the supreme legislative body. It is a multifunctional institution performing a variety of roles. These roles are discussed below:

### **Legislative Role**

The primary function of Parliament is law-making. It is the law making that makes the legislature a paramount body.

The lower house of the Parliament seems to enjoy a key role with regard to money bill. These bills can be introduced only in the Lok Sabha and not in Rajya Sabha. Once the bill is passed by the lower house, it goes to the Rajya Sabha for consideration. The Rajya Sabha is given fourteen days time to take action on the bill. The Rajya Sabha can either pass it or can amend or reject it. If the bill is passed by the Rajya Sabha, then it goes to the President for his assent. If it is amended or rejected, then it goes back to the Lok Sabha for reconsideration and then voted by a simple majority and is sent to the President for assent.

In case of ordinary bills, both the houses have equal powers. These bills can be introduced either in the Lok Sabha or the Rajya Sabha. The Rajya Sabha may amend or reject a bill that is passed by the Lok Sabha. If the Lok Sabha disagrees with the action of the Rajya Sabha or if it happens vice versa, when the Rajya Sabha disagrees to the amendments made to a bill by the Lok Sabha, then the matter is placed before a joint sitting of both the Houses and then it gets passed by a simple majority. A bill passed in a joint sitting is sent to the President for his assent. With regard to Constitutional amendment too, both the Houses have equal powers. The Constitution cannot be amended unless the Rajya Sabha also agrees to bring in such amendments.

### **Control over the Executive**

Another important role of the parliament is the control of the executive. In the Constitution, the Council of ministers is collectively responsible to the Lok Sabha<sup>5</sup>. The lower house enjoys the right to call for information pertaining to policies and programmes of the government and to see whether it has acted in conformity with its obligation. The parliament's control over executive is meant to galvanize and promote administrative pro-activeness in all matters of public interest. This makes the executive to be always vigilant to work in public interest.

There are numerous procedures by which the lower house controls the executive. Parliamentary questions to ministers, adjournment motions, and call attention motions are the procedures, which enable members to draw attention to specific grievances or issues and elicit government's responses on them. The lower house has a right to pass a no-confidence or censure motion against the government (this right does not exist with the Rajya Sabha). Besides, there are motions of short duration discussions, private members' resolutions, motions for modification of statutory instruments, and reporting by the departments and public undertakings that keep a tab on the administrative lapses or shortcomings of the government

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<sup>5</sup> The Rajya Sabha has every right to be fully informed on all matters connected with the government's activities, which are raised on its floor.

machinery.

Parliamentary control over public finance-the power to levy or modify taxes and the voting of supplies and grants-is one of the important checks against the executive assuming arbitrary powers. No taxes can be levied and no expenditure can be incurred from the public exchequer without Parliamentary authorization of the same by law.

### **Representational Role**

Parliament is a body, which represents the people. Its members are drawn from every part of the country and represent interests. Parliament acts a forum, where members from diverse parties and varied interests come together under a common platform. Here is where consensual politics can happen with dialogue and interaction taking place face to face.

Also by being a forum, the needs and aspirations of the masses here get expressed. In the words of Kashyap “Parliament represents the changing...needs of the people. It is not only a microcosm and a mirror of the people, but also a barometer of their mood and pulse”.

Parliament, as a people’s institution and its members, as peoples’ representatives, has always championed the cause of masses. Parliament has all along been a body, which responds to matters of public interest zealously- raising matters of public importance in the House. It has culminated to a role of being an ombudsman of the grievances of the people of the country.

### **Special Powers of Rajya Sabha**

The Constitution has assigned some special powers only to the Rajya Sabha. Article 249 of the Constitution empowers the Rajya Sabha to make laws on matters coming under the state list keeping national interest in perspective. Similarly, under Article 312, the Rajya Sabha is empowered to decide by a resolution supported by a two-thirds majority about setting up of an All India Service. The Lok Sabha comes into picture later, after the Rajya Sabha has passed the laws concerning these.

Thus, we see that the two Houses of Parliament, though constituted differently and enjoy some powers on an equal/ exclusive basis are nevertheless coordinate chambers. Both the Houses have equal powers in matters such as in the impeachment of the President, removal of the Vice-President, Constitutional amendments, and removal of the judges of the Supreme Court and the High Court. Besides, Presidential ordinances, proclamation of emergency, and proclamation of the failure of Constitutional machinery in a state must be placed before both the Houses.

However, there are certain powers that are in the exclusive domain of each of the Houses. Whereas the council of ministers enjoys financial powers and owes a sense of collective responsibility to the lower house, the upper house does enjoy certain powers, as has been already mentioned in Articles 249 and 312.

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## PARLIAMENTARY PROCEDURE

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The lower house, that is, the Lok Sabha has the elected representatives of the people, who form the executive. The executive has members. The entire executive is having a Council of Ministers having both the state ministers and Cabinet ministers. The Cabinet ministers hold different portfolios.<sup>6</sup> The entire Council of Ministers is headed by the Prime Minister of the political party that has a majority of seats in the Parliament. The executive is thereby formed by the ruling party. The Cabinet continues in powers as long as, it retains majority in the lower house of the parliament.

