DPCS-03

Rules of Procedure and Conduct of Business of Parliament of India

DIPLOMA PROGRAMME IN PARLIAMENTARY AND CONSTITUTIONAL STUDIES

COURSE III

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COURSE INTRODUCTION

This is the third course of the one year Diploma Program in Parliamentary and Constitutional Studies. The third course or paper of this Diploma Programme is titled "Rules of Procedure and Conduct of Business of Parliament of India". It is designed to help the learners to have a basic understanding of rules and procedures of the Parliament and state legislature, particularly of the Assam Legislative Assembly. India has adopted parliamentary form of government and as responsible citizen of a democratic counrty we should have knowledge about various operational dynamics of the Parliament and state legislature. Accorgingly this course is designed to provide some basic knowledge about our legislature. This course contains 5 units. The units are as follows:

Unit 1 : Rules of Procedure and Conduct of Business of the Indian Parliament and Assam Legislature

Unit 2 : Roles of Members, Governor's Address and Messages to the State Legislature, Motion on Adjournment, Motion of No-Confidence, Call Attention, Zero Hour, Half An Hour Motion, Question Hour

` Unit 3 : Legislation: Publication of Bills, Motions After Introduction and Passing of Bills, Debate, Correction, Withdrawal, Amendments; Resolutions; Procedure in Financial Matters; Parliamentary Privileges

Unit 4 : Various Committees of the Parliament

Unit 5 : Delegated Legislation in Parliament and State Legislature

In India at the central level the Parliament is the main law-making organ of the government and at the state level this task is performed by the state legislature. The legislature has to keep a check on the functioning of the government. The fulfillment of this mandate dependes upon the effective participation of Members of Parliament (MPs) in its proceedings. For effective participation in parliamentary proceedings, advance preparation and understanding of these rules is important. Accordingly the first unit discusses the Rules of Procedure and Conduct of Business of the Indian Parliament and Assam Legislature. There are certain techniques through which the executive is held responsible to the legislature in India. The second unit focuses on some of these techniques, such as- Motion on Adjournment, Motion of No-Confidence, Call Attention, Zero Hour, Half An Hour Motion, Question Hour etc. This unit also discusses the roles of Members, Governor's Address and Messages to the state legislature. The third unit discusses the legislation process of the Parliament. It also highlights the concept of parliamentary privileges. The Parliament of India has constituted a number of committees for various purposes. Committees of the Parliament undertake such functions which the House as a whole sitting in session may not be able to undertake and execute. There are two types of parliamentary committees- Standing Committees and Adhoc Committees. In the fourth unit we shall discuss the committee system of the Parliament. In the present time delegated legislation has become inevitable. In a modern welfare State,

the bulk of the business of the legislature has increased. It does not have sufficient time to discuss and look into details of the business of the legislatures. As a result it has to recommend the executive or administrative authority to make subordinate legislation to supplement the legislation made by the legislature. Therefore delegated legislation has become a subject of prime importance. The fifth unit dicusses delegated legislation in the Parliament and state legislature.

While going through the units, you will find that unit is further divided into certain sections and sub-sections, wherever necessary, for your better understanding. Again, the units carry certain activities after a particular section where needed. These “ACTIVITIES” will provide you the opportunity to practically apply your own thoughts based on the knowledge gained from reading the text in a particular section. Besides, in order to give you additional information on certain relevant topics, you will find a category called “LET US KNOW” after the sections in each unit. Another category that has been included at the end of each section of a particular unit is “CHECK YOUR PROGRESS”. The purpose of this category is to help you to asses for yourself as to how thoroughly you have understood a particular section. You may then match your answers with “ANSWERS TO CHECK YOUR PROGRESS” given at the end of each unit. The section “FURTHER READING” in each unit contains the names of a few books which you might want to consult if you are intereted in learning more elaborately about the concepts discussed in a particular unit. Furthermore, the category called “MODEL QUESTIONS” is in tended to give you a hint of the type of questions you are likely to get in the examination.

UNIT 1 : RULES OF PROCEDURE AND CONDUCT OF BUSINESS OF THE INDIAN PARLIAMENT AND ASSAM LEGISLATURE

UNIT STRUCTURE

1.1 Learning Objectives

1.2 Introduction

1.3 Indian Parliament and Assam Legislature

1.4 Rules of Procedure and Conduct of Business of the Indian Parliament

1.5 Rules of Procedure and Conduct of Business of Assam Legislature

1.6 Let Us Sum Up

1.7 Further Reading

1.8 Answers to Check Your Progress

1.9 Model Questions

1.1 LEARNING OBJECTIVES

After going through this unit, you will be able to-

- examine the rules of procedure of the Indian Parliament and Assam Legislature
- explain the conduct of business of the Indian Parliament and Assam Legislature.

1.2 INTRODUCTION

In India Parliament, which is a bi-cameral legislature, is the law-making organ of the government at the central level. Both the Houses of the Parliament have detailed rules of procedure which regulate their functioning. Besides law-making the Parliament has to keep a check on the functioning of the government. As a representative institution, it also highlights important issues being faced by the people. The fulfillment of this mandate is dependent upon the effective participation of Members of the Parliament (MPs) in its

proceedings. For effective participation in parliamentary proceedings, advance preparation and an understanding of these rules is important. In this unit we shall discuss rules of procedure and conduct of business of the Indian Parliament and Assam legislature.

1.3 INDIAN PARLIAMENT AND ASSAM LEGISLATURE

Indian Parliament

Parliament is the supreme legislative body in India. The Indian Parliament comprises of the President and the two Houses - Rajya Sabha (Council of States) and Lok Sabha (House of the People). The President has the power to summon and prorogue either House of Parliament or to dissolve Lok Sabha. The first general elections were held during the year 1951-52 and the first elected Parliament came into existence in April, 1952.

Assam Legislature

The Assam Legislature is a unicameral legislature. It consists of the Governor and the Assam Legislative Assembly. The Assam Legislative Assembly comprises 126 members, directly elected from single-seat constituencies. Its term is five years, unless sooner dissolved.



CHECK YOUR PROGRESS

Q 1: The Indian Parliament consists of ..... (fill in the blank)

Q 2: The Representation of House of the People is based on ..... (fill in the blank)

Q 3: What is total strength of members in Assam Legislative Assembly?

.....

1.4 RULES OF PROCEDURE AND CONDUCT OF BUSINESS OF THE INDIAN PARLIAMENT

As we know that the Indian Parliament consists of the President, Rajya Sabha and Lok Sabha. Rajya Sabha and Lok Sabha have their own rules and procedure to conduct the business. Article 118(1) of the Indian

Constitution empowers each House of the Parliament to make rules for regulating its procedure and the conduct of its business. Under its rule of procedure and conduct of business, each House has instituted an elaborate committee system with a view to better organize its work and discharge its functions effectively. The committee system helps in conserving the time of the House, increasing expertise and enables the House to exert some control over the executive.

Under this provision of the Constitution, Rajya Sabha adopted rules for regulating its procedure and the conduct of its business on June 2, 1964. The rules were brought into force with effect from July 1, 1964. Rajya Sabha's proceedings are presided over by the Chairman of the House. The proceedings are guided by the rules of procedure, which are implemented by the Chairman. The rules give the Chairman discretion in some matters to ensure smooth functioning of the House. For example, the discretion to allow an MP to raise a matter of public importance rests with the Chairman. In the Chairman's absence, the Deputy Chair or the Panel of Chairmen presides over the House. Participation in the proceedings of the House often requires advance planning. Rules require that MPs give prior information to the Secretariat/Chairman for asking questions, raising issues, and initiating or participating in debates. This is called "giving notice". For example, to ask a question in the House, a notice of fifteen days is required. There is some flexibility in the Rules to allow for debates without giving prior notice. This is left at the discretion of the Chairman.

In case of Lok Sabha, the Constituent Assembly (Legislative) Rules of Procedure and Conduct of Business in force immediately after the commencement of the Constitution of India were modified and adopted by the Speaker of Lok Sabha in exercise of the powers conferred on the Speaker by Article 118(2) of the Constitution and published under the title "Rules of Procedure and Conduct of Business in the House of the People" in the Gazette of India Extraordinary dated the 17th April, 1952.

The Procedure of The House (Lok Sabha):

- National Anthem
- Oath of Speaker

- Oath of parliamentarians
- Statement from members of House
- Discussion Hours
- Question Hour
- Zero Hour
- Introduction of the Bills
- Reading of the bill (3 Reading consisting of discussion and amendments)
- Voting (Simple Majority)
- Declaration of bill as passed or rejected
- Statement of Speaker
- National Song

Oath or Affirmation:

The Speaker will take up the procedure of the House in the order in which it is printed in the list of procedure or may take oath collectively. A newly elected member of the House is required to make an Oath or affirmation at the commencement of a sitting of the House.

Statements from the House:

After establishing quorum, the Speaker will ask for statements from the members. A total of 8 members (4 each from government and opposition) are given time on the floor to make statements. The leader of the House is the default first speaker and the leader of opposition is the default last speaker. However they may pass on their chance to speak to whoever they wish to. The other 6 speakers are chosen by the discretion of the chair when the MPs are asked for statements. The maximum time allowed to make statements is two minutes. Agendas for discussion hour (explained in the next section) are allowed to be sent once first two speakers have given their statements.

Discussion Hour:

A discussion hour is the time allotted (maximum 40 minutes) for the discussion on a sub- agenda which the members feel should be discussed in front of the House. The total time of all the discussion shall be an hour. All agendas for discussion hour are supposed to be sent prior the commencement of discussion hour. Agendas for discussion hour are

allowed to be sent once first two speakers have given their opening statements. The process of putting up agendas for a discussion is in writing and follows the given format: Name of the constituency, Topic of the discussion, Total Duration (not to exceed 40 minutes), Individual Speaker Time (not to exceed 90 seconds). The speaker shall keep the agendas in chronological order and first put the agenda to vote which is received first by the board. The chairperson may withdraw any agenda he/she feels has no relation to the agenda. However he/she has to notify the particular MP of the same on which the MP is allowed to send a chit explaining why the agenda should not be withdrawn. On receiving the agenda, the speaker will ask for seconds and oppositions, if no seconds, the motion fails and in case of seconds but no oppositions the agenda clearly passes. On receiving both seconds and oppositions the chairperson will put the agenda to vote and the result is decided by a simple majority of placard vote. An extension to a discussion hour may be obtained if the total time does not exceed 40 minutes or otherwise on the discretion of the chair.

Question Hour:

It is the one hour after the discussion hour where the members of the House are free to ask questions to each other on matters pertaining to agenda or on a national emergency provided that such a question is sent in writing to the said member via the speaker and with his/her due approval before the commencement of question hour. The question has been defined as an instrument by which a member can elicit information on any matter of public importance. There are two types of questions- Starred Questions- meant for oral answers, Unstarred Questions- meant for written answers.

Zero Hour:

It starts immediately after the Question Hour. During the Zero Hour any question pertaining to agenda or a national emergency can be raised by a member without any prior written request. The Zero Hour can extend to any period of time depending upon the Speaker's direction. The Government is not obliged to answer any of the questions raised in the Zero Hour. However in the context of the debate it is highly expected from them to answer all the questions. The chairperson shall choose the MPs on his/her discretion.

- **Legislative Business [Reading of the bill (3 Reading consisting of discussion and amendments), Voting (Simple Majority), Declaration of bill as passed or rejected, Statement of Speaker]**

All legislative proposals are brought in the form of Bills before the Parliament. No Bill can become a law unless it has been passed by the parliament and has received assent of the President. The proposal is given the shape of a Bill and introduced in Parliament. Bills are either Government Bills which are sponsored by Ministers, or private members' bills which are sponsored by individual members other than ministers. Each Bill undergoes three Readings. These are:

(a) First Reading

The First Reading means a motion for permission to introduce a Bill. On the adoption of the motion the Bill is introduced.

(b) The Second Reading

There are two stages in the Second Reading of the bill. In the first stage, the motion that the Bill be taken into consideration is adopted. (This is followed by discussion on the principles of the bill.) In the second stage, clause-by-clause consideration of the Bill is taken up. Notices of amendment are given any time after the introduction of a Bill. An amendment is admissible if it is within the scope of the bill. After the introduction of the bill, the minister concerned formally moves that the bill be taken up for consideration. The Minister then makes a brief introductory speech outlining of the importance of the Bill.

After this the Speaker formally places the motion before the house with the announcement that "The motion is that the ..... Bill to be taken into consideration." This is followed by a discussion in which the members from either side can take part after giving prior notice of their intention to the secretary-general. It may be noted that the discussion should be held on the general principles and provisions of the Bill. The Speaker asks members from both the Treasury and the Opposition benches to speak on the bill. After the discussion, the Minister concerned makes a closing speech and winds up the

discussion. The motion for consideration is then put to the house. After it has been adopted, clause-by-clause discussion of the bill takes place. Amendments, if any, are permitted and voted upon.

