

PARLIAMENT AND STATE LEGISLATURE PART 2



Types of Majority

Simple Majority: 50% of present + voting

Absolute Majority: 50% of total membership

Effective Majority: Majority of (Total strength - Vacancy)

Special Majority: 50% of total strength + 2/3 rd present voting

Removal of judges/CEC — Taken from USA

Art 61: Impeachment of President (2/3rd of total strength)

Art 249: 2/3rd members present + voting (RS) — Parliament can make law on State List

** Majority: $\frac{\quad}{2} + 1$

Removal of Vice President in RS, removal of Speaker, Deputy Chairman

Art 101: Vacation of seats

No person shall be a member of both the Houses of Parliament/State Legislature

Resignation: By writing to Presiding Officer

If a member is absent for **60 days** without the permission of the House

He/She has to vacate

Results in disqualification

At the same time from two seats

At the same time from two Houses

Art 102: Disqualification of membership

(a) Not hold an office of profit

RPA: People Representation Act, 1951

(b) Unsound mind

Jail for more than two years → Disqualification

(c) Undischarged insolvent

Not written in Constitution

(d) Not a Citizen of India



Defection (10th Schedule, 52nd CA)

On grounds of:

- Independent members joins any political party
- Nominated members, join the political party after 6 months from date of his nomination
- Did not follow the direction of Whip
- if any MP joins any other party

Not mentioned in the Constitution

Exception

- Merger: 2/3rd members leave and joins other political party

Decision with regard to disqualification under defection

Presiding Officer

Kihoto Hollohan vs Zachillhu Case
Judiciary can review the final

91st CA: Disqualification on ground of defection

Art 103: Decision on disqualification of members

President on the advice of ECI

Art 104: Penalty for sitting and voting before making oath or affirmation under Art 99 or when not qualified or disqualified

Penalty of 500 Rs per day

Exception

Not to President (no criminal proceeding against him)

Art 105: Power and privileges → are also extended to those who are entitled to speak in the Parliament

Freedom of speech in Parliament

Attorney General

No, an shall be liable to any proceedings in any court w.r.t any said/vote in Parliament

MP cannot be arrested in any civil proceedings during a session — 40 days before/after the session

Not in criminal proceedings

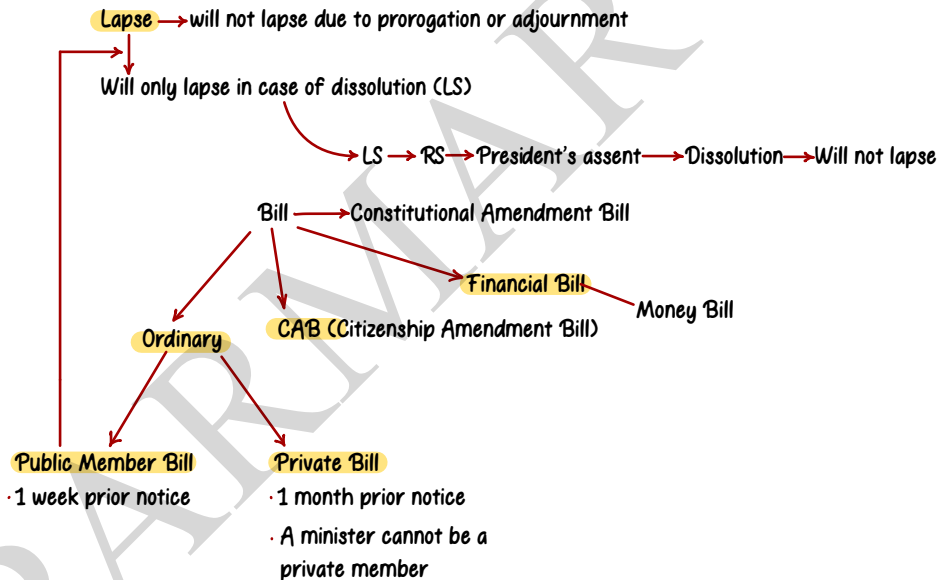
· **Art 106:** Salaries and allowances of members

