

Chapter 9

Legislation

Ministry/
Department
responsible for
initiating legislation

9.1 Every proposal for legislation in Parliament will be initiated in the Ministry/Department to which the subject matter of the legislation relates.

Pre-drafting stage

9.2 Pre-drafting stage of a legislative proposal will fall into the following four broad sub-stages:

Formulation
of legislative
proposals

(a) The Ministry/Department concerned will formulate the legislative proposals in consultation with all the interests and authorities concerned, essentially from administrative and financial points of view. This should include a discussion on the necessity for the proposed legislation and all matters of substance to be embodied therein but not the technical details of the drafting.

Consultation with
the Ministry of Law
and Justice

(b) The Ministry/Department concerned will thereafter refer the matter to the Ministry of Law and Justice for advice as to its feasibility from legal and constitutional points of view. The Ministry of Law and Justice will, at this stage, advise generally on the necessity or desirability of such legislation in the light of the existing laws and also constitutional validity of the proposals without going into details.

Approval of the
Cabinet

(c) If it is decided to proceed with the legislation, a self-contained note will be prepared by the Ministry/Department concerned in consultation with the Ministry of Law and Justice (Legislative Department) and other concerned Ministries/Departments.

(d) The Ministry/Department concerned will also send all the relevant papers to the Ministry of Law and Justice (Legislative Department) with an Office Memorandum indicating the precise lines on which it has been decided to legislate, to enable that department to take up drafting of the requisite Bill. The Office Memorandum will contain:

- (i) complete details of the legislative proposals;
- (ii) the entire background material (placed on the file for reference);
- (iii) all other details relevant to the proposed Bill; and
- (iv) Draft Note for the Cabinet.

The administrative Ministry/Department will not attempt a draft of the Bill.

9.3 The Ministry of Law and Justice (Legislative Department) will then prepare a draft Bill ordinarily within thirty days from the date of receipt of the proposal after clearance from the Department of Legal Affairs, unless any clarifications are required or it is not possible to do so for contingencies such as the draftsman being busy with budget proposals etc., on the basis of the material made available by the concerned Ministry/Department, holding discussions with the officers of that Ministry/Department for getting various aspects of the Bill clarified, wherever considered necessary. Drafting stage

9.4 The format of the Bill shall be as below:

Format of the Bill

- (a) if the Bill contains more than 25 clauses, include in the beginning a table showing the arrangement of clauses; and
- (b) in the case of an amending Bill, contain relevant extracts of provisions of original Act sought to be amended.

Approval of the
Cabinet

9.5 Once the Note for the Cabinet, as prepared in consultation with the Ministry of Law and Justice and other concerned Ministries/Departments, is finalised and the draft of the Bill prepared by the Ministry of Law and Justice (Legislative Department) is accepted after scrutiny by the Ministry/Department concerned, the Ministry/Department will send the Note to the Cabinet Secretariat for placing the same before the Cabinet for its consideration and approval. The Note for the Cabinet will:

- (a) state the legislative proposals, bringing out clearly the need, scope, and object of the proposed legislation;
- (b) incorporate the views of other concerned Ministries/Departments and be also shown to them, if so required by the procedure laid down by the Cabinet Secretariat;
- (c) set out all the implications of the proposed legislation; and
- (d) include the draft of the proposed Bill as Appendix II.

Action to be taken
after Cabinet
decision

9.6 After the Cabinet approval, the Ministry/Department concerned will examine the decision of the Cabinet to see whether any change is necessary in the draft Bill submitted to the Cabinet. If so, all the relevant papers including the decisions of the Cabinet will be sent to the Ministry of Law and Justice (Legislative Department) to enable that Ministry/Department to make necessary changes in the draft Bill in consultation with the concerned Ministry/Department in accordance with the decisions of the Cabinet. In case, however, no modifications are necessary in the Bill after the Cabinet approval, the Ministry/Department concerned will prepare:

- (a) a Statement of Objects and Reasons relating to the Bill to be signed by the Minister;
- (b) notes on Clauses to be appended to the Statement of Objects and Reasons in case the Bill is of a complicated nature;

PRO8.1
RSR62
LSR65
Notes on clauses

- (c) Financial Memorandum to be prepared in consultation with the Ministry of Finance, in respect of Bills involving expenditure, inviting particular attention to clauses involving expenditure and also giving an estimate of the recurring and non-recurring expenditure involved. As clauses involving expenditure are required to be printed in thick type, necessary marking may be made in the text; and
- (d) a Memorandum regarding Delegated Legislation explaining the scope of the proposals and stating whether they are of a normal or exceptional character.
- All the above documents will also be shown to the Ministry of Law and Justice (Legislative Department) before finalization.
- 9.7.1** After action as in para 9.6 is taken, the Ministry/ Department concerned will obtain :
- (a) recommendation of the President for the introduction of any Bill:
- (i) seeking the formation of new States or for the alteration of areas, boundaries or names of existing States (Article 3 of the Constitution); or
- (ii) making provision for any of the matters specified in sub-clauses (a) to (f) of clause (1) of Article 110 of the Constitution in accordance with Article 117(1); or
- (iii) imposing or varying any tax or duty in which States are interested (Article 274 of the Constitution); or
- (b) the previous sanction of the President for introduction of any Bill, making provision for the language to be used, for any of the purposes mentioned in Article 348(1) of the Constitution; and
- (c) the recommendation of the President for the consideration of the Bill, if it involves expenditure from the Consolidated Fund of India (Article 117(3) of the Constitution.)

