

Lawmaking procedure in India

India is a democracy having quasi-federal structure of Government. Laws are made separately at different levels, by the Union Government/Federal Government for the whole country and by the State Governments for their respective states as well as by local municipal councils at district level. The **Legislative procedure in India** for the Union Government requires that proposed bills pass through the two legislative houses of the Indian Parliament of India, i.e. the Lok Sabha and the Rajya Sabha. The legislative procedure for states with bicameral legislatures requires that proposed bills be passed, at least in the state's Lower House or the Vidhan Sabha and not mandatory to be passed in the Upper House or the Vidhan Parishad. For states with unicameral legislatures, laws and bills need to be passed only in the state's Vidhan Sabha, for they don't have a Vidhan Parishad.

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Constituent power of parliament

The process of addition, variation or repeal of any part of the constitution by the Parliament under its constituent powers, is called amendment of the constitution.^[1] The procedure is laid out in Article 368. An amendment bill must be passed by each House of the Parliament by a majority of the total membership of that House when at least two-thirds members are present and voted. In addition to this, certain amendments which pertain to the federal and judicial aspects of the constitution must be ratified by a majority of state legislatures. There is no provision for joint sitting of the two houses (Lok Sabha and Rajya Sabha) of the parliament to pass a constitutional amendment bill. Basic structure of the Indian constitution cannot be altered or destroyed through constitutional

amendments under the constituent powers of the Parliament without undergoing judicial review by the Supreme Court. After the 24th amendment, parliament in its constituent capacity can not delegate its function of amending the constitution to another legislature or to itself in its ordinary legislative capacity^[2]

Proclamation of emergency per Article 352 (6) shall be ratified by the Parliament similar to its constituent power. When President's rule is invoked in a state using Article 356 (c) and its proclamation contains such incidental and consequential provisions suspending in whole or in part the operation of any provisions of the constitution relating to any body or authority in the State for giving effect to the objects of the proclamation, the proclamation needs to be approved by the Parliament under its constituent power (i.e. not by simple majority) after the 24th amendment^{[1][2]}

Legislative Powers

The legislative power of the states and the Centre are defined in the constitution and these powers are divided into three lists. The subjects that are not mentioned in any of the three lists are known as residuary subjects. Subject to the provisions in the constitution elsewhere, the power to legislate on residuary subjects, rests with parliament or state legislative assembly as the case may be per Article 245. Deemed amendments to the constitution which could be passed under legislative powers of Parliament, are no more valid after the addition of Article 368 (1) by 24th amendment^[1]

Union List

Union list consists of 100 items (previously 97 items) on which the parliament has exclusive power to legislate.

State list

State list consists of 61 items (previously 66 items) where state legislative assembly can make laws applicable in that state. But in certain circumstances, the parliament can also legislate temporarily on subjects mentioned in the state list, when the Rajya Sabha has passed a resolution with 2/3rd majority that it is expedient to legislate in the national interest per Articles 249 to 252 of the constitution.

Concurrent List

Concurrent list consists of 52 (earlier 47) where both parliament and a state legislative assembly can make laws in their domains subject to Articles 254 of the constitution

Nature of peoples mandate

The powers of a ruling party/coalition of the union is depending on the extent of the mandate it receives from the elections at central and state levels. These are

- commanding simple majority in the Lok Sabha only capable to run the government by passing money bills only. President can not issue ordinances on advise of the union cabinet alone as there is possibility of Rajya Sabha not according its approval!^[3]
- commanding simple majority in the Lok Sabha and Rajya Sabha (together or separately) capable to run the government by its legislative powers only
- commanding two - thirds majority in both Lok Sabha and Rajya Sabha separately capable to run the government by its constituent and legislative powers. Ruling government has full powers to impeach the President and Judges of Supreme Court / High Courts when charges of violating the constitution are established by judicial enquiry
- commanding two - thirds majority in either house of parliament capable to run the government by its legislative powers only. Per Article 61(3) or 124(4 & 5) or 217(1.b), the President and Judges of Supreme Court / High Courts can be forced by either of the house to establish violation of the constitution by a judicial enquiry so that when found guilty, president or a judge relinquishes their posts on moral grounds or other house may concur the opponent's impeachment proceedings on moral grounds.^[4]

At state level, simple majority in the legislative assembly (Vidhan Sabha) is enough to exercise all its constitutional powers except for deciding to have or abolish Legislative Council per Articles 169.

