

FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B. 1st Semester

SUBJECT: Political science-I

SUBJECT CODE: BAL-101

NAME OF FACULTY: Dr. Shiv Kumar Tripathi

Lecture-27



Legislature: Meaning, Functions and Types of Legislature

Of the three organs of the government, the place of primacy belongs to the Legislature. The function of government begins by law-making and is followed up by law-enforcement and adjudication functions. As such, the legislature is the first organ of the government.

Legislature: Meaning

The term 'legislature' is a generic term meaning a body which legislates. The term 'Legg' means law and 'lature' the place and etymologically Legislature means a place for law-making. Another term, which is used as a synonym of Legislature, is 'Parliament.' This word stands derived from the French word 'Parley' which means to 'talk' or to discuss and deliberate.

In this way, we can say 'Parliament' means the place where deliberations are held. Combining the two views, we can say Legislature or Parliament is that branch of government which performs the function of lawmaking through deliberations.

The legislature is that organ of the government which passes the laws of the government. It is the agency which has the responsibility to formulate the will of the state and vest it with legal authority and force. In simple words, the legislature is that organ of the government which formulates laws. Legislature enjoys a very special and important in every democratic state. It is the assembly of the elected representatives of the people and represents national public opinion and power of the people.

Functions of a Legislature:

1. Legislative or Law-making Functions:

The first and foremost function of a legislature is to legislate i.e. to make laws. In ancient times, laws used to be either derived from customs, traditions and religious scriptures, or were issued by the kings as their commands. However, in the contemporary era of democracy, legislature is the chief source of law. It is the legislature which formulates the will of the state into laws and gives it a legal character. Legislature transforms the demands of the people into authoritative laws/statutes.

2. Deliberative Functions:

To deliberate upon matters of national importance, public issues, problems and needs is an important function of a modern legislature. Through this function, the legislature reflects the public opinion over various issues. The debates held in the legislature have a great educative value for the people.

3. Custodian of National Finances:

A near universal rule is that “the legislature of the state is the custodian of national purse.” It holds the purse of the nation and controls the finances. No money can be raised or spent by the executive without the approval of the legislature. Each year the executive has to prepare and get passed from the legislature the budget for the coming financial year. In the budget, the executive has to place the account of the actual income and expenditure of the previous year and estimated income and expenditure for the New Year.

Not only the legislature passes the budget but also it alone can approve the imposition, or repeal or collection of any tax whatsoever. Further, the legislature maintains a control over all financial transactions and expenditures incurred by the executive.

4. Control over the Executive:

A modern legislature has the power to exercise control over the executive. In a parliamentary system of government, like the one which is at work in India, for all its actions, decisions, and policies, the executive is collectively responsible before the legislature. It is accountable before the legislature. The legislature has the power to remove the executive by passing a vote of no-confidence or by rejecting a policy or budget or law of the executive.

The Prime Minister and all other ministers are essentially the members of the legislature. They are bound by the rules and procedures of the Parliament.

(b) In a Presidential form of government, like the one which is at work in the USA, the legislature exercises some checks over the executive. It can appoint investigation committees to probe the functioning of government departments. By the use of its power to legislate and pass the budget, the legislature exercises a fair amount of control over the executive. Thus, whether a political system has a parliamentary system or a presidential system, the legislature exercises a control over the executive.

5. Constituent Functions:

In almost every state, it is the legislature which has the power to amend the constitution. For this purpose legislature has to pass special laws, called amendments, in accordance with the procedure laid down in the Constitution. In some states the requirement is that the legislature must pass the amendment with 2/3rd or 3/4th or an absolute majority of votes.

6. Electoral Functions:

A legislature usually performs some electoral functions. The two houses of the Indian Parliament elect the Vice-President. All elected MPs and MLAs form the Electoral College which elects the President of India. In Switzerland, the Federal Legislature elects the members of the Federal Council (Executive) and the Federal Tribunal (Judiciary).

7. Judicial Functions:

It is customary to give some judicial power to the legislature. Usually, the legislature is assigned to act as a court of impeachment i.e. as an investigating court for trying high public officials on charges of treason, misdemeanor and high crimes and remove them from office. In India, the Union Parliament can impeach the President. It has also the power to pass a resolution for the removal of Judges of the Supreme Court and of the High Court's on the ground of misbehavior or incapacity.

8. Ventilation of Grievances:

A legislature acts as the highest forum for ventilation of public grievances against the executive. Besides representing every interest and shade of opinion, the legislature acts as the national forum for expressing public opinion, public grievances and public aspirations. Parliamentary debates and discussions throw a flood light over various issues of public importance.

9. Miscellaneous Functions:

Some legislatures are assigned specific executive tasks. For example, the US Senate (Upper House of US Legislature) has the power to confirm or reject the major appointments made by the US President. Likewise, it enjoys the power to ratify or reject treaties made by the US President. In India, the

Rajya Sabha has been given the power to establish or eliminate any All India Service. Legislatures also perform the function of approving or rejecting or amending all the policies and plans made by the executive. In the US Constitution, the Congress (Legislature) enjoys the power to declare war.

Thus the legislative organs of the government play a very important and active role in the exercise of the sovereign power of the state. In fact legislature is the legal sovereign in the State. It has the power to transform any decision of the state into a law. Legislature is the chief source of law. It is the mirror of national public opinion and the symbol of the power of the people.

1. “Parliamentary Government” is also known as....

- (A) Cabinet Government
- (B) Responsible Government
- (C) Westminster forms of government
- (D) All of the above

2. Which of the following characteristics is not related to Parliamentary Government?

- (A) Resolution of lower house
- (B) Collective liability
- (C) Leadership of the Prime Minister
- (D) Single Executive

3. Which of the following is not the merit of the Presidential System?

- (A) Permanent Government
- (B) Confirmation in policies
- (C) Limited Representation
- (D) Government by experts

4. Which of the following is a demerit of the Parliamentary System?

- (A) Compressed representation
- (B) Uncertainty of policies
- (C) Temporary Government
- (D) All of the above

5. Which of the following statements is not correct?

(A) According to the 42nd and the 44th amendment, it is compulsory for president to comply with the advice of the Council of Ministers.

(B) Presidential System is based on double executive.

(C) According to the Article 74 the Council of Ministers works under the leadership of the Prime Minister.

(D) Article 74 and 75 provides parliamentary system in the center.