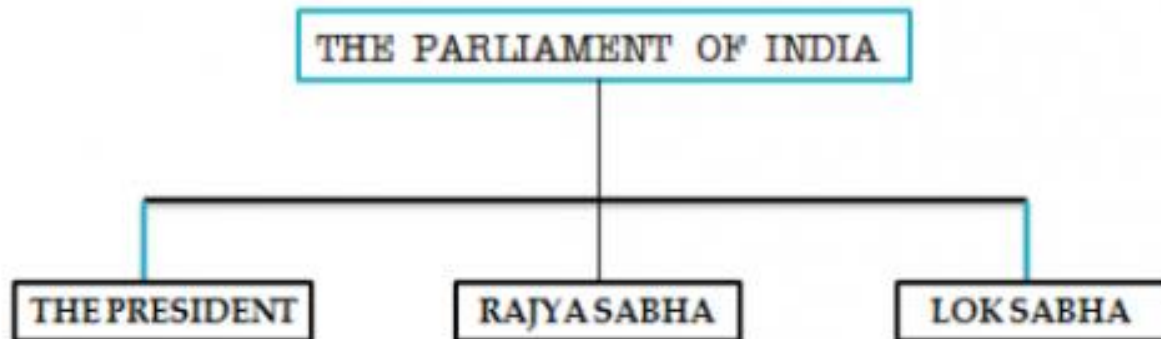


Union legislature part V [article 79- 122]



- Article 79 to 122 in part V chapter II of the Constitution deals with the organization, composition, duration, officers, procedures, privilege, power etc of Parliament.
- The Rajya Sabha is the upper house and the Lok Sabha is the lower house
- **Rajya Sabha** represents the states and union territories. **Lok Sabha** represent people of India

Composition of Rajya Sabha article 80

- Article 80 provides that Council of state shall consist of
 - a. **12 members** to be nominated by the **President** and
 - b. Not more than **238** representatives of the states and union territory.

- The members to be nominated by the president shall consist of a person having special knowledge or practical experience in respect of such matters as **literature, science, art, social service**
- The allocation of seats in Council of states to be filled by representatives of the states and union territories shall be in accordance with the provisions in that behalf contained in fourth schedule article 80[2]
- The representatives of states in the Rajya Sabha are elected by **elected members of state legislative assemblies**. The election is held in accordance with the system of proportional representation by means of Single Transferable Vote [**Article 80[4]**].
- The seats are allotted to the states in Rajya Sabha on the **basis of population**.
- The representatives of Union Territories in Council of states shall be chosen in such manner as Parliament may by law prescribe.
- Delhi and Puducherry are the only two union territories that have representation in Rajya Sabha.

Composition of Lok Sabha [article 81]

- Article 81 provide that Lok Sabha shall consist of following
 - A. Not more than **530** members are to be chosen from direct election from States
 - B. not more than **20 members to represent** union territories and
 - C. *two members are to be nominated by president from Anglo Indian community article 331.[removed from the 104 Constitutional Amendment Act 2020]*
- The Maximum strength of Lok Sabha is fixed at 552

- The Parliament has enacted the **union territories [Direct Election to the House of People] Act 1965** by which the members of Lok Sabha from the union territories are also chosen by the direct election.

Readjustment after each census [article 82]

- **Article 82** provide that every census, a readjustment has to be made in
 - a) allocation of seats in Lok Sabha to the states and
 - b) division of each state into territorial constituencies
- Parliament is empowered to determine the authority and the manner in which it is to be made
- Parliament has enacted **The Delimitation Commission Act in 1952, 1962, 19, and 2000 for this purpose**
- The **42nd Constitutional Amendment Act 1976** froze the allocation of seats in Lok Sabha to the states and the division of state into territorial constituencies till the year 2000 at the **1971 level**.
- This ban on readjustment was extended for another 25 years that is up to **2026** by the **84th constitutional amendment 2001**
- The **87 Constitutional Amendment Act 2003** provided for delimitation of constituencies on the basis of 2001 census and not on 1991 census.

