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LEGISLATIVE PROCESS IN INDIA

AUTHORED BY - UDAY RAJ CHAUHAN¹

Abstract

Recently, the Parliament of India passed the Criminal Law bills to replace the Indian Penal Code, Criminal Procedure Code and Evidence Act by Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Bill respectively. So it is essential to understand the legislative process in India. The legislative process includes various and complex steps after which a bill becomes an act, The main objective of this paper is to understand the legislative process of the parliament and the relevant provisions under the Constitution of India.

Introduction

One of the main functions of the Parliament is to legislate laws. The process of legislating a law in India is monumental which must be because the laws made by the Parliament of India become a central act and are generally enforced on all the states and union territory of India. It is necessary to understand the legislative process or how the laws are made in India as it is the primary source of law. This paper is about the various stages through which the Parliament of India makes laws.

Difference between Act and Bill

In Layman's terms, a Bill is a document that is proposed in Parliament for consideration and has not been passed yet by the Parliament. On the other hand Act is a document that is passed by the parliament and has Legal weight in it as the violation of any act by any person is punishable and it is also enforceable in the court of law.

Process of Legislation

An ordinary bill may originate in either house and as it is passed by both houses and after getting president's ascent the bill becomes an act. There are usually 3 reading stages of a bill:-

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- **Introduction Stage**:- In this stage, no discussion takes place only the basic introduction of the bill is given to the house, it can be proposed by a Minister or any private member.
- A private Member is a member who is not a Minister though theoretically private members are authorised to introduce a bill but practically it is not possible to get it passed without the support of the ruling government and also most of the time the session is occupied by Government bills.
- **Consideration Stage**:- In this stage clause by clause discussion takes place and the important bills are sent to the Select Committee or Joint Select Committee for consideration. Then reports of the Select Committee or Joint Select Committee are submitted to the House.

Select Committee or Joint Select Committee

To prevent laws from being enacted only based on members of parliament's private opinions, one member of parliament represents a large number of citizens approximately 2.5 million citizens² hence a Select Committee or Joint Select Committee was created. The select committee is formed only for any particular bill and after the disposal or passing of that particular bill the select committee will also dissolve.

- **General Discussion**:- This is the third stage, in this stage brief discussion takes place and after the brief discussion the bill is put up for voting in the case of an ordinary bill a simple majority of Members are present and voting is required to pass the bill.

A similar process is followed by the other house and once both houses pass the bill the bill is sent to the president for his President's assent. President has power under Article 111 of the Indian Constitution he can either:-

- Give his assent
- Hold his assent (VETO)
- Sent the bill for reconsideration

² Pradeep Chhibber, F.J. (2019) This data shows why Indian mps don't truly represent their people, ThePrint. Available at: <https://theprint.in/opinion/this-data-shows-why-indian-mps-dont-truly-represent-their-people/201769/> (Accessed: 20 December 2023).

All the above three acts are done with the aid and advice of the Council of Ministers. Once the president gives his assent on the bill, it is considered that the bill is passed and that bill now becomes an Act.

Joint Sitting

Under Article 108 of the Constitution of India President has the power to call for a joint sitting of both houses in case:-

- If the bill is rejected by the other house.
- The 2nd House disagreed on the Amendment
- When the other house does not pass the bill for more than 6 months.

The presiding officer in the joint sitting will be the Speaker of Lok Sabha, In his absence any person who is determined by rules of procedure.

In India, only 3 times Joint sitting has been called by the President:

- 1961 (Dowry Prohibition Bill)
- 1978 (Banking Service Commission) (Repealed)
- 2002 (Prevention of Terrorism Bill)

Financial Bill

A financial bill means a money bill that also contains some other matter tacked on it. A bill is neither a money bill or a financial bill if it relates to the Imposition of fines or other pecuniary penalties, Demand of fees of licences or fees for any service, Imposition, Abolition, Remission or regulation of any tax by local authorities.

Money Bill

A bill is deemed to be a money bill if it contains only provisions dealing with:

- The Imposition, Abolition, Remission, Altering or regulation of any tax.
- The Regulation of Borrowing money or the giving of any guarantee by the Government of India, or Amendment of any law with respect to any financial obligation undertaken or to be taken by the Government of India.
- Withdrawal of payment of money into the Consolidated Fund or the Contingency Fund of India.

Article 110 of the Constitution of India lays down which bill is to be considered as the money bill, a money bill can only be introduced in the Lok Sabha and the Rajya Sabha has to send it back to the Lok Sabha within 14 days otherwise it is deemed that the Rajya Sabha has passed the bill. In the case of a money bill Rajya Sabha has very limited powers as Rajya Sabha can suggest amendments to the money bill but it is not binding on Lok Sabha to agree on those amendments and the Rajya Sabha cannot reject the Money Bill it can only suggest Amendments in it.³

Ordinance

Article 123 of the Constitution of India gives power to the president to promulgate ordinances when both houses i.e. Lok Sabha and Rajya Sabha are not in session then the president has the power to issue an ordinance and the validity of the ordinance is a maximum of six months and six weeks after that it should be passed by both the houses for its further enforceability.

Conclusion

In conclusion, the legislative process in India is a lengthy process that ensures the proper framing of the act, ensures the advantageousness of the act on the society and most importantly factors that the act must not be arbitrary and should be just, fair and equitable⁴. Although many bills after becoming acts are declared unconstitutional and read down by the Supreme Court of India by their Judicial Review Jurisdiction which is also an additional safeguard to prevent making any law that is arbitrary and not just, fair and equitable.

3 Seervai, H.M. (2023) Constitutional law of India: A critical commentary Vol 1. Fourth. Delhi, Delhi: Law & Justice Publishing Co.

⁴ Maneka Gandhi v. Union of India, (1978) 1 SCC 248