

Constitutional Law and Public Administration in India

Prof. (Dr) Sairam Bhat

Centre for Environmental Law, Education, Research and Advocacy (CEERA)

National Law School of India University, Bengaluru

Week- 07

Lecture-03

Union & State Legislatures – II

In India the functions of the parliaments are very important and are broadly defined under the legislative functions. The essential function of the legislature is lawmaking either by the central government or by the state government. The next important function is the executive function. India does not have a strict separation of theory between the legislature and the executive and therefore, the executive belongs to the legislature. The financial functions are mostly the budgetary aspects of the government, that is the income and expenditure of the government, the grants given to the states and so on. These form the financial functions. The judicial functions are impeachment proceedings for the supreme court judge, which is in the form of a judicial function. All the powers and functions of the Parliament are derived from the Constitution of India.

The source of power to the legislature whether it is the central government or state government is the Constitution of India. The union legislature as per Article 79 of the Constitution, that is, the Parliament shall consist of the Lok Sabha or house of people and the Rajya Sabha that is the council of states. The Lok Sabha is called the lower house, the Rajya Sabha is called the upper house, and the head of the government is the President. The President has a very important function of providing the legislative aspects and is the executive functionary in the government. The Presidential assent is required for the bills which are passed in Lok Sabha and Rajya Sabha to become an Act or a legislation.

The central legislature consists of two houses and each house must meet within six months of its previous sitting. Since the essential function of the legislature is law making, there shall be a timely sitting between the upper house and the lower house. A joint sitting of two houses can be held in certain states where it requires more discussion and voting. A bill can become an Act or a law or a legislation only when it is passed by both houses of the Parliament by a simple majority or by two-thirds majority which requires it during the amendment. All the subjects in the union list are exclusively for the union legislature to legislate.

The central legislature has its own sphere of law making and the union list provides the areas of law making for the central legislature. In a democracy the term of Parliament is mentioned as five years, it means the term of majority by the ruling party if it obtains the confidence of the parliament. It rules the nation. The Parliament can be dissolved well before five years, or it can rule up to five years. The term of Lok Sabha unless dissolved earlier is five years noticeably from the date of its first meeting.

During the proclamation of emergency, that is national emergency, the term may be extended which is provided in the Parliament for a period not exceeding one year. In any case, not six months after the proclamation has ceased to operate. So, these are the provisions which are made in the Constitution so that, when an emergency is declared the term of emergency must be prescribed. The maximum strength of the Lok Sabha is 550 members inclusive of both union states and the union territories. 30 members represent the states, 20 members represent the union territories.

Previously the two members from the Anglo-Indian community were nominated by the President for the Lok Sabha, but that provision has been removed by a Constitutional amendment in 2020. The representation by the states to the Parliament has been made distributed in a sense that the ratio between the number of states allotted to each state depends upon the population of the state and therefore more populous countries have more representatives in the Parliament and less populous countries have less representatives in the parliament. That is also a matter of debate, as to the representation which has been overtaken by the majority population countries than the states with lesser population. Rajya Sabha is always in a continuous session. It means that it is not dissolved as in Lok Sabha because the members of Rajya Sabha are not elected directly by the people.

The Constitution provides that Rajya Sabha has 250 members. It is not subject to dissolution and one third of its members retire every second year. The term of Rajya Sabha is 6 years. The 12 members from 250 members shall be nominated by the President having special knowledge or experience in respect to the matters of literature, science, art, and social service. Elections to the Rajya Sabha are indirect. It is called the proportional representation by means of single transferable vote. So, this is also followed in the election of the President. Article 52 of the Constitution says that there shall be the President of India who is the executive head of the government. The qualifications to become the President of India is that he must be a citizen and must have completed the age of 35 years.

He should be qualified to be elected to become the member of the house of the people. He must not hold office of profit under the government of India or government of any state for the obvious reason that he shall be unbiased and shall not be dictated by terms other than the Constitution. Article 55 clause 3 of the Indian Constitution specifically talks about the Presidential elections. The system of Presidential election is proportional representation by means of single transferable vote. The voting takes place in a secret ballot system.

