

State Legislature - Legislative Council

legislative council

A legislative council is the legislature, or one of the legislative chambers, of a nation, colony, or subnational division such as a province or state. It was commonly used to label unicameral or upper house legislative bodies in the British (former) colonies. However, it has also been used as designation in other (non Commonwealth) nations. A member of a legislative council is commonly referred to as an MLC.

Abolition or creation of Legislative Councils in States.—

(1) Notwithstanding anything in article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.

(2) Any law referred to in clause (1) shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary.

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

Draft article 148A was introduced by Dr. Ambedkar in the Constituent Assembly on 30 July, 1949. It proposed that after article 148 the following new article be inserted:

Article 171 {Composition of the Legislative Council}

1. The total number of members in the Legislative Council of a State having such a Council shall not exceed one-third of the total number of members in the Legislative Assembly of that State: Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.
2. Until Parliament by law otherwise provides, the composition of the Legislative Council of a State shall be as provided in clause (3).
3. Of the total number of members of the Legislative Council of a State -

- a. as nearly as may be, one-third shall be elected by electorates consisting of members of municipalities, district boards and such other local authorities in the State as Parliament may by law specify;
 - b. as nearly as may be, one-twelfth shall be elected by electorates consisting of persons residing in the State who have been for at least three years graduates of any university in the territory of India or have been for at least three years in possession of qualifications prescribed by or under any law made by Parliament as equivalent to that of a graduate of any such university;
 - c. as nearly as may be, one-twelfth shall be elected by electorates consisting of persons who have been for at least three years engaged in teaching in such educational institutions within the State, not lower in standard than that of a secondary school, as may be prescribed by or under any law made by Parliament;
 - d. as nearly as may be, one-third shall be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly;
 - e. the remainder shall be nominated by the Governor in accordance with the provisions of clause (5).
4. The members to be elected under sub-clause (a), (b) and (c) of clause (3) shall be chosen in such territorial constituencies as may be prescribed by or under any law made by Parliament, and the elections under the said sub-clauses and under sub-clause (d) of the said clause shall be held in accordance with the system of proportional representation by means of the single transferable vote.
 5. The members to be nominated by the Governor under sub-clause (e) of clause (3) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely: - Literature, science, art, co-operative movement and social service.

Election To Legislative Council

Article 169

- The Parliament can abolish a legislative council (where it already exists) or create it (where it does not exist) by a simple majority, that is, a majority of the members of each House present and voting, if the legislative assembly of the concerned state, by a special majority, passes a resolution to that effect.

- **Special majority** implies, a majority of the total membership of the assembly and majority of not less than two-thirds of the members of the assembly present and voting.

Composition

- Under **Article 171** of the Constitution, the Legislative Council of a state shall not have more than one-third of the total strength of the State Assembly, and not less than 40 members.
- Like the Rajya Sabha, the legislative council is a continuing chamber, that is, it is a permanent body and is not subject to dissolution. The tenure of a Member of the Legislative Council (MLC) is six years, with one-third of the members retiring every two years.

Manner of Election

- One-third of the MLCs are elected by the state's MLAs,
- Another 1/3rd by a special electorate comprising sitting members of local governments such as municipalities and district boards,
- 1/12th by an electorate of teachers and another 1/12th by registered graduates.
- The remaining members are appointed by the Governor for distinguished services in various fields namely, literature, science, art, cooperative movement and social service.

LC vis-à-vis Rajya Sabha

- The legislative power of the Councils are limited. Unlike Rajya Sabha which has substantial powers to shape non-financial legislation, Legislative Councils lack a constitutional mandate to do so.
- Assemblies can override suggestions/amendments made to legislation by the Council.
- Again, **unlike Rajya Sabha MPs, MLCs cannot vote in elections for the President and Vice President.** The Vice President is the Rajya Sabha Chairperson while a member from the Council itself is chosen as the Council Chairperson.

State Legislature - Seat of Legislative Council and Chairman

Article 173 {Qualification for membership of the State Legislature}

A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he -

- a. is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule;
- b. is, in the case of a seat in the Legislative Assembly, not less than twenty-five years of age and, in the case of a seat in the Legislative Council, not less than thirty years of age; and
- c. possesses such other qualifications as may be prescribed in that behalf by or under any law made by parliament.

