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A study on the Procedure of Drafting and Ratification of Bills to become Laws

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ABSTRACT

Law refers to a system of guidelines of managing of the required lawful force and its effect, as arranged, accepted and imposed by the concerned authority. In the United States, law represents as to a regulation, if violated puts the guilty party in a position to be charged with criminal penalty or a civil obligation. The laws of USA are drafted by the central, state-run, and local governments, the President, Governors of the State, the Judges of the courts and lastly the administrative agencies.

“Lawmaking is the process of crafting legislation. ” The process of law preparation in the current democracies is tasked with the legislatures, which are present at the local, state, and central levels and therefore, prepare laws that are fitting and are necessary to be followed by the individuals residing within their jurisdictions. The legislative organs are persuaded to make new laws by the supporters who selected them to which the government is responsible, if the arrangement is working as planned. The aspect of lawmaking also relates to the expenditure of governmental resources, as mainly most of the jurisdictions comprise of the budget as a substance of law.

I. INTRODUCTION

Need for making new laws: Laws need to be updated on a regular basis as it would be too inconvenient to stick to regulations that would be too traditional and ineffective. Therefore, owing to the following reasons laws need to be kept in check:

1. **Progressive nature of technology:** The capability of technology is growing leaps and bounds, therefore, the laws should be altered and modified to increase their relevancy and to fulfill its purpose.
2. **Changing community values:** The opinion of the people residing in a society changes from one generation to another over a provisional period of time. The legislature must preserve the relevancy of the laws by maintaining and replicating the ethics and the principles of the society.

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3. **Shifting community awareness:** The individuals in the present day are more alert of the pertinent issues mainly due to the effectiveness of communication. It is the duty of the aware and educated citizens, to pressurize the law makers to alter or introduce legislation in subjects that are necessary.
4. **Changing Expectations of the Legal System:** The laws introduced by the legislature were anticipated to control human behavior, however with the passage of time individuals have started to assume that the law should support the individual rights as well as guard people from any impairment. Therefore, it is the duty of the legislature to make sure that it takes an active role to guarantee that the law remains appropriate.

Provisions in the Constitution of India:

The concept of legislative procedure is mentioned in Articles 107- 111 of the Constitution of India & the procedure relating to financial matters is discussed in Articles 112- 117 in the Constitution.

Article 368 of the Constitution of India talks about the constituent power of the Parliament to by way of addition, variation or repeal any provision of this Constitution. In the case of *Keshvananda Bharati v. State of Kerala*² it was decided by the Supreme Court that the Parliament has the authority to modify any provision of the Constitution to accomplish its social & economic responsibilities provided to the residents as per the Preamble dependent on the condition that this modification would not violate the basic structure of the Constitution of India.

Law Making Bodies of India:

The Laws of India are prepared by the Central Government for the entire country and the respective state governments for the welfare of their states and also by the local municipal councils & districts. The procedure of bringing a legislation by the union government necessitates that the projected bills should be passed through the two houses of the Parliament of India, Lok Sabha and the Rajya Sabha. The lawmaking process for states with bicameral legislatures comprises of the proposed bills being passed, as a minimum in the state's Vidhan Sabha and it is not compulsory for it to be approved in the Upper House or the Vidhan Parishad. The states with unicameral legislatures, the laws as well the bills need to be approved only in the Vidhan Sabha, as they do not have a Vidhan Parishad.

² Ibid at 2

II. KINDS OF BILLS IN PARLIAMENT

Kind of Bills	Subject	Introduction	Passage
Ordinary Bills	The subject can be related to any matter of the Union and & Concurrent List.	An ordinary bill can be brought before any house of the Parliament.	The bill can be passed with a simple majority in either of the house,
Money Bills	The subject mainly involves taxation, borrowing, funds from the government, payment/withdrawal of cash from the Consolidated or Contingency Funds of India	Can be introduced only in the Lok Sabha.	<p>The bill can be passed by a simple majority in the Lok Sabha.</p> <p>Rajya Sabha can recommend some variations but Lok Sabha has the power to discard them.</p> <p>The Rajya Sabha has to return or permit a Money Bill within 14 days otherwise it is considered as passed.</p>
Constitutional Amendment Bills	Relates mainly to amendment of a provision of the Constitution.	The bill can be introduced in any house of the Parliament.	<p>The bill can be made a law by a simple majority of total membership and two-third majority of the Ministers of parliament present and voting.</p> <p>There are some bills that need to be ratified by half of the state governments in the Country.</p>