Difference between a Bill and an Act

Legislative proposals are brought before either house of the Parliament of India in the form of a bill. A bill is the draft of a legislative proposal, which, when passed by both houses of Parliament and assented to by the President, becomes an Act of Parliament. As soon as the bill has been framed, it has to be published in the news papers and the general public is asked to comment in a democratic manner. The bill may then be amended to incorporate the public opinion in a constructive manner and then may be introduced in the Parliament by ministers or private members. The former are called government bills and the latter, private members' bills. Bills may also be classified as public bills and private bills. A public bill is one referring to a matter applying to the public in general, whereas a private bill relates to a particular person or corporation or institution. The *Orphanages and Charitable Homes Bill* or the *Muslim Waqfs Bills* are examples of private bills.

How a Bill becomes an Act in Parliament

A Bill is the draft of a legislative proposal. It has to pass through various stages before it becomes an Act of Parliament.^{[5][6]} There are three stages through which a bill has to pass in one House of Parliament. The procedure is similar for the Legislative Assemblies of States.

First Reading

The legislative process begins with the introduction of a Bill in either House of Parliament, i.e. the Lok Sabha or the Rajya Sabha. A Bill can be introduced either by a Minister or by a private member. In the former case it is known as a Government Bill and in the latter case it is known as a Private Member's Bill. It is necessary for a member-in-charge of the Bill to ask for the leave of the House to introduce the Bill. If leave is granted by the House, the Bill is introduced. This stage is known as the First Reading of the Bill. If the motion for leave to introduce a Bill is opposed, the Speaker may, in his discretion, allow a brief explanatory statement to be made by the member who opposes the motion and the member-in-charge who moved the motion. Where a motion for leave to introduce a Bill is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker may permit a full discussion thereon. Thereafter, the question is put to the vote of the House. However, the motion for leave to introduce a Finance Bill or an Appropriation Bill is forthwith put to the vote of the House.^[7] Money/Appropriation Bills and financial bills can be introduced only in Lok Sabha per Articles 109, 110 and 117. Speaker of Lok Sabha decides whether a bill is Money Bill or not. Chairman of Rajya Sabha decides whether a bill is finance bill or not when the bill is introduced in the Rajya Sabha.^[8]

Publication in the official Gazette

After a Bill has been introduced, it is published in The Gazette of India. Even before introduction, a Bill might, with the permission of the Speaker, be published in the *Gazette*. In such cases, leave to introduce the Bill in the House is not asked for and the Bill is straight away introduced.^[7]

Reference of Bill to a Standing Committee

After a Bill has been introduced, the Presiding Officer of the concerned House (Speaker of the Lok Sabha or the Chairman of the Rajya Sabha or anyone acting on their behalf) can refer the Bill to the concerned Standing Committee for examination and to prepare a report thereon. If a Bill is referred to a Standing Committee, the Committee shall consider the general principles and clauses of the Bill referred to them and make a report thereon. The Committee can also seek expert opinion or the public opinion of those interested in the measure. After the Bill has thus been considered, the Committee submits its report to the House. The report of the Committee, being of persuasive value, shall be treated as considered advice.^[7]

Second Reading

The Second Reading consists of consideration of the Bill which occurs in two stages.

First stage

The first stage consists of general discussion on the Bill as a whole when the principle underlying the Bill is discussed. At this stage it is open to the House to refer the Bill to a Select Committee of the House or a Joint Committee of the two Houses or to circulate it for the purpose of eliciting opinion thereon or to straight away take it into consideration.^[7]

If a Bill is referred to a Select/Joint Committee, the Committee considers the Bill clause-by-clause just as the House does. Amendments can be moved to the various clauses by members of the Committee. The Committee can also take evidence of associations, public bodies or experts who are interested in the measure. After the Bill has thus been considered, the Committee submits its report to the House which considers the Bill again as reported by the Committee. If a Bill is circulated for the purpose of eliciting public opinion thereon, such opinions are obtained through the Governments of the States and Union Territories. Opinions so received are laid on the Table of the House and the next motion in regard to the Bill must be for its reference to a Select/Joint Committee. It is not ordinarily permissible at this stage to move the motion for consideration of the Bill.^[7]

Second Stage

The second stage of the Second Reading consists of clause-by-clause consideration of the Bill as introduced or as reported by Select/Joint Committee. Discussion takes place on each clause of the Bill and amendments to clauses can be moved at this stage. Amendments to a clause have been moved but not withdrawn are put to the vote of the House before the relevant clause is disposed of by the House. The amendments become part of the Bill if they are accepted by a majority of members present and voting. After the clauses, the Schedules if any, clause 1, the Enacting Formula and the Long Title of the Bill have been adopted by the House, the Second Reading is deemed to be over.^[7]