Duration of Rajya Sabha [article 83 [1]]

- **Article 83[1]** provides that the Council of state shall not be subjected to dissolution, but As nearly **one third of the members** shall retire on the expiration of every **second year** in accordance with provisions made on behalf of the Parliament by law.

- The retiring member are eligible for re-election and re nomination any number of time
- The constitution has not fixed the term of office of members of Rajya Sabha and left it to the Parliament to decide it by making a law
- The parliament in **Representation Of Peoples Act 1951** provides that the term of office of the member of Rajya sabha shall be **6 years**.

Duration of Lok Sabha [Article 83[2]]

- **Article 83[2]** provides that the house of people shall continue for **five years** from the date appointed for its first meeting.
- After expiration of **5 years** the Lok Sabha shall automatically dissolve
- Lok Sabha can be dissolved at any time before the completion of 5 years by the President.
- **Duration of Lok Sabha in national emergency:** while a proclamation of emergency is in Operation the period of 5 years can be extended by Parliament by law for a period not exceeding **one year** at a time and not exceeding in any case beyond a period of **six months** after the proclamation has ceased to operate.
[provision to article 83[2]]

Qualifications for membership of Parliament [article 84]

- **Article 84** provides the following qualifications for a person to be chosen a member of parliament
 1. He must be a citizen of India
 2. He must he must make and subscribe to an oath or affirmation before the person authorized by Election Commission for this purpose
 3. He must be not less than **30 years** of age in the case of **Rajya Sabha** and not less than **25 year** of age in case of **Lok Sabha**

4. He must possess other qualifications prescribed by parliament.

Disqualification for membership of Parliament article 102

- article 102 provide that every person shall be disqualified for being chosen as, and for being, a member of either of the house of parliament
- Clause 1
 - a) If he holds an office of profit under the Government of India or government of any state other than an office declared by Parliament by law not to disqualify its holder.
 - b) If he is of unsound mind and stands so declared by the competent court
 - c) If he is an undischarged insolvent.
 - d) If he is not a citizen of India, or have voluntarily acquired the citizenship of a foreign state or is under any acknowledgement of alliances two foreign states
 - e) If he is disqualified by or under any law made by parliament[Representation Of Peoples Act 1951]
- A person shall not be Deemed to hold any office of profit under Government of India for the Government of any state by the reason only that he is a Minister either for the Union or for such state
- Clause 2
- A person shall be disqualified for being a member of either of the houses of Parliament if he is so disqualified under the **tenth schedule [article 102[2]]**.

What is office of profit?

- The expression office of profit has not been defined in the constitution. Courts have laid down certain test to determine which office is a office of profit

- The office of profit means an office to which some benefit is derived or might reasonably be expected to be made by the holder of the office
- The Supreme Court in **Jaya Bachchan versus Union of India 2016** held that the office of profit is an office which is capable of yielding profit or pecuniary gain. Whether a person actually receives the same is not important.

Disqualification on the ground of defection

- The constitution also lays down that a person shall be disqualified from being a member of parliaments if he is to be disqualified on the ground of defection under the provisions of the **10 schedule**. [52ND CAA, 1985] A member in class disqualification in law.
 - a) If he voluntarily gives up the membership of the political party on whose ticket he was elected to the house.
 - b) If he votes or abstains from voting in house contrary to any direction given by his political party
 - c) If any independently elected member join any political party and
 - d) If any nominated member joins any political party after expiry of 6 months.
- The **question** of disqualification under **10th schedule** is decided by the **chairman in the case of rajya sabha and speaker in the case of lok sabha.**
- In **Kihoto Hollohan V. Zachillhu** supreme court ruled that function of speaker / chairman while applying anti defection law is that of a tribunal and therefore it is open to judicial review
- **91st constitutional amendment 2003** added to article 75 which provides that a member of either house of parliament belonging to any political party who is disqualified from being a member of the house under paragraph if off 10 schedule shall also be disqualified together minister.