III. THE LEGISLATIVE PROCEDURE

Step 1: In the first step, the necessity for a new regulation, or an alteration to the present portion of the legislature, is recognized. This can be done either by the management of the government or by residents who can advance and generate public alertness regarding the need for that particular law.

Step 2: The second step involves the ministry in question related to the passage of the new law drafting a sample text of the projected law, known as a 'Bill'. The Bill is distributed to other related ministries for their valuable ideas. A Bill is circulated at least two days before it is scheduled to be introduced in any one house of the parliament. The House possesses the option to abandon the requirement. There is a possibility of commentaries being invited from the audience on the planned draft. As in the recent event of UIDAI inviting the public feedback on the "Draft National Identification Authority Bill"³. After the above-mentioned process, the draft is reviewed to include the suggestions and is then upgraded by the Ministry of Law. Later the draft is offered to the Cabinet for their consent to the same.

Step 3: After the bill is approved by the Cabinet, it is brought before the Parliament. In the political organization of India, the Parliament is considered as the chief legislative body. A Bill has to go through three evaluations in both the houses of the Parliament before it becomes an Act.

- In the First Reading the Bill is presented in the Parliament. The presentation of a Bill can be objected and the issue can be settled by a vote count. For example, in 2009, the then Law Minister removed the motion that tried to introduce the Judges (Disclosure of Assets and Liabilities) Bill as quite a few Ministers of Parliament had conflicting views on the Bill stating that the bill violated principles of the Constitution.
- Once the bill is presented, the Presiding Officer of the House in question (Can be the Speaker in the event of the bill being presented in Lok Sabha, or the Chairman in case of the Rajya Sabha) can forward the Bill to the Department in question that to the associated Standing Committee for evaluation.
- The Committee studies the comprehensive purposes as well as specific parts of the Bill forwarded to them and can request public remarks on the particular Bill. The Standing Committee on Science and Technology, Environment and Forests had invited ideas from the public on the Civil Liability for Nuclear Damage Bill, 2010.

³ The National Identification Authority Bill, 2010

- Certain Bills which fall under the domain of a number of diverse ministries, may be presented to a Joint Committee.
- The Committee later forwards its commendations in the form of a report to the Parliament.
- Second Reading also referred to as the Consideration Period, in which the Bill is examined carefully. Each and every section of the Bill is deliberated in the House and the same can be acknowledged, revised or excluded.
- The Third Reading refers to the Passing, in which the House votes on the revised Bill. In the event of passing of an ordinary bill, a simple majority of members present and voting is important. However, if the bill involves amending a part of the Constitution, a majority of the overall membership of the house and a majority of at least two-thirds of the members present and voting is mandatory in both the houses of the Parliament. If a situation arises in which the quantity of votes in support and in contradiction of the bill are equal, then the governing officer of the house in question can cast his/her vote, which can be termed as a casting vote right
- As soon as the bill is passed in one of the House, it is later sent to the other House, in which the bill goes through the second & third stage of evaluation.
- At the second stage, the Government, or any Minister of Parliament, can present modifications to the Bill, out of which some are based on commendations of the Committee. Nonetheless, the Government is required to agree to the Committee's commendations.

Step 4: Once both the Houses pass the Bill, it is forwarded to the President for his/her acceptance. The president has the right to ask for any information or explanation in relation to the Bill, and can return the same to the Parliament for re-examination. This provision can be performed in only one occasion. If both the Houses of the Parliament do not agree to the Presidents' suggestions and pass the Bill for the second time, the President has no choice but to give his/her assent to the bill.

