

**LEGISLATIVE PROCEDURE IN THE
RAJYA SABHA**



**RAJYA SABHA SECRETARIAT
NEW DELHI**

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PREFACE

This booklet is part of the Rajya Sabha Practice and Procedure Series which seeks to describe in brief, the legislative procedure in Rajya Sabha including the procedure about Money and Financial Bills and Bills to amend the Constitution of India. It is based on the provisions of the Constitution of India and the Rules of Procedure and Conduct of Business in Rajya Sabha. The booklet is intended to serve only as a handy guide for ready reference. For full and authentic information original sources may be referred to and relied upon.

New Delhi
February, 2005

DR. YOGENDRA NARAIN
Secretary-General

LEGISLATIVE PROCEDURE IN RAJYA SABHA

Introduction

All legislative proposals are brought before Parliament in the form of Bills. A Bill is a statute in draft. It has to be in a proper format bearing such matters as long and short titles, enacting formula, date of commencement, extent of application, etc. It is divided into clauses, sub-clauses and items. It may also contain schedules, etc. besides these usual and general matters, a Bill has to be accompanied by—(i) a Statement of Objects and reasons giving the aims and purposes of the proposed legislation; (ii) memorandum regarding delegated legislation, indicating the delegation of power to a subordinate authority to make rules, etc; (iii) financial memorandum containing the financial aspect of the Bill, if enacted; and (iv) recommendation of the President, if required for introduction/consideration of the Bill. In case of Bills amending an existing law, the extracts of the sections proposed to be amended are also reproduced in an Annexure. If the Bill contains more than 25 clauses, arrangement of clauses is also appended. It is however, not necessary to append arrangement of clauses in case a Bill containing more than 25 clauses is an amending Bill.

Categories of Bills

Subject to the provisions of the Constitution, a Bill may originate in either House of Parliament. From the procedural point of view, the Bills may be categorised as—

- (i) Government Bills *i.e.*, Bills initiated by Ministers;
- (ii) Private Members' Bills *i.e.*, Bills introduced by members who are not Ministers;
- (iii) Bills to replace Ordinance promulgated by the President when Parliament is not in session;
- (iv) Money and Financial Bills; and
- (v) Bills to amend the Constitution.

I. Procedure regarding Bills originating in Rajya Sabha

All Bills introduced in the House have to pass through various stages and these stages are common to all types of Bills except with few variations or special aspects in regard to certain categories of Bills.

(i) Introduction of a Bill

a. First reading

The actual legislative process starts with the introduction of a Bill. A Bill is introduced by moving a motion for leave to introduce the Bill. If leave is granted

by the House, the Bill is introduced. This stage constitutes the First Reading of the Bill. Normally, the motion for introduction of a Bill is not opposed. But if it is opposed, the Chairman may in his discretion allow a brief explanatory statement to be made by the member who opposes the motion and the member who moves it. Thereafter, without further debate, the question is put to the vote of the House. A member can also oppose a Bill on the ground that it initiates legislation on a matter which is outside the legislative competence of the Parliament. In such a case, the Chairman may permit a full discussion thereon. The question whether leave be granted or not is decided by majority of the members present and voting. For the first time in the history of Rajya Sabha, a Government Bill, namely the Allahabad University Bill, 2004 could not be introduced on 4 February 2004, because the motion for leave to introduce the Bill was negatived by the House.

After a Bill has been introduced, it is published in the Official Gazette as soon as possible. But even before introduction, a Bill might, with the permission of the Chairman, be published in the Gazette. In such a case, which is rare, leave to introduce the Bill is not necessary and it is straightaway introduced.

With the introduction of the Department-related Parliamentary Standing Committees, the Bills

introduced in Rajya Sabha or Lok Sabha may be referred to the respective Committees by the Chairman, Rajya Sabha or the Speaker, Lok Sabha for examination and report. However, it is now a common practice that an Ordinance replacing Bill is not ordinarily referred to the Department-related Parliamentary Standing Committee for examination and report in view of the stipulation of time fixed by the sub-clause (a) of Clause (2) of article 123 of the Constitution which provides that an ordinance promulgated under this article shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions.

b. Second reading

The Second Reading consists of consideration of the Bill which is in two stages.

