

National Parliaments: India

February 2017



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National Parliaments: India

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SUMMARY India is a federal (or quasi-federal) democratic republic with a parliamentary system of government largely based on the UK model. India’s modern parliamentary institutions originate from the British colonial administration but developed organically as result of increasing Indian demand for greater representation in government. India’s federal legislative branch consists of the President, the Rajya Sabha (Council of States) as the upper house, and the Lok Sabha (House of the People) as the lower house. If a political party or a coalition receives more than half of the total number of seats in the Lok Sabha, which in its current composition is 273 seats, that party/coalition is able to form a government. Elections to the Lok Sabha are carried out using a first-past-the-post electoral system. In order for a bill to become law in India, it must undergo a three-stage process in each house of Parliament that involves introduction, consideration, and final passage, and must also be given presidential assent.

I. Background

India’s modern parliamentary institutions originated from the British colonial administration but developed organically as result of “relentless struggles” and Indian demand for greater representation in government.¹ The first signs of a legislative body came during the rule of the East India Company, when the Council of the Governor-General of India had both executive and legislative functions and responsibilities. The Charter Act, 1833 changed the structure of the Governor-General’s Council to one “legislative council for all the British territories in India.”² The Governor-General’s Council was succeeded by the Imperial Legislative Council pursuant to the Indian Councils Act of 1861. Amendments were made in 1892 and 1909 in an attempt to make the body more representative and expand its functions. According to the “living heritage” section of the UK parliament website,

[t]wo Indian Councils Acts, of 1892 and 1909, allowed a small number of Indians – 39 in 1892 rising to 135 in 1909 – to be elected to both the imperial legislative council and the provincial legislative councils. The 1909 Act ensured that these representatives were chosen by small groups of Indian electors as representatives of specific religious and social groups, such as Muslims or landowners. These councils remained merely advisory and the governor was in no way responsible to these elected representatives. Parliament’s legislation of 1892 and 1909 did not adequately address the wide-scale dissatisfaction with British rule.³

¹ SUBHASH KASHYAP, OUR PARLIAMENT 4 (2011).

² *Id.*

³ *Living Heritage: Parliament and Empire: Government of the Raj 1858–1914*, UK PARLIAMENT, <http://www.parliament.uk/about/living-heritage/evolutionofparliament/legislativescrutiny/parliament-and-empire/parliament-and-the-american-colonies-before-1765/government-of-the-raj-1858-1914> (last visited Jan. 30, 2017), archived at <https://perma.cc/32C6-FG2P>.

In 1919, the British Parliament, pursuant to the Government of India Act 1919, passed the Montagu-Chelmsford reforms,⁴ which introduced a bicameral legislature, a lower house called the Central Legislative Assembly, and an upper house-like Council of State, for the first time.⁵ The Government of India Act 1935⁶ laid the foundation for India's federal structure.⁷ The Act also established a bicameral federal legislature consisting of the Council of States and Federal Assembly.⁸

After independence, pursuant to the Indian Independence Act,⁹ the Constituent Assembly became India's first sovereign legislature.¹⁰ The Assembly was formed under a plan recommended by the Cabinet Mission that called for the framing of the Constitution of India.¹¹ A drafting committee under the chairmanship of Dr. B.R. Ambedkar was set up by the Constituent Assembly. It took the drafting committee two years and eleven months to complete the drafting of the Constitution.¹² The Constitution of India was adopted on November 26, 1949, and came into effect on January 26, 1950. The Constituent Assembly continued as a provisional Parliament of India until 1952, when a new Parliament was constituted.¹³

The current Indian Parliament was established pursuant to the Constitution of India,¹⁴ which stipulates that “[t]here shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People.”¹⁵

Parliament House is located in New Delhi, which is the capital of India. Parliament House is part of the Parliament House Estate, which also includes the Reception Office Building, the

⁴ *Montagu-Chelmsford Report*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/event/Montagu-Chelmsford-Report> (last updated July 12, 2015), archived at <https://perma.cc/AP8H-KSYU>.

⁵ RAJYA SABHA SECRETARIAT, AN INTRODUCTION TO PARLIAMENT OF INDIA (May 2007), http://rajyasabha.nic.in/rsnew/Parliament_of_India.pdf, archived at <https://perma.cc/M2PT-WCPD>.

⁶ Government of India Act, 1935, http://www.legislation.gov.uk/ukpga/1935/2/pdfs/ukpga_19350002_en.pdf, archived at <https://perma.cc/SV6Z-WD5R>.

⁷ SUBHASH KASHYAP, OUR PARLIAMENT: AN INTRODUCTION TO THE PARLIAMENT OF INDIA 16 (National Book Trust, India, 2011).

⁸ *Id.*

⁹ Indian Independence Act, 1947, http://www.legislation.gov.uk/ukpga/1947/30/pdfs/ukpga_19470030_en.pdf, archived at <https://perma.cc/2NEX-7SCY>.

¹⁰ SUBHASH KASHYAP, *supra* note 7, at 20.

¹¹ *First Day in the Constituent Assembly: Some Facts*, PARLIAMENT OF INDIA, <http://parliamentofindia.nic.in/ls/debates/facts.htm> (last visited Feb. 6, 2017), archived at <https://perma.cc/Y697-SUC3>.

¹² *Id.*

¹³ *Id.*

¹⁴ CONSTITUTION OF INDIA, ch. II, art. 79, <http://lawmin.nic.in/olwing/coi/coi-english/coi-4March2016.pdf>, archived at <https://perma.cc/H74L-9Y3K>.