Step 5: Once the President gives his acceptance, the Bill is reported as an Act. After that, the provisions of the Bill are brought out into full strength and the instructions and guidelines as to implementing the Act once decided by the concerned ministry are listed in Parliament.

IV. IMPLICATION OF PROVISIONS OF AMENDMENT IN THE CONSTITUTION

As per Article 368 of the Indian Constitution, the Parliament has the power to modify the

Constitution and the article also mentions the process to be followed for altering the same.

As per Article 368, the Parliament can exercise its amendment power in three ways:

- (i) Addition of a new law
- (ii) Altering the present law
- (iii) Revoking the present law

There are three ways in which an amendment can be done:

1. **Simple majority:** Firstly, Articles that can be revised by the houses of the Parliament by a simple majority which is also required in the acceptance of any law in the Parliament. The amendments of the Constitution as per Article 5, 169 & 239-A are performed in this method. Such Articles are omitted out of the process mentioned in Article 368.
2. **Amendment by Special Majority:** The Articles of the Constitution may be modified by a superior majority as mentioned in Article 368 of the Constitution. Most of the Constitutional modifications apart from the ones mentioned above fall within this group and thereby quite affected by the majority of not only the overall membership of both the houses but also the majority of at least two-thirds of the members of that particular house present and voting.
3. **Amendment by Special Majority & Confirmation by States:** In some cases, there are articles which require, in accumulation to the superior majority mentioned above, confirmation by the resolution passed in at least one-half of the State legislatures fall in this category. This category contains modifications which aim at making a change in the provisions referred in the proviso to article 368(2).

EXTENT OF THE POWER GRANTED UNDER ARTICLE 368:

In the case, *Shankari Prasad v. Union of India*⁴, the Supreme Court came to the conclusion that the power to alter the Constitution comprises of the fundamental rights and further pointed out that a Constitutional amendment would be lawful even if shortens or takes away any of the fundamental rights.

Further in the landmark case of *Golaknath v. State of Punjab*⁵, the Supreme overruled the decisions awarded in Shankari Prasad's case and pointed that the organs of the Parliament had no authority to amend Part-III of the Constitution i.e. to remove or shorten the fundamental

⁴ Shankari Prasad v. Union of India, 1951 AIR 458

⁵ Golaknath v. State of Punjab, 1967 AIR 1643

rights granted to the individuals of the country.

THEORY OF BASIC STRUCTURE WITH RESPECT TO ARTICLE 368:

Supreme Court has explained the meaning of basic structure in detail in the case *M. Nagraj Vs Union of India*⁶ as follows:

“Basic structure are systematic principles underlying and connecting provisions of the Constitution. They give coherence and durability to the Constitution. These principles are part of the Constitutional law even if they are not expressly stated. Theory of basic structure is based on the concept of Constitutional identity. The main object behind the theory is continuity and within that continuity of identity.”

ANALYSIS

The Indian Constitution in its Article 368 has covered one of the most significant provisions as the Article takes into picture the social, economic and political situations prevailing at the present time as well as the future. The principles followed in the present day, can become obsolete for the following generations. Therefore there will always be a necessity for the fair usage of Article 368.

V. CURRENT STATUS OF BILL PASSING & ACCEPTANCE IN PARLIAMENT

In the year 2019, Narendra Modi of the Bharatiya Janata Party won the office for another term in power and approved 63 bills. Out of which a few are mentioned below:

- 1. The Jammu and Kashmir Reorganisation Bill, 2019-** This Bill was presented on 5th August by Home Ministry, headed by Mr. Amit Shah in the Rajya Sabha. It was primarily intended to restructure the Northern state of Jammu and Kashmir into a Union Territory, by withdrawing “Article 370” in the state which granted special powers to the state. Once the bill was accepted, all regulations of the Indian Constitution, as revised gradually except for any alterations would apply to the Union Territory of Jammu & Kashmir & Ladakh.
- 2. The Motor Vehicles (Amendment) Bill, 2019-** This Bill sought to modify the previous *Motor Vehicles Act*⁷ relating to road safety. It was presented in the Parliament by *Minister for Road Transport and Highways*⁸, Mr. Nitin Gadkari. This Act mentioned a list of monetary fines concerning abuse of road safety rules, with the principles that had to be

⁶ Ibid 3

⁷ Motor Vehicles Act, 1988

⁸ Ministry of Road Transport and Highways

continued for drivers of the motor vehicles as well as permitting and granting of license to the same.