Financial
Memorandum
PRO 7.2, 7.3
RSR 64
LSR 69

Memorandum
regarding Delegated
Legislation
PRO 8.4
RSR 65
LSR 70

Obtaining
recommendation/
previous sanction of
the President
PRO 8.10
PRO 8.21 to 8.25

- PRO 8.22 Note :The recommendation mentioned in (c) above will be obtained separately in respect of each House.
- 9.7.2** For obtaining the recommendation or the previous sanction of the President, the Ministry/Department will submit through the Minister to the President a self-contained note with a copy of the note for the Cabinet and its decision and a copy of the Bill.
- PRO 8.23 **9.7.3** The Ministry/Department will, thereafter, communicate the recommendation/previous sanction of the President through a letter from the Minister addressed to the Secretary General, Rajya Sabha/Lok Sabha in the form at Annex 7.
- 9.7.4** To avoid objections of a procedural or constitutional nature, the Ministry/Department will submit to the Minister, information in the form at Annex 8
- Keeping the Ministry of Parliamentary Affairs informed **9.8** To enable the Ministry of Parliamentary Affairs to draw up the legislative programme of a session, detailed particulars about the Bill(s) proposed to be introduced during a session will be sent to that Ministry in Part I of the form given in Annex 1, at least a month before the commencement of the session.
- House in which Bill is to be introduced **9.9** Bills which attract the provisions of Article 109 read with Articles 110(1) and 117(1) of the Constitution will be introduced in the Lok Sabha. In the case of the other Bills, the House in which they are to be introduced will be decided in consultation with the Ministry of Parliamentary Affairs.
- Printing of the Bill **9.10.1** The Ministry of Law and Justice (Legislative Department) will send the Bill as finalised, to the Government of India Press for obtaining proof copy.
- 9.10.2** After receipt of the proof from the Government of India Press, the Ministry of Law and Justice (Legislative Department) will scrutinise proof and :
- PRO8.12 (a) send simultaneously two proof copies each of English and Hindi versions of the Bill duly authenticated by Legislative Counsel to:

(i) the Secretariat of the House in which it has been decided to introduce the Bill (vide para 9.9 above); and

(ii) the Ministry of Parliamentary Affairs; and

(b) return the file to the Ministry/Department concerned.

9.10.3 The Rajya Sabha/Lok Sabha Secretariat gets the copy of the Bill printed at every stage and sends a copy of it simultaneously to the administrative Ministry/Department and to the Legislative Department for scrutiny for ensuring accuracy. The administrative Ministry/Department, after scrutiny of the Bill, returns it within a day to the Legislative Department so as to enable the Legislative Department to incorporate corrections/suggestions, if any, and send a final scrutinised copy to the Rajya Sabha/Lok Sabha Secretariat.

9.10.4 After receipt of the scrutinised copies of the Bill from the Ministry of Law and Justice (Legislative Department), the Rajya Sabha/Lok Sabha Secretariat gets copies of the Bill circulated to the members, along with errata, if any. PRO 8.20

9.10.5 Ministries/Departments requiring additional copies of Bills should send a requisition in form S.99 to the RS/LS Secretariat so that it reaches it before the proof copy is transmitted by that Secretariat to the press. PRO 8.20

9.10.6 A similar procedure will be followed for obtaining additional copies of reports of Select Committee/Joint Committee/Standing Committee on Bills. Requisitions, therefore, should be made sufficiently in advance of the date of presentation of the report. PRO 8.28

9.11.1 The concerned Ministry/Department will send a notice of the motion for introduction of the Bill, signed by the Minister, in the form at Annex 9, to the Secretary General, Rajya Sabha/Lok Sabha, with a copy to the Ministry of Parliamentary Affairs. One printed copy of the Bill in each version, duly authenticated by the Minister, will be sent to the Secretariat of the House in which the Bill is proposed to be introduced. Procedure for introducing the Bill in the House

9.11.2 Under the directions of the Chairman/Speaker:

SD 19A
PRO 8.14

(a) seven days' notice is normally required for introducing an official Bill in the Lok Sabha and five days in case of the Rajya Sabha; and

SD 19B
PRO 8.13

(b) no bill shall be included for introduction in the Rajya Sabha/Lok Sabha until after copies thereof have been made available to members for at least two days before the day on which the Bill is proposed to be introduced.

9.11.3 Where exemption is required from the direction 20A(2) of Directions by the Chairman in Rajya Sabha or direction 19A of Directions by the Speaker in Lok Sabha, the Minister, while giving full reasons, will request the Chairman/Speaker to waive the requirement of this direction for introduction of the Bill. Where the exemption is required under Chairman Direction 20 B, the Minister shall give full reasons in a memorandum for consideration of the Chairman explaining as to why the Bill is sought to be introduced in Rajya Sabha earlier than two days. Where, however, the exemption is required from the direction 19B of the Speaker, the Minister while requesting the Speaker in this regard will also inform him that he has consulted the leaders of various parties in the Lok Sabha and that they have no objection to the exemption of the direction for introduction of the Bill. The Ministry/Department concerned will also forward 300 (three hundred) copies (for RS) and 500 (five hundred) copies (for LS) in English and 100 (one hundred) copies (for RS) and 300 (three hundred) copies (for LS) in Hindi of a memorandum in the form at Annex 10, including one copy in each version duly authenticated by the Minister, to the Rajya/ Lok Sabha Secretariat respectively for circulation among members.

9.11.4 On the date specified by the Ministry of Parliamentary Affairs, the Bill is put down for introduction in the Rajya Sabha/Lok Sabha and is thereafter published in the Gazette of India by the RS/LS Secretariat.

9.11.5 On a request made by the Minister, the Chairman/ Speaker may permit the publication of the Bill in the gazette by the RS/LS Secretariat before its introduction. In such cases, the Bill will be put down for introduction without asking for the leave of the House. Where, however, such a Bill undergoes any change before its formal introduction, the procedure as in sub-para 9.11.1 will be followed.

Publication before
introduction
PRO 8.7
RSR 61
LSR 64

9.11.6 The Departmentally related Parliamentary Standing Committees examine such Bills as are referred to these committees by the Chairman, Rajya Sabha or the Speaker, Lok Sabha, as the case may be, and make reports thereon. Normally, Bills other than the Appropriation Bills, Finance Bills, Bills seeking to replace Ordinances and Bills of trivial nature, are referred to the respective Standing Committees (Annex 23b) for their examination and report. The Standing Committees may present their reports on the Bills in the subsequent Parliament session and sometimes, may take even longer, to present their reports. Where, however, there is urgency in enacting the legislation, the Minister concerned, while giving the reasons therefor, under intimation to the Minister of Parliamentary Affairs, may request the Presiding Officer of the House in which the Bill was introduced not to refer the Bill to the Standing Committee so that it could be considered and passed by the Houses during the ongoing Parliament Session.

