

FACULTY OF JURIDICAL SCIENCES

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Lecture-29



State Legislature: Organization, Powers and Limitations on the Powers of State Legislature

The Constitution of India provides for a legislature in each State and entrusts it with the responsibility to make laws for the state. However, the composition of a state Legislature can be different in different states. It can be either bicameral or unicameral. Presently, only six states (Andhra Pradesh, Bihar, J&K, Karnataka Maharashtra and UP) have bi-cameral legislatures. Twenty two States and Two Union Territories (Delhi and Puducherry) have uni-cameral Legislatures.

In case of a bicameral state legislature, the upper house is known as State Legislative Council (Vidhan Parishad) and the lower house as the State Legislative Assembly (Vidhan Sabha). Where there is only one House of the State Legislature, it is known as the State Legislative Assembly. Orissa has a unicameral legislature with Orissa Legislative Assembly as its all powerful house.

(I) Method of Abolition or Creation of a State Legislative Council:

The power to establish or abolish the Legislative Council in a state belongs to the Union Parliament. It can do it by enacting a law. The Parliament, however, acts when the Legislative Assembly of the concerned state passes a desired resolution by a majority of its total membership and by a majority of not less than two-thirds of the members of the State Legislative Assembly present and voting.

Organisation of a State Legislature:

(A) Composition of the State Legislative Assembly (Vidhan Sabha):

The State Legislative Assembly, popularly known as Vidhan Sabha, is the lower, directly elected, popular and powerful house of the state legislature. Its membership is in proportion to the population of the state and hence it differs from state to state. The members are directly elected by the people of the state through a secret ballot, simple majority vote victory and single member territorial constituency system. Orissa Legislative Assembly has 147 members.

A citizen of India, who is not less than 25 years of age and who fulfills every other qualification as laid down by a law can become its member by winning an election from any constituency in the state. However, no person can simultaneously be a member of two Houses of the Parliament or of any other State Legislature.

The normal term of Legislative is 5 years. However, it can be dissolved by the Governor at any time. It can be suspended or dissolved when an emergency under Art. 356 is proclaimed in the state. In May 2009, in the Orissa Legislative Assembly elections the BJD won 103 seats while the Congress got 26, the BJP 6 and independents and other 12 seats.

(B) Composition of State Legislative Council:

At present only 6 States — Andhra Pradesh, UP, Maharashtra, Karnataka, J&K and Bihar—have Legislative Councils. The popular name of the State Legislative Council is Vidhan Parishad. The total membership of a Legislative council cannot be normally less than 40 and more than 1/3rd of the total membership of the State Legislative Assembly.

Andhra Pradesh Vidhan Parishad has 90 members UP Vidhan Parishad 100, Maharashtra Vidhan Parishad 78, J&K Vidhan Parishad 36, Bihar Vidhan Parishad 75 and Karnataka Vidhan Parishad 75 members. The membership of Vidhan Parishad includes elected as well as nominated representatives from several types of constituencies.

The following formula is used:

- (i) 1/3rd members are elected by the members of State Legislative Assembly.
- (ii) 1/3rd members are elected by local bodies of the state.
- (iii) 1/12th members are elected by teachers of at least three years standing, serving educational institutions of the state.
- (iv) 1/12 members are elected by state university graduates of not less than three years-standing.
- (v) 1/6th members are nominated by the Governor of the state.

Any citizen of India who is not less than 30 years of age, who possesses all the qualifications as laid down by the Parliament, who is not a member of any other legislature or Union Parliament can become a member of the State Legislative Council either by winning an election or by securing Governor's nomination. Legislative council is a semi-permanent House. It is never dissolved as a whole. 1/3rd of its members retire after every 2 years. Each member has a term of 6 years.

Powers and Functions of a State Legislature:

Each State Legislature exercises law-making powers over the subjects of the State List and the Concurrent List. In case a state has a unicameral legislature, i.e., in case it has only State Legislative Assembly, all the powers are exercised by it. However, even in case it is a bicameral state legislature with state Legislative Council (Vidhan Parishad) as the upper house and state Legislative Assembly as the lower house, almost all the powers are exercised by the latter. The Legislative Council plays only a secondary and minor role.

Powers of State Legislature:

1. Legislative Powers:

The State Legislature can make laws on the subjects of the State List and the Concurrent List. It can enact any bill on any subject of State List, which becomes an Act with the signatures of the Governor. Normally, the Governor acts as a nominal and constitutional head and as such follows the advice of the State Chief Minister and his Council of Ministers.

However, he can reserve some bills passed by the State Legislature for the approval of the President of India. Further, in case a law made by the State Legislature on a concurrent subject comes into conflict with a Union Law on the same subject, the latter gets precedence over the former. In ordinary law-making, both the Houses (Legislative Assembly and Legislative Council wherever these exist together) have co-equal powers. In practice the

Legislative Assembly dominates the law-making work. Most of the non-money ordinary bills are introduced in the Legislative Assembly and it plays a major role in their passing. The Legislative Council acts only as a revising and delaying second chamber.

A bill passed by the Legislative Assembly and rejected by the Legislative Assembly or not decided upon by the latter within 3 months, when re-passed by the Legislative Assembly becomes an Act after the expiry of one month from the date on which it was sent to the Legislative Council a second time.

A bill first passed by the Legislative Council becomes an Act only when it gets the approval of the Legislative Assembly. Thus, Legislative Council can only delay the passing of an ordinary bill by a maximum of 4 months. In case the State Legislature is a unicameral body, all the law-making powers are exercised by the Legislative Assembly.