3. The Insolvency and Bankruptcy Code (Amendment) Bill, 2019- The introduction of this bill was mainly done to revise the previous law to provide for a detailed procedure for determining insolvency in companies & persons. The bill was presented in Rajya Sabha by the Finance Ministry, headed by Mrs. Nirmala Sitharaman.

4. The Citizenship Amendment Bill, 2019- This controversial Bill was planned to award citizenship to members from Hindu, Christian, Sikh, Buddhist, Jain, and Parsi communities who had sought relief in India from neighbouring countries such as Pakistan, Bangladesh and Afghanistan till the date of 31st December, 2014. The administration further clarified that the Act would be succeeded by the National Register of Citizens, in which Muslims would have to prove their residency in India and that they were not refugees of any neighbouring country as mentioned before.

In the year 2020, The Session of the monsoon season of the Parliament had come to an unforeseen end owing to the increasing number of coronavirus cases. The session had started on 14th September and after 7 days of working, the session was suspended. The Union Minister for the Parliamentary Affairs, Prahlaad Joshi commented that the efficiency of Lok Sabha was roughly 167% and of the Rajya Sabha was around 100.47% during the Monsoon Session of 2020. In the monsoon session, 22 Bills were presented before the parliament. The Lok Sabha and Rajya Sabha independently passed 25 Bills each and 27 Bills were approved by both the Lok Sabha & the Rajya Sabha. The proportion of acceptance of Bills was 2.7 Bills per day, which is the best performance of the Parliament till date.

Some of the Important Bills passed:

1) The Farmers (Empowerment and Protection) Agreement on Price Assurance and Farm Services Bill, 2020

This bill attempted to establish a proper outline for contract farming over an agreement between the producer i.e. farmer and a purchaser before the production or completion of any produce of the farm. A farming arrangement could be connected with any coverage or credit schemes provided by the Union & the State Government or any provider of financial service to guarantee the 'flow of credit' to agriculturalists.

2) The Essential Commodities (Amendment) Bill, 2020

This bill authorizes the central government to control the manufacture and trade in specific

commodities. The bill tries to resolve in eliminating fears of private investors of unnecessary supervisory interference and inviting investment into the sector. The law sought to eliminate cereals, pulses, oilseeds, edible oils, onion and potatoes from being considered as essential commodities and allowed their regulation only in unanticipated situations such as a price rise, conflict with another country and natural disasters.

3) The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2020

The act provisionally tries to opening up of corporate liquidation resolution procedure as per Sections 7, 9 & 10 of the Insolvency and Bankruptcy Code for a definite period of six months or an extended period up to a year.

VI. FOREIGN LAWS

USA:

- 1) That idea of introduction of a new bill can come from anyone. One can simply interact with their elected officials to share their side of the story. Once the officials are interested, they will prepare a bill.
- 2) A bill may be presented in any house of the Congress when it's announced mainly by the chief sponsor i.e. a selected Senator or an appointed Representative.
- 3) The appointed representatives or the senators happen to meet together in a gathering to study, discuss and to make certain variations to the bill. They can either vote to proceeding or rejecting the bill and its variations before sending it to the House of the Congress or the floor of the Senate for deliberation or to an appointed committee for further examination.
- 4) The House & the Senate now possess the opportunity to have a discussion about the bill and suggest variations or alterations before voting for the same. In the event of the bill getting the majority vote and bill being passed, it is forwarded to the other house wherein the bill goes over the same procedure of appointment of committees, deliberation, and voting. There is a necessity of both the houses to settle on the similar form of the bill before it is sent to the President.
- 5) Once the bill reaches to the President, he or she can accept and pass the bill. A bill once approved becomes a law.