(i) Motion for consideration

The first stage consists of a discussion on the Bill as a whole when only the principle of the Bill and its provisions are discussed in general. This is done by moving a motion for consideration of the Bill. After the members have spoken, the member-in-charge of

the Bill replies to the debate and the motion is put to the vote to the House. At this stage, it is also open to the House to refer the Bill to a Select Committee of the House or to a Joint Committee of the two Houses, or to circulate the Bill for the purpose of eliciting opinion thereon. This may be done by the member-in-charge of the Bill by moving a motion that the Bill be referred to a Select/Joint committee or that it be circulated for the purpose of eliciting public opinion thereon, instead of moving that it be taken into consideration.

If, however, the member-in-charge of the Bill moves a motion for consideration of the Bill, it is permissible for any other member to move, as an amendment to the motion for consideration, that the Bill be referred to a Select/Joint Committee or be circulated for eliciting public opinion thereon. If the motion is for reference of the Bill to a Joint Committee consisting of members of both the Houses, the concurrence of the other House is necessary.

Bill before the Select/Joint Committee

In case, a Bill has been referred to a Select/Joint Committee, the Committee considers the Bill clause-by-clause just as the House does. Amendments can be moved to various clauses by members of the Committee. The Committee can also take evidence of associations, public bodies or

experts who are interested in the measure. After the Bill has thus been considered, the Committee submits its report to the House which considers the Bill as reported by the Committee.

Circulation of Bill for eliciting opinion

A Bill may be circulated for the purpose of eliciting public opinion thereon and the opinions are obtained through the State Governments and the Governments of Union Territories. Where a Bill has been circulated for eliciting opinion and the opinions thereon have been received, they are laid on the Table of the House. The next motion in regard to the Bill thereafter, is for its reference to a Select/Joint Committee. It is not ordinarily permissible at this stage to move a motion for consideration of the Bill, unless the Chairman allows it. In respect of a Bill passed by Lok Sabha and transmitted to Rajya Sabha, a motion for circulation of the Bill for eliciting public opinion thereon is not permissible.

(ii) Clause-by-clause consideration

The second stage of the Second Reading arises only after the adoption of motion for consideration of the Bill or of the Bill, as reported by the Select/Joint Committee, as the case may be. It consists of clause-by-clause consideration of the Bill as introduced or as reported by the

Select/Joint Committee. Discussion takes place on various clauses and amendments to clauses can be moved at this stage. Amendments and clauses are put to the vote of the house. The amendments become part of the Bill if they are accepted by a majority of members present and voting. After the clauses, the Schedules, if any, the Enacting Formula, Long Title and Short Title of the Bill have been adopted by the House, the Second Reading is deemed to be over.

c. Third reading

Thereafter, the member-in-charge can move that the Bill or the Bill, as amended be passed. This stage is known as the Third Reading of the Bill. At this stage debate is confined to arguments either in support of the Bill or its rejection, without referring to the details thereof further than is absolutely necessary. Only formal, verbal or consequential amendments are allowed at this stage. In passing an ordinary Bill a simple majority of members present and voting is sufficient.

When a Bill has been passed by Rajya Sabha, it is transmitted to Lok Sabha for concurrence with a message signed by the Secretary-General, Rajya Sabha, to that effect.

II. Procedure regarding Bills originating in Lok Sabha and transmitted to Rajya Sabha

After a Bill is passed by Lok Sabha, it is sent to Rajya Sabha for concurrence with a message to that effect and is laid on the Table. The communication of the message to the House and laying of the Bill on its Table is done by the Secretary-General, Rajya Sabha. Thereafter, it goes through the same stages in Rajya Sabha—consideration and passing.

III. Withdrawal of Bill

The member-in-charge of a Bill may at any stage of the Bill move for leave to withdraw the Bill and if such leave is granted, no-further motion is made with reference to that Bill and the Bill is withdrawn. In case such a motion relates to a Bill pending before a Select/Joint Committee, the withdrawal motion stands referred to that Committee for its opinion. It is proceeded with only after the opinion of the Committee in the form of a report is received by the House. In case such a motion relates to a Bill received from Lok Sabha, a motion is required to be moved in Rajya Sabha recommending to Lok Sabha that Lok Sabha may agree to leave being granted by Rajya Sabha to withdraw the Bill. After the adoption of the motion by Rajya Sabha and concurred in by Lok Sabha, the member-in-charge moves for leave to withdraw the Bill. It is a practice that before the motion for withdrawal is put down in the list of business, a statement explaining the reasons for withdrawal of the Bill is circulated to the members.