Article 191 {Disqualification for membership}

1. A person shall be disqualified for being chosen as, and for being, a member of the legislative Assembly or Legislative Council of a State -
 - a. if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;
 - b. if he is of unsound mind and stands so declared by a competent court;
 - c. if he is an undischarged insolvent;
 - d. if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;
 - e. if he is so disqualified by or under any law made by Parliament.

[Explanation: For the purposes of this clause, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.]

2. A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.

State Legislature - Legislative Assembly and Reservation

Article 170 {Composition of the Legislative Assemblies}

1. Subject to the provisions of article 333, the Legislative Assembly of each State shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State.
2. For the purposes of clause (1), each State shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State. [Explanation: In this clause, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published: Provided that the reference in this Explanation to the last preceding census of which the relevant figures have been published shall, until the relevant figures for the first census taken after the year 2000 have been published, be construed as a reference to the 1971 census.]
3. Upon the completion of each census, the total number of seats in the Legislative Assembly of each State and the division of each State into territorial constituencies shall be readjusted by such authority and in such manner as Parliament may by law determine: Provided that such readjustment shall not affect representation in the Legislative Assembly until the dissolution of the then existing Assembly: Provided further that such readjustment shall take effect from such date as the President may, by order, specify and until such readjustment takes effect, any election to the Legislative Assembly may be held on the basis of the territorial constituencies existing before such readjustment: Provided also that until the relevant figures for the first census taken after the year 2000 have been published, it shall not be necessary to readjust the total number of seats in the Legislative Assembly of each State and the division of such State into territorial constituencies under this clause.

Tenure of mla

MLA stands for the Member of Legislative Assembly. A state legislative assembly has a specific number of constituencies depending on the demographic of the state. A representative is elected directly by the people of the constituency, who then

becomes a Member of the Legislative Assembly or MLA. MLA is elected for a term of **5 years**.

Article 189 {Voting in Houses, power of Houses to act notwithstanding vacancies and quorum}

1. Save as otherwise provided in this Constitution, all questions at any sitting of a House of the Legislature of a State shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman, or person acting as such. The Speaker or Chairman, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.
2. A House of the Legislature of a State shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature of a State shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.
3. Until the Legislature of the State by law otherwise provides, the quorum to constitute a meeting of a House of the Legislature of a State shall be ten members or one-tenth of the total number of members of the House, whichever is greater.
4. If at any time during a meeting of the Legislative Assembly of the Legislative Council of a State there is no quorum, it shall be the duty of the Speaker or Chairman, or persons acting as such, either to adjourn the House or to suspend the meeting until there is a quorum.

State Legislature - Special Article 370

Special Status Of Jammu & Kashmir

Under the Part XXI of the Constitution of India, which deals with “Temporary, Transitional and Special provisions”, Article 370 is a temporary provision granting special autonomous status to Jammu and Kashmir.

The Temporary, Transitional and Special provisions are provided in part XXI of our constitution’ Article 370 deals with the State of Jammu & Kashmir which forms a part of the ‘territory of India’ as defined in Article 1 of the Constitution, being the fifteenth State included in the First Schedule of the Constitution, as it stands amended.

Nevertheless, the special Constitutional position which Jammu & Kashmir enjoyed under the original Constitution has been maintained, so that all the provisions of the Constitution of India relating to the States in the First Schedule are not applicable to Jammu & Kashmir. This is the only State which has its own Constitution.

Administration of Union territories

Article 239 which deals with the administration of Union Territories like Delhi, is our exponent of study here. Now before beginning with the administration of Union Territories, it is essential to know what constitutes the Union Territories.

States and territories under the First Schedule, in Part C and Part D respectively were replaced by the Union Territories, under Part II of the First Schedule. This was done in the 7th Amendment Act, 1956. At that time Union Territories were six in number namely, Delhi; Himachal Pradesh; Manipur; Tripura; Andaman & Nicobar Islands; Laccadive; Minicoy and Amindivi Islands.

However after successive Amendment Acts, the following belong to the list of Union Territories:

1. Andaman & Nicobar Islands;
2. Chandigarh;
3. Dadra & Nagar Haveli;
4. Delhi;
5. Daman and Diu;
6. Lakshwadeep;
7. Puducherry;
8. Jammu & Kashmir;
9. Ladakh.