UK:

- 1) In United Kingdom, the most popular form of law-making is mainly of the Public Bills, which are presented mainly by ministers of the government.

- 2) The process of a Public Bill being passed can start in any of the house i.e. House of Commons as well as the House of Lords.
- 3) The law-making process begins with the first understanding which is just a mere formality in the two Houses.
- 4) Once the first evaluation is completed, second reading starts. In the House of Commons, the Bill is introduced by a minister from the government. After which opinions of the opposition parties are observed.
- 5) Once Bills have been accepted in the second reading at the “House of Commons”, they are forwarded to an appointed committee for inspection. A committee usually contains 16 to 20 Ministers of Parliament.
- 6) In the upper house i.e. House of Lords, the process of the second interpretation is the same, but the bills are generally raised to the entire committee of the House.
- 7) Once the committee period is finished, the committee responsible for the examination of the Bill must state its decisions to the “House of Commons” in less than two weeks, so that the participating members have a chance to suggest alterations or to add sections.
- 8) In this stage, the final draft of the Bill is revised. In the “House of Commons”, the Bill cannot be revised considerably in the third stage. Once the bill is accepted through the preceding phases, the Bill should be forwarded to the other House where the entire process is repeated. The Bill may be modified at this step, if and only both the Houses approve of the alterations.
- 9) The final period of the law-making process in the UK is that of receiving the Royal Assent. The Royal Assent is granted by the Queen to the Bill that has accomplished all the legislative stages, and is later acknowledged to both the Houses.

VII. PRESIDENT’S VETO AND REJECTION OF BILLS

During the process of accepting a bill by the two Houses of the Parliament, it is forwarded to the President for his acceptance. The President may either give his acceptance or discard his acceptance of the bill and can also return for re-examination dependent on the type of the bill. This power of the President is referred to as the Veto Power. The President’s decision to accept the bill, discard the bill or hold back the acceptance to the bill falls within his Veto Power. The veto power of the President is mentioned in Article 111 of the Indian Constitution.

They are of three types:

1. Complete Veto

2. Suspensive Veto

3. Pocket Veto

- The President may discard the bill which is referred as the absolute (complete) veto, which is in the event of the President refusing his acceptance to a bill, and later the bill is let go of.
- The President has no authority over money bills.
- A president uses the option of an absolute veto only on the consultation of the Council of Ministers.
- On the occasion of the President exercising his will in declining a bill out of his own agreement, it is termed as a pocket veto. Such a pocket veto has been opted only once by a President of India i.e. by Zail Singh in 1986.
- In the event of a President returning a bill for re-examination by the both the Houses, and it is accepted again by the houses with/ without his approvals, the President has no choice but to give his acceptance to the bill.
- It is important for the President has to give his acceptance in case of constitutional amendment bills.
- If a constitutional amendment bill disrupts the basic structure of the Indian Constitution, then the Supreme Court will rightfully be struck down.
- If the Parliament is satisfied that a President is not performing his duties, it can initiate impeachment proceedings against him/ her.

VIII. CONTROVERSIAL GCTOC BILL

The much contentious Bill of Gujarat Control of Terrorism and Organised Crime 2015, was earlier accepted by the Vidhan Sabha in Gujarat but it was rejected twice by the earlier government and was returned by then President Shri Pranab Mukherjee as. The Gujarat Control of Organised Crime (GUJCOC) Act was disallowed twice by the President. Later, the bill was presented on March 31, 2015 in an adapted manner termed as the Gujarat Control of Terrorism and Organised Crime (GCTOC) Bill, 2015 and was approved, irrespective of the objections raised by the opposition in Congress.