(c) The Third Reading

In the Third Reading the Minister concerned moves that the bill be passed. The Speaker then puts the question before the House. Those in favor will say "Aye, those against will be 'No.' after taking the voice vote, he/she declares thrice that Ayes (or Noes) have it. He will then say that 'the Bill is passed (not passed)", as the case may be. It may be noted that for passing an ordinary Bill a simple majority is required and for Bills pertaining to Constitutional Amendments two-thirds majority is necessary.



CHECK YOUR PROGRESS

Q 4: Write a short note on Zero Hour. (within 50 words)

.....

.....

Q 5: What is the difference between question hour and discussion hour?

.....

.....

Q 6: How many readings are required in each Bill?

.....

Q 7: Which Article of the Indian Constitution empowers each House of Parliament to make rules for regulating its Procedure and the Conduct of its business?

.....

1.5 RULES OF PROCEDURE AND CONDUCT OF BUSINESS OF ASSAM LEGISLATURE

The Assam Legislative Assembly adopted a Resolution on 5th July, 1957 for examining the Rules of Procedure then in force and to bring them

at par with the Rules of Procedure and Conduct of Business in Lok Sabha. The Rules Committee, Assam Legislative Assembly, headed by the then Hon'ble Speaker presented its final Report to the Assembly which was adopted by the House on 12th December, 1957.

In pursuance of the provision of Rule 310 and other Rules of Procedure and Conduct of Business in Assam Legislative Assembly, the Speaker, Assam Legislative Assembly has been issuing directions from time to time for regulating subject to the provisions of the rules, certain matters not specifically provided for in the rules and certain matters relating to detailed working of the rules. Some provisions of the rules are:

1. Oath or Affirmation
2. Rules to be observed by Members
3. General Procedure for giving notice
4. Method for participation in Debates by Members
5. Point of order
6. Precincts of the House and Assembly Premises
7. Maintenance of order within the Assembly Premises
8. Statement by Minister
9. Study tour of Legislature Committees
10. Recognition of and Facilities to Legislature Parties and Groups
11. Statutory Resolution
12. Entry into the Assembly Premises
13. Questions
14. Zero Hour
15. Committee on Petitions

- **Rules to be observed by Members of Assam Legislative Assembly**

  While the House is sitting, a member should observed some rules. Some of the important rules are as follows:

  1. Shall not read any book, newspaper or letter except in connection with the business of the House.
  2. Shall not interrupt any member while speaking by improper expression or noises or any other improper manner.
  3. Shall not leave the House while Speaker is addressing the House.

4. Shall maintain silence when not speaking in the House.
5. Members should be present in the House a few minutes before the schedule time as provided under rule 11.
6. Members should not sit back to the chair not bring any mobile phones to the Chamber with their switch on.
7. No member should raise in the House the subject matter of a notice or a communication not sent by him to the Speaker, unless he has been specifically permitted by the Speaker to do so. If no intimation has been received by the member, he should presume that the matter is under the active consideration of the Speaker.
8. Every member should resume his/her seat as soon as the Speaker rises to speak, or calls out "order", and also when any other member is in possession of the floor (i.e. speaking with the permission of the Chair).
9. Members should not leave the House immediately after they finish their speeches. Courtesy to the House requires that after finishing their speeches they resume their seats and leave the House only afterwards, if necessary.
10. When any member offers a criticism of another member or Minister, the latter is entitled to expect that the critic should be present in the House to hear his/her reply.

- **General Procedure For Giving Notices**

The general procedure for giving notices is as follows -

1. Every notice required by the rules should be given in writing addressed to the Secretary, and signed eligibly by Member giving notice, and has to be delivered to Secretary or notice Office during office hours except on Government holidays.
2. The writings in the notice should be clear and easily readable. Each communication should deal with one matter only.
3. Prescribed forms for various purposes are kept in the notice Office. Members may collect the forms required by them from there.
4. It is open to member to give notices before making and subscribing an oath or affirmation and taking seat in the House, but he/she cannot exercise any of his/her functions as a member in the House, that is

to say, he/she cannot ask a question or move a motion or resolutions etc. unless he/she has made and subscribed the oath or affirmation and taken his/her seat in the House.

- **Method for Participation in Debates by Members**

1. Any one of the following three methods may be adopted by members who desire to notify the Speaker of their intention to take part in a debate or discussion -
   a. The names of members who wish to participate in a particular debate or discussion may be supplied to the Speaker by the Legislature Parties or Groups.
   b. A member who prefers to write direct to the Speaker may do so without having to go through the machinery of Legislature Party or Group.
   c. A member who may not like to give his/her name to the Speaker through his/her Party or to write direct to the Speaker but wishes to adopt the well-known parliamentary practice of catching the Speaker's eye may stand in his/her seat whenever he/she wishes to take part in a debate.
2. Unless a member rises in his/her seat and catches the Speaker's eye, he/she shall not be called upon by the Speaker's to speak, irrespective of whether he/she has send his/her name through his/her Party or Group or written direct to the Speaker.
3. The Speaker shall not be bound by the lists or order in which names have been given by the Parties or Groups or individuals directly. The lists shall be for his/her guidance only and it shall always be open to him/her to make changes whenever necessary in order that the debates are regulated in accordance with the general principles laid down by the Speaker from time to time.
4. If a member speaks without being called by the Speaker to speak or continues to speak despite the directions to conclude the speech forthwith the Speaker may direct that such speech or portions thereof, as the case may be shall not form part of the proceedings of the House.

- **Point Of Order**

  A member can raise a point of order under rule 300 only during the interval between the termination of one item of business and the commencement of another item. A point of order shall not be raised during Question Hour.

- **Supplementary Questions**

  Any member with the permission of the Speaker may put Supplementary Questions to a Starred Question after it is called by the Speaker for the purposes of further elucidating any matter of fact regarding which any answer has been given. But not more than 5 minutes shall be devoted for putting supplementaries to a particular question.

- **Zero Hour**

  Unless the Speaker otherwise directs no matter of public importance shall be allowed to be raised during Zero Hour which occurred three days before the day on which it is proposed to be raised. The member desiring to raise such matter shall give notice his/her intention to the Speaker and the Secretary along with a copy of the notice of to the concerning minister at least one hour before the commencement of the Session. The Speaker in his/her discretion may allow the member to raise the matter and the concerned Minister may give a reply if required information and other materials are available with him, otherwise the replies shall be given by the Minister according to his/her convenience and the matter shall be treated as "raised". Provided that not more than three such matters shall be allowed to be raised on any particular day.



CHECK YOUR PROGRESS

Q 8: Members of the Assam Legislative Assembly should not sit back to the chair not bring any mobile phones to the Chamber with their switch on. (True/False)

.....

Q 9: Define Supplementary Question.

.....

.....

Q 10: How many methods may be adopted by members who desire to notify the Speaker of their intention to take part in a debate or discussion?

.....



1.6 LET US SUM UP

- Both Houses of the Parliament have detailed Rules of Procedure which regulate their functioning. For effective participation in parliamentary proceedings, advance preparation and an understanding of the Rules is important.
- Article 118(1) of the Indian Constitution empowers each House of Parliament to make rules for regulating its Procedure and the Conduct of its business. Under its rule of procedure and conduct of business, each house has instituted an elaborate committee system with a view to better organize its work and discharge its functions effectively. The Committee system helps in conserving the time of the House, increasing expertise and enables the House to exert some control the government.
- Rajya Sabha's proceedings are presided over by the Chairman of the House. The proceedings are guided by the Rules of Procedure, which are implemented by the Chairman. The Rules give the Chairman discretion in some matters to ensure smooth functioning of the House. For example, the discretion to allow an MP to raise a matter of public importance rests with the Chairman. In the Chairman's absence, the Deputy Chair or the Panel of Chairmen presides over the House.
- In case of Lok Sabha, the Constituent Assembly (Legislative) Rules of Procedure and Conduct of Business in force immediately after the commencement of the Constitution of India were modified and adopted by the Speaker of Lok Sabha in exercise of the powers

conferred on the Speaker by article 118(2) of the Constitution and published under the title "Rules of Procedure and Conduct of Business in the House of the People" in the Gazette of India Extraordinary dated the 17th April, 1952.

- Assam Legislative Assembly also has rules of procedure and conduct of business for its smooth functioning.



1.7 FURTHER READING

1) Jain, M.P, (2007). *Indian Constitutional Law (5th ed)*. New Delhi: Wadhwa and Company.

2) Pandey, J.N, (2004). *Constitutional Law of India (41st ed)*. Allahabad: Central Law Agency.

3) *Rules of Procedure and Conduct of Business in Assam Legislative Assembly,(2011)*: 11th ed, Guwahati, Assam Legislative Assembly Secretariat Dispur.



1.8 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: the President and the two Houses - Rajya Sabha (Council of States) and Lok Sabha (House of the People).

Ans to Q No 2: universal adult suffrage.

Ans to Q No 3: 126

Ans to Q No 4: Zero Hour starts immediately after the Question Hour. During the Zero Hour any question pertaining to agenda or a national emergency can be raised by a member without any prior written request. The Zero Hour can extend to any period of time depending upon the Speaker's direction. The Government is not obliged to answer any of the questions raised in the Zero Hour. However in the context of the debate it is highly expected from them to answer all the questions.

Ans to Q No 5: Question is the one hour after the discussion hour where

the members of the House are free to ask questions to each other on matters pertaining to agenda or on a national emergency provided that such a question is sent in writing to the said member via the speaker and with his/her due approval before the commencement of question hour. While a discussion hour is the time allotted (maximum 40 minutes) for the discussion on a sub- agenda which the members feel should be discussed in front of the house. The total time of all the discussion shall be an hour.

Ans to Q No 6: Three Readings are required in each Bill.

Ans to Q No 7: Article 118(1)

Ans to Q No 8: True

Ans to Q No 9: Any member with the permission of the Speaker may put Supplementary Questions to a Starred Question after it is called by the Speaker for the purposes of further elucidating any matter of fact regarding which any answer has been given. But not more than 5 minutes shall be devoted for putting supplementaries to a particular question.

Ans to Q No 10: Three methods



1.9 MODEL QUESTIONS

A) Very Short Questions

Q 1: What are the two Houses of the Indian Parliament?

Q 2: Assam's legislature is a unicameral legislature. (True/ False)

Q 3: Who has the power to summon and prorogue either House of the Parliament or to dissolve Lok Sabha?

B) Short Questions (Answer each question in about 150 words)

Q 1: Examine the role of Speaker in the Lok Sabha.

Q 2: Explain any four rules to be observed by Members of the Assam Legislative Assembly.

C) Long Questions (Answer each question in about 300-500 words)

Q 1: Discuss the rules of procedure of the Indian Parliament.

Q 2: Discuss the rules of procedure of Assam Legislative Assembly.

UNIT 2 : ROLE OF MEMBERS, GOVERNOR'S ADDRESS AND MESSAGES TO THE STATE LEGISLATURE, MOTION ON ADJOURNMENT, MOTION OF NO-CONFIDENCE, CALL ATTENTION, ZERO HOUR, HALF AN HOUR MOTION, QUESTION HOUR

UNIT STRUCTUR

2.1 Learning Objectives

2.2 Introduction

2.3 Role of Members of the Parliament

2.4 Governor's Address to the State Legislature

2.5 Motion on Adjournment

2.6 Motion of No-Confidence

2.7 Calling Attention

2.8 Zero Hour

2.9 Half An Hour Motion

2.10 Question Hour

2.11 Let Us Sum Up

2.12 Further Reading

2.13 Answers To Check Your Progress

2.14 Model Questions

2.1 LEARNING OBJECTIVES

After going through this unit, you will be able to-

- discuss the role of the members of the legislature in India
- analyse the Governor's address and messages to the State Legislatures
- examine some important motions through which the executive are held accountable to the legislature, such as- motion on adjournment, motion of no-confidence etc.

- analyse some other techniques of the legislature, such as- calling attention, zero hour, half an hour motion, question hour etc.

2.2 INTRODUCTION

In India the Parliament at the Centre and the state legislature at the state levels have the power of law-making. In the previous unit we have discussed the rules of procedure and conduct of business of the Parliament and Assam Legislature. In this unit we shall discuss what are the roles of the members of the Parliament. Besides this the unit will also deal with some important techniques through this the executive is held responsible and accountable to the legislature.

2.3 ROLE OF MEMBERS OF THE PARLIAMENT

Although the exact roles and responsibilities of an MP are not codified in the Constitution of India, Section 3 of Article 105, which discusses the powers and privileges of MPs and of committees, lays down the responsibility of an MP and committees of the Parliament. It says: *"..the powers, of each House of Parliament, and of the members and the committees of each House, shall be defined by Parliament by law from time to time."*

However, through various laws and otherwise, an MP is required to perform various responsibilities in the Parliament and outside, which can be broadly classified into the following: (An MP's major role is the legislative role and over the years some executive functions have been assigned).