Determined by Parliament
time to time

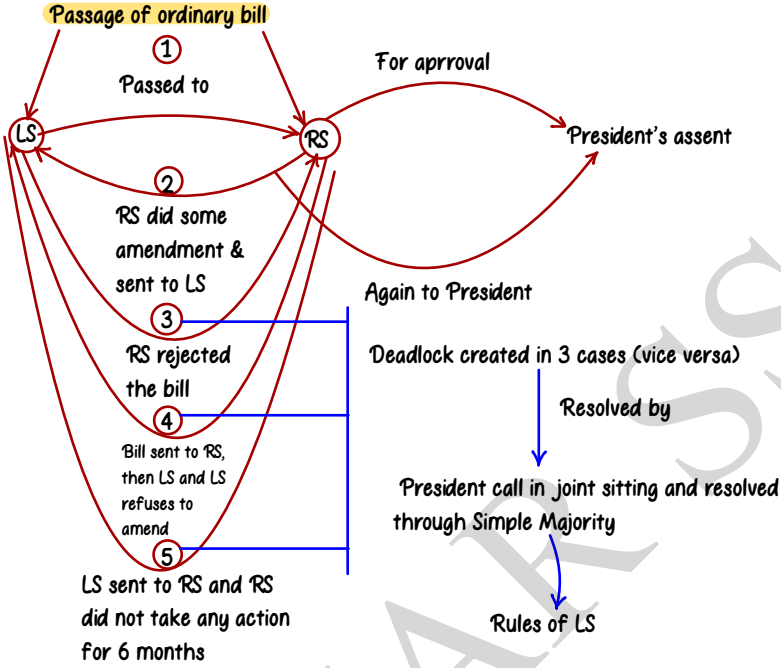
Legislative Procedures

· **Art 107:** Provisions as to introduction and passing of bills

A bill may originate in either House of the Parliament



· **Art 108:** Joint sitting of both Houses



3 Joint Sitting on

- Dowry Prohibition Bill (1960)
- Banking Services Commission Bill (1977)
- Prevention of Terrorism Bill (2002)

Recited by Speaker of LS/Deputy speaker of LS/Deputy Chairman of RS

→ Chairman of RS can never preside joint sitting, Why?

- Because he is not a member of any house

• Art 109: Special procedure in respect to Money Bill

Origin: LS

Goes to

Cannot amend money bill, but can recommend amendment

← RS (has 14 days to react)

- Has limited powers w.r.t to Money Bill
- No provisions of joint sitting in case of Money Bill

Art 110: Definition of Money Bill

Speaker of Lok Sabha decides whether a bill is a money bill/not — Final decision

Subject to judicial review

Examples

Tax, borrowing of money, etc

Any bill shall not be dumped as Money Bill: Fine, penalty, fee, tax for local purpose

Art 111: Assent to Bills

Negative Powers

→ Veto Power

Cannot be used in case of Constitutional Amendment under Art 368

Absolute Veto: Bill rejected → Cannot be rejected 2nd time

Suspensive Veto: Bill returned → Assent is mandatory in returned bill

Pocket Veto: No reaction

Qualified Veto: Not available to Indian President (Only to USA)

• No time limit given

• It was first used by Gyani Zail Singh

Not available in case of Money Bill, why?

• Money Bill are brought prior recommendation to President

* Pocket of Indian President is deeper than USA President (time limit)

Art 112: Annual Financial Statement

Budget → the term is not mentioned in the Constitution

• President shall cause to be laid before both the Houses of the Parliament, a statement of estimated receipts and expenditure

Budget in the name of President → Financial expenses and revenues of government — Annual Financial Statement

Meaning: Income



This Annual Financial Statement expenditure shall be shown in two types:

Charged on Consolidated Fund of India

Not votable (due to salary of President, HC judges, etc)

Made from Consolidated Fund of India

Votable (Only in LS)

*RS has no power to vote on budget

Art 113: Procedure in Parliament with respect to estimates

Voting in Consolidated Fund of India and only in LS
(LS has power to vote)

No demand for a grant shall be made except on recommendation of President

Demand for fund in the name of President → Voting → Grant

Art 114: Appropriation Bills

Demand for grant

No voting is allowed in Appropriation Bill

Without passing this bill, the government cannot take out money from Consolidated Fund of India → no voting is allowed in Appropriation Bill

During voting, the Parliamentarians can pass 'Cut motion'

To reject

Policy cut: Reduced to Rs 1

Token cut: Reduced to Rs 100

Economy cut: Reduced by specified amount

If passed, amounts to defeat of the government

*Budget session: Feb-May

Art 115: Supplementary additional or excess grant

Art 116: vote on account, votes of credit and exceptional grants



Different types of funds Public purse

Consolidated Fund of India (Art 266)

- Tax
- Revenue

Public Account of India (Art 266)

- Remittance — Public fund deposits
 - Judicial deposits
- In hands of Executive, not Parliament

Contingency Fund of India (Art 267)

- In hands of President, but run by President and Finance Secretary

Art 117: Special provisions to Financial Bills

All Money Bills are Financial Bill, but vice versa is not true

— Prior recommendation of President

— Same as Ordinary Bill

Art 118: Rules of procedure

- Each House of Parliament may make rules for regulating its procedure and conduct of its business

Art 119: Regulation of law of procedure in Parliament in relation to Financial Business

Art 120: Language to be used in Parliament

— Business of Parliament shall be transacted in English and Hindi

— Shall be removed after 15 yrs (but still continuing)

— Presiding officer may permit any member to express himself in mother tongue

Art 121: Restriction on discussion in Parliament

In the courts (SC or HC)

- No discussion regarding the conduct of judges shall be done in the Parliament

Art 122: Court not to inquire into the proceedings of Parliament

Art 123: Power of President to promulgate Ordinances during recess

Gap between sessions

Legislative power of the President

— Law making power

— President in centre (Art 123)

— Governor in State (Art 213)

→ Can ordinance be promulgated when only one house is not in session?