¹⁵ *Id.*

Sansadiya Gyanpeeth (Parliament Library Building), an annex to Parliament House, and extensive lawns.¹⁶

The Government of India Act 1919 prompted the need to construct a building to house the Central Legislative Assembly, which is also used to house the current Parliament. The building was designed by two architects—Sir Edwin Lutyens and Sir Herbert Baker—“who were responsible for the planning and construction of New Delhi.”¹⁷ According to the Parliament of India website,

[t]he centre and focus of the building is the big circular edifice of the Central Hall. On the three axes, radiating from this centre are placed the three Chambers for Lok Sabha (the House of the People), Rajya Sabha (the Council of States) and the erstwhile Library Hall (formerly the Princes Chamber) and between them lie garden courts. Surrounding these three Chambers is a four storeyed circular structure providing accommodation for Ministers, Chairmen, Parliamentary Committees, Party Offices, important offices of Lok Sabha and Rajya Sabha Secretariats and also the Offices of the Ministry of Parliamentary Affairs.¹⁸

II. Constitutional Status and Role

India is a federal (or quasi-federal) democratic republic with a parliamentary system of government largely based on the UK model.¹⁹ Parliament is the “supreme legislative body of India” comprised of the President and the two Houses – Rajya Sabha (the Council of States) and the Lok Sabha (the House of the People).²⁰ India’s bicameral parliament forms the legislative branch of government. The President, as the titular head of state (who also forms a constituent part of Parliament), the Vice President, and the Union Council of Ministers (or federal cabinet, which is led by the Prime Minister, as head of government)²¹ comprise the executive branch, and India courts at the Union, state, and local levels²² make up the judicial branch of government.²³ PRS Legislative Research has broadly outlined the main functions of Parliament as follows:

¹⁶ *Parliament House Estate*, PARLIAMENT OF INDIA, <http://www.parliamentofindia.nic.in/ls/intro/p2.htm> (last visited Jan. 30, 2017), archived at <https://perma.cc/8A9K-DJSC>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Parliamentary Institutions*, in *HOUSE OF COMMONS PROCEDURE AND PRACTICE* (Robert Marleau & Camille Montpetit eds., 2000), <http://www.parl.gc.ca/marleaumontpetit/DocumentViewer.aspx?Sec=Ch01&Seq=2&Language=E>, archived at <https://perma.cc/P8S5-URLE>.

²⁰ *Indian Parliament*, NATIONAL PORTAL OF INDIA, <https://india.gov.in/my-government/indian-parliament> (last visited Jan. 30, 2017), archived at <https://perma.cc/TR6Y-B6JT>.

²¹ Lorraine Snyder & Dustin Martin, *The Constitution and Canada’s Branches of Government*, CENTRE FOR CONSTITUTIONAL STUDIES (Apr. 2, 2015), <http://ualawccsprod.srv.ualberta.ca/ccs/index.php/constitutional-issues/democratic-governance/818-the-constitution-and-canada-s-branches-of-government>, archived at <https://perma.cc/K8UY-DBMX>.

²² *Id.*

²³ THE BRITANNICA GUIDE TO INDIA 315 (2009).

- **Legislative responsibility:** To pass laws
- **Oversight responsibility:** To ensure that the executive (i.e. government) performs its duties satisfactorily
- **Representative responsibility:** To represent the views and aspirations of the people of their constituency in Parliament
- **“Power of the Purse” responsibility:** To approve and oversee the revenues and expenditures proposed by the government²⁴

According to political scientist and former secretary-general of the Lok Sabha, Subhash Kashyap, “[t]he two Houses of Parliament enjoy co-equal power and status in all spheres except in financial matters and in regard to the responsibility of the Council of Ministers, which are exclusively the domain of the Lok Sabha.”²⁵

The Parliament of India shares its lawmaking function with twenty-nine state legislatures. Seven union territories also exist, which are governed directly by the Union (or central) government. The legislative powers of the Union Parliament are stipulated by the Seventh Schedule of the Constitution of India, which stipulates a “Union list”²⁶ on which Parliament has exclusive jurisdiction to legislate, and a “Concurrent list,” which enumerates shared or overlapping competencies.²⁷

III. Structure and Composition

A. Members and Representatives

India’s federal legislative branch consists of the President, the Rajya Sabha (Council of States) as the upper house, and the Lok Sabha (House of the People) as the lower house. The House of People and the Council of States constitute India’s bicameral Parliament.

Article 81 of the Constitution of India stipulates a maximum cap of 552 members²⁸ for the Lok Sabha, not more than 530 members chosen by direct election from territorial constituencies in the states,²⁹ and up to twenty members to represent the Union Territories.³⁰ Not more than two members of the Anglo-Indian Community can be nominated by the President, if, in his opinion, that community is not adequately represented in the House.³¹ The total elective membership is distributed among the states in such a way that the ratio between the number of seats allotted to

²⁴ *About Parliament*, PRS LEGISLATIVE RESEARCH, <http://www.prsindia.org/parliamenttrack/about-parliament/the-indian-parliament-198> (last visited Jan. 31, 2017), archived at <https://perma.cc/87DB-DN7E>.

²⁵ SUBHASH KASHYAP, *supra* note 7, at 28

²⁶ CONSTITUTION OF INDIA, 7th sched., “Union List.”

²⁷ *Id.*

²⁸ *Id.* art. 81(1)(a).

²⁹ *Id.*

³⁰ *Id.* art. 81(1)(b).

³¹ *Id.* art. 331.

each state and the population of the state is, so far as practicable, the same for all states.³² The Lok Sabha currently has 545 members.³³ According to the Parliament of India website,

[the] Lok Sabha, unless sooner dissolved, continues for five years from the date appointed for its first meeting and the expiration of the period of five years operates as dissolution of the House. However, while a Proclamation of Emergency is in operation, this period may be extended by 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 the proclamation has ceased to operate.³⁴

Article 80 of the Constitution stipulates a cap of 250 members for the Council of States. Of these, twelve members are nominated by the President³⁵ and 238 are representatives that are indirectly elected³⁶ through “members of the Legislative Assembly of that State and by the members of the Electoral College for that Union Territory.”³⁷ Currently, the Rajya Sabha has 245 representatives.³⁸ A member who is elected for a full term serves for a six-year period.³⁹ One-third of its members retire at the end of every two years.⁴⁰ The Rajya Sabha is a permanent body and, unlike the Lok Sabha, cannot be dissolved at any time.⁴¹

If a political party or a coalition is able to receive more than half of the total number of seats in the Lok Sabha, which in its current composition is 273 seats,⁴² it will be able to form a government.⁴³ If no party is able to acquire a majority of seats, the party with the most seats is invited by the President to form a new government and “prove its majority” on the floor of the house within a certain amount of time.⁴⁴ The party with the plurality of seats attempts to achieve a majority by reaching out to other parties in order to form a minority coalition government.