1) Legislative Role:

a) Making laws for governance of our country (on subjects enumerated in the Union list and the residuary subjects): An MP participates in the discussion of a bill and suggests amendments to a Government bill. Separately, any MP who is a non-Minister can also propose legislative changes to the government, through Private Members' Bills. An MP also participates in voting for amending the Constitution of India (subject to the basic structure.) Legislative matters on issues

such as creation of state legislative council; to increase or decrease area or boundaries of a state, change the name of a state and Union territories; regulation of the organization and jurisdiction of the Supreme Court and High Courts and allot one High Court to two or more states etc. are also discussed by the MPs in their respective Houses. An MP also participates in the process for impeachment of the President; removal of the Vice-president, and judges of the High Court and Supreme Court.

b) Delegated legislation: Once a bill is signed into law, the powers to make detailed rules and regulations within its framework rest with the executive. An MP's role is to keep a check on the executive overreach and ensure that the powers of delegated legislation are not abused by the government. E.g.: RS MP, P. Rajeeve raised objections to the IT rules drafted by the government in 2011.

2) Supervisory Role:

a) The MPs exercise control over the executive through Parliamentary interventions such as Question Hour, Zero Hour, Calling Attention Motion, Adjournment Motion, No-confidence Motion, Censure Motion and other discussions.

b) MPs also supervise the executive by participating in committees like Public Accounts, Estimates, Public Undertakings and various other department related standing and ad-hoc committees.

3) Electoral Role:

a) An MP participates in the election of the President and the Vice-President.

b) On one hand, a Lok Sabha MP elects the Speaker of the House and the Deputy Speaker. On the other hand, a Rajya Sabha MP elects the Vice-Chairman of the Rajya Sabha.

4) Power of the Purse:

No tax can be levied and no expenditure incurred by the government except with the approval of the Parliament. The Budget is therefore presented to the Parliament. Parliamentary control over executive in matters of Finance are:

a) Budgetary control

b) Post-budgetary control

5) Representative Responsibility:

Every MP is the voice for his/her constituency. Every MP has to raise issues of his or her constituency in the Parliament through questions, debates etc. An MP can also play a role in implementing projects in his/her constituency by following up on projects at the level of the district administration or at the State government and Central government level.

2.4 GOVERNOR'S ADDRESS TO THE STATE LEGISLATURE

Article 176(1) of the Constitution of India enjoins that the Governor shall address both the Houses of the state legislature assembled together at the commencement of the first session after each general election to the Assembly and at the commencement of the first session of each year and inform the Legislature of the causes of its summons. The address of the Governor contains a review of the activities and achievements of the Government during the previous year and their policies with regard to important internal problems as well as a brief account of the programme of Government Business for the session.

On the first day on which the discussion on the address of the Governor begins, a copy of the Address of the Governor is laid on the table of the House. The Speaker, in consultation with the Business Advisory Committee, allots time for discussions of the matters referred to in the Governor's Address. A motion is moved by a member and secondly by another member thanking the Governor for the Address. The occasion is provided for General Discussion in respect of any aspect of administration and also the matters referred to in the address. Members may move Amendments to the Motion of Thanks in such form as may be considered appropriate by the Speaker.

The Chief Minister or any other Minister has the right to explain the position of the Government at the end of the discussion. A copy of the address

as adopted by the House is communicated to the Governor's reply for the address if any is reported to the Assembly by the Speaker as soon as he received it.

2.5 MOTION ON ADJOURNMENT

The primary object of an adjournment motion is to draw the attention of Lok Sabha to a recent matter of urgent public importance having serious consequences and in regard to which a motion or a resolution with proper notice will be too late.

Adjournment motion is allowed only in Lok Sabha (or in state legislative assembly) and not in Rajya Sabha (or in state legislative council) because it has an element of censure against the government.

- **Essential Conditions:** There are few conditions of adjournment motion in Lok Sabha which are as follows:

  Such a motion needs support of at least 50 members. It should be introduced on a matter of definite and urgent public importance. However, it should not cover more than one matter and be restricted to that matter only. The subject matter should not be the same which has already been discussed in the same session. A question of privilege or any other questions which can be raised via other distinct motion cannot be raised in adjournment motion. Since adjournment motion disrupts the normal business of the house so, this is regarded as an extraordinary tool in parliament. The discussion on adjournment motion needs to last for atleast 2.5 hours.

- **Calling Attention versus Adjournment Motion:** Since Rajya Sabha is not permitted to make use of the adjournment motion, there is a similar tool in Rajya Sabha which is called "Calling Attention". The notable difference between the two is that while adjournment motion has an element of censure against the Government, Calling Attention has no such elements.

  Adjournment Motion is the procedure for adjournment of the business of the House for the purpose of discussing a definite matter of urgent public importance, which can be moved with the consent of the Speaker.

The Adjournment Motion, if admitted, leads to the setting aside of the normal business of the House for discussing the matter mentioned in the motion.

To be in order, an Adjournment Motion must raise a matter of sufficient public importance to warrant interruption of normal business of the House and the question of public importance is decided on merit in each individual case.

The purpose of an Adjournment Motion is to take the Government to task for a recent act of omission or commission having serious consequences. Its adoption is regarded as a sort of censure of the Government.

2.6 MOTION OF NO-CONFIDENCE

A motion of no-confidence (alternatively vote of no confidence, no-confidence motion, or (unsuccessful) confidence motion) is a statement or vote which states that a person(s) in a position of responsibility (government, managerial, etc.) is no longer deemed fit to hold that position, perhaps because they are inadequate in some respect, are failing to carry out obligations, or are making decisions that other members feel are detrimental. As a Parliamentary motion, it demonstrates to the head of state that the elected Parliament no longer has confidence in (one or more members of) the appointed government.

A censure motion is different from a no-confidence motion. Depending on the constitution of the body concerned, "No-Confidence" may lead to compulsory resignation of the council of ministers or other position-holder(s), whereas "Censure" is meant to show disapproval and does not result in the resignation of ministers. The censure motion can be against an individual minister or a group of ministers, but the no-confidence motion is directed against the entire cabinet. Again, depending on the applicable rules, censure motions may need to state the reasons for the motion while no-confidence motion may not require reasons to be specified. In many parliamentary democracies, strict time limits exist as to the proposal of a no -confidence motion, with a vote only allowed once every three, four or six months. Thus,

the timing of a motion of no confidence is a matter of political judgement; using a motion of no-confidence on a relatively trivial matter may prove counterproductive if a more important issue suddenly arises which warrants a motion of no-confidence, because a motion cannot be proposed if one had been voted on recently. Sometimes, the government will choose to declare that one of its bills is a "motion of confidence" in order to prevent dissident members of parliament from voting against it. In India, a Motion of No-Confidence can be introduced only in the Lok Sabha (the lower house of the Parliament of India). The motion is admitted for discussion when a minimum of 50 members of the house supports the motion. If the motion carries, the House debates and votes on the motion. If a majority of the members of the house vote in favour of the motion, the motion is passed and the Government is bound to vacate the office. Acharya Kripalani moved the first-ever no-confidence motion on the floor of the Lok Sabha in August 1963, immediately after the disastrous India-China War. With the anti-defection law, Vote of no-confidence has no relevance left in case the ruling party has an absolute majority in the House. If the majority party (with an absolute majority in the House) issues whip to vote party members in favor of the Government, then it is impossible to remove the Government by no-confidence motion. Hence the no-confidence exercise of House merely becomes the no-confidence exercise of the Party.



CHECK YOUR PROGRESS

Q 1: Which Article of the India Constitution discusses the powers and privileges of the MPs?

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Q 2: What is the primary object of an adjournment motion?

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Q 3: Who for the first time moved the no-confidence motion on the floor of the Lok Sabha?

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2.7 CALLING ATTENTION

The concept of 'Calling Attention' is of Indian origin. It is an innovation in the modern parliamentary procedure and combines the asking of a question for answer with supplementaries and short comments in which different points of view are expressed concisely and precisely, and the Government has adequate opportunity to state its case. It gives members an opportunity to bring to the surface the failure or inadequate action of Government on a matter of urgent public importance. This procedural device is analogous to an adjournment motion without its censure aspect.

Provisions in the Rajya Sabha Rules:

Rule 180 of the Rules of Procedure and Conduct of Business which deals with the calling attention to matters of urgent public importance, reads:

(1) A member may, with the previous permission of the Chairman, call the attention of a Minister to any matter of urgent public importance and the Minister may make a brief statement or ask for time to make a statement at a later hour or date, provided that no member shall give more than two such notices for any one sitting.

(2) There shall be no debate on such statement at the time it is made.

(3) Not more than one such matter shall be raised at the same sitting.

(4) In the event of more than one matter being presented for the same day, priority shall be given to the matter which is, in the opinion of the Chairman, more urgent and important.

(5) The proposed matter shall be raised after the questions and the laying of papers, if any, on the table and before any other item in the list of business is taken up and at no other time during the sitting of the Council.

In pursuance of certain decisions taken at the meetings of Rules Committee, General Purposes Committee and leaders of the parties/ groups in Rajya Sabha, the following procedure and practice regarding Calling Attention, has been adopted:

(i) All Calling Attention notices received for a day during a week in which that day falls are kept alive during the whole of that week and placed before the Chairman for his consideration from day to day along

with notices received up to 10.30 a.m. on the day on which the notices are put up to him.

(ii) On the last day of the week on which the House sits, the notices received upto 10.30 a.m. on that day are considered and notices which are not selected are regarded as lapse and no intimation about this is given to the members.

(iii) Notices received after 10.30 a.m. on the last day of the week on which the House sits are deemed to have been received for the day on which the next sitting of the House is to be held and these are valid for the following week.

(iv) Not more than two notices of Calling Attention may be given by a member for one sitting.

(v) A member who initiates a Calling Attention may not take more than 7 minutes and other members who are called by the Chairman should not take more than 5 minutes each and should restrict themselves strictly of seeking clarifications on the Calling Attention.

(vi) Where a Calling Attention notice stands in the name of a number of members, in choosing members who desire to seek clarifications the first principle adopted is party/group. After exhausting the parties/ groups, whose members have given the notice by calling one member from each party/group, the Chairman may call members belonging to the parties/groups not included in the list.

(vii) A member whose Calling Attention notice has not been selected during a week may renew the same for subsequent week(s). In such a case, the date and priority of the notice is taken as the date and time at which the renewal notice is received in the Secretariat from the member concerned and no consideration is given to the previously lapsed notice of Calling Attention on the same subject.

(viii) The normal time to be spent on a Calling Attention is about an hour so that it should conclude at 1.00 p.m.

Calling Attention procedure in actual practice:

A member who intends to call the attention of a Minister to a matter of urgent public importance has to give notice thereof in writing in the

prescribed form available in the Notice Office. All notices received from members up to 10.30 a.m. are placed before the Chairperson everyday for his or her consideration by the Secretary-General. The Chairman decides the admissibility of the Calling Attention notice. The concerned Minister and the members in whose name the Calling Attention notice is admitted are informed accordingly.

An item of the admitted Calling Attention is included in the list of business in the names of all those members whose notices on that subject are alive and the inter se priority of members is determined according to the time of receipt of all those notices.

It is not necessary for the Chairman to admit Calling Attention notice for every sitting of the House. Admission of notice is subject to the rules and ultimately to the decision of the Chairman that the matter sought to be raised does call for an early statement from the Minister.

Generally, the 'Calling Attention' is taken up immediately after the Question Hour and laying of papers, if any, but sometimes the Calling Attention may be taken up later in the day, subject to the direction of the Chair and the consensus arrived at in the House.

The member whose name is first in the list of business rises in his seat when called upon and calls the attention of the Minister by reading out the item from the list of business. At that time he does not make any statement.

Thereafter, the Minister makes a statement in response to the Calling Attention. Copies of the proposed statement of the Minister are made available to members just before the Minister commences his statement. Under the rules, no debate is permitted on such statement at the time it is made. However, members are permitted to seek clarifications on the statement. For this purpose, the Chairman calls the members in party-wise i.e., one member from each party/group. In other words, members are not called in the order in which their names appear in the list of business. It is also not obligatory on the Chairman to call all those whose names appear in the list of business. After the members to whom the Chairman has permitted to seek for clarifications, the Minister replies.

Ordinarily, the Calling Attention is concluded before lunch-break, but there have been occasions in the past when the discussion on a Calling Attention had gone beyond lunch-break or took the whole day or even next day depending on the importance of the subject and desire of the House. There were occasions also in the past when after a Minister had made a statement, members were permitted to seek clarifications thereon the next or the subsequent day.

2.8 ZERO HOUR

Generally, the first hour of a sitting of Lok Sabha (11 am to 12 noon) is devoted to Questions and that hour is called the Question Hour.

It is during the Question Hour that the members can ask questions on every aspect of administration and Governmental activity. The member give notice in writing addressed to the Secretary-General of the Lok Sabha, intimating his intention to ask a question. Besides the text of the question, the notice states clearly then official designation of the Minister to whom the question is addressed as also the date on which the question is desired to be placed on the list of questions for answer as also the order of preference.