RSR 270
LSR 331

9.11.7 In case of Bills referred to Standing Committees for examination, the Ministry/Department concerned may examine the report of the committee when it is presented to the Houses or to the Presiding Officers. Where the Ministry/Department decides, with the approval of its Minister, to affect change(s) in the provisions of the Bill as introduced in the House, on the basis of recommendations of the committee, it may obtain the approval of the Cabinet to the amendments proposed to be made in the Bill. After Cabinet approval, notice of motion of amendments to be moved by the Minister in the House should be finalised in consultation with the Ministry of Law and Justice (Legislative Department).

The notice of motion of amendments so finalised along with the notice for consideration and passing of the Bill, duly signed by the Minister, should then be sent to the Secretary-General of the concerned House under intimation to the Ministry of Parliamentary Affairs and the Ministry of Law and Justice (Legislative Department).

Motions after
introduction

RSR 69

LSR 74

9.12 After the Bill is introduced, the Minister may send to the Secretary-General, Rajya Sabha/Lok Sabha, notice in the appropriate form at Annex 11,12,13, 14 of his intention to move:

- (a) that it be taken into consideration and passed; or
- (b) that it be referred to a Select Committee of the House;
or
- (c) that it be referred to a Joint Committee of both Houses with the concurrence of the other House [except in the case of Bills referred to in para 9.7.1 (a)(ii)]; or
- (d) that it be circulated for eliciting public opinion.

Withdrawal of a
Bill

RSR 118

LSR 110

SD 36

PRO 8.33

9.13 If it becomes necessary at any stage to withdraw a Bill, the Ministry of Law and Justice and the Ministry of Parliamentary Affairs will be consulted and approval of the Cabinet will be obtained. Where, however, for want of time, it is not possible to obtain prior approval of the Cabinet, the Minister in-charge will take a decision in consultation with the Prime Minister. As soon as possible thereafter, a note in the usual form will be submitted for ex post facto approval of the Cabinet. The form of notice of withdrawal will depend on the stage at which the Bill is, and whether it has been passed by one House and pending before the other House. The forms at Annex 15 and 16, as may be appropriate, will be used for the purpose. A statement duly authenticated by Minister (English and Hindi) giving reasons for the withdrawal will also be sent to the RS/LS Secretariat at least five days before the date on which the motion for withdrawal is to be made.

The number of copies to be sent for circulation will be 300 (three hundred) in English and 100 (one hundred) in Hindi for the Rajya Sabha Secretariat and 650 (six hundred and fifty) in English 350 (three hundred and fifty) in Hindi for the Lok Sabha Secretariat.

9.14.1 The strength of the Select/Joint Committee as also the date by which it will submit its report will be indicated by the concerned Ministry/Department and the names of the members to be appointed on the committee will be suggested by the Ministry of Parliamentary Affairs. These details will be incorporated in the body of the motion in the form at Annex 12 or 13. On this motion being passed by one House a concurrence motion in the form at Annex 17 will be moved by the Minister in the other House, if the bill is proposed to be referred to a Joint Committee.

Composition of
the Select/Joint
Committee

9.14.2 After the Committee has been constituted, its Chairman is appointed by the Chairman/Speaker. All matters connected with the meetings of the Select/Joint Committee are looked after by the RS/LS Secretariat. A Minister, even though he is not a member of a committee, may address the committee with the permission of the Chairman.

RSR 76
LSR 299

9.14.3 All notices of Government amendments to the Bills referred to Select/Joint Committee will be drafted by the Ministry of Law and Justice (Legislative Department). Notices of such amendments will be given by a Minister who is a member of the committee, in the form at Annex 18 to the RS/LS Secretariat, at least a day before the day of sitting at which the amendments are to be moved.

Amendments to
Bills before Select/
Joint Committee
PRO 8.26

9.15 When a Bill is to be circulated for eliciting public opinion, necessary action is taken by the RS/LS Secretariat, which also addresses the State Governments.

Procedure when
a Bill is to be
circulated for public
opinion
SD 20-23

9.16 After presentation of the report of the Select/Joint committee to the House, the Minister in charge may give notice of his intention to move that the Bill as reported by the Select/Joint Committee :

Procedure after
presentation of the
report of Select/
Joint Committee
RSR 93
LSR 77

(a) be taken into consideration and be passed; or

- (b) be recommitted to the same committee or another committee; or
- (c) be recirculated for obtaining further public opinion.

9.17 When the motion that:

- (a) the Bill be taken into consideration; or
- (b) the Bill as reported by the Select/Joint Committee be taken into consideration is carried, the Bill will be taken up for clause-by-clause consideration. Members can, at that stage, move amendments to the Bill.

Amendments

9.18.1 Copies of amendments given notice of by members are sent by the RS/LS Secretariat to the Ministry/Department concerned. When they are received, the branch officer will put them up with briefs for use of the Minister for determining the Government's response to them.

9.18.2 Government amendments will also be moved at this stage. These amendments, will be drafted by the Ministry of Law and Justice (Legislative Department) in consultation with the administrative Ministry/Department. After approval, notice of amendments, both in English and Hindi version will be sent by the Minister to the Secretary General, for which the form at Annex 19 will be used. Copies of this notice are also to be endorsed to the Ministry of Parliamentary Affairs and the Ministry of Law and Justice (Legislative Department).

9.18.3 Amendments falling within Articles 117(1) and 274 of the Constitution are subject to the same restrictions in regard to the recommendation or the previous sanction of the President as Bills falling within those articles (vide para 9.7.1) except when the amendments falling within Article 117(1) involve reduction or abolition of any tax.

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O.M.No. 11/1/4/72-
CF dt.1-11-72

9.18.4 Time permitting, proposals to amend the provisions of a Bill will be submitted to the Cabinet for approval. Where, however, for want of time, this is not possible, the Minister in charge will take a decision in consultation with the Prime Minister. As soon as possible thereafter, a note in the usual form will be submitted for ex post facto approval of the Cabinet.

9.19 After a Bill is passed by a House:Scrutiny by
Ministry of Law &
Justice

(a) a copy of the Bill, as passed is sent by the RS/LS Secretariat to the Ministry of Law and Justice (Legislative Department) for scrutiny with a view to correcting patent errors and for making such other changes as are consequential to the amendments accepted by the House; and

PRO 8.29
SD 34

(b) such changes as are accepted by the Chairman/Speaker are incorporated in the Bill, before it is transmitted to the other House for concurrence.