³² *Id.* art. 81(2)(a).

³³ *Lok Sabha (House of the People)*, PARLIAMENT OF INDIA, <http://parliamentofindia.nic.in/ls/intro/introls.htm> (last visited Jan. 30, 2017), archived at <https://perma.cc/SB85-QVPC>.

³⁴ *Id.*

³⁵ *Id.* art. 80(1)(a).

³⁶ *Id.* art. 80(1)(b).

³⁷ *Council of States (Rajya Sabha)*, RAJYA SABHA, http://rajasabha.nic.in/rsnew/council_state/council_state.asp (last visited Jan. 30, 2017), archived at <https://perma.cc/NL73-YBH5>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *About Parliament*, *supra* note 24.

⁴¹ *Id.*

⁴² COUNTRY RESEARCH SECTION, REFUGEE REVIEW TRIBUNAL/MIGRATION REVIEW TRIBUNAL AUSTRALIA, THE REPUBLIC & STATES OF INDIA AT A GLANCE 7 (Dec. 2008), available at <http://www.refworld.org/pdfid/4f4610f62.pdf>, archived at <https://perma.cc/WU5Q-CD5W>.

⁴³ *Glossary of Parliamentary Terms for Younger Students*, PARLIAMENT OF CANADA, <http://www.parl.gc.ca/About/Parliament/Education/GlossaryElementary/index.asp?Language=E> (last updated Feb. 2005), archived at <https://perma.cc/E9XG-QB8J>.

⁴⁴ G.B. REDDY & MOHD. SUHAIB, CONSTITUTION OF INDIA AND PROFESSIONAL ETHICS 89 (2008).

As of December 5, 2016, there are seven recognized national parties in India: the Bharatiya Janata Party (BJP), Indian National Congress (INC), Communist Party of India (CPI), CPI (M), All India Trinamool Congress, Bahujan Samaj Party, and Nationalist Congress Party.⁴⁵ Of these, the INC, also commonly known as the Congress Party, and the BJP are the largest. Section 6b of the Election Symbols (Reservation and Allotment) Order, 1968⁴⁶ stipulates the following criteria for recognition as a national party:

- The party wins 2% of seats in the Lok Sabha (11 seats) from at least 3 different States.
- At a General Election to Lok Sabha or Legislative Assembly, the party polls 6% of votes in four States and in addition it wins 4 Lok Sabha seats.
- A party gets recognition as State Party in four or more States.⁴⁷

Currently, thirty-six political parties are represented in the Lok Sabha.⁴⁸ Following is a breakdown of the representation of the political parties with the most seats in the Lok Sabha:

Party Name	No. of Members	Percentage (%)
Bharatiya Janata Party (BJP)	282	52.13
Indian National Congress (INC)	44	8.13
All India Anna Dravida Munnetra Kazhagam (AIADMK)	37	6.84
All India Trinamool Congress (AITC)	34	6.28
Biju Janata Dal (BJD)	20	3.70
Shiv Sena (SS)	18	3.33
Telugu Desam Party (TDP)	16	2.96
Telangana Rashtra Samithi (TRS)	11	2.03
Yuvajana Sramika Rythu Congress Party (YSR Congress)	9	1.66

⁴⁵ *Recognized National Political Parties*, ANDHRA PRADESH STATE ELECTION COMMISSION (Dec. 5, 2016), http://www.apsec.gov.in/Politicalparties/list_of_political_parties.pdf, archived at <https://perma.cc/6VTA-G2FC>.

⁴⁶ Symbols (Reservation and Allotment) Order, 1968, § 6b, http://eci.nic.in/eci_main/ElectoralLaws/Orders/Notifications/Election_Symbol_2011_order_1968.pdf (multilingual edition), archived at <https://perma.cc/6Z4L-F82L>.

⁴⁷ Press Information Bureau, Government of India, Election Commission, Dynamics of Elevation of Political Parties to State or National Party (Mar. 8, 2014), <http://pib.nic.in/newsite/PrintRelease.aspx?relid=104537>, archived at <https://perma.cc/3N5L-K93N>.

⁴⁸ *Sixteenth Lok Sabha Party-wise Representation of Members*, PARLIAMENT OF INDIA LOKH SABHA, <http://164.100.47.192/loksabha/Members/PartyWiseStatisticalList.aspx> (last visited Jan. 30, 2017), archived at <https://perma.cc/34SF-BHN4>.

Party Name	No. of Members	Percentage (%)
Party)		
Communist Party of India (Marxist) (CPI(M))	9	1.66

Source: Adapted from *Sixteenth Lok Sabha: Party-wise Representation of Members: All Members Party-wise List*, LOK SABHA, http://www.lok_sabha.nic.in/members/PartyWiseStatisticalList.aspx, archived at <https://perma.cc/T655-ZERW>.

Thirty political parties are represented in the Rajya Sabha,⁴⁹ with the Indian National Congress (INC) (60), Bharatiya Janata Party (BJP) (56), Samajwadi Party (SP) (19), All India Anna Dravida Munnetra Kazagham (AIADMK) (13), and All India Trinamool Congress (AITC) (11) parties holding the most seats.⁵⁰

B. Leadership Roles

Some of the important leadership roles in both houses of Parliament are the presiding officers (the speakers and deputy speakers), house leaders, and whips. The Speaker of the Lok Sabha presides over the sessions⁵¹ and regulates the day-to-day conduct and business of the house.⁵² The Speaker and the Deputy Speaker of the Lok Sabha are elected from among its members by “a simple majority of members present and voting in the House.”⁵³ No specific qualifications are prescribed for being elected as Speaker; the Constitution only requires that the Speaker should be a member of the House.⁵⁴

According to *Introduction to the Constitution of India*, the Speaker “is responsible for upholding the dignity and the privileges of the House. When a point of order is raised or any question involving the interpretation of the rules and the precedents of Lok Sabha is raised the Speaker has to interpret the rule and give his ruling.”⁵⁵ The Speaker performs his or her functions in accordance with the provisions of the Constitution and the Rules of Procedure and Conduct of

⁴⁹ *Alphabetical Party Position in the Rajya Sabha*, RAJYA SABHA, http://164.100.47.5/Newmembers/party_memberlist.aspx (last visited Jan. 31, 2017), archived at <https://perma.cc/QM85-P6CZ>.