The need for forming of the Union Territories was safeguarding the rights of indigenous cultures, averting political turmoil related to governance matters, etc. For these reasons the status of "Union Territory" may be assigned to an Indian sub-jurisdiction.

Now coming back to what Article 239 talks about. Article 239 begins by stating that the administration of every Union Territory shall be done by the President to such

extent as he thinks fit. An administrator can also be appointed by the President as and when he feels. Clause (2) of the same article states that the President can appoint the Governor of a State as the Administrator of an adjoining Union Territory and after such an appointment, the Governor may exercise his power and execute his functions independently of his Council of Ministers.

Scheduled and Tribal Areas in India

Article 244 deals with the administration of Scheduled areas and Tribal areas. The provisions of the Fifth Schedule of the constitution apply to the administration and control of the scheduled areas and scheduled tribes in any state other than the states of Assam, Meghalaya, Tripura and Mizoram.

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Administration of Schedule Areas

The Features of the Fifth Schedule are Mentioned Below:

1. Declaration of Scheduled Areas: The constitution empowers the President to declare any areas as scheduled area. The president can increase or decrease its area or alter its boundaries. He can cancel such designation after consultation with the governor or can make fresh orders redefining the schedule areas.

2. Executive Power of State and Centre: Subject to the provisions of this schedule, the executive power of state extends to the scheduled areas therein. The governor of each state having scheduled areas annually, or whenever required by the president, make a report to the president regarding the administration of the scheduled areas

in that state. The executive power of the union extends to the giving of directions to the state as to the administration of such areas.

3. Tribes Advisory Council: Each state having scheduled areas needs to establish tribes advisory council consisting of not more than twenty members of whom about three-fourth members should be the representatives of the scheduled tribes in the legislative assembly of the state.

4. Law Applicable to Scheduled Areas: The governor is empowered to direct that any particular act of parliament or of the legislature of the state does not apply to a scheduled area subject to such exceptions and modifications as he may specify in the notification.

(a) Prohibit or restrict the transfer of land by or among members of the scheduled tribes in such area;

(b) Regulate the allotment of land to members of the scheduled tribes in such area;

(c) Regulate the carrying on of business as money-lender by persons who lend money to members of the scheduled tribes in such area.

In doing so, he may repeal or amend any act of parliament or the state legislature or any existing law which is for the time being applicable to such area. All the above regulation requires the assent of the president.

Tribal Areas Sixth Schedule

The Sixth Schedule deals with the administration and control of the tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram.

Administration of Tribal Areas

The Sixth Schedule of the constitution provides special provisions for the administration of the tribal areas in Assam, Meghalaya, Tripura and Mizoram. The provisions of the schedule are as follows:

1. It provides for autonomous districts and autonomous regions.
2. The governor can increase, decrease, re-organise or alter the boundary of these districts.
3. If there are different scheduled tribes in an autonomous district, the governor may divide the area or areas inhabited by them into autonomous regions.
4. Each autonomous district has a district council consisting of not more than thirty members, of whom not more than four persons shall be nominated by the governor and the rest shall be elected on the basis of adult suffrage. The elected members of

the district council hold office for a term of five years and nominated member hold office at the pleasure of the governor.

5. The district and the regional councils can make laws on matters such as land, forests, canal water, Jhum cultivation, local administration, inheritance of property etc.

6. The district and the regional councils may constitute village councils or courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas.

7. The district council can establish, construct, or manage primary schools, dispensaries, markets, ferries, fisheries, roads, road transport and waterways in the district.

8. A district fund for each autonomous district, and a regional fund for each autonomous region is constituted to which money received respectively by the district council

9. The district and the regional councils have powers to assess and collect land revenue and to impose certain taxes.

10. The district council is empowered to make regulations for the Control of money-lending and trading by non-tribals.

11. Estimated receipts and expenditure pertaining to autonomous districts has to be shown separately in the annual financial statement of the state.

12. An act of parliament or of the legislature of the state does not apply to a autonomous districts and autonomous regions or apply with specified exceptions and modifications.

13. If at any time the Governor is satisfied that an act or resolution of a district or a regional council is likely to endanger the safety of India he may suspend such an act or resolution and take such steps.

14. The governor can appoint a commission to look into and report on the matters related to administration of the autonomous districts or regions.