9.20.1 After the Bill is laid on the Table of the other House, the Minister concerned will give notice of a motion in the form at Annex 20 to the Secretary-General of the House and also communicate the recommendation of the President, wherever necessary.

Consideration of
the Bill in the other
House
RSR 122
LSR 115

9.20.2 In the case of a Bill passed by one House with amendments, the Ministry/Department concerned will determine whether any consequential changes are required in the Financial Memorandum and/or Memorandum regarding Delegated Legislation. If any change is required, a letter will be sent in the form at Annex 21, signed by the Minister-in-charge of the Bill, addressed to the Secretary-General, Rajya/Lok Sabha forwarding revised memoranda, which will be prepared in consultation with the Ministry of Finance/Ministry of Law and Justice (Legislative Department), as may be appropriate.

Consequential
revision of
the Financial
Memorandum
and the one
on delegated
legislation
PRO 8.2 to 8.5

9.20.3 Ministries/Departments should ensure that all official communications pertaining to the legislative business of the House required to be listed on a particular day should reach the Rajya Sabha/Lok Sabha Secretariats before 6.00 p.m. the previous day.

Time limit for
sending notices to
the Secretariat**9.21** After the Bill is passed by both the Houses:Further scrutiny
by Ministry of
Law and Justice
and assent of the
President

(a) a copy is sent by the RS/LS Secretariat to the Ministry of Law and Justice (Legislative Department) as envisaged in para 9.19 for scrutiny and correction of patent errors, etc.

- SD 34 (b) on its return from the Ministry of Law and Justice, it will be reprinted on azurelaid paper by the RS/LS Secretariat with the superscription “as passed by the Houses of Parliament.” After it is printed in azurelaid paper, it is once again sent to the Ministry of Law & Justice for scrutiny.(change by RSS)
- RSR 135
LSR 128 (c) the RS/LS Secretariat will send to the Secretary to the President, through the Ministry of Law and Justice (Legislative Department), enclosing two copies of the Bill signed by the Chairman/the Speaker together with ten spare copies;
- PRO 8.32 (d) whenever the President’s assent is required by a particular date, the RS/LS Secretariat, the Ministry of Law and Justice (Legislative Department) and the Ministry of Parliamentary Affairs will be advised well in advance by the Ministry/Department concerned. The Ministry of Law and Justice (Legislative Department) will keep in touch with the President’s Secretariat for the purpose; and
- (e) the date of assent which is the date on which the Bill becomes an Act, is intimated to the concerned Ministry/Department and the Ministry of Parliamentary Affairs by the Ministry of Law and Justice (Legislative Department). One copy of the Act bearing the President’s signature is retained in the Ministry of Law and Justice (Legislative Department) and the other copy returned to the RS/LS Secretariat. The President’s Secretariat retains one spare copy.
- Publication in the official gazette **9.22** The Ministry of Law and Justice (Legislative Department) will:
- (a) publish the Act in the Gazette of India Extraordinary;
- (b) forward copies of the Act to all State governments for publication in their Official Gazettes; and
- Printing of copies of Act for sale (c) get copies of the Act printed in a suitable form for sale to the general public.
- Procedure regarding private Member’s Bill **9.23.1** Whenever a Private Member of Parliament gives notice of his desire to move for leave to introduce a Bill, the RS/LS Secretariat sends a copy of the Bill to the concerned Ministry/Department.

9.23.2 The Ministry/Department concerned will consult the Ministry of Law and Justice as to the competence of Parliament to enact the measure.

9.23.3 The policy of the Government in relation to the Bill will be officially settled in the concerned Ministry/Department with the approval of Cabinet Committee on Parliamentary Affairs. The provisions of paras 5.8.3 and 5.8.4 will *mutatis mutandis* apply.

9.23.4 The President's recommendation required under clause (1) and/or (3) of Article 117 of the Constitution for the introduction/consideration of private members' Bills will ordinarily be granted unless very exceptional circumstances especially warrant withholding of the President's recommendation. In case a Ministry/Department feels that the recommendation of the President to a Bill should be withheld, that Ministry/Department will supply five copies of the brief explaining the circumstances leading to such proposal to the Ministry of Parliamentary Affairs for obtaining the approval of the Cabinet Committee on Parliamentary Affairs.

9.24.1 The procedure applicable to Bills will apply *mutatis mutandis* to promulgation of Ordinances under Article 123(1) of the Constitution. Ordinances

9.24.2 After the terms of a draft Ordinance have been settled in consultation with the Ministry/Department concerned, the Ministry of Law and Justice (Legislative Department) will submit through the Minister of the concerned Ministry/Department and the Prime Minister, for the signature of the President, a copy of the Ordinance together with:

- (a) a spare copy of the Ordinance;
- (b) a copy of the Note for the Cabinet; and
- (c) a copy of the decision of the Cabinet relating to the Ordinance.

9.24.3 The concerned administrative Ministry/Department will inform the Legislative Department the date and time at which they had delivered the Ordinance to the President's Secretariat.

9.24.4 The Ministry of Law and Justice (Legislative Department) will:

- (a) get the Ordinance published in the Gazette of India Extraordinary;
- (b) inform the Ministry/Department concerned and the Ministry of Parliamentary Affairs as to the promulgation of the Ordinance; and
- (c) forward copies thereof to all the state governments for publication in their official gazettes.

Post-promulgation
action

9.25 As soon as the Ordinance is promulgated, the following action will be taken:

- (a) The Ministry of Law and Justice (Legislative Department) will supply to the Ministry of Parliamentary Affairs seventy-five copies each of Hindi and English versions of the Ordinance for being laid on the Table of the Houses. The Ministry of Law and Justice (Legislative Department) will also supply five copies of the Ordinance to Rajya Sabha/Lok Sabha Secretariat.
- (b) The Ministry/Department concerned will indicate to the Ministry of Parliamentary Affairs whether it is proposed to replace the Ordinance by an Act of Parliament. The Ministry/Department concerned shall also supply sufficient number of copies of the Ordinance to Rajya Sabha/Lok Sabha Secretariat for circulation to Members.
- (c) In case it is decided to replace the Ordinance by an Act of Parliament, the concerned Ministry/Department will keep ready a Bill relating thereto for introduction as far as possible on the opening day of the session.
- (d) The concerned Ministry/Department will take steps to prepare in consultation with the Ministry of Law and Justice (Legislative Department), a statement explaining the circumstances which necessitated legislation by Ordinance. This statement will be laid on the Table of the House at the time of introduction of the Bill seeking to replace the Ordinance. The statement will also be circulated to the members. The number of the copies for the purpose will be as in para 4.1(c).