The normal period of notice of a question is not more than twenty-one and not less than ten clear days. A short notice question can be asked with a notice shorter than ten days, but the member has to state briefly the reasons for asking the question at short notice.

Zero Hour denotes the time immediately following the Question Hour in both the Houses of Parliament. This is about 12 noon which is why it is called Zero Hour. During this hour members can raise matters of great importance without prior 10 days notice. However, the duration of the Zero Hour has varied over the years. It is not possible to predict what kind of matters might be raised during Zero Hour as there is no mention of any Zero Hour in the rules of the Parliament. It began as an informal practice in 1962. The idea behind zero hour is that there are certain matters of urgent public importance which cannot wait for 10 days notice.

Whenever Presiding Officers of the Houses give directions to the Government or the Minister/Minister of State for Parliamentary Affairs gives

assurances on certain issues raised during 'Zero Hour' in the two Houses, the important extracts from the proceedings of the Houses relating to such matters are sent by the Minister of Parliamentary Affairs to the Minister concerned on the same day for such action as may be deemed necessary by the department. Ministry of Parliamentary Affairs also sends relevant extracts from the proceedings relating to the matters raised during Zero Hour in the two Houses on which no directions or assurances are given, to the department concerned for information and such action as may be deemed necessary. The department may examine such matters and, if deemed necessary, send replies to the members under intimation to the Ministry of Parliamentary Affairs.

2.9 HALF-AN-HOUR MOTION

The Chairperson shall allot half-an-hour from 5 p.m. to 5.30 p.m. on any day for raising discussion on a matter of sufficient public importance which has been the subject of a recent question in the Council, and the answer to which needs elucidation on a matter of fact, provided that if the other business set down for the day is concluded before 5 p.m. the period of half-an-hour shall commence from the time such other business is concluded. The Chairman may vary the time of commencement of such discussion if such a course is, in his opinion, necessary or convenient.

A member wishing to raise a matter shall give notice in writing to the Secretary-General three days in advance of the day on which the matter is desired to be raised, and shall shortly specify the point or points that he wishes to raise:

(a) Provided that the notice shall be accompanied by an explanatory note stating the reasons for raising discussion on the matter in question.

(b) Provided further that the notice shall be supported by the signatures of at least two other members:

(c) Provided further that the Chairman may with the consent of the Minister concerned waive the requirement concerning the period of notice.

The Chairman shall decide whether the matter is of sufficient public importance to be put down for discussion. If more than two notices have

been received and admitted by the Chairman, the Secretary-General shall draw by lot two notices and the notices shall be put down in the order in which they were received in point of time, provided that if any matter put down for discussion on a particular day is not disposed of on that day it shall not be set down for any other day, unless the member so desires, in which case it shall be included in the draw of lot for the next available day.

There shall be no formal motion before the Council nor voting. The member who has given notice may make a short statement and the Minister concerned shall reply shortly. Any member who has previously intimated to the Chairman may be permitted to put a question for the purpose of further elucidating any matter of fact, provided that if the member who has given notice is absent, any member who has supported the notice may, with the permission of the Chairman, initiate the discussion.

2.10 QUESTION HOUR

Question Hour is the first hour of a sitting session of India's Lok Sabha devoted to questions that Members of the Parliament raise about any aspect of administrative activity. The concerned Minister is obliged to answer to the Parliament, either orally or in writing, depending on the type of question raised. Questions are one of the ways Parliament can hold the Executive accountable.

There are two main types of questions-Starred and non-starred. Starred questions are those for which an oral answer is expected. The member is allowed to ask a supplementary question, with the permission of the Speaker, after the reply is obtained from the Minister concerned. Non-starred questions are those for which a written reply is expected. After the reply has been provided, no supplementary question can be asked. A notice period is to be given to the minister to reply to a question. However, if a Member seeks to ask a question urgently and cannot wait for the duration of the notice period, then the member can do so provided it is accepted by the Speaker. Such questions are called supplementary questions.



CHECK YOUR PROGRESS

Q 4: What is starred questions?

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Q 5: Write briefly about the Calling Attention motion.

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Q 6: What is Question Hour?

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2.11 LET US SUM UP

- Although the exact roles and responsibilities of an MP are not codified in the Constitution of India, Section 3 of Article 105, which discusses the powers and privileges of MPs and of committees, lays down the responsibilities of an MP and committees of the Parliament.
- Participation in law-making procedure is the most important function of the members of the Parliament.
- MPs also supervise the executive by participating in committees like Public Accounts, Estimates, Public Undertakings and various other department related standing and ad-hoc committees.
- Article 176(1) of the Constitution of India enjoins that the Governor shall address both the Houses assembled together at the commencement of the first Session after each general election to the Assembly and at the commencement of the first session of each year and inform the Legislature of the causes of its summons.
- The primary object of an adjournment motion is to draw the attention of Lok Sabha to a recent matter of urgent public importance having

serious consequences and in regard to which a motion or a resolution with proper notice will be too late.

- The concept of 'Calling Attention' is of Indian origin. It is an innovation in the modern parliamentary procedure and combines the asking of a question for answer with supplementaries and short comments in which different points of view are expressed concisely and precisely, and the Government has adequate opportunity to state its case.
- A motion of no-confidence (alternatively vote of no confidence, no-confidence motion, or (unsuccessful) confidence motion) is a statement or vote which states that a person(s) in a position of responsibility (government, managerial, etc.) is no longer deemed fit to hold that position, perhaps because they are inadequate in some respect, are failing to carry out obligations, or are making decisions that other members feel are detrimental. As a parliamentary motion, it demonstrates to the head of state that the elected parliament no longer has confidence in (one or more members of) the appointed government.
- Zero Hour denotes the time immediately following the Question Hour in both the Houses of the Parliament. This is about 12 noon which is why it is called Zero Hour. During this hour members can raise matters of great importance without prior 10 days notice.



2.12 FURTHER READING

1) Fadia, Dr. B.L. & Fadia, Dr. Kuldeep. (2018). *Indian Government and Politics*. New Delhi: Sahitya Bhawan, Publication.

2) Kashyap, Subhash. (2015). *Our Parliament*. New Delhi: National Book Trust .

3) Pandey, J. N. (2017). *The Constitution of India*. New Delhi : Central Law Agency.

4) Shoutrie, Arun. (2007). *The Parliamentary System*. New Delhi:Rupa & Co.

2.13 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: Article 105

Ans to Q No 2: The primary object of an adjournment motion is to draw the attention of Lok Sabha to a recent matter of urgent public importance having serious consequences and in regard to which a motion or a resolution with proper notice will be too late.

Ans to Q No 3: Acharya Kripalani

Ans to Q No 4: Starred questions are those for which an oral answer is expected in the Parliament.

Ans to Q No 5: The concept of 'Calling Attention' is of Indian origin. It is an innovation in the modern parliamentary procedure and combines the asking of a question for answer with supplementaries and short comments in which different points of view are expressed concisely and precisely, and the Government has adequate opportunity to state its case. It gives members an opportunity to bring to the surface the failure or inadequate action of Government on a matter of urgent public importance.

Ans to Q No 6: The first hour of a sitting of Lok Sabha (11 am to 12 noon) is devoted to Questions and that hour is called the Question Hour.

2.14 MODEL QUESTIONS

A) Very Short Questions

Q 1: Mention one supervisory function of the Members of the Parliament.

Q 2: What is Zero Hour?

Q 3: What are the primary object of an adjournment motion ?

B) Short Questions (Answer each question in about 150 words)

Q 1: Write a short note on the Half-an-Hour motion.

Q 2: Explain briefly the role of the Governor in the state legislature.

Q 3: Write briefly about the meaning of motion of no-confidence.

C) Long Questions (Answer within 300-500 words)

Q 1: Explain the roles of the members of the Parliament.

Q 2: Discuss the various techniques through which the Parliament exercise control over the executive.

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UNIT 3: LEGISLATION: PUBLICATION OF BILLS, MOTIONS AFTER INTRODUCTION AND PASSING OF BILLS, DEBATE, CORRECTION, WITHDRAWAL, AMENDMENTS; RESOLUTIONS; PROCEDURE IN FINANCIAL MATTERS; PARLIAMENTARY PRIVILEGES

UNIT STRUCTURE

3.1 Learning Objectives

3.2 Introduction

3.3 Legislation

- 3.3.1 Publication of Bills
- 3.3.2 Motions After Introduction of Bills and Passing of Bills
- 3.3.3 Debate, Correction, Withdrawal, Amendments
- 3.3.4 Resolutions

3.4 Procedure in Financial Matters

3.5 Parliamentary Privileges

3.6 Let Us Sum Up

3.7 Further Reading

3.8 Answers To Check Your Progress

3.9 Model Questions

3.1 LEARNING OBJECTIVES

After going through this unit, you will be able to -

- describe the various stages of the legislative procedure of the Indian Parliament
- explain the legislative procedure in financial matters
- examine the privileges of the members of the Parliament and state legislature.

3.2 INTRODUCTION

In India there are three organs of the government. These are- legislature, executive and judiciary. The legislature formulates the laws, executive implements these laws and the judiciary interprets the laws of the legislature and actions of the executive. India has bicameral legislature at the centre and at the state level 7 states have bicameral legislature and other remaining states have unicameral legislature. At the center the legislature is known as the Parliament consisting of the President, the Rajya Sabha (Upper House) and the Lok Sabha (Lower House). Making or formulation of laws is the most important task of the Parliament. In this unit we shall discuss the process of legislation of the Parliament both in case of ordinary matters and financial matters. We shall also discuss privileges of the members of the Parliament and state legislature.

3.3 LEGISLATION

A legislature is a deliberative assembly with the authority to make laws for a political entity such as a country or city. Legislature forms important part of the government. Laws enacted by the legislatures are known as legislation. Legislatures observe and steer governing actions and usually have exclusive authority to amend the budget or budgets involved in the process.

The members of a legislature are called legislators. In democracy, legislators are most commonly elected by the people; although indirect election and appointment by the executive are also used, particularly for bicameral legislatures featuring an upper chamber. In the following sections we shall discuss the various stages of legislation in the Indian Parliament.

3.3.1 Publication of Bills

A Bill is the draft of a legislative proposal. It has to pass through various stages before it becomes an Act of the Parliament. The legislative process starts with the introduction of a Bill in either House of Parliament- Lok Sabha or Rajya Sabha. A Bill (other than money 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 leave 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 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.

After a Bill has been introduced, it is published in the Official Gazette. Even before introduction, a Bill might, with the permission of the Speaker, be published in the Gazette.

3.3.2 Motions After Introduction of Bills and Passing of Bills

Law-making is the main function of the Parliament. It is true that law is made jointly by the legislature and executive, but the role of legislature in law-making deserves a mention.

Law-making involves several steps. First, a bill is introduced in the Parliament. Secondly, the bill is passed by the Parliament. Thirdly, the bill, after being passed by the Parliament is sent to the President for his/her consent. When the bill is adopted in the Parliament, it becomes an Act. When an Act gets the assent of the Parliament, it becomes the law of the land.

A Bill is a technical name given to the draft of the proposal which is moved in the Parliament. Non-Money Bills can be introduced either in the Lok Sabha or in the Rajya Sabha. But the Money Bills can be introduced only in the Lok Sabha. A Money Bill, before it is introduced in the Lower House, has to receive the approval of the President.

A Bill is the draft of a legislative proposal. It has to pass through various stages before it becomes an Act of the Parliament.

First Reading:

The legislative process starts with the introduction of a Bill in either House of Parliament– Lok Sabha or 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 leave 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 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.

Publication in Gazette:

After a Bill has been introduced, it is published in the Official Gazette. 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 straightaway introduced.

Reference of Bill to Standing Committee:

After a Bill has been introduced, Presiding Officer of the concerned House can refer the Bill to the concerned Standing Committee for examination and make report thereon. If a Bill is referred to the Standing Committee, the Committee shall consider the general principles and clauses of the Bill referred to them and make report thereon. The Committee can also take expert opinion or the public opinion who are interested in the measure. After the Bill has thus been considered, the

Committee submits its report to the House. The report of the Committee, if found persuasive shall be treated according to the recommendations given by the Committees.

Second Reading:

The Second Reading consists of consideration of the Bill which is 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 straightaway take it into consideration.

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.

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 that 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 participate in 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.

Third Reading:

Thereafter, the member-in-charge can move the Bill. This stage is known as the Third Reading of the Bill. At this stage the debate is confined to arguments either in support or opposition of the Bill without referring to the details thereof more 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-third of the members present and voting is required in each House of Parliament.

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.

Money Bills: Bills which exclusively contain provisions for imposition and abolition of taxes, for appropriation of money out of the Consolidated Fund, etc., are certified as Money Bills. Money Bills can be introduced only in the Lok Sabha. Rajya Sabha cannot make amendments in a Money Bill passed by Lok Sabha and transmitted 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. It is open to Lok Sabha to accept or reject any or all of the recommendations of 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 and if Lok Sabha does not accept any of the recommendations of Rajya Sabha, 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 and then it will go to the President for his/her assent. After receiving the assent of the President, the Bill becomes an Act.

