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Topic- The Legislature

Legislature: Meaning, Functions and Types of Legislature

Of the three organs of the government, the place of primacy belongs to the Legislature. The function of government begins by law-making and is followed up by law-enforcement and adjudication functions. As such, the legislature is the first organ of the government.

Legislature: Meaning

The term 'legislature' is a generic term meaning a body which legislates. The term 'Legg' means law and 'lature' the place and etymologically Legislature means a place for law-making. Another term, which is used as a synonym of Legislature, is 'Parliament.' This word stands derived from the French word 'Parley' which means to 'talk' or to discuss and deliberate.

In this way, we can say 'Parliament' means the place where deliberations are held. Combining the two views, we can say Legislature or Parliament is that branch of government which performs the function of law making through deliberations.

The legislature is that organ of the government which passes the laws of the government. It is the agency which has the responsibility to formulate the will of the state and vest it with legal authority and force. In simple words, the legislature is that organ of the government which formulates laws. Legislature enjoys a very special and important in every democratic state. It is the assembly of the

elected representatives of the people and represents national public opinion and power of the people.

Functions of a Legislature:

1. Legislative or Law-making Functions:

The first and foremost function of a legislature is to legislate i.e. to make laws. In ancient times, laws used to be either derived from customs, traditions and religious scriptures, or were issued by the kings as their commands. However, in the contemporary era of democracy, legislature is the chief source of law. It is the legislature which formulates the will of the state into laws and gives it a legal character. Legislature transforms the demands of the people into authoritative laws/statutes.

2. Deliberative Functions:

To deliberate upon matters of national importance, public issues, problems and needs is an important function of a modern legislature. Through this function, the legislature reflects the public opinion over various issues. The debates held in the legislature have a great educative value for the people.

3. Custodian of National Finances:

A near universal rule is that “the legislature of the state is the custodian of national purse.” It holds the purse of the nation and controls the finances. No money can be raised or spent by the executive without the approval of the legislature. Each year the executive has to prepare and get passed from the legislature the

budget for the coming financial year. In the budget, the executive has to place the account of the actual income and expenditure of the previous year and estimated income and expenditure for the New Year.

Not only the legislature passes the budget but also it alone can approve the imposition, or repeal or collection of any tax whatsoever. Further, the legislature maintains a control over all financial transactions and expenditures incurred by the executive.

4. Control over the Executive

A modern legislature has the power to exercise control over the executive. In a parliamentary system of government, like the one which is at work in India, for all its actions, decisions, and policies, the executive is collectively responsible before the legislature. It is accountable before the legislature. The legislature has the power to remove the executive by passing a vote of no-confidence or by rejecting a policy or budget or law of the executive.

The Prime Minister and all other ministers are essentially the members of the legislature. They are bound by the rules and procedures of the Parliament.

(b) In a Presidential form of government, like the one which is at work in the USA, the legislature exercises some checks over the executive. It can appoint investigation committees to probe the functioning of government departments. By the use of its power to legislate and pass the budget, the legislature exercises a fair amount of control over the executive. Thus, whether a political system has a

parliamentary system or a presidential system, the legislature exercises a control over the executive.

5. Constituent Functions:

In almost every state, it is the legislature which has the power to amend the constitution. For this purpose legislature has to pass special laws, called amendments, in accordance with the procedure laid down in the Constitution. In some states the requirement is that the legislature must pass the amendment with 2/3rd or 3/4th or an absolute majority of votes.

6. Electoral Functions:

A legislature usually performs some electoral functions. The two houses of the Indian Parliament elect the Vice-President. All elected MPs and MLAs form the Electoral College which elects the President of India. In Switzerland, the Federal Legislature elects the members of the Federal Council (Executive) and the Federal Tribunal (Judiciary).

7. Judicial Functions:

It is customary to give some judicial power to the legislature. Usually, the legislature is assigned to act as a court of impeachment i.e. as an investigating court for trying high public officials on charges of treason, misdemeanour and high crimes and remove them from office. In India, the Union Parliament can impeach the President. It has also the power to pass a resolution for the removal

of Judges of the Supreme Court and of the High Court's on the ground of misbehaviour or incapacity.

8. Ventilation of Grievances:

A legislature acts as the highest forum for ventilation of public grievances against the executive. Besides representing every interest and shade of opinion, the legislature acts as the national forum for expressing public opinion, public grievances and public aspirations. Parliamentary debates and discussions throw a flood light over various issues of public importance.

9. Miscellaneous Functions:

Some legislatures are assigned specific executive tasks. For example, the US Senate (Upper House of US Legislature) has the power to confirm or reject the major appointments made by the US President. Likewise, it enjoys the power to ratify or reject treaties made by the US President. In India, the

Rajya Sabha has been given the power to establish or eliminate any All India Service. Legislatures also perform the function of approving or rejecting or amending all the policies and plans made by the executive. In the US Constitution, the Congress (Legislature) enjoys the power to declare war.