⁵⁰ *Id.*

⁵¹ BRIJ KISHORE SHARMA, *INTRODUCTION TO THE CONSTITUTION OF INDIA* 185 (2015).

⁵² *About Parliament*, PRS LEGISLATIVE RESEARCH, <http://www.prsindia.org/parliamenttrack/about-parliament/the-indian-parliament-198> (last visited Jan. 31, 2017), archived at <https://perma.cc/2C9J-SQT2>.

⁵³ *Role of the Speaker*, OFFICE OF THE SPEAKER LOK SABHA, <http://speakerloksabha.nic.in/roleofthespeaker.asp> (last visited Jan. 31, 2017), archived at <https://perma.cc/K5QM-UNCM>.

⁵⁴ *Id.*

⁵⁵ KISHORE SHARMA, *supra* note 51, at 185.

Business in the Lok Sabha.⁵⁶ Another task of the Speaker is to maintain parliamentary decorum and discipline under all circumstances.⁵⁷

The presiding officers of the Rajya Sabha have the duty to conduct the proceedings of that house. The Vice-President of India is a presiding officer, serving as the ex-officio Chairman of the Rajya Sabha.⁵⁸ The body also elects a Deputy Chairman from among its members, “who takes care of the day-to-day working of the House.”⁵⁹ The Vice-President is not a member of the Rajya Sabha and does not take part in the voting, except when there is a tie.⁶⁰ The powers of the Vice President as a presiding officer include the authority to interpret the Constitution and rules of procedure relating to matters concerning the House, issue binding rulings, and maintain order and discipline in the House.⁶¹ Another important officer of each house is the Secretary-General, who functions as the “advisor to the Speaker, to the House and to the members on all parliamentary functions and activities and all matters of procedure and practice.”⁶²

In the Lok Sabha, the Leader of the House is the Prime Minister unless he or she is not a member of the House, in which case another minister may be nominated by the Prime Minister to function as the Leader of the House.⁶³ Each House can also have a Leader of the Opposition. The Salary and Allowances of Leaders of Opposition in Parliament Act, 1977 defines the term “Leader of the Opposition” to mean

that member of the Council of States or the House of the People, as the case may be, who is, for the time being, the Leader in that House of the party in opposition to the Government having the greatest numerical strength and recognised as such by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.⁶⁴

⁵⁶ *Rules of Procedure and Conduct of Business in the Lok Sabha*, PARLIAMENT OF INDIA, <http://parliamentofindia.nic.in/ls/rules/rules.html> (last visited Jan. 31, 2017), archived at <https://perma.cc/S9XM-TUAK>.

⁵⁷ *Role of the Speaker*, *supra* note 53.

⁵⁸ *Council of States (Rajya Sabha)*, *supra* note 37.

⁵⁹ *About Parliament*, *supra* note 24.

⁶⁰ Ch. 4, *Presiding Officers of Rajya Sabha and other Parliamentary Functionaries*, in RAJYA SABHA SECRETARIAT, RAJYA SABHA AT WORK 85 (2006), http://rajyasabha.nic.in/rsnew/rsat_work/chapter-4.pdf, archived at <https://perma.cc/6ULA-YUG9>.

⁶¹ *Id.* at 79.

⁶² SUBHASH KASHYAP, *supra* note 7, at 111.

⁶³ Definition of “Leader of the House,” *Rules of Procedure and Conduct of Business in Lok Sabha* § 2(1), <http://parliamentofindia.nic.in/ls/rules/rule1.html> (last visited Jan. 31, 2017), archived at <https://perma.cc/V78P-45J5>.

⁶⁴ Salary and Allowances of Leaders of Opposition in Parliament Act, 1977, as amended, § 2, http://rajyasabha.nic.in/rsnew/msa_section/leader_opposition_1977.pdf, archived at <https://perma.cc/GNA6-72VQ>.

However, to be a recognized party by the Speaker the party must have “one-tenth of the total number of members of the House”⁶⁵—which is fifty-five members.⁶⁶ The current Lok Sabha does not have a Leader of the Opposition since the largest opposition party, the Congress Party, only has forty-four seats.⁶⁷

Each party has a Chief Whip and Assistant Whips, depending on the number of members it has in the respective house. Of all the duties that are common to whips of all parties, by far the most important duties devolve upon the Government Whip. He or she is concerned with mapping out the time of the session, getting the Government’s program of business through, and arranging the business of the individual sittings. The Government Whip is also responsible for the orderly consideration of Government business.⁶⁸

C. Committees

In India, parliamentary committees are mainly of two types: ad hoc committees, and standing committees.

According to the Parliament of India website, “[a]d hoc Committees are appointed for a specific purpose and they cease to exist when they finish the task assigned to them and submit a report.” The principal ad hoc Committees are the Select and Joint Committees on Bills, which are appointed to “consider and report on particular Bills.”⁶⁹ Others, such as the Railway Convention Committee, the Committees on the Draft Five-Year Plans, and the Hindi Equivalents Committee, were appointed for specific purposes.⁷⁰

Standing committees, on the other hand, “are permanent and regular committees which are constituted from time to time in pursuance of the provisions of an Act of Parliament or Rules of Procedure and Conduct of Business in Lok Sabha.”⁷¹ The work of these committees is of a continuous nature. Committee members are elected by each house or nominated by the Speaker (or Chairman) “to consider and report on specific matters and become functus officio as soon

⁶⁵ Ch. IX, *General Directions*, para. 121(I)(c), in Directions by the Speaker, <http://parliamentofindia.nic.in/ls/direct/dirp9.html> archived at <https://perma.cc/EE8X-NBJL>.