Third Reading

Thereafter, the member-in-charge can move that the Bill be passed. This stage is known as the Third Reading of the Bill. At this stage the debate is confined to arguments either in support or rejection of the Bill without referring to the details thereof further than that are absolutely necessary. Only formal, verbal or consequential amendments are allowed to be moved at this stage. In passing an ordinary Bill, a simple majority of members present and voting is necessary. But in the case of a Bill to amend the Constitution, a majority of the total membership of the House and a majority of not less than two-thirds of the members present and voting is required in each House of Parliament.^[7] If the number of votes in favour and against the bill are tied, then the Presiding officer of the concerned House can cast his/her vote, referred to as a Casting Vote.^[7]

Passing a bill

If at any time during a meeting of a House there is no quorum which is minimum one-tenth of the total members of a House, it shall be the duty of the Chairman or Speaker, or person acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.^[9] The bills taken up under legislative power of parliament are treated as passed provided majority of members present at that time approved the bill either by voting or voice vote. It is also right of a member to demand voting instead of voice vote.^[10] In case of passing a constitutional amendment bill, two-third of the total members present and voted in favour of the bill with more than 50% of the total members of a house, is required per Article 368.

Bill in the other House

After the Bill is passed by one House, it is sent to the other House for concurrence with a message to that effect, and there also it goes through the stages described above, except the introduction stage.^[7] If a Bill passed by one House is amended by the other House, it is sent back to the originating House for approval. If the originating House does not agree with the amendments, it shall be that the

two houses have disagreed. The other House may keep a money bill for 14 days and an ordinary Bill for three months without passing (or rejecting) it. If it fails to return the Bill within the fixed time, the Bill is deemed to be passed by both the houses and is sent for the approval of the President.

At state level, it is not mandatory that a bill shall be passed by the legislative council (if existing) per Articles 196 to 199. There is no provision of conducting joint session of both Houses to pass a bill.

Joint session of both Houses

In case of a deadlock between the two houses or in a case where more than six months lapse in the other house, the President may summon, though is not bound to, a joint session of the two houses which is presided over by the Speaker of the Lok Sabha and the deadlock is resolved by simple majority. Until now, only three bills: the Dowry Prohibition Act (1961), the Banking Service Commission Repeal Bill (1978) and the Prevention of Terrorist Activities Act (2002) have been passed at joint sessions.^[11]

President's approval

When a bill has been passed, it is sent to the President for his approval per Article 111. The President can assent or withhold his assent to a bill or he can return a bill, other than a money bill which is recommended by president himself to the houses. However Article 255 says that prior recommendation of president or governor of a state wherever stipulated is not compulsory for an Act of parliament or of the legislature of a State but the final consent of president or governor of a state is mandatory. President may be of view that a particular bill passed under the legislative powers of parliament is violating the constitution, he can send back the bill with his recommendation to pass the bill under the constituent powers of parliament following the Article 368 procedure. President shall not withhold constitutional amendment bill duly passed by parliament per Article 368. If the President gives his assent, the bill is published in The Gazette of India^[12] and becomes an Act from the date of his assent. If he withholds his assent, the bill is dropped, which is known as absolute veto. The President can exercise absolute veto on aid and advice of council of ministers per Article 111 and Article 74.^[13] The president may also effectively withhold his assent as per his own discretion, which is known as pocket veto. The pocket veto has only been exercised once by President Zail Singh in 1986, over the postal act where the government wanted to open postal letters without warrant by amending the Indian Post Office Act, 1898. If the president returns it for reconsideration, the Parliament must do so, but if it is passed again and returned to him, he must give his assent to it. If parliament is not happy with the president for not assenting a bill passed by it under its legislative powers, the bill can be modified as a constitutional amendment bill and passed under its constituent powers for compelling the president to give assent. In case a constitutional amendment act is violating the basic structure of the constitution, constitutional bench of Supreme Court would quash the act. When parliament is of the view that the actions of the president are violating the constitution, impeachment proceedings against president could be taken up to remove him under Article 61 where at least two - thirds of total membership of each house of parliament should vote in favour of the impeachment when charges against the president are found valid in an investigation.

In case of a bill passed by the legislative assembly of a state, the consent of that state's Governor has to be obtained.^[14] Some times the governor may refer the bill to the president anticipating clash between other central laws or constitution and decision of the president is final per Articles 200 and 201.