Thus the legislative organs of the government play a very important and active role in the exercise of the sovereign power of the state. In fact legislature is the legal sovereign in the State. It has the power to transform any decision of the state into a law. Legislature is the

chief source of law. It is the mirror of national public opinion and the symbol of the power of the people.

Types of Legislature: Bicameral and Unicameral Legislatures:

A modern legislature is either Bicameral or Unicameral.

Bicameralism means a legislature with two houses/chambers while uni-cameralism means a legislature with a single house/chamber. A large number of modern legislatures, particularly of big states, are bicameral i.e. legislatures with two houses (Bi = Two, Cameral = House).

However several states, mostly the small states and provinces of a federal system, have unicameral legislatures, i.e. legislatures with single houses. Where the legislature is bicameral, “the first house is usually called the lower house, and the second house is called the upper house.

India, USA, UK, France, Russia, Switzerland, Australia and a large number of other states have bicameral legislature. 22 states of India have bicameral legislatures.

The unicameral legislatures are working in China, New Zealand, Zimbabwe, Turkey, Portugal and several other states. The state legislatures of all the Canadian and Swiss cantons (provisions) are unicameral. In India, 6 states and 2 Union Territories have unicameral legislatures...

Arguments in Favour of a Bi-cameral Or Arguments against a Unicameral Legislature:

1. Second Chamber is a Safeguard against the Despotism of a Single Chamber:

The second chamber of a legislature is essential for preventing the first house from becoming arbitrary and despotic. A single chamber with all the legislative power can become corrupt and despotic. The second chamber is needed for keeping it away from being arbitrary and despotic.

2. Second Chamber is essential for preventing Hasty and 111- Considered Legislation:

Second chamber prevents the passing of hasty and ill-considered legislation by a single chamber. With a view to satisfy mass passions and demands, the single chamber can commit the mistake of passing ill-considered measures in a haste, which can subsequently be a source of big harm to the national interests. The second chamber prevents or at least considerably limits such chances. It exercises a checking and modifying influence on the bill passed by the first house.

3. Second Chamber acts as a Revising Chamber:

The legislative work in the modern welfare state has become highly complex and technical. It demands a deep and careful examination of all aspects of the measures which are to be enacted into laws. The second chamber performs the role of a reviser. “When deliberations have to be done, two heads are better than one.”

4. Second Chamber Lessens the Burden of the First House:

The emergence of welfare state has produced a manifold increase in the scope of law-making. A modern legislature has to pass a large number of laws. Under the circumstances, a legislature with a single chamber can fail to effectively pass all the legislative work. The second house is needed for sharing the legislative work.

5. Two Houses Better Represent Public Opinion:

The two houses can together correctly act as the barometer of public opinion. A single house can grow out of tune and fail to keep in harmony with public opinion. The second house chosen at a different time can help the legislature in overcoming the above defect.

6. Essential for giving Representation to Special Interests:

The second chamber provides a convenient means for giving representation to different classes and interests which need representation. The lower chamber can consist of the elected representatives of the people as a whole, and the upper house can give representation to the minorities and special interests and groups like the Labour, women, scientists, artists, teachers, intellectuals, writers, chambers of commerce.

7. Delay is Useful:

The critics of the second chamber often argue that it is a source of delay in the passing of laws. Undoubtedly, the passing of laws by two houses leads to some delay. However, this delay is very useful. It helps the crystallisation of public opinion on all bills before they become laws. The existence of second chamber acts as a source of delay between the introduction and final adoption of a law and thus permits time for reflection and deliberation.

8. Essential for a Federation:

A bi-cameral legislature is considered essential for a federal system. In such a system, the lower house gives representation to the people of the state as a whole and the upper house gives representation to the units of the federation.

9. Instrument for Utilising the Services of the Able and the Experienced Persons:

A second chamber makes it possible for the state to use the political and administrative ability of such people, who for certain reasons are not in a position, or are not quite willing to enter the lower house through elections. The second chamber can, as such, help the induction of experience and ability into the legislature.

10. Second Chamber is a Source of Stability:

The second chamber can be given a longer and continuous term for securing stability. The lower house, being the representative of the people has to be given a shorter tenure. As against this, the second chamber can be given a longer tenure and a permanent or quasi-

permanent character for ensuring some stability. It has been due to such a consideration that a member of Indian Rajya Sabha has six year tenure and this house has a quasi- permanent character—it is never dissolved as a whole and only 1/3rd of its members retires after every two years.

11. Historical Support:

History supports the case in favour of bicameralism. The successful working of bicameral legislatures in various states of the world is an accepted fact. No major state, whatever its form of government, has been willing to dispense with the second chamber. “The experience of history has been, in favour of two chambers. It is not wise to disregard the lesson of history.”

On the basis of all these arguments, the supporters of bi-cameral legislature build a very strong case. They reject the case for unicameralism.