3.3.3 Debate, Correction, Withdrawal, Amendments

- **Amendments to Bills**

  Insertion of new clause: When an amendment for the insertion of a new clause in a Bill is adopted by the House, the Speaker shall put the question thus: 'The question is: That clause (quoting the number of the new clause) be added to the Bill.

- **Corrections in Bills**

  Procedure for corrections in Bills: No alteration shall be made in a Bill as introduced or in a Bill as reported by a Select/Joint Committee except by way of an amendment adopted in the House, provided that (a) the Speaker shall correct any obvious printing or clerical error at any stage of the Bill by issue of a corrigendum to the Bill, (b) in the case of a secret Bill printed by the Ministry concerned before introduction, such a correction in the Bill, as introduced, shall not relate to an error affecting taxation.

- **Indication in Debates regarding Correction of Patent Errors in Bills:**

  Incorporation of corrections in Debates-

  (1) Where an amendment to a clause has been moved and adopted by the House and subsequently the Official Draftsman, while scrutinizing the Bill, as passed, has suggested any correction which has been accepted by the Speaker as a patent error, such a correction shall be incorporated in the body of the amendment itself without any foot-note in the printed debate.

  (2) Where the Speaker has accepted a correction suggested by the Official Draftsman relating to a clause and not to an amendment to a clause which has been adopted by the House, such a

correction shall be indicated with an appropriate foot-note, in the printed debates as indicated below:--

"In views of the amendment to clause..... part ( ) of sub-clause ( ) of clause..... (as the case may be) adopted by the House the words '.....' occurring in clause...../part () of sub-clause ( ) of clause..... (as the case may be) were omitted or inserted as patent errors under the direction of the Speaker".

- **Bills as Passed**

Scrutiny, change of year and authentication-

(1) When a Bill, as passed by the Houses, is in possession of the Lok Sabha, a copy thereof shall be sent to the Draftsman, Ministry of Law for scrutiny before it is presented to the President under rule 128.

(2) If in the opinion of the Draftsman the Bill is not likely to be assented to in the same year in which the Bill is passed and he makes a suggestion that the year in the title clause be changed, the Speaker may accept the suggestion and make the consequential change in clause 1 and other clauses of the Bill wherever necessary.

(3) In such a case, the Bill shall be authenticated in the same year in which it is likely to be assented to.

Laying of Bills after assent-

Every Bill passed by the Houses of the Parliament and assented to by the President under article 111 of the Constitution shall be laid by the Secretary-General on the Table, provided that in the case of a Bill on which assent is obtained by the Rajya Sabha Secretariat, the Bill, as assented to by the President, shall be duly authenticated by the Secretary-General of Rajya Sabha before being laid on the Table.

- **Withdrawal and Removal of Bills**

Advance circulations of reasons for withdrawal of Government Bills-

When a Bill pending in Lok Sabha is sought to be withdrawn by the Government, a statement containing the reasons for which the

Bill is being withdrawn shall be circulated to members by the Ministry concerned sufficiently in advance of the date on which the motion for withdrawal is sought to be made.

Removal of pending Bill from Register of Bills-

Where a pending Bill seeks to amend an Act which is subsequently repealed, it shall be removed from the Register of Bills pending in the House.

The Petition addressed to the Council of States (Rajya Sabha) may either be forwarded to the Secretary-General, Rajya Sabha, Parliament House, New Delhi or may be got countersigned by a Member of Parliament (Rajya Sabha) who may then present it before the Rajya Sabha on the petitioner's behalf. The Committee on Petitions will examine every petition referred to it. The recommendations of the Committee on the Petition will be presented in the form of a Report to the Rajya Sabha, where after the recommendations will receive the consideration of the appropriate Ministry of the Government of India. This process will be monitored by the Committee on Petitions.

3.3.4 Resolutions

In law, resolution is a written motion adopted by a deliberative body. The substance of the resolution can be anything that can normally be proposed as a motion. For long or important motions, though, it is often better to have them written out so that discussion is easier or so that it can be distributed outside the body after its adoption. An alternate term for a resolution is a resolve.

Resolutions are commonly used in corporations and Houses of legislature. Resolution is a self-contained independent proposal submitted for the approval of the House and drafted in such away as to be capable of expressing a decision of the House. A resolution may be in the form

(i) of declaration of opinion; or

(ii) of a recommendation; or

(iii) so as to record either approval or disapproval by the House of an act or policy of Government; or

(iv) convey a message; or

(v) command, urge or request an action; or

(vi) call attention to a matter or situation for consideration by government; or

(vii) in such other form as the Speaker may consider appropriate.

Example of a resolution -

In case of a natural disaster like the floods that occurred in Jammu & Kashmir, the House can pass a resolution recommending the immediate measures to be taken by the Government for relief and rehabilitation of the victims.



CHECK YOUR PROGRESS

Q 1: An ordinary bill can be introduced in both Houses of the Parliament. (True/False)

.....

Q 2: Write briefly about second reading of Bill.

.....

.....

.....

.....

Q 3: Mention any two forms of Resolution.

.....

3.4 PROCEDURE IN FINANCIAL MATTERS

The Budget-

(1) The Annual Financial Statement or the Statement of the estimated receipts and expenditure of the Government of India in respect of each financial year (herein after referred to as "the Budget") shall be presented to the House on such day as the President may direct.

(2) There shall be no discussion on the Budget on the day on which it is presented to the House.

General Discussion on the Budget:

(1) On a day to be appointed by the Chairman subsequent to the day on

which the Budget is presented and for such time as the Chairman may allot for this purpose, the House shall be at liberty to discuss the Budget as a whole or any question of principle involved therein, but no motion shall be moved nor shall the Budget be submitted to the vote of the House.

(2) The Finance Minister shall have a general right of reply at the end of the discussion.

(3) The Chairman may, if he thinks fit, prescribe a time limit for speeches.

Presentation of the Budget in parts:

Nothing herein before contained shall be deemed to prevent the presentation of the Budget to the House in two or more parts and when such presentation takes place, each part shall be dealt with in accordance with these rules, as if it were the Budget.

Business that can be taken up on a day allotted for financial business:

Notwithstanding that a day has been allotted for financial business, a motion or motions for leave to introduce a Bill or Bills may be made and a Bill or Bills may be introduced on such day before the House enters on the business for which the day has been allotted.

Explanation– Financial business includes any business which the Chairman holds as coming within this category under the Constitution.

Provisions regarding Financial Bills referred to in Article 117(1) of the Constitution:

(1) If notice of motion for leave to introduce a Bill making provision for any of the matters specified in clause (1) of Article 117 of the Constitution is received, the Chairman may direct that it should not be included in the list of business.

(2) On a Bill being put down for introduction, a member may at that stage or at any subsequent stage take objection that the Bill is a financial Bill within the meaning of clause (1) or Article 117 of the Constitution and should not be introduced in the Council.

(3) If the Chairman holds that the Bill is a financial Bill within the meaning of clause (1) of Article 117 of the Constitution, he/she shall terminate discussion on the Bill forthwith and direct that it be struck off from the

list of business and be removed from the register of Bills pending in the House and should not be introduced in the House.

(4) If the Chairman has any doubt in regard to the validity of the objection, he/she shall refer the matter to the Speaker and if these is no agreement between the Speaker and the Chairman, the Chairman shall report the matter to the House and take the sense of the House as to whether it wishes to proceed further with the Bill.

Money Bills:

(1) A Money Bill passed by the House and transmitted to the Council shall, as soon as may be, be laid on the Table.

(2) The Chairman in consultation with the Leader of the House shall within two days of the Bill being so laid on the Table allot a day or days or part of a day for the completion of all or any of the stages involved in the consideration and return of the Bill by the Council including the consideration and passing of amendments, if any, to the Bill.

(3) When such an allotment has been made, the Chairman shall at the appointed hour on the allotted day or the last of the allotted days, as the case may be, forthwith put all the questions necessary to dispose of the outstanding matters in connection with the stage or stages for which a day or days or part of a day has been allotted.

(4) After the motion that the Bill be taken into consideration has been carried, the Bill shall be taken up clause by clause. At this stage, amendments to be recommended to the House may be moved to the Bill and the provisions of the rules of the Council regarding consideration of amendments to Bills shall apply.

(5) After the Bill has been considered clause by clause and the amendments, if any, have been disposed of, the member in charge of the Bill shall move that the Bill should be returned.

(6) When the motion that the Bill be returned has been carried, the Bill shall be returned to the House in the case where the Council does not make any recommendations, with a message that the Council has no recommendations to make to the House in regard to the Bill and in the case, where any amendments have been recommended by the Council,

with a message intimating to the House the amendments so recommended.

(7) On a Bill being introduced in the House or at subsequent stage if an objection is taken that a Bill is a Money Bill within the meaning of Article 110 and should not be proceeded within the House, if the Chairman holds the objection valid he shall direct further proceedings in connection with the Bill be terminated.

(8) If the Chairman has any doubt in regard to the validity of the objection, he shall refer the matter to the Speaker whose decision on the question shall be final in accordance with clause (3) of Article 110 of the Constitution.

3.5 PARLIAMENTARY PRIVILEGES

Article 105 and 194 of the Indian Constitution deal with the power privileges and immunities of the Parliament and its members and of their state legislature and its members respectively.

- **Article 105: Powers, privileges, etc. of the Houses of the Parliament and of the members and committees thereof.-**

  (1) Subject to the provisions of this Constitution and the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

  (2) No Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

  (3) In other respects, power, privileges and immunities of each House of the Parliament, and of the members and the committees of each House, shall be such that it may be defined from time to time by the Parliament with the help of law, and, until so defined shall be those of that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of the Parliament or any committee thereof as they apply in relation to members of the Parliament.

- **Article 194: Powers, privileges, etc., of the House of State Legislatures and of the members and committees thereof.-**

(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 26 of the Constitution (forty-fourth Amendment) Act, 1978.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature.

Hence from the above two different Articles of Indian constitution it can be inferred that the position of State Legislature is same as those of Houses of the Parliament. Both Articles expressly mentioned two privileges namely- freedom of speech and freedom of publication of proceedings.



CHECK YOUR PROGRESS

Q 4: Money Bill can be introduced only in the ..... (fill in the blank)

Q 5: Which Article of the Indian Constitution deals with the privileges of the members of the Parliament?

.....



3.6 LET US SUM UP

- A legislature is a deliberative assembly with the authority to make laws for a political entity such as a country or city.
- A Bill is the draft of a legislative proposal. It has to pass through various stages before it becomes an Act of Parliament. The legislative process starts with the introduction of a Bill in either House of Parliament-Lok Sabha or Rajya Sabha.
- Law-making involves several steps. First, a bill is introduced in the Parliament. Secondly the bill is passed by the Parliament. Third, the bill, after getting passed by the Parliament is sent to the President for his assent. When the bill is adopted in the Parliament, it bee an Act. When an Act gets the assent of the President, it becomes the law of the land.
- No alteration shall be made in a Bill as introduced or in a Bill as reported by a Select/Joint Committee except by way of an amendment adopted in the House.
- Money Bill can be introduced only in the Lok Sabha.
- The Constitution of India has provided some privileges to the members of the Parliament and state legislatures.



3.7 FURTHER READING

1) Fadia, Dr. B.L. & Fadia, Dr. Kuldeep. (2018). *Indian Government and Politics*. New Delhi: Sahitya Bhawan, Publication.

2) Kashyap, Subhash. (2015). *Our Parliament*. New Delhi: National Book Trust .

3) Pandey, J. N. (2017). *The Constitution of India*. New Delhi : Central Law Agency.

4) Shoutrie, Arun. (2007).*The Parliamentary System*. New Delhi:Rupa & Co.



3.8 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: True

Ans to Q No 2: The Second Reading consists of consideration of the Bill which is 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 straightaway take it into consideration.

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.

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 that 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 participate in 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.

Ans to Q No 3: (i) declaration of opinion; (ii) a recommendation

Ans to Q No 4: Lok Sabha

Ans to Q No 5: Article 105



3.9 MODEL QUESTIONS

A) Very Short Questions

Q 1: Mention one privilege of the Members of the Parliament.

Q 2: In which House of the Parliament Money Bill can be introduced?

Q 3: Which Article of the Indian Constitution deals with the privileges of the members of the state legislature?

B) Short Questions (Answer each question in about 150 words)

Q 1: Write a short note on Resolution.

Q 2: How a bill can be published ?

Q 3: How motions are conducted after introduction of bills ?

C) Long Questions (Answer within 300-500 words)

Q 1: What is meant by Parliamentary Privileges? Discuss in detail in the light of the provisions under the Constitution of India.

Q 2: Write an exhaustive note on Money bill.

Q 3: Discuss the legislative procedure of the Indian Parliament.