⁶⁶ Definition of “Recognized Party,” Leaders and Chief Whips of Recognised Parties and Groups in Parliament (Facilities) Act, 1998, § 2(b)(ii), http://rajyasabha.nic.in/rsnew/msa_section/leader_chief1998.pdf, archived at <https://perma.cc/3JGJ-BFGD>.

⁶⁷ Ankit Panda, *India’s Parliament Will Have No Opposition Leader*, THE DIPLOMAT (June 13, 2014), <http://thediplomat.com/2014/06/indias-parliament-will-have-no-opposition-leader>, archived at <https://perma.cc/3KWE-579W>.

⁶⁸ *Role of the Leader of the House, Leader of the Opposition and Whips: Brief History*, RAJYA SABHA, http://rajyasabha.nic.in/rsnew/practice_procedure/oppo.asp# (last visited Jan. 31, 2017), archived at <https://perma.cc/GV87-V3FY>.

⁶⁹ SUBHASH KASHYAP, *supra* note 7, at 191.

⁷⁰ *Parliamentary Committees*, PARLIAMENT OF INDIA, <http://www.parliamentofindia.nic.in/ls/intro/p21.htm> (last visited Jan. 31, 2017), <https://perma.cc/X64A-CHZ8>.

⁷¹ *Parliamentary Committees*, LOK SABHA SECRETARIAT, http://164.100.47.132/LssNew/Committees/Parliamentary_committee.htm, archived at <https://perma.cc/AC3P-H76J>.

they have completed their work on these matters.”⁷² Some standing committees include the Business Advisory Committee, the Committee on Petitions, the Committee of Privileges, and the Rules Committee.

Another class of committees act as Parliament’s “watch dogs” over the executive. These are the Committees on Subordinate Legislation, the Committee on Government Assurances, the Committee on Estimates, the Committee on Public Accounts, and the Committee on Public Undertakings and Departmentally Related Standing Committees (DRSCs).⁷³

IV. Elections

Elections in India are conducted according to provisions in the Constitution, accompanied by laws made by Parliament. The main laws consist of the Representation of the People Act, 1950, “which mainly deals with the preparation and revision of electoral rolls,”⁷⁴ and the Representation of the People Act, 1951, “which deals, in detail, with all aspects of conduct of elections and post election disputes.”⁷⁵ The Supreme Court of India “has held that where the enacted laws are silent or make insufficient provision to deal with a given situation in the conduct of elections, the Election Commission has the residuary powers under the Constitution to act in an appropriate manner.”⁷⁶

In order to become a member the Lok Sabha, a person must run for a seat in the federal elections, which are held “on the basis of universal adult suffrage” and “have to take place every five years, unless called earlier.”⁷⁷ This means every citizen of India who is eighteen years of age or older has the right to vote in the elections to the Lok Sabha unless he or she is otherwise disqualified by law.⁷⁸ The President may dissolve Lok Sabha and call a general election before five years is up if the government can no longer command the confidence of the Lok Sabha, and if there is no alternative government available to take over.⁷⁹ According to the Lok Sabha website,

Parliament, from time to time, by law makes provision with respect to all matters relating to, or in connection with, elections to the Lok Sabha, including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of the Lok Sabha. When the seat of a Member elected to

⁷² SUBHASH KASHYAP, *supra* note 7, at 190.

⁷³ *Parliamentary Committees*, PARLIAMENT OF INDIA, *supra* note 70.

⁷⁴ *The Function: Electoral System*, ELECTION COMMISSION OF INDIA, http://eci.nic.in/eci_main1/the_function.aspx (last visited Jan. 31, 2017), archived at <https://perma.cc/TF54-ENX4>.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Frequently Asked Questions on Lok Sabha (As on 19.05.2015)*, LOK SABHA, <http://164.100.47.194/loksabha/FAQ.aspx> (last visited Jan. 31, 2017), archived at <https://perma.cc/Q82V-W8J6>.

⁷⁸ CONSTITUTION OF INDIA, 7th sched., art. 326.

⁷⁹ *The Function: Electoral System*, *supra* note 74.

the House becomes vacant or is declared vacant, or his/her election is declared void, the same is filled through bye-election.⁸⁰

Article 84 of India's Constitution stipulates that in order to become a member of the Lok Sabha, a person must be a citizen of India, not less than twenty-five years of age, and possess such other qualifications as may be prescribed by or under any law made by Parliament.

Elections to the Lok Sabha are carried out using a first-past-the-post electoral system.⁸¹ The country is split up into separate geographical areas, known as constituencies, and the electors can cast one vote each for a candidate (although most candidates stand as independents, most successful candidates stand as members of political parties), the winner being the candidate who gets the highest number of votes.⁸²

The country is divided into 543 parliamentary constituencies, each of which returns one Member of Parliament to the Lok Sabha, the lower house of Parliament. The size and shape of the parliamentary constituencies "are determined by an independent Delimitation Commission, which aims to create constituencies which have roughly the same population, subject to geographical considerations and the boundaries of the states and administrative areas."⁸³

The last general election was held over thirty-five days and nine phases between April 7, 2014, and May 12, 2014.⁸⁴ A total of 8,251 candidates ran for office. Voter turnout was relatively high, involving 66.38% of the country's approximately 814.5 million eligible voters.⁸⁵ The next general election is to be held in 2019.

V. Legislative Process

In order for a bill to become law in India, it must undergo a three-stage process in each house of Parliament.⁸⁶ As explained on the Lok Sabha website,

[t]he *first stage* consists of the introduction of the Bill which is done on a motion moved by either a Minister or a Member. During the *second stage*, any of the following motions can be moved: that the Bill be taken into consideration; that it be referred to a Select Committee of the House; that it be referred to a Joint Committee of the two Houses; or that it be circulated for the purpose of eliciting opinion thereon. Thereafter, the Bill is taken up for clause-by-clause consideration as introduced or as reported by the

⁸⁰ *Frequently Asked Questions on Lok Sabha (As on 19.05.2015)*, *supra* note 77, Question & Answer 27.