Decisions on question as to disqualification of members article 103

- Article 103 provides that if any question arises as to whether a member of either House of Parliament has become subject to any of these disqualifications mentioned in article 102[1], the question shall be referred for decision of the **president and his decision shall be final.**
- Before giving any decisions on any such questions, **the president shall obtain the opinion of the election commission and shall act accordingly to such opinion.**

Vacation of seats article 101

- **Article 101** provides for the vacation of seats. In the following circumstances a Member of Parliament vacate his seat.
 1. No person shall be a member of both houses of Parliament and provision shall be made by Parliament by law for vacation by a person who is chosen a member of **both houses** of his seat in one house or the other. article 101[1]

Representation of People Act 1951 provides for the following

- If a person is elected to both the houses of parliament, he must intimate within 10 days in which House he desires to serve. In default of such intimation his seat in Rajya Sabha becomes vacant.
- Member of one house is also elected to the other house his seat in the first house becomes vacant
- If a person elected to two seats in a house he should exercise his option for one. Otherwise both seats become vacant.

2. No person shall be a member of both of Parliament and of House of Legislature of the state and if a person is chosen a member both of parliament And off of a house of Legislature of a state, then at the expiration of such period as may be specified in the rules made by the president, that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of state **article 101[2]**

3. If a member of either House of Parliament

A. Become subject to any disqualification in article 102[1] and [2]; or

B. Resign his seat by writing under his hand address to the chairman or the speaker, as the case may be

Oath and affirmation by members article 99

- Article 99 provides that every member of either House of Parliament shall before taking his seat Make and subscribe before the President or some person appointed in that we have by him on and on or information according to the form set out for the purpose in third schedule
- **Penalty Article 104**
 - A person is liable to **a penalty of rupees 500 for each day he sits** or votes as a member in the house in the following conditions
 1. Before taking and subscribing to the prescribed oath or affirmation; or
 2. When he knows that he is not qualified or that he is disqualified for its membership; or
 3. When he knows that he is prohibited from sitting or voting in-house by virtue of any law

Chairman and Deputy Chairman of Rajya Sabha

- **Article 89** provides that Vice President of India till the act official chairman of Council of States
- The Council of states choose a member of Council to be Deputy Chairman

Vacation, resignation, removal from Office of Deputy Chairman[Article 90]

- **Article 90** provides that a member holding office as Deputy Chairman of the Council of States shall vacate his office
 1. If he ceases to be a member of the Council;
 2. Resign by writing under his hand address to the Chairman and
 3. Removed from his office by a resolution of Council passed by a majority of all the then members of Council
- No resolution for the purpose of removal shall be moved unless at least 14 days notice has been given of the intention to move resolution.

Removal of vice president/term of office [article 67]

He can be removed by a resolution of Rajya Sabha passed by an absolute majority [that is a majority of total members of house] an agreed to by the Lok Sabha

No such resolutions can be moved analyst at least 14 days advance notice has been given

Speaker and Deputy Speaker of Lok Sabha

- **Article 93** provide that Lok Sabha shall as soon as may be choose to members of the house to be respectively **Speaker and Deputy Speaker**
- As and when the office of speaker and deputy speaker becomes vacant, the house shall choose another member to be speaker or deputy speaker

Vacation, resignation, Removal from the offices of speaker and deputy speaker [article 94]

- **Article 94** provides that a member holding office as a speaker or deputy speaker of the house of the people shall vacate his office if:
 - a) He ceased to be a member of house of people
 - b) **Resign** by writing under his hand addressed, if such member is the speaker to the deputy speaker and if such member is the deputy speaker of the speaker resign his office and
 - c) **Removed** from his office by a resolution of house of people passed by majority of all the then members of the house.
- No resolution for the purpose of removal shall be moved at 14 days notice has been given of the intention to move the resolution.
- Whenever the house of people is dissolved the speaker shall not vacate his office until immediately before the first meeting of the house of people after the dissolution
- **Article 96** provides that Speaker or Deputy Speaker shall not preside while a **resolution for his removal** from office is under consideration.
- The speaker shall have the **right to speak** in and take part in the proceeding of the house of people, while any resolution for his removal from office is under consideration.