RSR 66
LSR 71

- (e) Whenever an Ordinance, which embodies wholly or partly or with modification the provisions of a Bill pending before the House, is promulgated, the concerned Ministry/Department will lay on the Table of each House, at the commencement of the session following the promulgation of the Ordinance, a statement prepared in consultation with the Ministry of Law and Justice (Legislative Department) explaining the circumstances which had necessitated immediate legislation by Ordinance.

RSR 66

LSR 71

9.26.1 Article 246(4) of the Constitution vests Parliament with powers to legislate on any matter in relation to the Union Territories listed in the First Schedule to the Constitution.

Legislation in
respect of Union
territories

9.26.2 Of the various Union Territories:

- (a) Puducherry has a Legislative Assembly under the Government of Union Territories Act, 1963, with powers to legislate on matters specified in List II (State List) and List III (Concurrent List) in so far as any such matter as applicable in relation to Union Territories;
- (b) The Union Territories of the Andaman and Nicobar Islands, Chandigarh, Daman and Diu, Dadra and Nagar Haveli and Lakshadweep have an Advisory Committee each, set up by the Ministry of Home Affairs;
- (c) The National Capital Territory of Delhi has a Legislative Assembly under Article 239 AA of the Constitution of India read with the Government of National Capital Territory of Delhi Act, 1991, with powers to legislate on matters specified in List II (State List) or in List III (Concurrent List) in so far as any such matter is applicable to Union Territories except matters with respect to Entries 1, 2 and 18 of the State List and Entries 64, 65 and 66 of that List in so far as they relate to the said Entries 1, 2 and 18.

9.27.1 Proposals for Parliamentary legislation for the Union Territories will be initiated by the Ministry/Department concerned, which will consult:

Parliamentary
legislation for
Union Territories

- (a) the Ministry of Home Affairs on the desirability of undertaking the proposed legislation and the principles involved therein, including the substance of the more important provisions thereof; and
- (b) the Ministry of Law and Justice (Department of Legal Affairs) from the constitutional and legal points of view.

9.27.2 Thereafter the Ministry/Department concerned will:

- (a) consult other Ministries/Departments concerned with any aspect of the subject matter of the legislation;
- (b) refer the matter to the Ministry of Law and Justice (Legislative Department) for preparing a draft Bill;
- (c) send the Bill where the matter relates to entries in List II (State List) or List III (Concurrent List) to the Ministry of Home Affairs for obtaining the views of the Advisory Committee concerned, if it relates to a Union Territory having such a Committee.

9.27.3 Thereafter the Ministry/Department concerned will take steps to obtain the approval of the Cabinet and introduce the proposed legislation in Parliament in accordance with the procedure already described in this chapter for central legislation.

Legislation by
the Legislative
Assemblies

9.28.1 Section 3 of the Government of Union Territories Act, 1963, provides for constitution of a Legislative Assembly in the Union Territory of Puducherry. The Rules of the Business of the said Union Territory of Puducherry provide that the administrator shall refer for prior approval to the Central Government, every Bill which:

- (a) if passed by the Legislative Assembly, is required to be reserved for the consideration of the President under section 21 or section 25 of the said Act;
- (b) relates to any matter enumerated in List III (Concurrent List);
- (c) attracts the provisions of Article 304 of the Constitution as applicable to the Union territories;

- (d) relates to any matter which may ultimately necessitate additional financial assistance from the Central Government through substantive expenditure from the Consolidated Fund of the Union Territory or abandonment of revenue or lowering of the rate of any tax;
- (e) pertains to any matter relating to universities; and
- (f) affects or is likely to affect the interests of any minority community, Scheduled Castes or Scheduled Tribes.

9.28.2 References relating to prior approval to such Bills will:

- (a) except in regard to para 9.28.1(c) above, be dealt with in the Ministry of Home Affairs; and
- (b) in regard to para 9.28.1(c), be dealt with in the Department of Commerce in consultation with the Ministry of Home Affairs.

In all cases, these references will be dealt with in consultation with the other Ministries/Departments concerned and the Ministry of Law and Justice.

9.29.1 Section 3 of the Government of National Capital Territory of Delhi Act, 1991, provides for constitution of a Legislative Assembly in the National Capital Territory of Delhi. The transaction of Business of the Government of National Capital Territory of Delhi Rules provide that the Lieutenant Governor shall refer to the Central Government every Bill which:

- (a) if passed by the Legislative Assembly, is required to be reserved for consideration of the President under the proviso to sub-clause (c) of clause (3) of Article 239AA or, as the case may be, under the second proviso to section 24 of the Act;
- (b) attracts provisions of Articles 286, 287, 288 and 304 of the Constitution as applicable to the Capital; and

- (c) relates to any matter which may ultimately necessitate additional financial assistance from the Central Government through substantive expenditure from the Consolidated Fund of the Capital or abandonment of revenue or lowering of rate of any tax.

9.29.2 Subject to any instructions which may be issued from time to time by the Central Government, the Lieutenant Governor shall make a prior reference to the Central Government in the Ministry of Home Affairs or to the appropriate Ministry with a copy to the Ministry of Home Affairs in respect of the following matters:

- (i) proposals affecting relations of Central Government with any State government, the Supreme Court of India or any other High Court;
- (ii) proposals for the appointment of Chief Secretary or Commissioner of Police, Secretary (Home) and Secretary (Lands);
- (iii) important cases which affect or are likely to affect peace and tranquillity of the National Capital Territory; and
- (iv) cases which affect or are likely to affect the interests of any minority community, the Scheduled Castes/ Scheduled Tribes or Backward Classes.

9.29.3 References relating to prior approval to such Bills will:

- (a) except in regard to para 9.29.1(c) above, be dealt with in the Ministry of Home Affairs; and
- (b) in regard to para 9.29.1(c), be dealt with in the Department of Commerce in consultation with the Ministry of Home Affairs.