⁸¹ *The Function: Electoral System*, *supra* note 74.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Soutik Biswas, *Why Does India's Election Take So Long?*, BBC NEWS (May 2, 2014), <http://www.bbc.com/news/world-asia-india-27233843>, archived at <https://perma.cc/NS6B-2XTP>.

⁸⁵ Sanjaya Baru, *The Indian Parliamentary Elections of 2014: Year In Review 2014*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/Indian-Parliamentary-Elections-of-2014-The-2004659> (last updated Dec. 12, 2014), archived at <https://perma.cc/4DWA-F8TH>.

⁸⁶ *Frequently Asked Questions on Lok Sabha (As on 19.05.2015)*, *supra* note 77.

Select/Joint Committee. The *third stage* is confined to the discussion on the motion that the Bill be passed and the Bill is passed/rejected either by voting or voice vote (or returned to the Lok Sabha by the Rajya Sabha in the case of a Money Bill).⁸⁷

These stages can be further subdivided into introduction of a bill, first reading, second reading, committee stage, third reading, and finally Presidential assent.

A. Types and Forms of Bills

Generally there are two forms of bills: new legislation sponsored by Government ministers are called Government Bills and bills that originate from a Member of Parliament are known as Private Members' Bills.⁸⁸ However, there are very few Private Members' Bills that end up becoming law. According to the Lok Sabha website,

[d]epending on their contents, Bills may further be classified broadly into (a) Original Bills (Bills embodying new proposals, ideas or policies); (b) Amending Bills (Bills which seek to modify, amend or revise the existing Acts); (c) Consolidating Bills (Bills which seek to consolidate existing laws on a particular subject; (d) Expiring Laws (Continuance) Bills (Bills to continue an expiring Act); (e) Repealing Bills (Bills seeking to repeal existing Acts); (f) Bills to replace Ordinances; (g) Constitution (Amendment) Bills; and (h) Money and Financial Bills.⁸⁹

1. Constitution Amendment Bills

These are bills that seek to amend the Constitution. According to the procedure specified in the Constitution,

. . . Constitution Amendment Bills can be of three types *viz.*,

- (i) requiring simple majority for their passage in each House;
- (ii) requiring special majority for their passage in each House *i.e.*, a majority of the total membership of a House and by a majority of not less than two-thirds of the members of that House present and voting (article 368); and
- (iii) requiring special majority for their passage and ratification by Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures (proviso to clause (2) of article 368). A Constitution Amendment Bill under article 368 can be introduced in either House of Parliament and has to be passed by each House by special majority.⁹⁰

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*, Question & Answer 52.

⁹⁰ *Legislative Functions of Rajya Sabha*, RAJYA SABHA, <http://rajyasabha.nic.in/rsnew/legislation/introduction.asp> (last visited Jan. 31, 2017), archived at <https://perma.cc/456C-DP48>.

2. Money Bills

A bill is said to be a money bill “if it only contains provisions related to taxation, borrowing of money by the government, expenditure from or receipt to the Consolidated Fund of India. Bills that only contain provisions that are incidental to these matters would also be regarded as Money Bills.”⁹¹ If any question arises as to whether a bill is a money bill, “the decision of the Speaker of the House of the People thereon shall be final.”⁹² A more lengthy definition of “money bill” is provided by article 110 of the Constitution.⁹³

A money bill can only be introduced in the Lok Sabha and only on the recommendation of the President. It “must be passed in Lok Sabha by a simple majority of all members present and voting.”⁹⁴ After passage in the Lok Sabha a money bill is sent to the Rajya Sabha “with a certificate by the Speaker that it is a Money Bill,” and the Rajya Sabha “cannot reject a Money Bill nor can it amend it by virtue of its own powers. It must, within a period of 14 days from date of receipt of the Bill, return the Bill to the Lok Sabha with its recommendations.”⁹⁵ According to Subhash Kashyap:

[t]he Lok Sabha may thereupon either accept or reject all or any of the recommendations of the Rajya Sabha. If the Lok Sabha accepts any of the recommendations of the Rajya Sabha, the Money Bill shall be deemed to have been passed by both the Houses with the amendments recommended by the Rajya Sabha and accepted by the Lok Sabha. If the Lok Sabha does not accept any of the recommendations of the Rajya Sabha, the Bill shall be deemed to have been passed by both the Houses in the form in which it was passed by the Lok Sabha (before the amendments recommended by the Rajya Sabha). Further, if a Money Bill [is] passed and transmitted to the Rajya Sabha within the said period of 14 days, it shall be deemed to have been passed by both the Houses at the expiration of 14 days.⁹⁶

There is also no rule for a joint sitting of both houses in the case of a money bill, unlike an ordinary bill.⁹⁷

3. Financial Bills

A bill that contains “some provisions related to taxation and expenditure, and additionally contains provisions related to any other matter is called a Financial Bill.”⁹⁸ In other words, “if a Bill merely involves expenditure by the government, and addresses other issues, it will be a

⁹¹ Prianka Rao, *Money Bills vs. Other Bills*, THE PRS BLOG (Dec. 22, 2015), <http://www.prsindia.org/theprsblog/?p=3621>, archived at <https://perma.cc/CU5Y-KSH4>.

⁹² SUBHASH KASHYAP, *supra* note 7, at 172.

⁹³ *Id.*

⁹⁴ Prianka Rao, *supra* note 91.

⁹⁵ SUBHASH KASHYAP, *supra* note 7, at 173.

⁹⁶ *Id.* at 173.

⁹⁷ *Id.*

⁹⁸ Prianka Rao, *supra* note 91.

financial bill.”⁹⁹ Financial bills are typically further categorized as Category A and B bills. According to the Rajya Sabha website, “Category A Bills contain provisions dealing with any of the matters specified in sub-clauses (a) to (f) of clause (1) of article 110 [including but not limited to matters such as the imposition, abolition, remission, alteration or regulation of any tax; the regulation of the borrowing of money or the giving of any guarantee by the Government of India;] and other matters and Category B Bills involve expenditure from the Consolidated Fund of India.”¹⁰⁰ A Category A financial bill can only be introduced in the Lok Sabha on the recommendation of the President. However, “once it has been passed by the Lok Sabha, it is like an ordinary Bill and there is no restriction on the powers of the Rajya Sabha on such Bills.”¹⁰¹ Category B financial bills are treated like ordinary bills, which can be introduced in either house of Parliament.¹⁰²

4. *Ordinary Bills*

Ordinary bills are for legislation concerned with any matters other than those topics covered by financial bills, money bills, and Constitution amendment bills.