Arguments against Bicameral Legislature or Arguments in favour of Unicameral Legislature:

The critics of bi-cameralism and supporters of uni-cameralism, however, reject the thesis that second chamber is essential. They oppose it as a superfluous chamber which always results into more disadvantages than advantages.

Bicameralism is opposed and uni-cameralism is supported on the basis of the following arguments:

1. Two Chambers Confuse Public Opinion:

The critics argue that public opinion is one and can be represented by a single chamber. Sovereignty is one. People are sovereign. Their will is one and cannot be divided. They are best represented by a single chamber. Two chambers confuse public opinion, particularly when one chamber disagrees with the second chamber.

2. Second chamber is either Mischievous or Superfluous:

Abbie Sieyes holds that the second chamber is either mischievous or superfluous. If the second chamber dissents from the first, it is mischievous; if it agrees with it, it is superfluous. This argument assumes that the popular will is represented by the lower house.

3. Problem of Organising the Second Chamber:

It is a universal rule that the first house should be a directly elected representative house of the people. However, there exists no consensus regarding the organisation of the second chamber. Different bases have been adopted by different states, but the results have been not encouraging.

The hereditary and nominated character of the British House of Lords has made it a secondary and almost useless house. The US Senate, because of its small size and long" tenure, has become more powerful than the US House of Representatives.

The Indian experiment of striking a balance, by making the Rajya Sabha neither as powerless as the British House of Lords nor as powerful as the US Senate, has also failed to produce the desired results. The Rajya Sabha has not been successful in exercising desired control or in sharing the burden of the Lok Sabha. As such, there exists no sound method for organising the second chamber.

4. No Law is passed in a Hurry:

In the prevailing system of law-making in which a bill has to go through several stages before getting a place in the statutes book, there is no need for a second house. The system of Law-making as it operates today eliminates the chances of ill-considered and hasty legislation by a single chamber. Hence, the second chamber is not needed.

5. Source of Delay in Legislation:

The second chamber is always a source of unwanted delay. A bill has to pass through several stages in the first house before getting passed. When it goes to the second house, it has to again pass through a similar process. It causes unwanted and harmful delay. In this process, the legislation gets unnecessarily delayed.

6. Revision of the Bill by Second House is Unnecessary and Useless:

The critics of bi-cameralism reject the argument that the second house is needed for revising the bill.

They argue:

(i) The revision is unnecessary because the bill is revised thrice by the first house before it is passed;

(ii) The emergence of well organised committee system has made the revision of the bill by second house redundant; and

(iii) Since all discussions in the second house too are held on party lines, no really objective or additional revision is done during the discussions. As such, there is neither the need for nor any use of the so called revision done by the second house.

7. The Second Chamber is not in a position to check the Despotism of the First House:

The opponents of bi-cameralism hold, that in actual practice, the second chamber is never in a position to check the so called despotism of the first chamber. It merely works as a delaying house or a slowing-down chamber. The Indian Rajya Sabha can only delay a money bill for 14 days only and an ordinary bill for a little longer duration.

8. Second Chamber is mostly a Conservative and Reactionary Chamber:

It is alleged by the critics of the second chamber that it is generally citadels of reaction and conservatism. It acts as a brake on the wheels of democracy. The practice of giving representation to minorities and special interests makes the second chambers reactionary and conservative houses. The second chamber is usually dominated by the rich businessmen, capitalists, landlords and the 'elitist' sections of society.

9. Special Interests can be represented in the First House:

The supporters of unicameral legislatures advocate that the special interests of minorities and weaker sections of society can be given representation in the lower house without any loss. This can be done without disturbing the nature and character of the membership of the house as determined by the people through elections.

10. Second Chamber is not essential for a Federation:

The importance of second chamber as the representative of the units of a federation has also lost its relevance because of the role of political parties in the political system. Political parties now dominate the entire political life of every state—federal as well as unitary or non-federal. Since every election is fought on party basis, the second chamber too represents party interests and not the units of the federation.

11. Increased Expenses:

The existence of two chambers means more burdens on the finances of the state without much use, because the second chamber almost always fails to perform its due role in the legislative process. The second chamber entails heavy expenditure and renders no useful purpose.

On the basis of all these arguments, the supporters of unicameralism strongly advocate the case for single chamber legislatures. They reject bi-cameralism as unnecessary, less-useful, and an unwanted expensive system which seriously limits the legislative work.

After examining both sets of arguments, we can conclude that the case in favour of a bicameral legislature or bicameralism is qualitatively stronger than the case for unicameralism.

It can be stated that the national legislatures should be bi-cameral because of the importance of the work that these have to undertake. In the case of a federation also, it is more advantageous to have a bicameral legislature than a uni-cameral one. The second house, as the representative of the federal units serves as a source of strength for the health of a federal state.

Above all, the lesson of history has been clearly in favour of bi-cameralism. Bicameral legislatures have proved to be more effective and useful than the unicameral ones.

However for small states and for the member units (provinces or states) of a federation, unicameral legislatures can serve the

purpose. In India, we have both bicameral as well as unicameral legislatures at the state level.