In all cases, these references will be dealt with in consultation with the other Ministries/Departments concerned and the Ministry of Law and Justice.

9.30 All references relating to Bills passed by the Legislative Assemblies of the Union Territory of Puducherry and the National Capital Territory of Delhi and reserved by the Administrator for consideration of the President, will be dealt with in the Ministry of Home Affairs who will submit such Bills to the President after consulting the Ministry of Law and Justice and other Ministries/Departments concerned.

9.31 In every case in which the Lt. Governor of the Union Territory of Puducherry and the Lieutenant Governor of the National Capital Territory of Delhi is empowered to promulgate Ordinances (Article 239B of the Constitution in the case of Puducherry and Article 239AA(8) read with Article 239B in the case of NCT of Delhi), prior instructions of the President have to be obtained. The procedure indicated in paragraphs 9.28 and 9.29 above, in regard to Bills will, with necessary changes, apply to obtaining such prior instructions.

9.32 Under the provisions** of the relevant sections of the enactments relating to the Union Territories, the Central Government is competent to extend, by notification, any enactment in force in a State to the Union Territories of (a) Chandigarh, (b) Dadra and Nagar Haveli, (c) Delhi, (d) Daman and Diu, and (e) Puducherry. All proposals for such extension will be dealt with in the Ministry of Home Affairs who will examine them in consultation with the Ministry of Law and Justice, other Ministries/Departments concerned and also the Administration of the concerned Union Territory if considered necessary.

9.33.1 Article 240 of the Constitution empowers the President to make Regulations for the peace, progress and good governance of the Union territories of (a) Andaman and Nicobar Islands, (b) Dadar and Nagar Haveli, (c) Daman and Diu, (d) Lakshadweep, and (e) Puducherry. However, in the case of Union Territory of Puducherry, this power is available only when the Legislative Assembly of Puducherry is dissolved or its operation is suspended.

9.33.2 The Ministry of Home Affairs shall initiate the proposals for promulgation of Regulations in consultation with the Ministries administratively concerned with the subject matter of the Regulation. After the Regulation is approved by the Cabinet, it is finalised by the Legislative Department and submitted to the President through the Minister of Home Affairs.

******(i) Section 87 of the Punjab Reorganisation Act, 1966 in the case of Chandigarh.

(ii) Section 10 of the Dadra and Nagar Haveli Act, 1961 in the case of Dadra and Nagar Haveli.

(iii) Section 2 of the Union Territories (Laws) Act, 1950 in the case of Delhi.

Chapter 11

Subordinate Legislation

Introduction

11.1.1 The Constitution of India as well as Laws made by Parliament usually vest the powers in the Government to make and notify in the Gazette of India, rules, regulations, bye-laws etc., to subserve the objectives behind the main legislation, but within their broad framework. As these rules etc., are statutory in character, they come within the scope of what is termed as 'Subordinate Legislation'.

11.1.2 The Ministry/Department concerned will frame the rules etc., and refer them to the Ministry of Law and Justice who will vet them from constitutional, legal and drafting point of view.

11.1.3 To facilitate speedier disposal of cases and avoid unnecessary correspondence, Ministries/Departments may ensure fulfilment of the points given in the checklist below, before referring the cases relating to Subordinate Legislation to the Ministry of Law and Justice:

CHECKLIST

- (i) As regards Principal rules, regulations, orders etc.:
 - (a) consultation with the authorities which are required to be consulted have been made by the administrative Ministry/Department;
 - (b) where rules, etc., are to have effect retrospectively (in cases where parent Act or the Constitution empowers retrospective operation), an explanatory memorandum has been added in the form of a note explaining that the interests of no person shall be adversely affected by such retrospective effect;

- (c) where existing rules etc., are sought to be superseded or repealed, up-to-date copies of such rules, etc. are placed on the file for reference.
 - (d) approval of authorities competent to approve such proposal has been obtained.
- (ii) As regards amending rules, regulations, orders etc.:
- (a) up-to-date copies of the principal rules or copies of such rules along with subsequent amendments, are placed on the file for reference;
 - (b) footnote indicating the gazette references of the principal rules and all subsequent amending rules is appended to the draft;
 - (c) approval of authorities competent to approve such proposal has been obtained;
 - (d) where rules, etc., are to take effect retrospectively (in cases where parent Act or the Constitution empowers retrospective operation), an explanatory memorandum has been added in the form of a note explaining that the interests of no person shall be adversely affected; and
 - (e) consultation with the authorities which are to be consulted have been made.
- (iii) As regards rules, etc., to be finally published after they have been previously published for general information, the preamble to the draft should contain:
- (a) the notification number with which the draft has been published and the date of the gazette in which the draft rules were published;
 - (b) the date on which the gazette copies containing the draft rules were made available to the public;
 - (c) the last date fixed for receipt of public comments;
 - (d) all references made to the Ministry/Department should be accompanied with a self-contained note explaining the proposal; and

(e) in time-bound cases the administrative Ministry/Department should specifically indicate the same by some method in the file itself. Those cases, wherever possible, may be settled after discussion by an officer of appropriate level with the concerned legislative counsels.

11.2 Where an Act requires previous publication of rules, etc., made thereunder, the Ministry/Department concerned will:

Procedure where pre-publication of rules etc. is required

- (a) frame the draft rules;
- (b) get them published in the official gazette inviting objections and suggestions within a specified period of 30 days;
- (c) if suggestions have to be obtained from interests concerned who are likely to be affected by the legislation, attempt should be made to get their comments at the earliest by sending registered letters to them and, if necessary, by publication of the draft rules in the national or regional press/newspapers;
- (d) on expiry of the specified period of 30 clear days, which will be reckoned from the date on which the gazette is made available for sale to the public, consider the objections and suggestions received;
- (e) if the suggestions/objections received are large, the final rules should be notified within a period of six months from the last date of receiving the comments. If no objections/suggestions are received or the number of objections etc., so received is small, the rules should be finally notified within a period of 3 months; and
- (f) finalize the rules in consultation with the Ministry of Law and Justice.