- He shall also be entitled to **vote only in the first instance** on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

Secretariat of the Parliament article 98

- **Article 98** provides that each house of the Parliament shall have a separate Secretariat staff.
- Parliament may by law regulate the recruitment and the conditions of the services of person appointed, to the secretariat staff of either House of Parliament

Sessions of the Parliament- summoning, prorogation and dissolution

- **Article 85** provides that **President** shall from time to time summon each house of parliament to meet at such time and place as he thinks fit.
- The maximum gap between two sessions of Parliament cannot be **more than six months**
- The president may from time to time:-
 - a) Prorogue the houses or either house
 - b) Dissolve the house of the people
- **Propagation:** it means adjourned, when the business of the session is completed. The president issues a notification for propagation of the session. It does not end the life of Lok Sabha

- **Dissolution:** It ends the life of the existing house and a new house is constituted after general elections are held.

Rights of ministers and Attorney General as respects houses [article 88]

- **Article 88** provides that **every minister and Attorney General** of India shall have the **right to speak** in and otherwise to take part in the proceedings of either House any joint sitting of the houses and any committee of the parliament of which he may be named a member but shall not by the virtue of this article be entitled to vote.
- It follows that the Attorney General of India can participate in meetings of either houses of Parliament but shall not be entitled to vote.

Quorum and voting in the house of parliament article 100

- **Article 100** provides that all questions at any sitting of either houses or joint sitting of the houses shall be determined by a majority of votes of members present and voting, other than the speaker or the person acting as the chairman or speaker.
- The chairman of the speaker shall not vote in the first instance, but still have and exercise a casting vote in the case of an equality of votes.
- **Quorum:** the quorum to constitute a meeting of either House of Parliament shall be **one-tenth of the total number of members** of the house.

Legislative procedure

Provisions as to introduction and passing of this article 107

Article 107 provides that except money bill [109] and other financial bill[117] of Bill may originate in either House of Parliament.

- Subject to the provisions of **article 108 and 109**, a bill shall not be deemed to have been passed by the House of Parliament unless it has been agreed to by both houses, either without amendment or with such amendment only as are agreed to by both houses.
- A Bill pending in Parliament shall not lapse by the reason of **propagation** of the houses
- A Bill Pending in Council of state which has not been passed by House of people shall not lapse on **dissolution** of the house of people
- A Bill Which is pending in the house of people or which having been pass by house of the people is pending in Council of states, shall subject to the provision of article 108, lapse on the **dissolution** of House of people.

Joint sitting of both houses [article 108]

- **Article 108** provides that if after a bill has been passed by one house and transmitted to the other house and:-
- Bill is rejected by the other house or
- Houses have finally disagreed as to amendments to be made in the bill or
- More than 6 months has lapsed from the date of reception of the bill by the other house without the bill being passed by it.

- The **President** can notify to the houses his intention to Summon them to meet in a joint sitting for purpose of the deliberating and voting on the bill
- There will be no joint meeting in cases of **money bill**
- If at the joint sitting of the two Houses the bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of total number of members of both houses **present and voting** it shall be deemed for the purpose of the constitution to have been passed by both houses.
- In case of joint sitting of the house will be presided over by **the speaker of Lok Sabha. Article 118[4]**

Money bill

- Definition of money bill **article 110**
- **Article 110** provides that a bill shall be Deemed to be a money bill if it contains only provisions dealing with all or any of the following matters :
 - a) The imposition, abolition, remission, alteration or regulation of **any tax**;
 - b) The regulation of the borrowing of money or the giving of any guarantee by the government of India or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the government of India;
 - c) The custody of the **consolidated fund[266]** or the **contingency fund[267]** of India, the payment of moneys into or the withdrawal of moneys from any such fund;
 - d) The appropriation of moneys out of the consolidated fund of India;
 - e) The declaration of any expenditure to be expenditure charged on the consolidated fund of India or the increasing of the amount of any such expenditure;

- f) The receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or
- g) Any matter incidental to any of the matters specified in sub-clause (a) to (f).
- 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.[110[3]]
 - There shall be endorsed on every money bill then it is transmitted to the Council of states under **article 109**, and when it is presented to the president for a Centre under **article 111**, the certificate of the speaker of the house of the people signed by him that it is a money bill.