Important functions of the President, the legislative function powers of the President are he summons and prorogues the parliament. Whenever a new government is elected the session of the Parliament is conducted by the President. He has the power to summon the parliament. He has the power to dissolve the Lok Sabha only on the aid and advice of the prime minister and the council of ministers. He can summon a joint sitting of Lok Sabha and Rajya Sabha whenever the situation arises.

He addresses the Indian Parliament at the commencement of the first session or every session of the parliament. He nominated 12 members to the Rajya Sabha. He consults the election commission on the disqualification of the members of parliament. The election commission also has a very important role to play along with the President of India in the disqualification of the members. He recommends or permits the introduction of certain types of bills to be made into Acts or legislation. In a very significant feature, the President can also promulgate ordinance when none of the houses either Lok Sabha or Rajya Sabha are in session and there is a situation that a legislation is very pertinent. Under such circumstances the President can promulgate an ordinance. Another important feature of the President's power is Article 111 of the Constitution when a bill is sent for the Presidential assent. He can either reject the bill or return the bill or withhold the bill at his mercy. This is called the veto power of the President. The President cannot exercise the veto power for the money bills.

The President is bound by the Constitution to pass the money bill because the nation runs with the budget and with the income and expenditure which must be smooth flowing in the country, and therefore the veto power cannot be extended to the budgetary provisions or the money bills of the country. He lays the following reports for the parliaments namely, the controller and auditor general report, the union public service reports, the finance commission reports etc. which are few of the reports that is laid before the Parliament under the name of the President. As to the diplomatic powers of the President, the international treaties or agreements approved and assented by the Parliament must have the assent of the President. He represents India in an international forum and affairs.

The President is the commander in chief of the defence forces of India. He appoints the chief of the army, chief of the navy and chief of the air force. Through the Ordinance making power of the President under Article 123, he promulgates an ordinance on the recommendations of the union cabinet and gets the Presidential assent to become an Act. Another major function of the President is the Presidential proclamation of emergency. There are three kinds of emergency in India, one is national emergency under Article 352, President's rule or the state's emergency in Article 356 and the financial emergency in Article 360.

As to the executive powers of the President, the administrative Action by the government that is the Indian government must be taken or undertaken in the name of the President.

The President seeks the administrative information from the union government which is also termed as the aid and advice or otherwise normal administrative information must be provided to the President by the union government. He has the power to declare any area as a scheduled area with respect to the scheduled castes and scheduled tribes. The financial powers of the President to recommend distribution of taxes between the Union and the states.

He introduces the money bill in the parliament. He lays the union budget before the Parliament and demands grants through the finance commissions. He lays the provisions for the contingency fund of India. The President constitutes the finance commission every five years. Though these powers are all nominal it is very pertinent that these powers are exercised under the name of the President. The President also holds judicial powers. He has the powers for the appointment of the chief justice of the Supreme Court or high court judges. He also has the power to seek advice from the Supreme Court.

However, the advice is not binding but there are instances where the advice has been received by the President. He has a pardoning power under Article 72 against the punishment for an offense but is an executive power, and is independent of the judiciary, but does not sit in appeal. So, this is one of the discretionary powers of the President. The Supreme Court in its various decisions has mentioned that even the executive can aid and advise the President on these matters.

The prime minister and the council of ministers who are the real executive of the country also have important functions. The prime minister is appointed by the President from among the members of the party which has secured the highest majority in the general election. This is called the simple majority. In the seat of 550, whoever gets the simple majority, that party or the coalition of parties becomes the government. The prime minister shall hold the office for a term of 5 years or until he enjoys the confidence or the majority in the locus of the party. The Council of ministers is headed by the prime minister, and he aids and advises the President in the exercise of office functions. The council of ministers is collectively responsible to the parliament. This is one of the features that has been inherited from the parliamentary democracy of the United Kingdom. The prime minister communicates to the President all decisions of administration, all decisions of the cabinet, all decisions of the council of ministers and legislations.