All decisions of the union cabinet are to be assented by the president for issuing gazette order (GO). In case the cabinet decisions are not in the purview of the established law, president shall not give assent to the cabinet decisions. He may indicate union cabinet to pass the necessary legislation by the parliament to clear the cabinet decision. A minister is not supposed to take any decision without being considered by the council of ministers per Article 78(c).

The purpose of framing the Indian constitution is to serve with honesty, efficiency and impartiality for the betterment of its citizens by the people who are heading or representing the independent institutions created by the constitution such as judiciary, legislature, executive, etc. When one or more institutions are failing in their duty, the remaining shall normally take the lead in correcting the situation by using checks and balances as per the provisions available in the constitution.

Coming into force

Generally most Acts will come into force, or become legally enforceable in a manner as prescribed in the Act itself. Either it would come into effect from the date of assent by the President (mostly in case of Ordinances which is later approved by the Parliament), or a specific date is mentioned in the Act itself (mostly in case of Finance Bills) or on a date as per the wish of the Central or the State Government as the case may be. In case the commencement of the Act is as made as per the wish of the government, a separate Gazette notification is made, which is mostly accompanied by the Rules or subordinate legislation in another gazette notification.

Money Bills

Bills which exclusively contain provisions for imposition and abolition of taxes, for appropriation of moneys out of the Consolidated Fund, etc., are certified as Money Bills by the Speaker of the Lok Sabha. Money Bills can be introduced only in Lok Sabha on the recommendation of the President per Articles 109, 110 and 117. For every fiscal year, the annual budget or annual financial statement with demand for grants on the recommendation of the President per Articles 112 to 116 shall be passed by the Lok Sabha. The Rajya Sabha cannot make amendments to a Money Bill passed by the Lok Sabha and sent to it. It can, however, recommend amendments in a Money Bill, but must return all Money Bills to Lok Sabha within fourteen days from the date of their receipt. The Lok Sabha can choose to accept or reject any or all of the recommendations of the Rajya Sabha with regard to a Money Bill. If Lok Sabha accepts any of the recommendations of Rajya Sabha, the Money Bill is deemed to have been passed by both Houses with amendments recommended by Rajya Sabha and accepted by Lok Sabha. If Lok Sabha does not accept any of the recommendations of Rajya Sabha, the Money Bill is deemed to have been passed by both Houses in the form in which it was passed by Lok Sabha without any of the amendments recommended by Rajya Sabha. If a Money Bill passed by Lok Sabha and transmitted to Rajya Sabha for its recommendations is not returned to Lok Sabha within the said period of fourteen days, it is deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by Lok Sabha.^[7] When a money bill introduced in the Lok Sabha by the government fails to get its approval, the ruling party is treated as not commanding the majority support in the Lok Sabha or shall be dismissed by the president to pave way for new government / fresh elections or opposition would move no confidence motion

At state level also money bills shall be introduced in the legislative assembly only per Articles 198, 199 and 207 on the recommendation of the governor. When a money bill introduced in the legislative assembly by the state government fails to get its approval, the ruling party is treated as not commanding the majority support in the legislative assembly or shall be dismissed by the governor to pave way for new government / fresh elections or opposition would move no confidence motion

Ordinances

When both houses of parliament are not in session, extant provisions of law are felt inadequate, under compelling circumstances and the president is satisfied for the need of immediate action, he/she may promulgate such required ordinances under Article 123 of the constitution.^[15] An ordinance has same force and effect as an 'act of parliament'. Every ordinance shall cease to operate if not passed by the parliament before the expiration of six weeks from its reassembly. President shall not issue any ordinance which needs amendment to the constitution or violating the constitution. When state assembly is not in session, governor of a state can issue ordinances per Article 213 subject to the approval of the president in case required so.

Jammu & Kashmir state

The state of Jammu and Kashmir was accorded higher degree of federalism under Article 370 read with Appendix I {The Constitution (Application to Jammu and Kashmir) Order, 1954} of the Indian constitution.^[16] Matters related to Defence, Foreign relations and Communication of Jammu and Kashmir are under jurisdiction of union government. The laws enacted by the parliament (including amendments to the Indian constitution) applicable to rest of India are not valid in J&K state unless ratified by its state assembly.^[17] Government of India can declare emergency in Jammu and Kashmir and impose Governor's rule in certain conditions. The state has its own constitution other than applicable Indian constitution.^[18] Part XII of the J&K state constitution makes provision to amend its constitution with two thirds majority by the state assembly. Part VI (The states) and Part XIV (Services under the union and the states) of the Indian constitution is not applicable to J&K state per Article 152 and Article 308.