There are different stages in the parliamentary procedure relating to passing of bills (other than money bills) that are discussed, as follows:

- 1) **Introduction:** A bill other than money or financial bill may be introduced in either House of the Parliament and requires passage in both the Houses before it can be sent for the President's assent. A bill may be introduced either by a Minister or by a private Member.
- 2) **Motions after introduction:** After a bill has been introduced, the Member in-charge of the bill, may resort to any of the following motions:
  - That it can be taken into consideration.
  - That it can be referred to a select committee
  - That it can be circulated for the purpose of eliciting public opinion.
- 3) **Report by Select Committee:** If the bill is referred to a select committee, then the select committee of the House considers the provisions of the bill. After consideration, it submits its report to the House. Once the report is received, the clauses of the bill are open for discussion and amendments are admissible.
- 4) **Passage in the other house:** When a bill is passed in one House, it is sent to the other House. When the bill is received in the other House, it undergoes all the stages, as in the originating House subsequent to its introduction. The House, which receives the bill from another House can take either of the following courses:
  - It may reject the bill altogether. In such a case the provision of joint sitting may be convened by the President.
  - It may pass the bill with amendments. In this case, the bill will be returned to the originating House. If the originating House amends the bill, as per, then the bill is sent to the President for his/her assent. If, the originating House does not agree to the amendments made by the other House and there is a disagreement between the two Houses, the President summons a joint sitting for resolution.

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<sup>6</sup> Ministries and departments

<sup>7</sup> The difference in the two cases is that any member other than a Minister desiring to introduce a Bill has to give notice of his/her intention and to ask for leave of the House to introduce the bill.

- 5) **President's assent:** When a bill has been passed by both the Houses, it is sent to the President for assent. If the President withholds his assent, there is an end to the bill. With the President's assent, the bill becomes an Act w.e.f. the date of assent. The President can also return the bill for reconsideration by both the Houses. The Parliament may reconsider and as per, revise the bill or it may not reconsider and can send the bill back to the President without any changes in the same form, as earlier. Therein, sent for the second time, the President gives the assent.

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## CONTROL OVER FINANCES

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The financial system consists of two branches-revenue and expenditure.

- 1) As regards revenue, Art.265 specifies that no tax shall be levied or collected except by authority of law. The result is that the executive cannot impose any tax without legislative sanction. If any tax is imposed without legislative authority, the aggrieved person can obtain relief from the courts of law.
- 2) As regards expenditure, the Consolidated Fund of India is the reservoir of revenues of the GOI. Also, all loans raised by the government are paid from it. The Constitution provides that no moneys shall be appropriated out of the Consolidated Fund of India except in accordance with law.

The following are the financial committees of the Parliament to monitor the fiscal prudence of expenditure done by various ministries and departments.

to begin with is the Estimates committee.

- **Estimates Committee**

The government has the sole initiative in formulating its policies and in presenting its demands for carrying out those policies. Parliament can hardly refuse such demands or make drastic cuts in such demands without reflecting on the policy and responsibility of the government in power. It is also not expedient to suggest economies on different items of the expenditure proposed by the Government, owing to the shortage of time at the disposal of the House. Herein, the scrutiny of the expenditure proposed by the Government is, therefore done by a Committee, known as the Estimates Committee. After the Annual Financial Statement, that is the budget, is presented before the lower house, this Committee (annually constituted) examines the estimates.

Though the report of the Estimates Committee is not debated in the House, the fact that the Committee carries on its examination on two scales of economy and efficiency throughout the year and places its views before the members of the House, as a whole, exerts a salutary influence in checking governmental extravagance in making demands for the coming year and, as per, in moulding its policies.

- **Public Accounts Committee**

The expenditure sanctioned by Parliament has to be spent in accordance with the provisions of the Appropriation Act. The Comptroller and Auditor General(C&AG) is the guardian of the public purse and it is his/her duty to

watch that not a single paisa is spent without the authority of Parliament. The C&AG submits the audit report relating to the accounts of the Union Government to the President, who lays the same before the Houses of Parliament.

After the report of the C&AG is laid before the Parliament, it is examined by the Public Accounts Committee (PAC). Though this is a Committee of the House of the People, it has 15 members from the lower house and seven members of the upper house. The Chairperson of the Committee is generally a member of the Lok Sabha, who is not a member of the ruling party.

In scrutinizing the Appropriation Accounts of the GoI and the report of the C&AG thereon, it shall be the duty of the Committee on Public Accounts to satisfy:

- 1) That the moneys shown in the accounts, as having been legally disbursed, were actually available and applicable to the services or purposes for which they were applied for.
- 2) That the expenditure conforms to the authority, which governs it.
- 3) That every re-appropriation has been made in accordance with the provisions made in this behalf under rules framed by competent authority.

The Committee, in short, scrutinizes the report of the C&AG in detail and submits its report to the House of the People, so that the irregularities noticed can be discussed and effective steps can be taken thereof.

### **Activity**

How do you find government's concern over the financial irregularities brought forth by the Committees of the Parliament in recent years?

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## **CONCLUSION**

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In a Parliamentary democracy, sovereignty of the people is upheld through the legislature. In India, the legislature at the Union level is called Parliament. The Indian Constitution provides for a bicameral Parliament, which consists of the President and two houses known, as Rajya Sabha and Lok Sabha. Each house of Parliament has its own Presiding officer and secretarial staff. The Parliament, as a legislative body performs different functions like those of exercising control over finances, ensuring the accountability of the government to the lower house, passage of bills etc.

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