B. Overview of the Process

A Union bill must pass three readings in both the Lok Sabha or Rajya Sabha before it becomes law.

1. *Introduction and First Reading*

The legislative process is initiated by the introduction of a bill “after adoption of a motion for leave to introduce a Bill”¹⁰³ in either house of Parliament—the Lok Sabha or the Rajya Sabha.¹⁰⁴ Ordinary bills and Constitution amendment bills may be introduced in either house. However, money bills and other financial bills may only be introduced in the Lok Sabha.¹⁰⁵ A bill can be introduced by a Government minister or a private member.¹⁰⁶ A minister who wishes to “introduce a Bill has to give seven days notice in writing of his intention to move for leave to

⁹⁹ *Id.*

¹⁰⁰ *Legislative Functions of Rajya Sabha*, *supra* note 90.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *How a Bill Becomes an Act*, LOK SABHA, http://164.100.47.194/loksabha/writereaddata/our_parliament/How_a_bill_become_an_act.pdf (last visited Jan. 31, 2017), archived at <https://perma.cc/7PSX-3HQX>.

¹⁰⁵ PRS Legislative Research, *Parliament as a Law Making Body: Background Note for the Conference on Effective Legislatures 1* (Dec. 2, 2014), http://www.prsindia.org/administrator/uploads/general/1417684398~Parliament_as_a_Law_Making_Body.pdf, archived at <https://perma.cc/PN58-8PXD>.

¹⁰⁶ *Id.*

introduce the Bill. The Speaker may, however, allow the motion to be moved at a shorter notice.”¹⁰⁷

During the first reading, Members of Parliament may raise objections and challenges on certain grounds. The procedure for opposing introduction of a bill is as follows:

Motion for leave to introduce a Bill may be opposed by any member on general grounds or on the ground that the Bill initiates legislation outside the legislative competence of the House. Any member desirous of opposing the introduction of a Bill has to give a notice to that effect specifying clearly and precisely the objections to be raised by 1000 hours on the day on which the Bill is included in the list of business for introduction.¹⁰⁸

If the motion for leave to introduce a Bill is opposed, the Speaker may allow [a] brief statement from the member who opposes the motion and the Minister who moved the motion. Thereafter, the motion is put to the vote of the House. However, if the motion is opposed on the ground of legislative competence, the Speaker may permit a full discussion thereon.

It is an accepted practice in Lok Sabha that the Speaker does not give any ruling on the point whether a Bill is constitutionally within the legislative competence of the House or not. The House also does not take a decision on the specific question of vires of a Bill. After debate, the motion for leave to introduce a Bill is put to vote of the House by the Speaker.¹⁰⁹

After a bill has been introduced, it is published in the *Gazette of India*.¹¹⁰ Once a bill is introduced in Parliament, it may be referred to a Department Related Standing Committee (DRSC) “by the Chairman, Rajya Sabha or the Speaker, Lok Sabha, as the case may be” for detailed examination and to produce a report on the bill “in the given time.”¹¹¹ Customarily, a time period of three months is granted to the DRSCs for presentation of a report. According to the Lok Sabha website:

[a]s per prevailing practice, normally all Government Bills, except Bills to replace Ordinances, Bills repealing obsolete laws, Appropriation Bills, Finance Bills and Bills of technical or trivial nature, are referred to the concerned Departmentally Related Standing Committees for examination and report.

The reports of the Standing Committees have persuasive value and are treated as considered advice by the Government. In case, the Government accepts any of the recommendations of the Committee, it may bring forward official amendments at the consideration stage of the Bill or may withdraw the Bill reported by the Standing

¹⁰⁷ *Legislative Process*, LOK SABHA, http://164.100.47.132/LssNew/abstract/legislative_process.htm (last visited Jan. 31, 2017), archived at <https://perma.cc/DB35-U2SZ>.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

Committee and bring forward a new comprehensive Bill after incorporating such of the recommendations of the Standing Committee as are acceptable to the Government.¹¹²

2. *Second Reading*

The second reading of a bill is comprised of two stages. Once the relevant DRSC has submitted its report to the relevant house, the bill is typically taken up for discussion.

a. First Stage

The first stage of the second reading begins with “discussion on the principles of the Bill and its provisions generally.”¹¹³ According to the Parliament of India website, “[a]t 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.”¹¹⁴

In contrast to the general review typical for other bills at the first stage of the second reading, bills referred to a select or joint committee are considered clause-by-clause. Amendments can be introduced to various clauses by the members of the committee:

A Select Committee or a Joint Committee of both the Houses entrusted with the consideration of a Bill issues a press communique and invites memoranda from the public at large as well as from specialised interest groups to place materials and points of view before the Committee. The Committee may also hear expert evidence and representatives of special interest groups affected by the measure.¹¹⁵

b. Second Stage

The second stage of the second reading “consists of clause-by-clause consideration of the Bill, as introduced in Lok Sabha or as reported by a Select or a Joint Committee or as passed by Rajya Sabha, as the case may be.” Discussion and debate takes place “on each clause of the Bill and amendments can be moved at this stage.”¹¹⁶ Each amendment and each clause is put to a vote. The amendments become part of the bill if they are accepted by a majority of members present and voting. After the individual clause(s), the schedules (if any), clause one, the enacting formula, and the long title of the bill have been adopted with or without amendments by the House, the second reading is deemed to be over.

¹¹² *Id.*

¹¹³ *How a Bill Becomes an Act*, PARLIAMENT OF INDIA, <http://www.parliamentofindia.nic.in/ls/intro/p5.htm> (last visited Jan. 31, 2017), archived at <https://perma.cc/EB5T-6LDX>.