*** ***** ***

UNIT 4: VARIOUS COMMITTEES OF THE PARLIAMENT

UNIT STRUCTURE

4.1 Learning Objectives

4.2 Introduction

4.3 Types of Parliamentary Committees

- 4.3.1 Standing Committees
- 4.3.2 Adhoc Committees

4.4 Let Us Sum Up

4.5 Further Reading

4.6 Answers To Check Your Progress

4.7 Model Questions

4.1 LEARNING OBJECTIVES

After going through this unit, you will be able to-

- discuss the various Standing Committees of the Parliament and their functions
- describe the various Adhoc Committees of the Parliament and their functions.

4.2 INTRODUCTION

Committees of the Parliament undertake such functions which the House as a whole sitting in session may not be able to undertake and execute. Executive oversight, mainly review and monitoring of operations and activities of government programmes and policies, taking a variety of forms and utilization of various techniques etc. are some of the common programmes undertaken by such committees. Oversight inquiries range from specialized investigations by select committees to annual appropriations hearings, supported by a variety of authorities in the form of the Constitution and related laws, Court rulings, chamber and committee rules.

These are Committees designated according to government

portfolios to examine the expenditure, administration and policy of governmental departments and other matters falling under their jurisdiction. Most of the works of the Parliament is carried out by and generated in Portfolio Committees. Portfolio Committees are expected to table at least one report per session in Parliament covering their activities. Portfolio Committees perform both a pre-audit and post-audit function. In this unit we shall discuss various types of Committees of the Parliament and their functions.

4.3 TYPES OF PARLIAMENTARY COMMITTEES

The Parliamentary Committees are of two types–

1. Standing Committees
2. Adhoc Committees

The Standing Committees are permanent in nature, whereas the Adhoc Committees are constituted for a particular function and get dissolved automatically after the completion of the works.

4.3.1 Standing Committees

Among the Standing Committees the three functional Committees of the Parliament, namely Public Accounts Committee, Estimates Committee and Committee on Public Undertakings, are very important. Some of the important Standing Committees are discussed below:

1. **Public Accounts Committee:** The oldest Financial Committee, the Public Accounts Committees (PAC) was first created in 1923. It consists of 22 members (15 from Lok Sabha and 7 from Rajya Sabha). The members from the Rajya Sabha are co-members and do not enjoy voting rights in the Committee. A member of the council of ministers cannot be elected as member of this Committee. As a matter of practice, since 1967, a member of opposition is being appointed as the Chairman of the Committee. The term of office of the Committee is one year. The Public Accounts Committee performs the following functions:
   (i) It examines the public account of the Government of India and

the report of the Comptroller and Auditor General of India.

(ii) It examines the accounts to ascertain whether the money has been spent as authorised by Parliament and for the purpose for which it was sanctioned. Apart from technical irregularities, it brings out any evidence of waste, corruption, inefficiency or operational deficiency in the conduct of financial affairs.

(iii) However, the Committee is not concerned with policy making though they try to ensure that financial transactions are carried out within the ambit of the policies laid down by the Parliament.

2. **Estimates Committees:** This Committee was first created at the Centre in 1950. The Estimates Committee consists of thirty members, all from the House of the People (Lok Sabha). The members of the Estimates Committee are elected by the Lok Sabha from amongst its members by the method of single transferable vote system of proportional representation for a term of one year. One of the members of the Committee is appointed as Chairman by the Speaker of the Lok Sabha. However, if the Deputy Speaker of the Lok Sabha is also a member of the Committee, he/she automatically becomes the Chairman of the Committee. This Committee performs the following functions:

   (i) It reports on as to what economies, improvement in organization, efficiency of administration, consistent with the policy underlying the estimate may be effected.

   (ii) It examines whether the money is well laid out within the limit of the policy implied in the estimate.

   (iii) The Committee also suggests the alternative policies in order to bring about efficiency and economy in administration.

   (iv) It suggests the form in which the estimates shall be presented to the Parliament.

3. **Committee on Public Undertaking:** The Committee on Public Undertaking was first created in November 1963 by a resolution of the Lok Sabha on the recommendation of the Krishna Menon Committee. It consists of 22 members out of which 15 are elected from the Lok

Sabha and the 7 members are elected from the Rajya Sabha. The members are elected by the method of single transferable vote system of proportional representation. Every year, one-fifth members of the Committee are retired and new members are elected in their place. The Chairman of the Committee is appointed by the Speaker from among the members of the Committee drawn from the Lok Sabha. The Committee performs the following functions:

(i) It examines the reports and accounts of the public undertakings specified in the rules of procedures.

(ii) It also considers the report of the Comptroller and Auditor General on the functioning and financial affairs of the public undertakings. It examines whether the affairs of the public undertakings are managed in accordance with sound business principles and public commercial practices.

4. **Business Advisory Committees:** This Committee is constituted in both Houses of the Parliament. In the Lok Sabha the Committee consists of 15 members including the Speaker who is the ex-officio chairman of the Committee. The Speaker nominates the members of the Committee which continues in office till the new Committee is reconstituted. Its functions include-

(i) It recommends the time that should be allocated for the transaction of Legislative and other business, initiated by the Government. The leader of the House is consulted in such allocation of business.

(ii) The Committee is empowered to indicate the time schedule of business as to when different steps of a Bill or other business should be completed.

(iii) It also performs such other functions which are entrusted to it by the Speaker or the Chairman as the case may be.

The recommendations of the Committee are presented to the House in the form of a report. The House may accept or reject such a report with or without modification by passing a motion to that effect.

5. **Committee on Private Members' Bills and Resolutions:** This Committee of the House of the People consists of 15 members nominated by the Speaker and chaired by the Deputy Speaker. Its term of office is one year. The Committee performs the following functions:
   (i) It examines the private members' Bills seeking to amend the Constitution before their introduction in the Lok Sabha.
   (ii) It also examines the private members' Bills after their introduction to the House but before the discussion in the House on such Bill and categorises these in terms of their nature, importance and urgency.
   (iii) It allots time for the discussion on the private members' Bills after introduced in the House.
   (iv) It examines such Bills of private members where the Legislative competence of the House is challenged.
   (v) It recommends the time limit for the discussion of the private members' resolutions and other ancillary matters brought before the House.
   (vi) It performs other functions related to the private matters resolutions and the functions entrusted by the Speaker from time to time.

   It should be noted that there is no such Committee in the Rajya Sabha.
6. **Select Committee on Bills:** These are Adhoc Committees and are constituted to consider and report on particular Bills. The Committees are constituted by a motion of the Bill that is to be considered by a Select Committee. As soon as it completes its entrusted works, the Committee gets dissolved.

   This Committee submits its report to the House within the time limit decided by the House. If the time limit is not fixed by the House, the Committee submits its report within a period of three months from the date on which the motion was adopted to entrust a particular Bill for the consideration by the Select Committee.

7. **Committee on Petitions:** The Committee consists of 15 members nominated by the Speaker. A Minister is not nominated to this Committee. The right of submitting petition to the Lok Sabha is an inherent right of the people, which enables them to ventilate their grievances and put forth suggestions before the supreme body elected by them whether relating to any Bill or any other matter. This Committee examines the merits of these petitions and recommends action thereon. The Committee also examines representation of individual grievances received from the public. This Committee considers and reports on petitions presented to the House. It also considers representations from various individuals, Associations etc not covered by the rules relating to petitions and gives directions for their disposal.
8. **Committee on the Papers laid on the Table:** It consists of 15 members nominated by the Speaker for a term not exceeding one year. The Chairman of the Committee is appointed by the Speaker from amongst the members of the Committee. Its function is to examine all papers laid on the Table of the House by Ministers (other than those which fall within the purview of the Committee on Subordinate Legislation or any other Parliamentary Committee) and to report to the House- (a) whether there has been compliance of the provisions of the Constitution, Act, rule or regulation under which the paper has been laid, (b) whether there has been any unreasonable delay in laying the paper, (c) if there has been such delay, whether a statement explaining the reasons for delay has been laid on the Table of the House and whether those reasons are satisfactory, (d) whether both the Hindi and English versions of the paper have been laid on the Table, (e) whether a statement explaining the reasons for not laying the Hindi version has been given and whether such reasons are satisfactory, (f) such other functions in respect of the papers laid on the Table as may be assigned to it by the Speaker from time to time. The reports of the Committee are presented to the House from time to time. A member who desires to raise any of the matters which

pertain to the functions of the Committee should refer it to the Committee and not raise it in the House.

9. **Committee of Privileges:** This Committee consists of 15 members nominated by the Speaker. Its function is to examine every question involving breach of privilege of the House or of the members of any Committee thereof referred to it by the House or by the Speaker. It determines with reference to the facts of each case whether a breach of privilege is involved and makes suitable recommendations in its report. It also states the procedure to be followed by the House in giving effect to the recommendations made by it. When a question of privilege is referred to the Committee by the House, the report of the Committee is presented to the House by the Chairman or, in his absence, by any member of the Committee. Where a question of privilege is referred to the Committee by the Speaker under rule 227, the report of the Committee is presented to the Speaker who may pass final orders thereon or direct that it be laid on the Table of the House. With the coming into force w.e.f. 18.3.1986 of the Members of Lok Sabha (Disqualification on ground of Defection) Rules, 1985, made by the Speaker under paragraph 8 of the Tenth Schedule to the Constitution, an additional function has been assigned to the Committee. The Speaker may refer to the Committee any petition regarding disqualification of a member on ground of defection for making a preliminary inquiry and submitting a report to him. The procedure to be followed by the Committee in these cases is so far as may be same as in applicable to questions of breach of privilege.
10. **Committee on Subordinate Legislation (Lok Sabha):** The Committee consists of 15 members nominated by the Speaker. A Minister is not nominated to this Committee. The Committee scrutinizes and reports to the House whether the powers to make regulations, rules, sub-rules, by-laws etc. conferred by the Constitution or delegated by the Parliament are being properly exercised by the executive within the scope of such delegation.

    The function of the Committee is to examine matters of

subordinated Legislation and report to the House whether the powers of the executive to make such rules, regulations or bye-laws delegated by the Parliament have been properly exercised or not. A minister cannot become a member of the Committee.

11. **Committee on Government Assurances (Lok Sabha):** This Committee consists of 15 members nominated by the Speaker. A Minister is not nominated to this Committee. While replying to questions in the House or during discussions on Bills, Resolutions, Motions etc., Ministers at times give assurances or undertakings either to consider a matter or to take action or to furnish the House further information later. The functions of this Committee are to scrutinize the assurances, promises, undertakings etc. given by Ministers from time to time and to report to the Lok Sabha on the extent to which such assurances etc. have been implemented and to see whether such implementation has taken place within the minimum time necessary for the purpose.
12. **Committee on Absence of Members from the Sittings of the House (Lok Sabha):** The Committee consists of 15 members who hold office for one year. The members are nominated by the Speaker. This Committee considers all applications from members for leave of absence from the sittings of the House and examines every case where a member has been absent for a period of 60 days or more, without permission, from the sittings of the House. In its report it makes recommendations with respect to each case as to whether the absence should be condoned or leave applied granted or whether the circumstances of the case justify that the House should declare the seat of the member vacant.
13. **Rules Committee (Lok Sabha):** The Rules Committee consists of 15 members including the Speaker who is the ex-officio Chairperson of the Committee. The members are nominated by the Speaker. The Committee considers matters of procedure and conduct of business in the House and recommends any amendments or additions to the Rules of Procedure and Conduct of Business in Lok Sabha that are considered necessary.

14. **Committee on the Welfare of Scheduled Castes and Scheduled Tribes:**

The Committee on the Welfare of Scheduled Castes and Scheduled Tribes consists of 30 Members; 20 members are elected by Lok Sabha from amongst its Members in accordance with the system of proportional representation by means of single transferable vote and 10 members are nominated by Rajya Sabha from amongst its Members. The Chairman of the Committee is appointed by the Speaker from amongst the Members of the Committee. A Minister is not eligible for election to the Committee. If a Member after his election to the Committee is appointed as a Minister he ceases to be a Member of the Committee from the date of such appointment. The term of the Committee does not exceed one year. The functions of the Committee on the Welfare of Scheduled Castes and Scheduled Tribes are:

(a) to consider the reports submitted by the National Commission for Scheduled Castes and Scheduled Tribes under article 338(5) of the Constitution and to report as to the measures that should be taken by the Union Government in respect of matters within the purview of the Union Government including the Administration of the Union Territories;

(b) to report on the action taken by the Union Government and the Administration of the Union Territories on the measures proposed by the Committee;

(c) to examine the measures taken by the Union Government to secure due representation of the Scheduled Castes and Scheduled Tribes in services and posts under its control (including appointments in the Public Sector Undertakings, Nationalised Banks, Statutory and Semi-Government Bodies and in the Union Territories) having regard to the provisions of article 335;

(d) to report on the working of the welfare programmes for the Scheduled Castes and Scheduled Tribes in the Union Territories;

(e) to examine such other matters as may deem fit to the Committee or are specifically referred to it by the House or the Speaker.



CHECK YOUR PROGRESS

Q 1: What is the term of office of the Public Accounts Committee?

.....

Q 2: Mention one function of the Estimates Committee.

.....

Q 3: Write a short note on the Committee on Public Undertaking.