The council of ministers comprises cabinet ministers, ministers of state, or the deputy ministers. The state legislature is the same as the central legislature. It has the legislative assembly. Not every state has the legislative council or the upper house. Few states have legislative councils and as the President is prominent in the central legislature. The governor Acts as the Constitutional head in these states.

The government in states resembles that of the union. In Article 168 of the Constitution of India, it says that the state legislature consists of the governor. So, it categorically states that the governor is the executive head of the state. There are two houses in the states of Andhra Pradesh, Bihar, Maharashtra, Karnataka, Tamil Nadu, Telangana, and Uttar Pradesh. Few states have the Vidhan Parishad or the upper house. The Parliament has the power by law for an abolition of the existing legislative council. The Parliament can make the state government either bicameral or a unicameral legislature. It can either have one house called the house of people or the Vidhan Parishad, that is legislative assembly, or it can make bicameral legislature having two houses. The proposal is to be supported by the resolution of the legislative assembly of the concerned state. If any concerned state says that it must have a Vidhana Sabha and Vidhana parishad bicameral legislature, then it can make a proposal to the central government.

Under the Seventh schedule, the union list, state list and the concurrent list, there are different spheres of legislative making power by the Parliament and the state legislature. The power to create legislative councils in the states is vested with the central government. The governor under the Constitution also has legislative functions, executive functions, and judicial functions. Under Article 153 of the Indian Constitution, there shall be a governor for each state. A person can be appointed as a governor of two or more states when there is a situation, and the necessity demands. The governor of state is appointed by the President for a term of five years, and he holds the office during the pleasure of the President. The qualification to become the governor is that he must be above the age of 35 years, and he is the executive head of the state, and all the powers are vested in the governor. The governor has important Constitutional functions too. Appointment of chief minister is the prime function of the governor. He can send a report to the President about the failure of a Constitutional machinery in a state and recommend the governor's rule in the state as it has happened in the various states and the various decisions by the supreme court have laid down certain principles to be followed by the governor to recommend the governor's rule in states. The decisions of the supreme court are binding on the governor. On the matters relating to the assent of the bill passed by the legislature, the governor has the powers to send it to the President for his assent. As the prime minister and the council of ministers for the Union, the states also have the chief minister and the council of ministers. The term of the assembly is five years unless it is dissolved earlier for various other reasons. The council of ministers is collectively responsible to the legislative assembly of the state. The chief minister is appointed by the governor and the governor appoints the other ministers on the aid and advice of the chief minister. So, the function of aid and advice is a very prominent function by the executive to the governor. The powers and functions of the governors during the state emergency or what is called as the governor's rule is a very important aspect of the state governance. The governor's rule forms a major centralizing tendency of the Indian parliamentary system where during the governor's rule of the state,

the central government rules the state government and all the law-making areas in the state list can be made by the Indian government.

It is relevant to understand the process of law making in the Parliament or in the state legislatures. All the legislative proposals must be brought in the form of a bill before it becomes an Act. Because the basic function of the Parliament is to make law or legislation, it becomes the law only after approval of both houses of the Parliament and then the assent of the President of India. Now if we look into the important steps, the bill is first introduced either in Lok Sabha or Rajya Sabha depending upon the nature of the bill. It must be approved in both houses of the Parliament depending upon the nature of the bill.

Then it goes to the President for his assent. After the Presidential assent, it goes into the gazette notification and after a gazette notification, it becomes an Act or a legislation. Now we understand that the bill must be introduced in any of the houses. The decision of the speaker cannot be questioned in any court of law and the speaker can certify any bill whether it is money bill or a financial bill or bills any other than the money bill. This is a significant feature because whichever the origin of the house depends upon the nature of the bill. A bill when it is laid down in the parliament, passes through different stages. It is called the first reading, the second reading and the third reading. This is a very important function of the Parliament where the deliberation for the bill takes place and all the members of the parliament, ideally participate in the discussions of the Parliament regarding the bill for any suggestions, amendments, or any criticisms of the government.