11.3.1 Statutory rules, regulations and bye-laws will be framed within a period of six months from the date on which the relevant statute came into force. Cases in which, for any reasons, this is not possible, will be brought to the notice of the Secretary and the Minister at the earliest possible stage.

Time limit for framing rules.
Cabinet Secretariat
O.M.No. 6/1/13/71-
CF dt 25-8-71

11.3.2 In case the Ministries/Departments are not able to frame the rules within the prescribed period of six months, they should seek extension of time from the Committee on Subordinate Legislation stating reasons for such extension; such extension being not more than for a period of three months at a time. The request should be made after obtaining the approval of the Minister.

Notifying the rules etc. in the gazette

11.4 After the rules, etc., are finalised, steps will be taken by the Ministry/Department concerned to publish them in the gazette and, where the Act provides for it, to lay them on the Table of each House. The procedure to be followed in this regard has been described in para 11.5.

Laying of rules etc. on the Table of each House

11.5.1 After publication, the rules, etc., will be laid on the Table of the House as soon as possible and, in any case, within a period of 15 days (30 days in case of notifications relating to a state under the President's rule), reckoned from:

PRO 6.15

(a) the date of their publication in the official gazette if the House is in session; or

PRO 6.15

(b) the date of commencement of the next session, if the House is not in session.

PRO 6.1(a)

11.5.2 Two authenticated copies of the rules, etc. (one each in English and Hindi) will be sent to the RS/LS Secretariat for being laid on the Table of the House together with a statement containing the following information:

(a) brief purport;

(b) name of the Act and number of the Section under which the paper is to be laid;

(c) 'G.S.R.' or 'S.O.' number of the notification and the number of part and section of the gazette in which published;

(d) date of publication in the gazette;

(e) date on which it is proposed to be laid;

(f) whether under the Act, the rules, etc., are subject to modification by the House;

- (g) period for which they are required to be laid before the Houses; and
- (h) reasons for delay, if undue delay has taken place to lay them on the Table of the House and/or if there is delay beyond six months in the framing of the rules etc., the delay statement(both in English and Hindi) has to be authenticated by the Minister concerned.

11.5.3 As per Ministry of Urban Development (PSP Division) Gazette Notification NO.G.S.R. 746(E) in Part-II Section (3) (i) Extra Ordinary, dated 30th September, 2015, Gazette Notifications shall be only e-published by uploading on the website www.egazette.nic.in to do away with physical printing and sale of hard copies. This has been done in accordance with the provisions of Section 8 of Information Technology Act, 2000 in consultation with Department of Legal Affairs.

11.5.4 (i) Administrative Ministry/ Department submitting the request for publishing the Gazette Notification shall be solely responsible for submitting and circulating the gazette notification wherever required by law or otherwise.

(ii) As published Gazette Notifications are instantly uploaded on the official website www.egazette.nic.in, the downloaded electronic version as well as the downloaded and printed version of these Gazette Notifications will be treated as electronic versions for all official purposes as per Section 4 and Section 8 of Information Technology Act, 2000.

(iii) Lok Sabha Secretariat and Rajya Sabha Secretariat will be supplied with three hard copies of all statutory orders and will also be sent a soft copy on email Id cosl-lss@sansad.nic.in and rsc1sub@sansad.nic.in respectively, simultaneously with notification in e-Gazette format including those framed under Article 309 of the Constitution of India and those published in Part II Section 3 (i), 3(ii) & 4 of Gazette for scrutiny and upkeep of records.

- (iv) In the case of Notifications amending the earlier statutory orders, the concerned Ministry should also supply, by way of suitable annexure, the relevant extracts of the provisions which have been amended by the said notification for the sake of reference during their scrutiny.
- (v) Statutory orders, more particularly those notified under Article 309 of the Constitution of India must be laid before the Parliament by the concerned administrative Ministries and they will be held responsible for non-compliance of the same.

11.5.5 The period for which such rules should remain laid on the Table of each House is prescribed by the Act. For deciding the dates on which the papers sent by them were actually laid on the Table of the House, the Bulletin Part I will be consulted. In case Hindi and English versions of such rules, etc., are laid on the Table of the Houses on different dates, the statutory period for which the rules, etc., are required to be laid will be calculated from the later of the two dates.

11.5.6 Where the number of Notifications to be laid on the Table by a Ministry/Department during a particular Session is large, the Ministry/Department should plan out its schedule in advance by staggering the papers evenly over the whole Session instead of waiting for the last few days of the Session.

11.5.7 While laying of amendment and/or Corrigenda to rules, Ministry/Department should send copies of the rules duly authenticated by the Minister concerned, instead of laying the uncorrected copy along with corrigenda. Ministry/Department should examine whether there is necessity of assigning a separate G.S.R. No. to a corrigendum at the time of its publication in the Gazette and whether such a corrigendum should not be published without assigning any G.S.R. No. Ministry/Department should ensure supply of only corrected copies of the rules for laying on the Table so that they depict a true and correct picture and serve the desired purpose.

11.6.1 After the termination of each session, the Ministry/Department will examine the rules, etc., laid on the Table of each House to see whether the prescribed period for which they were to be laid has been completed. If not, an intimation stating the date (which should be, as far as possible, the first day of the following session allotted to the Ministry/Department concerned) for relaying should be furnished to the RS/LS Secretariat at least 3 clear days before the date on which it is to be re-laid. Such rules etc., when re-laid, need not be accompanied by authenticated or spare copies, unless there has been a change in the incumbency of the Minister who had laid it in the House earlier.

Relaying of the rules etc. on the Table of the House
PRO 6.11, 6.12
LSR 234

11.6.2 In the event of the dissolution of the Lok Sabha before the expiry of the full period prescribed, the concerned rule, etc., will be laid afresh in the new Lok Sabha for the full prescribed period.

PRO 6.13

11.7.1 After the notifications regarding rules, etc., are laid on the Table of the House, any member may give notice of an annulment or modification thereto.

Annulment or modification to rules etc. laid on the Table of the House
LSR 235

11.7.2 On receipt of a notice for annulment or modification of the rules, etc., the Parliament Unit will immediately bring it to the notice of the Joint Secretary in-charge of Parliament Section in the Ministry/Department concerned, who will:

- (a) put it up immediately for obtaining the orders of the Minister for arranging a discussion of the matter in Parliament before the expiry of the statutory period provided for annulment or modification by Parliament;
- (b) settle with the Ministry of Parliamentary Affairs the date to be fixed for the debate; and
- (c) submit a brief for use of the Minister during the discussion.