IV. Provision regarding lapsing of Bills

A Bill pending in Parliament or any of its Committees does not lapse on the prorogation of the Houses. However, pending notices, other than notices of intention to move for leave to introduce a Bill, lapse. A Bill pending in Rajya Sabha which has not been passed by Lok Sabha does not lapse on the dissolution of Lok Sabha but a Bill which is passed by Lok Sabha and is pending in Rajya Sabha lapses on the dissolution of Lok Sabha.

V. Joint sitting of Houses to resolve disagreement between them

If a Bill, passed by one House 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 reception of the Bill by the other House without the Bill being passed by it, the President may call a joint sitting of the two Houses to resolve the deadlock. The Bill is deemed to have been passed by both the Houses in the form in which it is passed by a majority of the total number of members of both the Houses present and voting at the joint sitting.

So far there have been three occasions when joint sittings of the two Houses were held to resolve

disagreements between them. The first such joint sitting was held in 1961 in respect of certain amendments to be made in the Dowry Prohibition Bill, 1959; the second one was held in 1978, when Rajya Sabha rejected the Banking Services Commission (Repeal) Bill, 1977, as passed by Lok Sabha; and the third joint sitting was held on 26 March, 2002 when the Prevention of Terrorism Bill, 2002, as passed by Lok Sabha was rejected by Rajya Sabha. There cannot be a joint sitting of the Houses on a Money Bill or a Constitution Amendment Bill, since in respect of the former, the final power vests in Lok Sabha and in respect of the latter it has to be passed by the requisite majority in each House.

VI. Assent by the President

When a Bill is passed by both the Houses, the Secretariat of the House which is last in possession of the Bill obtains the assent of the President. In the case of a Money Bill or a Bill passed at a joint sitting of the Houses, the Lok Sabha Secretariat obtains the assent of the President. Before the Bill is sent to the President for assent through the Ministry of Law it is endorsed by the Presiding Officer of the House concerned that the Bill has been passed by the Houses of Parliament. The Bill becomes an Act only after receiving the President's assent.

The President can give his assent or withhold his assent to a Bill*. The President can also return the Bill** (except 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 shall not withhold assent thereon.

In the case of a Bill which seeks to amend any of the provisions of the Constitution in terms of article 368 of the Constitution after it is passed by the Houses by the requisite special majority and ratified by the States, where required by the proviso to clause (2) of article 368, the President has to accord his assent thereto.

VII. Private Members' Bills

A member, other than a Minister, who wants to introduce a Bill has to give notice of a motion for leave to introduce the Bill and has to submit a copy of the Bill and an explanatory Statement of Objects and Reasons together with the notice. The period of notice of a motion for leave to introduce a Private Member's Bill is one month unless the Chairman allows the motion to be made at a shorter notice. Such Bills can be taken up

* The President had withheld his assent to the Salary, Allowances and Pension of Members of Parliament (Amendment) Bill, 1991 submitted to him by the Rajya Sabha Secretariat.

** The President had returned the Indian Post Office (Amendment) Bill, 1986 for reconsideration of the Houses. The Bill was withdrawn on 21 March, 2002 by leave of the House.

only on the days which are allotted for transaction of Private Members' Bills. Two and a half hours of a sitting on every alternate Friday are normally allotted for the introduction, consideration, etc. of Private Members' Bills.

The primary responsibility of drafting a Private Member's Bill is that of the Member concerned. Nevertheless the Secretariat renders all possible assistance and advice to members, so that their proposed Bills are not rejected on technical grounds.

On the day allotted for Private Members' Bills, Bills for introduction are set down as the first item in the List of Business for that day. A member can introduce maximum three Bills during a session. For determining the priority of pending Private members' Bills for consideration, a single draw of lot is held for all the days allotted for the Private Members' Bills in the session in respect of names of member-in-charge of bills. In the said draw of lot, ten names are drawn and the priority obtained therein remains valid for the entire session. out of the ten names drawn in the draw of lot, Bills of only five members (excluding part discussed Bill, if any) in order of their priority are included at a time in the List of Business for consideration on each day allotted for Private Members' Bills. Those members who have more than one Bill pending against their names are eligible to select one of their Bills but no

member is eligible to take up more than one Bill for consideration in the same session. The maximum time limit for discussion on a Private Members' Bill is two hours.

