

State Legislature - Article 168 – 212

Chapter III of Part VI of the Constitution is concerned with the State Legislature. It comprises state legislature and executives. This topic is an important concept in polity for the [IAS Exam](#). Articles 168 to 212 in Part VI of the Constitution deal with the organisation, composition, duration, officers, procedures, privileges, powers and so on of the state legislature.

Bicameral and Unicameral States

Though a uniform pattern of Government is prescribed for the States, it is not so in the matter of the composition of the Legislature. While the Legislature of every State shall consist of the [Governor](#) and the State Legislature, in some of the States, the Legislature shall consist of two Houses, namely, the Legislative Assembly and the Legislative Council, while in the rest, there shall be only one House, namely the legislative assembly.

The constitution provides for the abolition of the second chamber in a state where it exists as well as for the creation of such a chamber in a state where there is none at present. If a state Legislature passes a resolution by an absolute majority, together with not less than two-thirds of the members actually present and voting in favour of the creation of the second chamber and if Parliament gives concurrence to such a resolution, the concerned State can have two Houses in the Legislature. Similar is the procedure for the abolition of the Upper houses and the State of Punjab and West Bengal abolished the second chambers in 1969 and 1970 respectively.

Legislative Council in Tamil Nadu was abolished in 1986. The State Legislature which has only one House is known as the Legislative Assembly (Vidhan Sabha) and in the State which has two houses, the Upper House is known as the Legislative Council (Vidhan Parishad) and the lower House is known as the Legislative Assembly (Vidhan Sabha).

Owing to changes introduced since the inauguration of Constitution, in accordance with the procedure laid down in Art. 169, the States having two Houses are Bihar, Maharashtra, Karnataka, Andhra Pradesh, Telangana and Uttar Pradesh.

State Legislature - Legislative Assembly

The Legislative Assembly is the popularly elected chamber and is the real Centre of power in a State. The maximum strength of an assembly must not exceed 500 or its minimum strength fall below 60. But some of the States have been allowed to have smaller Legislative Assemblies, e.g. Sikkim, Arunachal Pradesh, Goa, etc.

The territorial constituencies demarcation should be done as far as possible, such that the ratio between the population of each constituency and the number of seats allotted to it is the same all over the State. Apart from these general provisions, there are also special provisions with respect to the representation of SC and ST. In case the Governor feels that the Anglo-Indian community is not adequately represented, he can nominate one member of that community to the assembly.

State Legislature - Legislative Council

The Legislative Council of a State Comprises not more than one-third of the total number of members in the Legislative Assembly of the State and in no case less than 40 members. However, in Jammu and Kashmir, the strength is only 36. The system of the composition of the Council as provided for in the Constitution is not final. The final power is given to the Parliament of the Union. But until the Parliament legislates on the

subject, it shall be as provided for in the Constitution, which is described below:

Duration of Legislative Assembly & Legislative Council

It will be a partly nominated and partly elected body, the election being an indirect one and in accordance with the principle of proportional representation by the single transferable vote. The members being drawn from various sources, the Council shall have a variegated composition. Broadly speaking 5/6 of the total number of members of the Council shall be indirectly elected and 1/6 will be nominated by

The duration of the Legislative Assembly is five years. The Governor has the power to dissolve the Assembly even before the expiry of its term. The period of five years, may, while a proclamation of emergency is in operation, be extended by the Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after proclamation has ceased to operate (Article 172(1)). Unlike the Legislative Assembly, the Legislative Council is not subject to dissolution. It is a permanent body unless abolished by the Legislative Assembly and Parliament by the due procedure. But no person can be a permanent member of the Council as one-third of the members of the Council retire on the expiry of every second year. It amounts to a term of six years for each member. There is no bar on a member getting re-elected on the expiry of his term.

- (a) one-third of the total number of members of the Council would be elected by electorates consisting of members of local bodies like the municipalities and the district boards.
- (b) one-twelfth of the members would be elected by electorates comprising of graduates of the standing of three years dwelling in that particular state.
- (c) one-twelfth of the members would be elected by electorates consisting of teachers who have been in the teaching profession for at least 3 years in educational institutes in that state, which are not lower than secondary schools in the standard.
- (d) one-third would be elected by members of the Legislative Assembly from amongst people who are not Assembly members.
- (e) The rest would be nominated by the Governor from persons having knowledge or practical experience in matters like science, literature, cooperative movement, art and social service. (The Courts can't question the propriety or bonafide of the Governor's nomination.)