The money bill sent to Rajya Sabha has to be sent to Lok Sabha within 14 days with or without recommendations, but the Rajya Sabha do not have much powers in the money bill as that money bill is the sole and the primary authority of the legislation and this is why the decision of the speaker becomes more important and it cannot be questioned in any court of law. He can decide what is the nature of the bill whether it is money bill or any bill other than the money bill. Now Article 110 of the Constitution defines what is a money bill.

A money bill can be introduced in Lok Sabha only in Lok Sabha. It must be passed by a simple majority of all the members present and voting in the Lok Sabha. After passing from the Lok Sabha, it goes to the Rajya Sabha for its recommendations. The Rajya Sabha can withhold the bill for a period of 14 days. It can make certain suggestions and return the bill to the Lok Sabha. The Lok Sabha has the authority to accept the suggestions or reject the suggestion and then when the Rajya Sabha sends the bill for its reconsideration the Lok Sabha has the absolute authority to decide on it and therefore after the recommendations sent to the Rajya Sabha whether the Lok Sabha accepts the recommendations or suggestions from Rajya Sabha it is sent back.

The Lok Sabha is the authority to accept the recommendations or suggestions and return the bill within a time of 14 days. The government nature of money bills is that all money bills are finance bills, but all finance bills are not money bills. A Finance bill is regarding the financial management of the country. It deals with the government taxes, government expenditures, government borrowings, revenues, etc. The annual financial statement called the budget deals with the financial planning of the government and is passed as a finance bill. The finance bill is introduced in the Lok Sabha and is passed by the parliament. After the assent of the President, it becomes the finance Act. Article 117 talks about the finance bill. A financial bill deals only with financial matters, but it is different from the money bills. Financial bills contain provisions that are pertaining to the taxation and expenditure in addition contain law relating to the other matters. The financial bill does not require prior recommendation by the President to be laid down in the parliament. It can be introduced only in the Lok Sabha. The Rajya Sabha has complete authority to reject or amend the bill as it does with the ordinary bill. The bill must be passed within 75 days of its introduction. The Indian Constitution of Article 117 clause 1 and 117 clause 3 talks about the finance bill. And that is where the nature of the bill assumes a very important role in the Parliament whether it is a money bill, finance bill or any bill other than the money bill. Now, there are bills other than the finance bill. An ordinary bill may be introduced in either house of the parliament. It must be passed by both houses by a simple majority. Article 107 and 108 of the Constitution explains what ordinary bills are. Any bill that is inherently not related to financial matters is an ordinary bill. And therefore, the role of speaker has a lot of significance in such situations.

It is the speaker of the Lok Sabha who has the authority to certify a bill as a money bill. The Constitution states that if any question arises whether a bill is a money bill or not, the decision of the speaker of the house of the people shall be final and this cannot be questioned in any court of law, or this question cannot be a subject matter of judicial review. Article 110 clause 3 of the Constitution categorically states its power. Money bills are legislations for in an example of money bills. The money bill for making Aadhaar. The Aadhaar Act of 2016 was taken to the supreme court for its categorization of money bills. In this case the lower house rejected the suggestions of the upper house, and the bill was certified as a money bill by the speaker. There was resistance since the upper house does not have any power in the money bill, and the Rajya Sabha wanted certain amendments to the Aadhaar Act. This case was pertaining to *Jairam Ramesh v. Union of India* where the question arose as whether the speaker was right in his function to declare Aadhaar Act as the money bill.

Coming to the law-making procedure, as to the passing of the bill there must be an adequate quorum in the house, that is the adequate number of members of Parliament must be present in the house. It is a duty of the presiding officer to either adjourn or suspend the meeting if the adequate quorum is not present. Because the law making requires passing of the bill

either through a simple majority or through two thirds majority and therefore an adequate number of people representation must be there in the parliament. After the bill is passed by the respective houses it is sent to the other house.

The nature of the bill decides the house in which it originates. If it is a money bill it must be only in the Lok Sabha. If it is any other bill, it can be in the Rajya Sabha and therefore when once it is passed in one house it must be sent for discussion in the other house. If there is any recommendation or amendment by the other house it is sent back to the house from where it originated for consideration. In case of a deadlock between two houses the President or the governor can summon the joint session of the Parliament where it is presided by the speaker to resolve by the simple majority.