Special procedures in respect of money bill article 109

- Money bill shall not be introduced in Rajya Sabha
- After a money bill has been passed by Lok Sabha it shall be transmitted to Rajya Sabha for its recommendations. The Rajya Sabha can within a period of **14 days** from the date of its receipt of the bill shall return the bill to Lok Sabha with its recommendation and Lok Sabha may thereupon either accept or reject all or any recommendations of Rajya Sabha.
- If the Lok Sabha accepts any Recommendation of Rajya Sabha the money bill shall be deemed to have been passed by both the houses with amendment recommended by the Rajya Sabha and accepted by Lok Sabha.
- If the Lok Sabha does not accept any of the Recommendation of Rajya Sabha, the money bill shall be deemed to have been passed by both the houses in the form in which it was passed by Lok Sabha without any of the amendment recommended by the Rajya Sabha.
- If a money Bill passed by Lok Sabha and transmitted to Rajya Sabha for its recommendation is not returned to Lok Sabha within the set period of **14 days**, it

shall be deemed to have been passed by both the houses at the expiration of the said period in the form in which it was passed by the Lok Sabha.

Assent to bills [article 111]

- **Article 111** provides that when a bill has been passed by the houses of parliament, it shall be presented to the President, and the President has following options:-
 1. Assent to bills, or
 2. Withholds assent
 3. He may also return the bill if it is not a money bill to the houses with a request to reconsider the bill.
- When a bill is so returned, the house shall reconsider the bill according, and if the bill is passed again by the houses with or without amendment and presented to the president for assent, President shall not withhold assent.

Annual financial statement [article 112]

- **Article 112** provide that The President shall in respect of every financial year cause to be laid before both the House of Parliament a statement of estimated recipes and expenditure of the Government of India for that year, in this path referred as the annual financial statement
- It is popularly known as the **budget**.

Appropriation bills [article 114]

- **Article 114** provides that soon after the grants under **article 113** have been made by the Lok Sabha, there shall be introduced to provide for appropriation out of the consolidated fund of India of all money required to meet
 - A. grant so made by the house of people and
 - B. expenditure charged on consolidated fund of India but not exceeding in any case the amount shown in the statement previously laid before the parliament

Votes on account, votes of credit and exceptional grant article 116

- **Article 116** provides that Lok Sabha shall have power
 1. to make any grant in advance in respect of estimated expenditure for a part of any financial year ending the completion of procedure prescribed in article 113 for the voting of such grant and passing of law of in accordance with the provision of article 114 in relation to that expenditure
 2. make a grant for meeting an Unexpected demands upon the resources of India when an account of the magnitude for the indefinite character of the service the demand cannot be stated with details accordingly given in an annual financial statement
 3. make an exceptional grant which forms no part of the current service of any financial year and Parliament shall have power to authorized by law the withdrawal of money from the consolidated fund of India for the purpose for which the state grant are made.

Other matters

Language to be used in Parliament article 120

- **Article 120** provides that business in Parliament shall be transacted in Hindi or in English
- The chairman of the Council of states or speaker of the house of people may permit any member who cannot adequately express himself in Hindi or in English to address the house in his mother tongue.

Restriction on discussion in Parliament [article 121]

- **Article 121** provides that No discussion shall take place in the Parliament with respect to the conduct of any judge of Supreme Court or of High Court in discharge of his duties except upon a motion for presenting and address to the president praying for the removal of the judge.

Courts not to enquire into proceedings of Parliament [article 122]

- **Article 122** provides that the validity of any proceeding in Parliament cannot be called in question on the grounds of any list irregularity of procedure
- No officer or Member of Parliament in whom powers are vested by or under this Constitution for regulating procedure for the conduct of business, for maintaining order, in parliament shall be subject to jurisdiction of any court in respect of the exercise by him of those powers.