.....

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.....

.....

Other Committees:

Another class of Committees, which function as Parliament's watchdogs over the executive, are as follows:

(a) Joint Committee on Offices of Profit: It is formed for the duration of each Lok Sabha and the intention behind constituting this committee is to examine the "composition and character" of the Committees appointed by the Union and State Governments.

(b) Committee on Empowerment of Women: Ever since it came into existence on 29th April, 1997, the committee has been competently playing its role. It not only reviews and monitors government's actions towards securing women's equality, status and dignity but also suggests corrective measures for improving the condition of women in respect of matters that come within the purview of the government.

(c) Railway Convention Committee: This ad-hoc Committee was constituted to review the Rate of Dividend that Railway undertaking needs to pay to the government and other matters in connection with the Railway Finance. It also takes up and examines matters which have a direct impact on the working of Railways.

4.3.2 Ad hoc Committees

The Ad Hoc Committees are set up to work for a specific task and are dissolved once it's completed. The Select and Joint Committees on Bills are considered as the main committees under this category.

The Parliament has the privilege of referring a bill to a Select Committee or to a Joint Parliamentary Committee (JPC) of both the Houses. The committee is formed only when motion is adopted by one House and supported by the other. A JPC can obtain both written and oral "evidence of experts, public bodies, associations, individuals or interested parties suo motu or on requests made by them". It can also call for documents in connection with a matter under its consideration. The first JPC was formed in August 1987 to investigate the Bofors scandal.



CHECK YOUR PROGRESS

Q 4: For what purpose the Railway Convention Committees was constituted?

.....

Q 5: The Committee on Empowerment of Women came into existence on ..... (fill in the blank)



4.4 LET US SUM UP

- Committees of Parliament undertake such functions which the House as a whole sitting in session may not be able to undertake and execute. Executive oversight, principally the review and monitoring of operations and activities of government programmes and policies, taking a variety of forms and utilization of various techniques etc are some of the common activities conducted by such committees.
- Most of the works of the Parliament are carried out by and generated in Portfolio Committees. Portfolio Committees are expected to table at least one report per session in Parliament covering their activities. Portfolio Committees perform both a pre-audit and post-audit function.

- There are two types of Parliamentary Committees, such as - Standing Committees and Ad hoc Committees.
- Among the Standing Committees the three functional Committees of the Parliament, namely Public Accounts Committee, Estimates Committee and Committee on Public Undertakings, are very important.
- The Ad Hoc Committees are set up to work for a specific task and are dissolved once it's completed. The Select and Joint Committees on Bills are considered the main committees under this category.



4.5 FURTHER READING

1) Fadia, Dr. B.L. & Fadia, Dr. Kuldeep. (2018). *Indian Government and Politics*. New Delhi: Sahitya Bhawan, Publication.

2) Kashyap, Subhash. (2015). *Our Parliament*. New Delhi: National Book Trust.

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4.6 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No 1: one year

Ans to Q No 2: The Estimate Committee suggests the alternative policies in order to bring about efficiency and economy in administration.

Ans to Q No 3: The Committee on Public Undertaking was first created in November 1963 by a resolution of the Lok Sabha on the recommendation of the Krishna Menon Committee. It consists of 22 members out of which 15 are elected from the Lok Sabha and the 7 members are elected from the Rajya Sabha. The members are elected by the method of single transferable vote system of proportional representation. Every year, one-fifth members of the Committee are retired and new members are elected in their place. The Chairman of the Committee is appointed by

the Speaker from among the members of the Committee drawn from the Lok Sabha. The Committee performs the following functions:

(i) It examines the reports and accounts of the public undertakings specified in the rules of procedures.

(ii) It also considers the report of the Comptroller and Auditor General on the functioning and financial affairs of the public undertakings. It examines whether the affairs of the public undertakings are managed in accordance with sound business principles and public commercial practices.

Ans to Q No 4: Railway Convention Committee was constituted to review the Rate of Dividend that Railway undertaking needs to pay to the government and other matters in connection with the Railway Finance.

Ans to Q No 5: 29th April, 1997



4.7 MODEL QUESTIONS

A) Very Short Questions

Q 1: Mention one function of the Committee on Empowerment of Women.

Q 2: In which year was the first Public Accounts Committee constituted?

Q 3: Who is the ex-officio Chairperson of the Rules Committee (Lok Sabha) ?

B) Short Questions (Answer each question in about 150 words)

Q 1: Write a short note on the Committee on the Welfare of Scheduled Castes and Scheduled Tribes.

Q 2: Write briefly about the functions of the Estimates Committee.

Q 3: Write a short note on the adhoc committees of the Parliament.

C) Long Questions (Answer within 300-500 words)

Q 1: Discuss the various standing committees of the Parliament and their functions.

Q 2: Examine the functions of the Public Accounts Committee, Estimates Committee and Committee on Public Undertakings.

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UNIT 5 : DELEGATED LEGISLATION IN PARLIAMENT AND STATE LEGISLATURE

UNIT STRUCTURE

5.1 Learning Objectives

5.2 Introduction

5.3 Causes Responsible for the Growth of Delegated Legislation

5.4 Types of Delegated Legislation

5.5 Permissible and Impermissible Delegated Legislation in the Parliament and in State Legislature

5.6 Needs and Various Kinds of Control Mechanisms of Delegated Legislation

5.7 Let Us Sum Up

5.8 Further Reading

5.9 Answers to Check Your Progress

5.10 Model Questions

5.1 LEARNING OBJECTIVES

After going through this unit, you will be able to-

- describe the factors leading to the growth of delegated legislation
- explain the merits and demerits of delegated legislation
- discuss the need and various kinds of control mechanisms of delegated legislation
- explain the delegated legislation in the Parliament and the state legislature
- explain the permissible and impermissible delegated legislation.

5.2 INTRODUCTION

This unit introduces you to the concept of delegated legislation and its importance in a welfare state. In a modern welfare State, the bulk of the business of the legislature has increased. It does not have sufficient time to discuss and look into details of the business of the legislature. As a result it

has to recommend the executive or administrative authority to make subordinate legislation to supplement the legislation made by the legislature. Now a days, the legislature often designs skeleton legislation and gives authority to the concerned department to supply flesh and blood to the skeleton by making rules, regulations, orders, etc.

According to traditional theory of separation of power, the legislature should make laws, the executive should execute or administer them and the judiciary should interpret them. The term delegated legislation is difficult to define. The delegated legislation may be defined as the legislation made by the authority other than the Legislature acting under the authority delegated to it by the Legislature. The delegated legislation is also called 'subordinate legislation'.

Jurist Sir John Salmond has classified the legislation in two categories- Supreme Legislation and Subordinate legislation. Supreme Legislation is the legislation made by the supreme power of the State. Subordinate legislation is the legislation made by the authority other than the supreme authority in the State.

In England, the Donoughmore Committee on Ministers' Power has also expressed its views on the meaning of the delegated legislation. According to this committee the term "delegated legislation" means - (i) the exercise of law-making power by the executive under the authority delegated to it by the Parliament; and also (ii) the rules, regulations, by-laws, etc. made by the executive in the exercise of the law-making power delegated to it by the Parliament.

5.3 CAUSES RESPONSIBLE FOR THE GROWTH OF DELEGATED LEGISLATION

The delegated legislation, now-a-days, has become inevitable. The factors responsible for the growth of delegated legislation or subordinate legislation may be summed up as follows:

- **Emergence of welfare state:** In modern welfare state the bulk of the Legislature has increased and it does not have sufficient time to discuss details and also to provide all the details adequate time. Consequently, it

has to confer on the executive or other agency , the authority to make subordinate legislation and to supplement the legislation made by the legislature. The Legislature, thus, passes skeleton legislation and gives authority to the concerned authority to supply flesh and blood to the skeleton by making rules, regulations, by-laws, orders etc.

- **Technicality of the subject matter:** Sometimes the subject -matter of the legislation is of technical nature and it requires handling by the expert. In such cases, it becomes necessary to delegate to appropriate authority the power to deal with such subject matters.
- **Fulfill local needs:** Sometimes the law is required to be applied with some modification according to the local needs and conditions. For this purpose the legislature lays down broad outlines and details are left to be filled by the authority who are to apply the law.
- **Expediency and Flexibility:** Delegated legislation or subordinate legislation is more flexible than ordinary legislation. The rules, regulations, by-laws, or orders, etc. if found to be defective, may easily be amended. The practice of delegated legislation enables experiment. If the experiment is found to be unsuccessful, the rules and regulations may be revoked or modified according to the requirements and if the experiment is found to be successful, the rules and regulations may be extended or made perpetual.
- **To meet emergency situation:** Sometimes the economic and national emergencies require quick action but because of being over burdened, the legislature finds it very difficult to act as promptly as the situation demands. Therefore, the executive delegates the power to make rules, regulations, etc. to deal with such situation.
- **Public Interest:** In some cases the public interest demands that the provisions of the law should not be known until the time fixed for their operation, for example- imposition of import duty or exchange control, rationing schemes, etc. This also necessitates the delegation of power to make rules, regulations, by-laws, etc to the executive or other agency.
- **Future Contingencies:** The legislature, while making the legislation, cannot foresee and provide for all future contingencies. It necessitates

delegation of power to the executive or other authority to make rules and regulations to meet the contingencies.

Demerits of Delegated Legislation: In spite of the above advantages of the practice of delegated legislation, it has been criticized by several scholars and jurists on the following grounds:

- Legislations are generally passed by the legislature in skeleton form and executive is given authority to supply the details. In practice, the rules and regulations made by the executive to supply the details are often found to be of vital importance to the common man. Consequently, it is not desirable that such rules and regulations should be made by the elected representatives of the people.
- Control of the delegated legislation by the legislature is not adequate. Due to the heavy work-load the legislature has no time to keep a full watch over what its delegates enact under the authority delegated by it. Sometimes the delegation is made in very wide terms. In the absence of effective control the executive may misuse it and act in an arbitrary manner.
- The judicial control over the delegated legislation is not adequate. Often the delegation clause is made in unduly wide terms so as to make the judicial control ineffective.
- Inadequate publicity of the delegated legislation is another defect. In England, the Statutory Instruments Act, 1946, has been passed for the publicity of the subordinate legislation. There is a great need of such legislation in India.
- The delegated legislation is also criticized on the ground that it is against the doctrine of separation of power and rule of law. It may result in concentration of power in a single person or body. The concentration of power in the executive or administrative authority is likely to make the executive or administrative authority arbitrary, i.e. it will increase the arbitrariness of the executive and thereby the human liberty will be hampered.



CHECK YOUR PROGRESS

Q 1: Define delegated legislation.

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Q 2: Salmond has classified the legislation in two categories- Supreme Legislation and …… (Fill in the blank)

Q 3: Mention any two causes responsible for the growth of delegated legislation.

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Q 4: Write two demerits of delegated legislation. (within 50 words).

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5.4 TYPES OF DELEGATED LEGISLATION

The delegated legislation exists in various forms, e.g., rules, regulations, by-laws, directions, orders, schemes, etc. The delegated legislation has been classified by different authors on different basis. The delegated legislation may be classified as follows:-

- **Rule:** It means a rule made in exercise of power conferred by any enactment and includes regulation made as a rule under any enactment.
- **Regulation:** Usually it is taken to mean an instrument by which orders, decisions and acts of the Government are made known to the public. However, in the area of delegated legislation or administrative rule making, it indicates the situation where the executive is delegated the power to specify the date for the enforcement of an Act or statute or to grant exemption from the application of the Act or statute, etc.
- **By-law:** It is taken to mean the rules made by the semi-Government

authorities established under the Act or statute, e.g., rules made by local authority, statutory corporation etc. By-laws are, thus, made by the semi-Government authorities established under the Act or statute.

- **Order:** The term order is applied to various forms of legislative and quasi-judicial decisions. The order may be general order or specific order. General order refers to delegated legislation or administrative rule making while the specific order refers to the administrative action.
- **Direction:** Direction is used in more than one sense. It is also used to refer the administrative rule making under the authority of the law or rules or orders made there under. In this sense, it relates to the delegated legislation. Direction may be mandatory or recommendatory. If it is mandatory, it has the force of law.
- **Scheme:** It is used to refer to a situation where the executive or administrative authority is authorized by the Act or statute to lay down a framework within which the concerned authority is to function.

5.5 PERMISSIBLE AND IMPERMISSIBLE DELEGATED LEGISLATION IN THE PARLIAMENT AND STATE LEGISLATURE

It is well settled that essential and primary legislative functions must be performed by the legislature itself and they cannot be delegated to the executive. Essential legislative functions consist of determination of legislative policy and its formulation as a rule of conduct. Once essential legislative powers are exercised by the legislature, all ancillary and incidental functions can be delegated to the executive.

Functions which can be delegated or permissible delegation:-

- Commencement: Several statutes contain an "appointed day" clause, which empowers the Government to appoint a day for the Act to come into force. In such cases, the operation of the Act depends on the decision of the Government. For example Section 3 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 provides that the Act 'shall come into operation on such date as the State Government may by notification in the Official Gazette appoint in this behalf'. Here the Act

comes into force when the notification is published in the Official Gazette. Such a provision is valid.