Qualifications of Members of Legislative Assembly

A person shall not be qualified to be selected to occupy a seat in the Legislature of a State unless he/she

- (a) is an Indian citizen;
- (b) is 25 years or above for Legislative Assembly, and is 30 or above for Legislative Council, and
- (c) possess such other qualifications as may be prescribed by the Parliament.

Thus, the Representation of the People Act, 1951, has provided that a person shall not be elected either to the Legislative Assembly or the Council unless he is himself an elector for any Legislative Assembly constituency in that State. A person can be disqualified for being selected as and for being a member of the Legislative Assembly or Legislative Council of a State if he/she

- (a) holds an office of profit under GOI or any State Government, other than that of a Minister at the centre or any state or an office declared by a law of the State not to disqualify its holder (many States have passed such laws declaring certain offices to be offices the holding of which does not disqualify its holder for being a member of the Legislature of that States)
- (b) is mentally unsound as declared by a competent Court
- (c) is an undischarged insolvent
- (d) is not an Indian citizen or has voluntarily got the citizenship of a foreign State or is under any acknowledgement of adherence/allegiance to a foreign nation

(e) is so disqualified by or under any law made by Parliament

Thus, the Representation of the People Act, 1951, has laid down some grounds of disqualification, like conviction by a Court, having been found guilty of electoral malpractice, being a manager or director of a corporation in which Government possesses a financial interest. Article 192 says that if any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned above, the matter will be referred to the Governor of the state who has to act in accordance with the opinion of the Election Commission. His decision is final and not liable to be questioned in Court.

Who are the officers of the state legislature?

Facts about Speaker & Deputy Speaker:

1. A Speaker vacates his office if he ceases to be a member of the Assembly.
2. He may also resign his office at any time.
3. A speaker may be removed from office by a resolution of the Assembly passed by a majority of all the then members of the Assembly after fourteen days' notice of the intention to move such a resolution.
4. Speaker does not vacate his office on the dissolution of the Assembly.
5. He continues to be the Speaker until immediately before the first sitting of the Assembly after the dissolution.
6. While the office of the Speaker is vacant, the Deputy Speaker performs his duties.
7. The duties and powers of the Speaker are, broadly speaking the same as those of the Speaker of the House of the People ([Lok Sabha](#)).

Facts about Chairman & Deputy Chairman:

1. The Council chooses from amongst its members a Chairman and a Deputy Chairman.
2. Both vacate their offices if they cease to be members of the Council or resign from its membership.
3. They can also be removed by a resolution of the Council passed by a majority of all the then members of the Council, provided fourteen days notice to move such resolution of removal has been given.
4. When the resolution for removal is under discussion against the Chairman or the Deputy Chairman, the concerned person shall not preside at the sitting of the Council, although he may be present at such a sitting and has the right to speak in, and otherwise to take part in the proceedings of the Council.
5. He shall be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings.
6. In case of an equality of votes, he does not exercise a casting vote to which he is otherwise entitled under Article 189.
7. The Chairman presides at all sittings of the Council and in his absence the Deputy Chairman.
8. During the absence of both the Chairman and the Deputy Chairman, such other person as may be determined by the rules of procedure of the Council shall preside; or, if no such person is present, such other person as may be determined by the Council shall act as Chairman.
9. While the office of the Chairman is vacant, the duties of his office are performed by the Deputy Chairman. If the office of the Deputy Chairman is also vacant, such member of the Council as the Governor may appoint shall perform all such duties connected with the office of the Chairman.

Powers & Functions of State Legislature

The functions of the states' Legislative Council are only advisory in nature. If any Bill is passed by the

Legislative Assembly and sent to the Council, and the Council refuses to give its approval, then the Assembly has the right to reconsider it. The assembly may pass it with or without the amendments proposed by the Council, and again send it to the Council. When a bill approved by the Assembly is sent to the Council for the first time, it may retain it for three months, but in the case when it is sent for the second time and is kept in the Council for one month only, the bill is deemed as having been passed. This evidently demonstrates the Assembly's absolute superiority over the LC. In the case of Money Bills, the State Assembly's powers are the same as those of the Lok Sabha. It is evident that the position of the Vidhan Parishad is haplessly weak. Even, in theory, it cannot be compared to the Rajya Sabha that, in spite of being the upper chamber of the Union Legislature, has some effective powers.