Now when there is a joint session of the Parliament the voting is always a simple majority. For example, in the cases of dowry prohibition Act of 1961, the prevention of terrorism Act of 2002 joint sessions were held to resume the functioning of the Parliament for this bill. The assent of the President and governor is very important to make it a law. As per Article 111 the bill after consideration of the Parliament is sent to the President for his assent. Under Article 200 the governor is the Constitutional authority to give his assent for the bills to be passed as an Act.

However, Article 255 states that the prior recommendations by the President or the governor wherever stipulated is not compulsory for an Act of Parliament or the state legislation but the consent of the President or governor is mandatory. Certain functions of the governor and President require the recommendations by them to be laid down in the Parliament but not in all cases. But in certain circumstances where it is laid down by the President it is also important that the final consent of the President or governor is mandatory. In all legislations in all bills to be passed like Acts or legislation even though the prior recommendation is not compulsory the final consent is compulsory by the President or the governor. It is a mandatory Constitutional requirement. When the President or the Governor is convinced that the bill violates any Article of the Constitution it can be returned to the house for consideration. If the bill is assented to then it gets published in the official Gazette of India and it becomes an Act. Sometimes in the state legislatures the governor may refer the bill to the President anticipating clash between the central law or the Constitution and the decision of the President is final as per Article 200 and 201. So, there are many such instances where the provisions of certain state legislatures have been recommended to the President by the governor for its essence which involves the national interest.

The law-making procedure in the case of a finance bill which deals only with financial matters is technically different from the money bill. It has the provisions of taxation, expenditures and in addition contains any other matters relating to finance. So, the finance bill does not require a prior recommendation by the President, or the governor and it can

be introduced only in Lok Sabha. The Rajya Sabha has complete authority to amend or reject the bill as it can be the ordinary bill.

The bill must be passed within 75 days of its introduction. Whereas a money bill is a provision related to tax on government expenditures from the consolidated fund of India and this type of bill can only be introduced in Lok Sabha or lower house on the recommendations of the President or the parliament. A money bill introduced in Lok Sabha is passed to the Rajya Sabha after it is passed in Lok Sabha. The Rajya Sabha does not have any power to amend the bill. A money bill should be returned to the Lok Sabha within 14 days of its passing to the Rajya Sabha if not the bill shall be considered as passed in Rajya Sabha. After deliberation it can be sent to Lok Sabha by the Rajya Sabha, but the Lok Sabha is not bound to make changes and after the bill is sent back to Rajya Sabha it must accept the bill as it is.

So, it clearly shows that Rajya Sabha has no powers in case of money bills and the Lok Sabha is the supreme authority in case of money bills. A similar procedure is found in the state legislature of where bicameralism is followed in the states. Now what are the sessions and functions of the Parliament and state legislature? Under the Constitutional scheme of the Indian legislature for a bill to be enacted as law, both houses of the Parliament must pass it. In the state legislature both houses wherever bicameralism is present must pass it. Now schedule 7 of the Constitution divides the subject matter of the state's law-making power between the state and the centre.

The law-making process is divided into various categories. It starts from the research. Any Act before becoming an Act or a legislation must have complete research and drafting of the bill by the respective ministry and must be introduced in the house for discussion and vote. Each member of the respective house is expected to take part in the discussion of the bill, make changes through debate and pass it by voting. A debate is an essential quality of the Parliament and every member irrespective of the party to which they belong they must debate and pass the bill. The bill becomes a law when it is assented to by the President or the governor. Now there is also something called a pre-drafting phase. The very first step towards formulating a policy is a pre-drafting phase where the legislatures recognize the areas where the legislation is required, or a problem is to be solved. This can be through survey investigations or opinions of the citizens or the pressure groups. So, all these considerations will be taken and then they will be made into a bill having certain recommendations from various peers.