- Supplying details: If the legislative policy is formulated by the legislature, the function of supplying details may be delegated to the executive for giving effect to the policy. What is delegated here is an ancillary function in aid of the exercise of the legislative function e.g. Section 3 of the All India Services Act, 1951 authorizes the Central Government to make rules to regulate conditions of service in the All India Services.
- Inclusion: Sometimes, the legislature passes an Act and makes it applicable, in the first instance, to some areas and classes of persons, but empowers the Government to extend the provisions thereof to different territories, persons or commodities etc. For example the Transfer of Property Act, 1882 was made applicable to the whole of India except certain areas, but the Government was authorized to apply the provisions of the Act to those areas also.
- Exclusion: There are some statutes which empower the Government to exempt from their operation certain persons, territories, commodities, etc. Section 30 of the Payment of Bonus Act, 1965 empowers the Government to exempt any establishment or a class of establishments from the operation of the Act.
- Suspension: Some statutes authorize the Government to suspend or relax the provisions contained therein, e.g. under Section 48(1) of the Tea Act, 1953, the Central Government is empowered under certain circumstances to suspend the operation of all or any of the provisions of the said Act.
- Modification: Sometimes the Act or statute making the delegation of legislative power authorizes the executive to modify the Act or statute itself. Sometimes it becomes necessary to enable the executive to meet the changing circumstances. Consequently such delegation is, often, held valid, if there is no change in the legislative policy of the Act or statute.
- Power to remove difficulties: Power is sometimes conferred on the Government to modify the provisions of the existing statutes for the

purpose of removing difficulties. When the legislature passes an Act, it cannot forsee all the difficulties which may arise in implementing it. The executive is, therefore, empowered to make necessary changes to remove such difficulties. Such type of delegation is also known as the Henry VIII Clause. In England, during the period of the King Henry VIII several laws were made authorizing the Government or executive to modify or amend even the Enabling or Parent Act. This is nicknamed as Henry VIII clause type of delegation.

- Framing of rules: A delegation of power to frame rules, by-laws, regulations, etc. is not unconstitutional, provided that the rules, by-laws and regulations are required to be laid before the legislature before they come into force and provided further that the legislature has power to amend, modify or repeal them.

Functions which cannot be delegated:

- Essential legislative functions: Even though there is no specific bar in the Constitution of India against the delegation of legislative power by the legislature to the executive, it is now well-settled that essential legislative functions cannot be delegated by the legislature to the executive. In other words, legislative policy must be laid down by the legislature itself and by entrusting this power to the executive, the legislature cannot create a parallel legislature.
- Repeal of Law: Power to repeal a law is essentially a legislative function, and therefore, delegation of power to the executive to repeal a law is excessive delegation and is ultra vires.
- Modification: Power to modify the Act in its important aspects is an essential legislative function and, therefore, delegation of power to modify an Act without any limitation is not permissible. However, if the changes are not essential in character, the delegation is permissible.
- Exemption: The aforesaid principle applies in case of exemption also, and the legislature cannot delegate the power of exemption to the executive without laying down the norms and policy for the guidance of the latter.
- Retrospective operation: The legislature has plenary power of law making

and in India, the Parliament can pass any law prospectively or retrospectively subject to the provisions of the Constitution. But this principle cannot be applied in the case of delegated legislation. Giving an Act retrospective effect is essentially a legislative function and cannot be delegated.

- Future Acts: The legislature can empower the executive to adopt and apply the laws existing in other States, but it cannot delegate the power by which the executive can adopt the laws which may be passed in future, as this is essentially a legislative function.
- Ouster of jurisdiction of courts: The legislature cannot empower the executive by which the jurisdiction of courts may be ousted. This is a pure legislative function.
- Offences and penalty: The making of a particular act into an offence and prescribing punishment for it is an essential legislative function and cannot be delegated by the legislature to the executive. However, if the legislature lays down the standards or principles to be followed by the executive in defining an offence and provides the limits of penalties, such delegation is permissible.



CHECK YOUR PROGRESS

Q 5: The essential legislative function cannot be delegated to administrative authority. (True/False)

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Q 6: Power to repeal a law is essentially a legislative function, and therefore, such power ..... be delegated. (Fill in the Blank)

Q 7: Mention any two legislative powers which cannot be delegated.

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5.6 NEEDS AND VARIOUS KINDS OF CONTROL MECHANISMS OF DELEGATED LEGISLATION

Now a days the pertinent question is not whether delegated legislation is desirable or not, but what controls and safeguards can and ought to be introduced so that the rule-making power conferred on the Administration is not misused or misapplied. The control must be introduced at two stages- firstly, at the source, i.e. the safeguards must be provided when the legislature confers the legislative power on the executive. Secondly, some safeguards must be provided in case of misuse or abuse of power by the executive. Controls over the delegated legislation may be divided into three categories:

1. Judicial Control
2. Legislative Control (Parliamentary Control)
3. Other Control

- **Judicial Control:** Delegated legislation does not fall beyond the scope of judicial review and in almost all the democratic countries it is accepted that courts can decide the validity or otherwise of delegated legislation mainly applying two tests, substantive ultra vires and procedural ultra vires.
  - Substantive Ultra Vires: Ultra vires means beyond the powers. When a subordinate legislation goes beyond what the delegate is authorized to enact, it is known as substantive ultra vires. Substantive ultra vires means that the delegated legislation goes beyond the scope of the authority conferred on it by the parent statute or by the Constitution. It is a fundamental principle of law that a public authority cannot act outside the power; i.e. ultra vires, and it has been rightly described as the 'central principle' and 'foundation of large part of administrative law'. An act which is for any reason in excess of power is ultra vires.

    A delegated legislation may be held to be invalid on the ground of substantive ultra vires in the following circumstances:

    (i) Where parent Act is unconstitutional

    (ii) Where delegated legislation is inconsistent with the parent Act.

    (iii) Where delegated legislation is unconstitutional.

(iv) Unreasonableness.

(v) Mala fide, bad faith

(vi) Sub-delegation.

(vii) Exclusion of judicial review

(viii) Retrospective effect.

- Procedural Ultra Vires: When a subordinate legislation fails to comply with certain procedural requirements prescribed by the parent Act or by the general law, it is known as procedural ultra vires. While framing rules, bye-laws, regulations, etc., the parent Act or enabling statue may require the delegate to observe a prescribed procedure, such as holding of consultations with particular bodies or interests, publication of draft rules or bye-laws, laying them before Parliament, etc. It is incumbent on the delegate to comply with these procedural requirements and to exercise the power in the manner indicated by the legislature. Failure to comply with the same may invalidate the rules so framed. The following two procedural requirements may now be discussed - Publication and Consultation.

(i) **Publication:** The procedural requirements relate to previous publication (i.e. publication of proposed delegated legislation), post-natal publicity (i.e. publication of the delegated legislation after fully framed but before being brought into operation).

Sometimes the Enabling or Parent Act provides for the publication of the proposed delegated legislation. It is called antecedent publicity (prior or previous publicity). Whether such publication is necessary or not depends on the Enabling or Parent Act. Its purpose is to give the general public an opportunity to raise their objections, make their representations and give their suggestions before the delegated legislation is prepared in the final form.

Post-natal publicity may be taken to mean publication of the subordinate or delegated legislation after being fully framed, but before being put into operation. It is essential, that adequate means are adopted to publicize the rules so that

people are not caught on wrong foot in ignorance of the rules applicable to them in a given situation.

(ii) **Consultation:** The term 'consult' implies a conference of two or more persons or an impact of two or more minds in respect of a topic in order to enable them to evolve a correct or, at least satisfactory solution of a problem. It is a process which requires meeting of minds between the parties to consultation on material facts to come to a right conclusion. In India, there is no general statutory provision requiring consultation with affected person before making the delegated or subordinate legislation.

- **Legislative Control (Parliamentary Control):** It is the function of the legislature to legislate, but if it seeks to give this power to the executive because of some circumstances, it is not only the right of the legislature, but also its duty as principal, to see how its agent (executive) carries out the task entrusted to it. Since it is the legislature which delegates legislative power to the administration, it is primarily for it to supervise and control the actual exercise of this power, and ensure against the danger of its objectionable, abusive and the warranted use by the administration. Thus, the underlying object of parliamentary control is to keep watch over the rule-making authorities and also to provide an opportunity to criticize them if there is abuse of power on their part. Legislative control can be effectively exercised by- Laying on Table and Scrutiny Committees.

  (i) **Laying on Table:** One of the controls of delegated legislation by the Parliament is the laying procedure, i.e., laying on the table of the House the rules and regulations framed by the administrative authorities. The laying procedure enables the members of the House to scrutinize the subordinate legislation and thereby to exercise control over it.

  (ii) **Scrutiny Committees:** Laying on the table has not always been held to be mandatory. Even if that requirement is complied with, mere laying of rules before the Parliament would not be of much

use, unless the rules were properly studied and scrutinized. And, therefore, with a view to strengthen Parliamentary control over delegated legislation, Scrutiny Committees or Committees on subordinate legislation are established.

- **Other Control:** Over and above judicial and parliamentary controls, sometimes other controls and safeguards are also provided. One of such safeguards against the abuse of delegated power is to properly and precisely limit the power of the delegate.



CHECK YOUR PROGRESS

Q 8: Ultra vires means beyond the powers. (True/ False)

.....

Q 9: Mention any two control mechanism of delegated legislation.

.....

.....

Q 10: The Post-natal publicity may be taken to mean publication of the delegated legislation after being fully framed, but before being put into ……. (Fill in the Blank)

Q 11: Explain the judicial control of delegated legislation. (within 50 words).

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5.7 LET US SUM UP

- According to traditional theory of separation of power, the legislature should make laws, the executive should execute or administer them and the judiciary should enforce and interpret them.
- The term delegated legislation is difficult to define. The delegated

legislation may be defined as the legislation made by the authority other than the Legislature acting under the authority delegated to it by the Legislature.

- There are many factors which are responsible for the growth of delegated legislation. These are- emergence of welfare state, technical nature of subject-matter, to fulfill local needs and conditions, flexibility of delegated legislation, to meet emergency situation etc.
- There are certain demerits of delegated legislation, such as- it is against the doctrine of separation of power, inadequate legislative and judicial control, inadequate publicity etc.
- Delegated legislation exists in various forms, e.g., rules, regulations, by-laws, directions, orders, schemes, etc.
- There are certain subjects over which delegated legislation is permissible and some other subjects which delegated legislation is impermissible.
- The controls over the delegated legislation may be divided into three categories- judicial control, legislative control (Parliamentary Control) and other control.



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1) Jain, M. P. & S.N. (2007). *Principles of Administrative Law*. New Delhi: Wadhwa and Company.

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5.9 ANSWERS TO CHECK YOUR PROGRESS

Ans to Q No1: The delegated legislation may be defined as the legislation made by the authority other than the Legislature acting under the authority delegated to it by the Legislature.

Ans to Q No 2: Subordinate legislation.

Ans to Q No 3: (i) Emergence of welfare State,

(iii) Expediency and flexibility of delegated legislation

Ans to Q No 4: (i) Control of the delegated legislation by the legislature is not adequate. Due to the heavy work-load the legislature has no time to keep a full watch over what its delegates enact under the authority delegated by it. In the absence of effective control the executive may misuse it and act in arbitrary manner.

(ii) The judicial control over the delegated legislation is not adequate. Often the delegation clause is made in unduly wide terms so as to make the judicial control ineffective.

Ans to Q No 5: True

Ans to Q No 6: can not be

Ans to Q No 7: (i) Essential legislative functions can not be delegated.

(ii) Power to repeal a law is essentially a legislative function, and can not be delegated.

Ans to Q No 8: True

Ans to Q No 9: (i) Judicial Control

(ii) Legislative control (Parliamentary Control)

Ans to Q No 10: operation.

Ans to Q No 11: Delegated legislation does not fall beyond the scope of judicial review and in almost all the democratic countries it is accepted that courts can decide the validity or otherwise of delegated legislation mainly applying two tests, substantive ultra vires and procedural ultra vires. Ultra vires means beyond the powers.



5.10 MODEL QUESTIONS

A) Very Short Questions

Q 1: Who made the delegated legislation?

Q 2: Whether essential legislative function can be delegated?

Q 3: Mention any two merits of the delegated legislation.

Q 4: Mention any two demerits of the delegated legislation.

B) Short Questions (Answer each question in about 150 words)

Q 1: Write a brief note on the importance of delegated legislation.

Q 2: Write a short note on Separation of Powers.

Q 3: Examine the role of delegated legislation in a modern welfare state.

Q 4: Explain the causes responsible for the growth of delegated legislation.

C) Long Questions (Answer each question in about 300-500 words)

Q 1: Discuss the various types of delegated legislation in India.

Q 2: Discuss the various types of control mechanism of delegated legislation.

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