



Odisha plans Legislative Council

The Odisha government is expected to introduce a Bill in the Odisha Assembly for the creation of a Vidhan Parishad or Legislative Council (LC), a second House of legislature.

- The State Cabinet has approved a 49-member Legislative Council, accepting the report of a committee set up in 2015 to study the functioning of the second chamber in other States and make recommendations.
- The committee recommended that Members of the Legislative Council's (MLC) salary should be the same as the Members of the Legislative Assembly (MLAs).
- According to it, like the MLAs, the MLCs too should be entitled to Local Area Development (LAD) funds and they should be given the opportunity to become ministers.

Background

- Currently, six states have Legislative Councils- Andhra Pradesh, Bihar, Karnataka, Maharashtra, Telangana, Uttar Pradesh.
- Proposals to create Councils in Rajasthan and Assam are pending in Parliament.
- While the parliamentary committee that looked into these Bills cleared the proposals, it struck a cautionary note.
 - It wanted a national policy on having an Upper House in State legislatures to be framed by the Union government, so that a subsequent government doesn't abolish it.
 - It also favoured a review of the provision in the law for Councils to have seats for graduates and teachers.

Constitutional Provisions

- India's transition from unicameral to bicameral legislature started under the Government of India Act, 1919, which established the council of state—now the Rajya Sabha—in 1921.
- The Montague-Chelmsford report, which envisaged formation of the Upper House at the Centre also proposed Upper Houses in provinces.
- Later under the Government of India Bill, 1935 Upper Houses were established in Bengal, the United Provinces, Bihar, Bombay, Madras and Assam in the middle of 1937.
- Consequently, the Indian Constitution provided for Article 169.
 - According to **Article 169**, a Legislative Council can be formed "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".
 - Parliament can then pass a law to this effect.
- Under **Article 171** of the Constitution, the Legislative Council of a state shall not have more than one-third of the total number of MLAs of the state, and not less than 40 members.
- However, as an exception - in Jammu & Kashmir, as per Section 50 of the state's Constitution, the Assembly has 87 members and the Legislative Council 36.
- As with Rajya Sabha MPs, the tenure of a MLC is six years, with one-third of the members retiring every two years.
- Similarly, MLCs are not directly elected by voters - like Rajya Sabha.

Election Procedure

- One-third of the MLCs are elected by the state's MLAs,
- One-third by a special electorate comprising sitting members of local governments such as municipalities and district boards,
- 1/12th by an electorate of teachers, and
- 1/12th by registered graduates.
- The remaining members are appointed by the Governor for distinguished services in various fields.

Why a second House

- A second House can help check hasty actions by the directly elected House, and also enable non-elected individuals to contribute to the legislative process.
- It provides a forum for academicians and intellectuals, who are arguably not suited for the rough and tumble of electoral politics.
- It provides a mechanism for a more sober and considered appraisal of legislation that a State may pass.
- Other arguments cited in favour of Legislative Councils range from their track record of sincere work, relevant amendments brought, non-confrontational attitude vis-à-vis legislative assembly, decorum and restraint in proceedings and drawing attention of both government and public to matters of public interest.

Shortcomings of a second House

- A Legislative Council can be used to delay legislation.
- The forum is likely to be used to accommodate party functionaries who fail to get elected
- It can also be an unnecessary drain on the exchequer.
- Moreover, graduates are no longer a rarity; also, with dipping educational standards, a graduate degree is no guarantee of any real intellectual heft.

LC vis-à-vis Rajya Sabha

- Legislative Councils have limited legislative power.
- Unlike Rajya Sabha which has substantial powers to shape non-financial legislation, LCs lack a constitutional mandate to do so.
 - Assemblies can override suggestions/amendments made to a legislation by the Council.
- Unlike Rajya Sabha MPs, MLCs cannot vote in elections for the President and Vice President.
- The Vice President is the Rajya Sabha Chairperson; an MLC is the Council Chairperson.

LC vis-à-vis Legislative Assembly

Equal with Assembly

- Introduction and passage of ordinary bills. (*However, in case of disagreement between the two Houses, the will of the assembly prevails over that of the council.*)
- Approval of ordinances issued by the governor.
- Ministers including the chief minister can be from either House.
- Enlargement of the jurisdiction of the state public service commission.

Unequal with Assembly

- Money Bill
 - A Money Bill can be introduced only in the assembly and not in the council.
 - The council cannot amend or reject a money bill - LC should return the bill to the assembly within 14 days.
 - The final power to decide whether a particular bill is a money bill or not is vested in the

Speaker of the assembly.

- The final power of passing an ordinary bill also lies with the assembly.
- LC can only discuss the budget but cannot vote on the demands for grants.
- LC cannot remove the council of ministers by passing a no-confidence motion.
- It does not participate in the election of the president of India and representatives of the state in the Rajya Sabha.
- It has no effective say in the ratification of a constitutional amendment bill.
- The very existence of the council depends on the will of the assembly.

◦ The council can be abolished by the Parliament on the recommendation of the assembly.

Way Forward

- Legislative Councils are subject to varied and inconclusive discussions around their creation, revival and abolishment. Given this, Odisha's proposal may give the country an opportunity to evolve a national consensus on Legislative Councils.
- An intense and detailed study of Legislative Councils and their role in enriching the process

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