11.7.3 Where a motion to annul or modify the rules, etc., is carried in one House, it is transmitted to the other House by the RS/LS Secretariat.

When it is carried in the other House also, the Ministry/Department concerned will take steps to annul or modify the rules, etc., notify them in the official gazette and lay them on the Table of each House vide para 11.5.1.

11.7.4 (i) Where the parent Act provides that the rules, etc., framed thereunder will come into force after the approval of the Parliament, the Ministry/Department will address a motion in the prescribed form (Annex 22) to the Secretary-General, Rajya Sabha/Lok Sabha, under intimation to the Ministry of Parliamentary Affairs. The date for discussion of such a motion will be settled by the Ministry of Parliamentary Affairs in consultation with the Ministry/Department concerned. In such a case, a brief will also be prepared for the use of the Minister.

Giving retrospective effect to rules

(ii) In cases where the parent Act provides for giving of retrospective effect, the rules framed thereunder should be accompanied by an explanatory note setting out there in the reasons and circumstances which necessitated the giving of such retrospective effect. The note should also indicate that the interests of no one will be prejudicially affected by giving retrospective effect. In cases where the parent Act does not provide for giving retrospective effect but retrospective effect is proposed to be given due to unavoidable circumstances, prior action should be taken to clothe it with legal sanction for the purpose.

M.P.A. O.M.
No.32(57)/73-R&C
dt. 22-9-1973

11.7.5 All amendments to rules and regulations will be published in the official gazette. If two or more amendments to the same rules or regulations are to be published in the same issue of the gazette, they will be assigned order numbers in the same sequences as those assigned to the amendments to the said rules etc. and also published in that order.

Committees
on Subordinate
Legislation
RSR 209
LSR 320

11.8 The committees on Subordinate Legislation constituted by the Chairman/Speaker scrutinize all rules etc. laid on the Table of the concerned House. The report containing the recommendations of the committee is submitted to the House by the Chairman of the committee.

11.9.1 (i) Soon after the presentation of the report by the committee:

- (a) the Ministry of Parliamentary Affairs will process such recommendations made by the committee as are of a general nature and concern more than one Ministry/Department. Action on the report of the committee
- (b) The Ministry/Department concerned will take prompt action on the recommendation which primarily concern them and ensure that “action taken statements” are sent direct to the Rajya Sabha/Lok Sabha Secretariat, as the case may be, under intimation to the Ministry of Parliamentary Affairs within the period of six months from the date of the presentation of the report.
- (ii) Where the Ministry/Department concerned accepts a recommendation, it will communicate the acceptance to the Rajya Sabha/Lok Sabha Secretariat, under intimation to the Ministry of Parliamentary Affairs, within one month. Where, however, a recommendation is not acceptable to the concerned Ministry/Department, or the Ministry/Department feels any difficulty in giving effect to it, it will:
- (a) submit a brief to the Minister giving the reasons for not accepting it; and
- (b) after obtaining his approval, communicate the comments of the Ministry/Department to the Rajya Sabha/Lok Sabha Secretariat, as the case may be, under intimation to the Ministry of Parliamentary Affairs, within three months.
- (iii) In case of accepted recommendations, the Ministry/Department should implement them within three months from the date of intimation of the recommendations.
- (iv) In case where preliminary procedure like consultations with other bodies, inviting public comments, etc. have to be gone through, this period may be extended by another three months.
- (v) In any case, all accepted recommendations should be implemented within six months.

- (vi) In case, where the Ministry/Department is definitely of the view that the period of six months is insufficient for finalization of action, it should approach the Committee within three months of the date of intimation of the recommendation so that the Committee may consider its difficulties, if any.

11.9.2 Where it is proposed to amend the rules on the basis of the recommendations of the committee, the Ministry/Department concerned will take steps to amend the rules, notify the amended rules, etc., in the official gazette and to lay them on the Table of each House (vide paras 11.4 and 11.5.1).

11.10 As soon as an Act comes into force, it should be examined to ascertain the specific sections conferring power to make rules, regulations, bye-laws, orders, etc.

11.11 A register should be maintained by the concerned section in each Ministry/Department, specifying the various stages of processing the legislation, e.g., name of the enactment, date of its coming into force, sections (with any sub-sections etc.) conferring legislative powers on the government; whether power has been given to an agency other than Central Government for framing the rules and also identify the various stages of processing the rules, namely, framing of the draft rules, notification thereof in the gazette, if necessary, consideration of objections and suggestions, finalisation of rules in consultation with the Ministry of Law and Justice, the translation thereof, and final notification in the gazette. The above register should be put up by the section concerned to the officer in-charge for periodical check with a view to seeing that the process of legislation is not held up at any stage for any reason.

11.12 The Ministries/Departments should upload copies of all their Acts and the Subordinate Legislations framed thereunder on their website so that the public has easy access to all the Acts administered by them and the corresponding Subordinate Legislations framed by them.

11.13 It is the responsibility of the Ministries/Departments to maintain proper database containing the title of rules/regulations framed under Acts administered by them, the Section/Sub-Section under which they have been framed and their date of laying on the Table of each House. This database should be maintained by the Ministries/Departments, updated regularly and posted on the website of the Ministries/Departments.

11.14 The Ministry/Department should maintain up-to-date copies of the Acts and rules and regulations, bye-laws, etc., framed there under in sufficient numbers. In case the number of amendments is large, efforts should be made to reprint the Acts or the rules, as the case may be, so as to provide a continuous reading.

11.15 Legislative Department, Ministry of Law and Justice have been assigned the function regarding compilation of general statutory rules and orders made under Acts passed by the Parliament in the India Code as per the Government of India (Allocation of Business) Rules, 1961x. Accordingly, a quarterly report in respect of cases in which rules/regulations under a statute have not been published within six months should be sent regularly to the Legislative Department, Ministry of Law and Justice so that it may be easy for them to compile and scrutinize pending cases and to know the reasons for delay in framing of rules, etc. as drafting and vetting of the rules, regulations etc. are finalized by them.