(1) All the LC can do is delay the passing of a money bill by 14 days, a non-money bill by 3 months or a non-money bill that is sent back to it with recommendations by 1 month.

(2) There is no provision in the Constitution for a joint sitting of the State Legislature. It is to be noted that while the Vidhan Sabha can override the Vidhan Parishad, the vice versa is never possible. A non-money bill that is passed by the Vidhan Parishad can be rejected by the Vidhan Sabha more than once.

(3) The LC members do not participate in the election of the President of the country. Apart from that, they do not have any meaningful role in any bill's rectification nor in a constitutional amendment.

In practical terms, the Legislature of a State implies its Legislative Assembly which possesses the following major powers and functions:

(1) It can create laws on any subject in the State List; it can also create laws on the Concurrent List provided the law does not contradict or conflict any law already made by the Parliament.

(2) The Assembly asserts control over the Council of Ministers. Assembly members can question the ministers, move motions and resolutions, and also pass a vote of censure in order to dismiss the state government. The government ministry is collectively accountable to the Legislative Assembly. If the ministry is defeated in the Assembly, it amounts to the passing of a no-confidence vote against the government.

(3) The assembly controls the State's finances. A money Bill can emerge from the Assembly and it is considered passed by the LC after a lapse of fourteen days after reference made to it by the Sabha. It could reject or pass the grants or reduce their amount indicating rejection or adoption of the budget and hence, implying victory or defeat of the State Government. Therefore, no tax can be levied or withdrawn without the consent of the Vidhan Sabha.

(4) The Assembly has constituent powers. With reference to Article 368, certain Bills of Constitutional amendment after being passed by the Parliament would be referred to the States for the process of ratification. In these cases, the Vidhan Sabha has a role to play. It should give its judgement by passing a resolution by a simple majority indicating approval or disapproval of the said Bill. There is a provision wherein the President shall refer to the state assembly of a state before he recommends the introduction of a bill which concerns with the alteration of the concerned state's boundary lines or its reorganisation in such a manner that its territory is increased or decreased.

(5) Some other powers of the State Assembly are as under:

(a) It elects its Speaker as well as Deputy Speaker. It can also remove them by a no-confidence vote.

(b) It participates in the election of India's President.

(c) It also considers reports presented by agencies such as the Auditor-General, State Public Service Commission, and others.

Hence, it is evident that the Vidhan Sabha is the powerful and popular chamber of the State Legislature. In theory, it is somewhat parallel to the Lok Sabha.

Limitations on the powers of State Legislature

(i) Certain types of Bills cannot be moved in the State Legislature without the previous sanction of the President of India; (ii) Certain Bills passed by the State Legislature cannot become operative until they receive the President's assent after having been reserved for his consideration by the Governor; (iii) The Constitution empowers Parliament to frame laws on subjects included in the State List if the Council of States declares that it is necessary and expedient in the national interest that Parliament should Legislate on

these subjects; (iv) Parliament can exercise the power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List, while a Proclamation of emergency is in operation; (v) The Legislative competence of Parliament can also extend to the subjects enumerated in the State List during the operation of a proclamation of breakdown of the Constitutional machinery.

Legislative Procedure

The Parliamentary procedure followed in the Assembly and the Council is the same as in Parliament.

1. The State Legislature must meet at least twice a year and the interval between any two sessions should not be more than six months.
2. The Governor delivers the opening address at the beginning of a new session in which he outlines the policy of the State Government.
3. Any Bill may be introduced in either House of the Legislature except a [Money Bill](#), which can be introduced only in the Assembly. It has to go through three readings, after which it goes to the Governor for his assent. The Governor may send it back for reconsideration but once it is passed again by the Legislature, he cannot withhold his assent.
4. He may reserve certain Bills for the consideration of the [President](#), who may ask him to place it before the Legislature for reconsideration. When it is passed again with or without amendment it goes to the President for his consideration.
5. The President is not bound to give his assent even though the Bill has been considered and passed for a second time by the State Legislature. In case the Assembly is dissolved before a Bill is passed, or it is passed by the Assembly but is pending before the Council, it will lapse.
6. But in case of Bills which have been duly passed by the Assembly, if there is only one House in the State, and by the Assembly and the Council where there are two House, and is awaiting the assent of the Governor or the President it does not lapse.
7. A bill which has been returned either by the Governor or the President for reconsideration can be considered and passed by the newly constituted Assembly, even though the Bill was originally passed by the dissolved House.