- Yes, a bill can become Act when passed from both the Houses and with the assent of President, if both the Houses are not there, then no act; however, in case of either one of the House not in session, Ordinance can be brought

• **Max life of Ordinance?**

- Approve
- Disapprove
- No reaction (6 months and 6 weeks), How?
 - Max gap between session — 6 months (break between two Houses)
 - When no action is taken — 6 weeks

• Case regarding Ordinance → DC Wadhwa Case

State Legislature

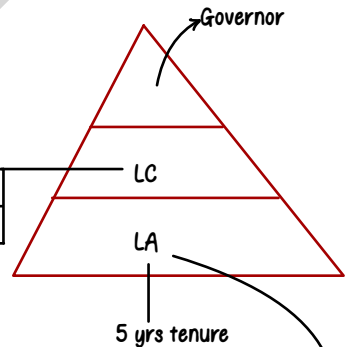
• Part VI — Art 168-212

• **Legislative Assembly** — In all States and UTs

• **Legislative Council** — Only in 6 States

- K: Karnataka
- A: Andhra Pradesh
- B: Bihar
- U: Uttar Pradesh
- T: Telangana
- M: Maharashtra

- Permanent House
- 6 yrs tenure
- Can be abolished by Simple Majority



• Bicameralism Legislature (6 States): LS + LA

LC strength

- Max: 1/3rd of total strength of LA
- Min: 40
- Actual strength is determined by the Parliament

• Parliament has the power to create or abolish LC

Simple Majority ← Special Majority by LA

LA strength

- Max: 500
- Min: 60

Exception

- Arunachal Pradesh
- Sikkim
- Goa
- Mizoram — 40
- Nagaland — 46

LC strength

- 1/3rd: Elected by MLA
- 1/3rd: Elected by local bodies
- 1/12th: Elected by graduates of 3 yrs
- 1/12th: Elected by teachers of 3 yrs
- 1/6th: Nominated by Governor — 12 members

- In the field of:
- L: Literature
 - S: Science
 - A: Arts
 - S: Social Science
 - C: Cooperative Society

• 104th CA: reservation of SC/ST has been extended

Qualification

- LA: 25 yrs
- LC: 30 yrs

Oath

- Governor/any person appointed by Governor

Vacation

- Same as RS/LS

Summon/Prorogue/Dissolve of LS: Governor

Adjourned by: Presiding Officer

*Rest same

Ordinary Bill

LA — Governor

Powers

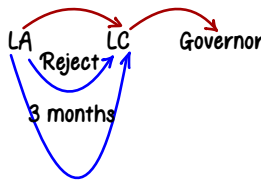
Absolute Veto

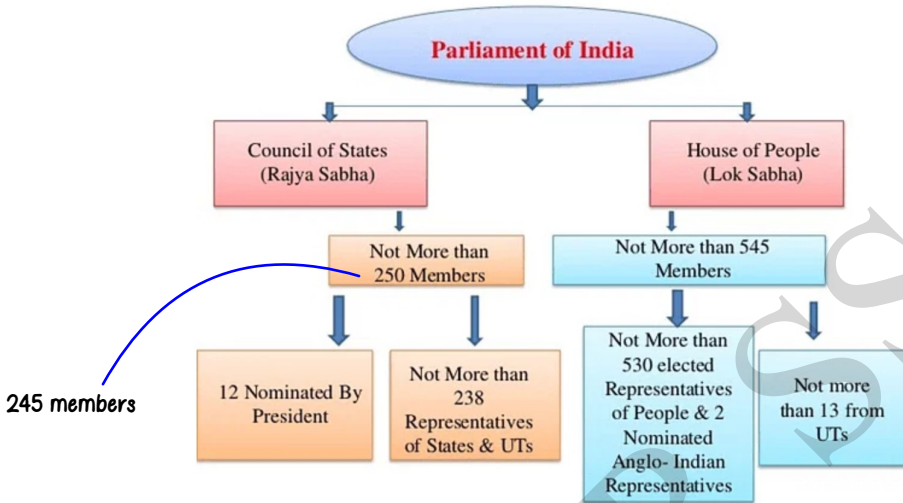
Suspensive Veto

Pocket Veto

Assent, Veto

— He may reserve the bill to President → no over right of President's approval (veto power)





245 members

- The first elected parliament with two Houses came into being in India in 1952
- **Art 312**: All India Services