2. Financial Powers:

The State Legislature has the power to levy taxes in respect of all subjects of the State List. It is the custodian of the finances of the state. No revenue can be collected or tax can be levied or collected by the state government without the consent of the State Legislature. The budget and all other financial policies and programmes of the state government become operational only after getting an approval from the State Legislature.

However, in emergencies declared under Articles 352, or 356 or 360, the financial powers of the state become subordinate to the Union. When the state is under a constitutional emergency (Art. 356), the State Legislature stands either suspended or dissolved. In this situation, the financial powers for the state are exercised by the Union Parliament.

When a State Legislature is unicameral, all the financial powers are naturally exercised by the Legislative Assembly. However, even when it is bi-cameral, the real financial

powers are in the hands of the Legislative Assembly. A money bill can be introduced only in the Legislative Assembly and after passage it goes to the Legislative Council.

The latter can delay its passage for only 14 days. In case, it rejects or amends the bill, the decision of the Legislative Assembly prevails. When the Legislative Council returns a financial bill to the Legislative Assembly with some amendments, it is the power of the Legislative Assembly to accept or reject these. Thus, in respect of financial powers, the real authority is in the hands of the State Legislative Assembly.

3. Power to control the Executive:

Control over the State Council of Ministers is exercised by the State Legislative Assembly. Little role has been assigned to the State Legislative Council. The State Chief Minister is the leader of majority in the State Legislative Assembly. The State Council of Ministers is collectively responsible before the Legislative Assembly.

The latter can cause the fall of the ministry by passing a vote of no-confidence or by rejecting a bill or policy or budget sponsored by the Council of Ministers. The State Legislative Council can exercise only a limited control over the ministry by putting questions and supplementary questions to the ministers.

4. Other Powers:

The State Legislature, particularly its Legislative Assembly, exercises several other powers. The elected members of the Legislative Assembly (MLAs) participate in the election of the President of India. They also elect representatives of the state in the Rajya Sabha. Certain constitutional amendments can be made by the Union Parliament only with the ratification by at least half of the State Legislatures.

The state legislature considers the reports of the State Public Service Commission, State Auditor General, and others. It also acts as a forum for ventilation of the grievances of the people. The State Legislative Assembly has the right of adopting a resolution for the creation or abolition of the State Legislative Council.

Position of a State Legislature:

The State Legislature occupies the same position in a state as is the position of the Parliament in the Union. There is, however, a difference of degree in their relative powers. Indian Unitarian Federalism makes the Union Parliament more powerful than each state legislature. Further, there are several specific limitations on the powers of a state legislature.

Some Limitations on the Powers of State Legislature:

(1) Prior consent of the President of India for introduction of some Bills:

There are certain bills which can be introduced in a state legislature only with the prior consent of the President of India.

(2) Reservation of bills by the Governor for President's Assent:

There are certain bills, which after having been passed by the state legislature, can be reserved by the Governor for the consent of the President. Such bills become laws only after the President has given his assent.

(3) Limitation that can be imposed by the Rajya Sabha:

The Union Parliament gets the power to pass laws on the State List, (for one year) if the Rajya Sabha adopts a resolution (supported by 2/3rd majority of the members present and voting) and declares a state subject mentioned in the resolution as a subject of national importance.

(4) Limitations during national Emergency:

When a national emergency (Under Art. 352) is in operation, the Parliament is empowered to pass a law on any subject of the State List. The law so passed operates during the period of emergency and for six months after the end of the emergency.

(5) Limitations during a Constitutional Emergency:

During the operation of constitutional emergency in a state under Art 356, the Union Parliament gets the authority of making laws for that state. The State Legislature stands either dissolved or suspended.

(6) Discretionary Powers of the Governor:

Discretionary powers of the Governor of a state also constitute a limitation on the State Legislature. Whenever he acts in his discretion, he is beyond the jurisdiction of the State Legislature. Acting in his discretion, the Governor can even dissolve the State Legislative Assembly.

(7) Precedence of Union Laws on the Concurrent Subject:

The State Legislature and the Union Parliament, both have the concurrent power to make laws on the subjects of the Concurrent List. If both the Union Parliament and a State Legislature pass a law on the same subject of the Concurrent List and there is inconsistency between the two, the law passed by the Union Parliament gets precedence over the corresponding state law.

Thus each state legislature in India exercises law-making powers over the subjects given to it by the Constitution. However, even in respect of these, it exercises law-making powers under the above constitutional limitations. Nevertheless in general the

State Legislatures act as important and powerful legislatures in all the 28 States and 2 Union Territories of India.

MCQ

1. Which Article of the Indian Constitution says that there shall be a President of India?

(A) 61

(B) 62

(C) 52

(D) 74

2. Who participates in the Presidential election?

(A) Elected members of both Houses of Parliament

(B) Elected and nominated members of the State Legislative Assembly

(C) Members of all Union Territories

(D) All of the above

3. What qualifications should be to become a President?

(A) 35 years of age

(B) He should be eligible to be elected as a member of Rajya Sabha.

(C) Must be an Indian citizen

(D) Only a and c

4. Which of the following statements is wrong?

(A) Elected and nominated members of the State Legislative Assembly participate in the presidential election.

(B) The Union Executive includes the President, Vice President, Prime Minister, Attorney General of India

(C) Impeachment may be initiated against the President for 'breach of constitution'

(D) Article 56 envisages the tenure of the President

5. Which of the following is not matched?

- (A) Article 54: Presidential election
- (B) Article 55: manner of presidential election
- (C) Article 60: Procedure for impeachment of the President
- (D) Article 123: Power of the President to promulgate ordinance