The minister who oversees the ministry initiates a plan on behalf of the government. A draft bill is published in the public domain for consideration whenever whether it is a policy or an Act to be made the government or the concerned ministry publishes the draft bill for public consultation in the public domain. A pre-legislative consultation means the draft of the bill is published before it is introduced in the Lok Sabha or the state legislature so that

the public can interact with the government. This procedure was introduced in the year 2014. It was based on the recommendations of the National Advisory Council of in 2013 and National Commission to review the working of the Constitution. As to the lawmaking procedure the Ministry of Law and Justice has made a provision for every ministry to publish the draft of the bill where the reasons for the introduction of such a bill, the financial requirements and explanation of the terms in simple language must be made by the concerned ministry.

Though this is not mandatory, the procedure prescribes that it is required as a matter of public consultation. The publication is supposed to be open for 30 days and accept the feedback and opinions from the public, especially the relevant stakeholders. After collecting the feedback, the ministry examines the socio-economic-political implications and takes suggestions from different departments including the Attorney General's advocate generals and other experts. Now the Constitutional aspects of the bill and every other aspect of the bill is to be examined and studied with the help of the Ministry of Law and Justice.

So, all these changes suggestions are submitted to the cabinet. An important example of the pre legislative consultation is the biodiversity amendment bill which was made into Act in 2023. It had a pre legislative consultation because of the nature of activity involved. Also, the wildlife protection amendment bill of 2022, the transgender rights bill of 2016, the Karnataka police bill of 2011, the freedom of information bill of 2004 which was passed as an RTI Act all had the pre legislative consultations. The cabinet forms a major role in the law-making procedures when the cabinet discusses the need for the policy proposed by the minister involved. It approves in the cabinet what is called the cabinet decision. After the bill has been approved by the various experts it is sent into the administrative ministry. The origin of the house of the bill is important if it is a money bill it is only introduced in Lok Sabha, if it is any other bill in the Rajya Sabha. So, the legislative council of the states wherever has a bicameral legislature also follows the same procedure.

The Ministry of Parliamentary affairs has the authority to decide when a bill is to be introduced in the parliament, that is it takes note of such bills which is money bill or any other bill, but this function is different from that of the authority of the speaker who decides the nature of the bill. The cabinet committees are formed, and they are all the extra Constitutional bodies which facilitate the examination of any policy related to the coordination of the different ministries. In 1861 the first cabinet committee was formed as an Indian council which introduced a portfolio system and established the executive council of governor general. Looking into the history this was renamed as cabinet secretariat and the executive council was called the cabinet secretary.

So, these are all under the cabinet secretariat government of India business rules of 1961 secretarial assistance to cabinet and cabinet committees' rules of businesses. These are all

the rules which the cabinet committees follow. The different cabinet committees prevalent in India are the standing committee and the ad hoc committee. The standing committee is a permanent committee where many of the bills have been discussed and an ad hoc committee is one which is constituted for a specific purpose only. The ad hoc committees are constituted from time to time and dissolved after fulfilling their objectives whereas the standing committees are permanent bodies. The membership of these committees varies from 3 to 8 or has different numbers of members. They are usually headed by the prime minister and include other than those that require technical knowledge.

The different cabinet committees are:

- a. Cabinet Committees on Economic Affairs (this is a standing committee; it's a permanent committee)
- b. Cabinet Committee on Parliamentary Affairs
- c. Cabinet Committee on Political Affairs
- d. Cabinet Committee on Security
- e. Cabinet Committee on Investments
- f. Cabinet Committee on Employment, Skill and Development etc.

The political affairs committee deals with the domestic and foreign policies, and this is the cabinet committee which decides on the areas of foreign policies, political affairs, and domestic affairs in the matters of politics. Appointments committees make decisions on the higher-level appointments like the office of the secretariat, public enterprises sectors, banks and other financial institutions.

The parliamentary affairs committee manages the government business within the parliament. The economic affairs committee directs the government's influence and coordination. The main function of the cabinet committee is to resolve the challenges that may be faced during the formulation of the policy or the Act. So, it is understood very well that the law-making power is a sovereign power of the government whether it is the central legislature, or the state legislature and it is called the inherent Constitutional powers to make the legislation.