The home minister for the State, Rajnikant Patel powerfully supported the bill by mentioning that the state of Gujarat shares its border with Pakistan, a country which supports terrorism and that this type of legislature is mandatory for the security and safety of the people residing in

the state. The government supported the stand by stating that the state of Maharashtra has its personal Maharashtra Control of Organized Crime Act (MCOCA) along with Karnataka & Andhra Pradesh but Bharatiya Janata Party governed states such as Gujarat, Madhya Pradesh & Rajasthan were deprived of Presidential Assent which is an essential in introducing a bill.

The opposition of the Congress and certain NGOs had contrasting views of the legislation and certain opposition ministers were placed on record requesting the President to not grant his acceptance to the Gujarat Anti-terror law.

The Bill in question contained a provision for death penalty along with a fine of Rs 10 lakhs & authorized the use of phone seizures and its permissibility as evidence in the courts. The bill also authorized the confessions pulled out by the police. Significantly, it increases the scope of the law to put the burden of proving one's innocence on the accused. It further stated in the bill that the Courts should assume, except the opposing view is proved, that the suspect has committed an offence. The individual in custody as per the Act cannot be set free on bail except the public prosecutor has been awarded a chance to oppose it, and when the court is pleased as to that there are genuine grounds to be certain of accused is innocent and would not involve in any crime while he/she is on a bail.

GUJCOC was brought in by the NDA government in Gujarat, passed in 2004 as the Prevention of Terrorism Act, which was later revoked by the UPA government directly after attaining power in 2004.

IX. CONCLUSION & SUGGESTIONS

Conclusion: The current law-making procedure in India involving three separate readings of the bill:

- 1) First reading: Drafting & Presentation of the same to the two houses of the Parliament.
- 2) Second Reading: In the Second Reading known as the Consideration Period, in which the Bill is examined carefully.
- 3) Third Reading: The third process involves the Passing, in which the House votes on the revised Bill and only if the majority is in support of the bill it becomes a law.

The researcher feels that the three evaluation methods adopted by the Parliament falls perfectly in place as it ensures that the members of the Parliament gets sufficient time to read and check each and every details of the bill, it also makes sure that the bill is being checked and verified by the Special Committee and also that the bill is not passed and made into a law unfairly. The Parliament also makes sure that the members possess the right to debate about the bill in

question & to suggest amendments to the same which is quite important in the law-making process as it increases the confidence and moral of the members.

The laws relating to the legislative procedure in India are mainly developed after referring laws of the United States of America & the United Kingdom. The laws of the two countries are combined and drafted in a perfect manner thereby making the procedure more systematic and reliable.

The researcher feels that it is necessary to rejuvenate the law-making process in the Parliament. It was observed that two critical points need to be reinforced i.e. investigation by the committees and debate about the bill on the floor of the House. In the parliament only three/fourths of the total bills were forwarded to the special committees; which the researcher feels should be made compulsory for all the Bills, for example in the British governance. The duty performed by the committees is quite inconsistent. The scholars in the special committees in the present day are very few in number, therefore, the Special Committees must be provided with a satisfactory number of academicians to solving and comprehend intricate and technical details.

Further, the ministry should seek public feedback on the Bill, which would be collated and sent to the standing committee when it examines it. This is a move towards increasing public participation in legislation and must be followed in spirit.

Suggestions: The researcher suggests the following changes to improve the situation of law-making procedure in India:

- 1) The Parliament must accept Bills only after a proper discussion specially when a bill in question is controversial, thus helping the lesser aware ministers in forming an opinion.
- 2) The houses of Parliament i.e. Lok Sabha & Rajya Sabha should maintain an official record of which member has voted in support & against the bill, so as to bring larger transparency and responsibility of the Minister to the voters who voted for him.
- 3) The Parliament should try to invite as much public opinion as possible on a particular bill so as to improve the trust & confidence of the people.
- 4) Further, there should be a compulsory provision stating each and every bill that is up for consideration to be examined by committees so as to improve the authenticity & make necessary changes for the same.
- 5) There should be an increase in the number of scholars present in the committees as there is a lack of the same in the present governance. This would help in increasing the valuable input

& speeding up the examination process.