See also

- [List of Acts of the Parliament of India](#)
- [List of Ordinances of Indian Government](#)
- [Prime Minister of India](#)
- [Union Council of Ministers](#)
- [Constitution of India](#)
- [List of amendments of the Constitution of India](#)

References

1. "Pages 311 & 312 of original judgement: A. K. Roy Etc vs Union Of India And Anr on 28 December 1981" (<http://indiankanoon.org/doc/875590/>) Retrieved 23 August 2014.
2. "Para 506e of Kesavananda Bharati v State of Kerala, (AIR 1973 SC 1461)" (<http://www.indiankanoon.org/doc/257876/>). 1973. Retrieved 2014-12-01.
3. "Repeated promulgation of ordinances because a bill is held up in the Rajya Sabha is a violation of constitutional principles" (<http://blogs.timesofindia.indiatimes.com/toi-edit-page/repeated-promulgation-of-ordinances-because-a-bill-is-held-up-in-the-rajya-sabha-is-a-violation-of-constitutional-principles/>) Retrieved 27 September 2016.
4. "The judges (inquiry) act, 1968" (<http://bombayhighcourt.nic.in/libweb/actc/1968.51.pdf>) (PDF). Retrieved 27 September 2017.
5. "Parliamentary procedure" (<http://164.100.47.192/loksabha/ParliamentProcedure.aspx>) Retrieved 3 May 2016.
6. "Rules of procedure and conduct of business in Rajya Sabha" (http://rajasabha.nic.in/rsnew/rs_rule/rules_pro.pdf) (PDF). Retrieved 3 May 2016.
7. "How a bill becomes an Act" (<http://www.parliamentofindia.nic.in/ls/intro/5.htm>). Retrieved 8 May 2015. [Ⓒ] *This article incorporates text from this source, which is in the public domain*
8. "Andhra Pradesh Bill A Financial Bill, Says Rajya Sabha Deputy Chairman" (<http://www.ndtv.com/andhra-pradesh-news/andhra-pradesh-bill-a-financial-bill-says-rajya-sabha-deputy-chairman-1627350>) Retrieved 8 March 2016.
9. "Rajya sabha handbook" (<http://rajasabha.nic.in/rsnew/handbook/chapter1-1.asp>) Retrieved 3 May 2016.
10. "Voting and division in Lok Sabha" (http://164.100.47.192/loksabha/writereaddata/Abstract/voting_and_division.pdf) (PDF). Retrieved 3 May 2016.
11. "Is any deadlock between the two Houses possible?" (<https://archive.is/20130724045633/http://rajasabha.nic.in/rsnew/faq/freq1.asp>) *rajasabha.nic.in*. rajasabha. Archived from the original on 24 July 2013 Retrieved 24 July 2013.
12. "Amendments to Sebi Act gets Presidential assent" (<http://economictimes.indiatimes.com/markets/regulation/amendments-to-sebi-act-gets-presidential-assent/articleshow/22718696.cms>) PTI. 18 Sep 2013 Retrieved 23 September 2013. "It has now been published in the Gazette of India, Extraordinary Part-II, Section-1, dated the 13th September 2013 as Act No. 22 of 2013"
13. "The president's power of withholding assent" (<http://guyanachronicle.com/presidents-power-to-withhold-assent/>) Retrieved 23 September 2015.
14. Gupta, V. P. (26 Aug 2002). "The President's role" (http://articles.timesofindia.indiatimes.com/2002-08-26/education/27323497_1_powers-impeachment-resolution) *Times of India*. Retrieved 4 January 2012.
15. "Re-promulgation of ordinances fraud on Constitution: SC" (<http://indianexpress.com/article/india/re-promulgation-of-ordinances-fraud-on-constitution-sc-4456354/>) Retrieved 3 January 2017.
16. "The Constitution of India" (<http://lawmin.nic.in/olwing/coi/coi-english/coi-indexenglish.htm>) Retrieved 21 March 2012.
17. "Central acts applicable to J&K state" (http://jklaw.nic.in/central_acts.pdf) (PDF). Retrieved 23 August 2014.
18. "Constitution of J&K state" (http://jkllegislativeassembly.nic.in/Constitution_of_J&K.pdf) (PDF). Retrieved 23 August 2016.

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