A Private Members' Bill passes through the same stages of procedure as mentioned earlier till it receives the assent of the President to become part of the statute book.

VIII. Bills to replace Ordinances

Under the Constitution, the President is empowered to promulgate an Ordinance when both Houses of Parliament are not in session. Such an Ordinance has the same force and effect as an Act of Parliament, but every such Ordinance has to be laid before each House of Parliament and ceases to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of the period, resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions. It is, therefore, permissible for a member to table a resolution for disapproval of an Ordinance. Whenever, a Bill seeking to replace an Ordinance with or without modifications is introduced, a statement explaining the circumstances which necessitated legislation by Ordinance is required to be placed before the House before introduction of the Bill. If such an Ordinance embodies wholly or partly or in a modified form the

provisions of a pending Bill, a statement explaining the circumstances which necessitated legislation by Ordinance has to be laid on the Table at the commencement of the session following the promulgation of the Ordinance. The resolution, if any, for the disapproval of the Ordinance and the motion for consideration of the Bill replacing it are discussed together, the member giving notice of resolution moving it first and the Minister concerned moving motion for consideration of the Bill next. Thereafter, the Bill passes through the same procedural stages as mentioned earlier. But the resolution is disposed first.*

IX. Money Bills and Financial Bills

a. Money Bills

A Money Bill, as defined in article 110 of the Constitution, is a Bill which contains only provisions dealing with all or any of these matters, namely, (a) the

* On 5 August 1991, the statutory resolution of Shri S.S. Ahluwalia, M.P. for disapproval of the Code of Criminal Procedure (Amendment) Ordinance, 1991, was adopted and the Bill replacing the Ordinance fell through. On 7 August 1997, the Statutory Resolution of Shri Satish Agarwal, M.P. for disapproval of the Presidential and Vice-Presidential Elections (Amendment) Ordinance, 1997, was adopted and the Bill replacing the Ordinance fell through. Similarly, on 22 March 2002, the statutory resolution of Shri Kapil Sibal, M.P. for disapproval of the Prevention of the Terrorism (Second) Ordinance, 2001 (No. 12 of 2001) was adopted and the Bill replacing the Ordinance fell through.

imposition, abolition, remission, alteration or regulation of any tax; (b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India; (c) the custody of the Consolidated Fund or the Contingency Fund of India, the payment of moneys into or the withdrawal of moneys from any such Fund; (d) the appropriation of moneys out of the Consolidated Fund of India; (e) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure; (f) the receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State; or (g) any matter incidental to any of the matters specified in sub-clauses (a) to (f). However, a Bill is not deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

A Money Bill can be introduced only in Lok Sabha and not in Rajya Sabha. On the question whether a Bill is a Money Bill or not, the decision of the Speaker

is final. On every Money Bill, Speaker endorses a certificate signed by him to the effect that it is a Money Bill, before the Bill is sent to Rajya Sabha or presented to the President for assent.

The procedure with regard to the Money Bills in Rajya Sabha is the same as in the case of other Bills transmitted by Lok Sabha with the difference that in case of other Bills the amendments are adopted and, the last motion is that the Bill be passed while in the case of Money Bills, the amendments are recommended and the last motion is that the Bill be returned. On the adoption of this motion, a Money Bill is returned to Lok Sabha with the message that Rajya Sabha has no recommendations to make to the House in regard to the Bill or with the message intimating to the House the amendments so recommended, as the case may be. Lok Sabha has the option to accept or reject all or any of the recommendations of Rajya Sabha. The Bill, however, has to be returned within a period of fourteen days from the date of its receipt by Rajya Sabha, otherwise it will be deemed to have been passed by both the Houses at the expiration of the said period in the form in which it was passed by Lok Sabha.