¹¹⁴ *Id.*

¹¹⁵ *Legislative Process*, *supra* note 107.

¹¹⁶ *Id.*

4. *Third Reading*

The third reading of a bill is the stage at which the member-in-charge can move that the bill be passed. At this stage “the debate is confined to arguments either in support or rejection of the Bill without referring to the details thereof further than that are absolutely necessary.”¹¹⁷ According to the Parliament of India website,

[o]nly 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-thirds of the members present and voting is required in each House of Parliament.¹¹⁸

5. *Repeated in Other House*

After a bill is passed in one house, “it is sent to the other House for concurrence with a message to that effect.”¹¹⁹ The legislative process of the Rajya Sabha is very similar to the one in the Lok Sabha, described above.

The Lok Sabha website summarizes the relationship between the two houses in the legislative process as follows:

On receipt of the message, the Bill is first laid on the Table of Rajya Sabha, which is deemed as the First Reading stage of the Bill in that House. Thereafter, the Bill again goes through the same stages, *viz.*, the Second Reading stage comprising either the discussion on the motion that the Bill be taken into consideration or its reference to a Select Committee of that House and the Third Reading stage. Rajya Sabha may either agree to the Bill, as passed by Lok Sabha, or return the Bill with amendments to Lok Sabha for its concurrence.

Rajya Sabha is, however, required to return a Money Bill passed and transmitted by Lok Sabha within a period of 14 days from the date of its receipt. Rajya Sabha may return a Money Bill transmitted to it with or without recommendations. It is open to Lok Sabha to accept or reject all or any of the recommendations of Rajya Sabha.

However, if Rajya Sabha does not return a Money Bill within the prescribed period of 14 days, the Bill is deemed to have been passed by both the Houses of Parliament at the expiry of the said period of 14 days in the form in which it was passed by Lok Sabha.¹²⁰

If a bill is passed by one house and is rejected by the other house, or the houses have finally disagreed as to the amendments to be made in the bill, or more than six months lapse from the date of receipt of the bill by the other house without the bill being passed by it, the President

¹¹⁷ *How a Bill Becomes an Act*, PARLIAMENT OF INDIA, *supra* note 113.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Legislative Process*, *supra* note 107.

may, unless the bill has lapsed by reason of dissolution of Lok Sabha, call a joint sitting of the two houses to resolve the deadlock.¹²¹

6. Presidential Assent

Presidential assent is the final step in the legislative process before a bill officially becomes an Act of Parliament and part of India's laws:

The President can give his assent or withhold his assent to a Bill. The President can also return the Bill, if it is not a Money Bill, with his recommendations to the Houses for reconsideration, and if the Houses pass the Bill again with or without amendments, the President can not withhold his assent to a such a Bill. The President is bound to give his assent to a Constitution Amendment Bill presented to him for assent.¹²²

VI. Recent Legislation

The following list reflects some important legislation that the Parliament of India recently considered and passed that have now become Acts of Parliament:

- **Constitution (122nd Amendment) (GST) Bill, 2014:** The national Goods and Services Tax is a value-added tax on the manufacture, sale, and consumption of goods and services. It is aimed at reforming and streamlining the tax system at the national level.¹²³
- **Juvenile Justice (Care and Protection of Children) Bill, 2014:** This bill replaces the Juvenile Justice (Care and Protection of Children) Act, 2000. "It addresses children in conflict with law and children in need of care and protection. The Bill permits juveniles between the ages of 16–18 years to be tried as adults for heinous offences."¹²⁴
- **National Judicial Appointments Commission Bill, 2014:** This bill was introduced in conjunction with the Constitutional (121st Amendment) Bill, 2014, which establishes the National Judicial Appointments Commission. The bill regulates the procedure to be followed by the NJAC for recommending persons for appointment as the Chief Justice of India and other justices of the Supreme Court, and as chief justices and other justices of the high courts.¹²⁵
- **Rights of Persons with Disabilities Bill, 2014:** The Bill replaces the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The

¹²¹ *Legislative Procedure in the Rajya Sabha*, RAJYA SABHA (Feb. 2005), http://www.rajyasabha.gov.in/rsnew/practice_procedure/book6.asp, archived at <https://perma.cc/WUQ7-6J5Y>.

¹²² *Legislative Process*, *supra* note 107.

¹²³ *Constitutional Amendment, The Constitution (122nd Amendment (GST) Bill, 2014*, PRS LEGISLATIVE RESEARCH, <http://www.prsindia.org/billtrack/the-constitution-122nd-amendment-gst-bill-2014-3505/>, archived at <https://perma.cc/NT82-K2BW>.

¹²⁴ *The Juvenile Justice (Care and Protection of Children) Bill, 2014: Highlights of the Bill*, PRS Legislative Research, <http://www.prsindia.org/billtrack/the-juvenile-justice-care-and-protection-of-children-bill-2014-3362/> (last visited Feb. 6, 2017), archived at <https://perma.cc/QNM2-M3K7>.

¹²⁵ National Judicial Appointments Commission Bill, 2014, Bill No. 96-C of 2014 (Lok Sabha).

bill expanded the number of disabilities specified under the 1995 Act from seven to nineteen conditions. “Persons with at least 40% disability are entitled to certain benefits such as reservations in education and employment, preference in government schemes etc.”¹²⁶

- **Bureau of Indian Standards Bill, 2015:** This bill replaces the Bureau of Indian Standards (BIS) Act, 1986. It seeks to establish the BIS as the national standards body and to require standardization of certain products.¹²⁷

¹²⁶ *The Rights of Persons with Disabilities Bill, 2014*, PRS LEGISLATIVE RESEARCH, <http://www.prsindia.org/billtrack/the-right-of-persons-with-disabilities-bill-2014-3122/>, archived at <https://perma.cc/47H8-Z9JE>.

¹²⁷ *The Bureau of Indian Standards Bill, 2015*, PRS LEGISLATIVE RESEARCH, <http://www.prsindia.org/billtrack/the-bureau-of-indian-standards-bill-2015-3961/>, archived at <https://perma.cc/EK33-W2U5>.