In the case of a Bill introduced in Rajya Sabha if there is any objection that the Bill is a Money Bill and should not be proceeded with in Rajya Sabha, and the

Chairman has any doubt in regard to the validity of the objection, he refers the matter to the Speaker of Lok Sabha whose decision on the question is final. There cannot be a joint sitting to resolve differences between the two Houses on a Money Bill, as stated earlier.

b. Financial Bills—Category-I

A Bill falling under clause (1) of article 117 of the Constitution is called a Financial Bill. It is a Bill which seeks to make provision for any other matters specified in sub-clauses (a) to (f) of clause (1) of article 110 as also other matters. It is, so to say, a Bill which has characteristics both of a Money Bill and an ordinary Bill. As in the case of a Money Bill, firstly, it cannot be introduced in Rajya Sabha, and secondly, it cannot be introduced except on the recommendations of the President. Except these two points of difference, a Financial Bill in all other respects is just like any other ordinary Bill.

c. Financial Bills—Category-II

There is yet another class of Bills which are also Financial Bills under article 117(3). Such Bills are more in the nature of ordinary Bills rather than the Money Bills and Financial Bills mentioned earlier. The only point of difference between this category of Financial Bills and the ordinary Bills is that such a Financial Bill, if enacted and brought into operation, involves expenditure from the Consolidated Fund of

India and cannot be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill. In all other respects this category of Bills is, just like ordinary Bills, so that such a Financial Bill can be introduced in Rajya Sabha, amended by it or a joint sitting can be held in case of disagreement between the Houses over such a Bill. There is, in other words, no limitation on the power of Rajya Sabha in respect of such Financial Bills.

X. Constitution Amendment Bills

Article 368 of the Constitution confers power on Parliament to amend the Constitution and provides the procedure for it. A Bill seeking to amend the Constitution can be introduced in either House of Parliament by a Minister or a private member. Motion for leave to introduce the Bill can be adopted by a simple majority of members present and voting. The Constitution provides for the following three types of constitutional amendments.

(1) Amendment by simple majority

Bills regarding formation of new States or alteration of areas of existing States, or creation or abolition of Legislative Councils in the States, etc. are treated as ordinary Bills and passed by a simple majority of the House. They are not regarded as Constitution

(Amendment) Bills although they have the effect of amending some provisions of the Constitution.

(2) Amendment by special majority

A Bill seeking to amend any other part of the Constitution has to be passed in each House of Parliament by a special majority *i.e.*, by a majority of the total membership of the House and by a majority of not less than two-thirds of the members of the House present and voting. The expression "total membership" means the total number of members comprising the House irrespective of the vacancies or absentees. The expression 'present and voting' means members who vote for "ayes" or for "noes". Members who vote as "abstention" are not treated as "present and voting".

According to the established procedure, the two-thirds majority is required at all the effective stages of the Bill and not merely at the Third Reading (passing) stage of the Bill. As such motion that the Bill be taken into consideration; motion that the Bill as reported by the Select/Joint Committee be taken into consideration; motion that the Bill, as passed by Lok Sabha, be taken into consideration; motion for adoption of clauses and schedules to the Bill, and final motion that the Bill be passed are all required to be passed by a special majority. Motion that the Bill be circulated for eliciting public opinion thereon or that the Bill be referred to a Select/Joint Committee can be passed by simple

majority. In case of special majority, voting is always by Divisions and the Chair, while announcing the result of the voting, specifically mentions that a particular motion or clause has been carried by a special majority.

The Constitution (Twenty-fourth Amendment) Bill, 1970, regarding the abolition of privy purses and privileges of the rulers of former Indian States, the Constitution (Sixty-fourth Amendment) Bill, 1989 and the Constitution (Sixty-fifth Amendment) Bill, 1989, regarding establishment of the Panchayati Raj bodies and the Municipalities in rural and urban areas, respectively could not be passed as these Bills did not get the requisite majority in Rajya Sabha.

(3) Amendment and its ratification by States

An amendment to the Constitution which seeks to make any change in articles relating to the election of the President, the extent of the executive power of the Union and the States, the Supreme Court and the High Courts, any of the lists in the Seventh Schedule, representation of States in Parliament or article 368 of the Constitution itself, after it is passed by the Houses of Parliament by the special majority, has also to be ratified by legislatures of not less than one-half of the States by resolutions to that effect before the Bill making provision for such an amendment is presented to the President for assent, which is done after receipt of authenticated copies of resolutions from the State

Legislatures. When a Bill duly passed by the Special majority or where necessary, ratified by States, is presented to the President, he is obligated to give his assent to the Bill and thereupon the Constitution stands amended in accordance with the Bill.