

# LEGALFOXES LAW TIMES

## PROCEDURAL DIFFERENCE BETWEEN UPPER HOUSE AND LOWER HOUSE ELECTIONS IN INDIA

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### **Introduction**

India's constitution has 3 kinds of elections. They are general elections (Lok Sabha), state assembly elections (Rajya Sabha) and by-elections. Lok Sabha can have the strength of 543 individuals and 245 in Rajya Sabha including 12 nominees who are experts in matters of science, culture, art, and history. These 12 individuals are nominated by the President of the country. Lok Sabha elections are done through direct elections, Rajya Sabha elections are done through indirect elections and by-elections (also known as bypoll in India) are also done through direct elections. In India, citizens have a right to vote wherein they can choose their representatives in the Lok Sabha by judging the candidate's offerings. Article 326 of the Indian Constitution provides the right to vote to the citizens who are 18 or above. In the 61<sup>st</sup> amendment of 1986, it was reduced from 21 to 18 years. In direct elections people choose a person or party to represent them. The chosen representatives then represent the common man through their votes in Rajya Sabha. This is called indirect elections. It's one of the oldest mechanisms of conducting an election.

### **Procedure**

There are generally two different procedures to conduct these elections. For electing a Member of Parliament or Member of Legislative Assembly, direct elections take place but for the election of the President of the country, the procedure of indirect elections is followed. The MPs hold their seats for a period of 5 years and MLAs for 2 years. There are advantages as well as disadvantages of direct and indirect elections. In direct elections, citizens have a right to vote and choose their own representatives while in indirect elections citizens can't vote. Direct elections, therefore, appear to be more democratic in nature. In direct elections, the candidates through their election campaign, showcase to the common public their agenda and scheme that'll be undertaken by them in case they are chosen. It encourages people to take part in active politics and vote. Direct elections also make their political officeholders accountable however, they are very expensive. According to the expense report of Lok Sabha 2014, a sum of 30,000 crores was spent by the government. And EC alone spent 4,000 crores. Illiterate voters sometimes misjudge the propaganda and vote to their caste or relatives which leads to unfair elections. The role of money is different in direct elections.

Sometimes, a political leader can use the money to buy votes. They provide goods and services for free to poor and greedy people to buy their votes. Election campaigns sometimes lead to violence, tension, anger, riots. It also affects day to day life of the citizens. On the other hand, indirect elections are less expensive than direct elections because the voters are very less in number. This kind of election is more suitable in largely populated countries. In indirect elections, the number of voters is very small. There can be a chance of corruption, horse-trading or bribery, etc. Indirect elections are less democratic because the citizens are not allowed to give their votes but instead their representatives do so for them. So, there is a chance of ignorance of people's will.

### **Qualification**

India's parliament is divided into 2 houses. Rajya Sabha or Council of States is the upper house and Lok Sabha or House of the People is the lower house. The term period for Lok Sabha is 5 years and for Rajya Sabha is 6 years. To become a member of Lok Sabha, a candidate must be a citizen of India. The age of the candidate must be above 25 years. The person must possess all qualifications as enunciated by the parliament. The candidate must not have any criminal record, must be of sound mind and not be a bankrupt. The candidate cannot hold any office of profit under Government of India. For a person to be a member of Rajya Sabha he/she should be a citizen of India and must be above the age of 30 years. The qualifications for the membership of Parliament have been laid down under article 84 of the Indian Constitution. The candidate must not hold any other office of profit under Government of India. An oath must be taken before a person authorized by the Election Commission of India. The candidate must not have any criminal record in his name. The candidate must not be insolvent or bankrupt. The candidate must be of sound mind.

### **Functions**

There are several functions of Lok Sabha and Rajya Sabha which they perform both separately and jointly. The first function of Lok Sabha is to perform its legislative powers. A bill can become a law only after it has been passed by both the houses. An ordinary bill can be introduced in any of the two houses but majority of the bills are introduced in Lok Sabha. After the approval from Lok Sabha, the bill goes to Rajya Sabha and after that to the President for his approval and signature. Lok Sabha has an executive power to control the Council of Ministers. The leader of the majority party becomes the Prime Minister. Lok Sabha also has some financial powers. A money bill can be introduced in Lok Sabha only. Once approved by the lower house, Rajya Sabha can only delay it for 14 days post which the bill is deemed to have been passed from both the houses and in case of any dispute, the speaker of Lok Sabha's decision is considered as final. It can't be challenged by any of the houses. It means Lok Sabha has more power in the matters of finance. Lok Sabha also has some judicial powers. By acquiring a 2/3rd majority in each of the houses, Lok Sabha can impeach the President. Lok Sabha and Rajya Sabha can also pass an order for the removal of any judge of the Supreme Court of India or of a State High Court. The Lok Sabha is considered as a very powerful house. The Rajya Sabha mainly has legislative, financial, executive, etc. functions. The legislative function of Rajya Sabha is that it shares equal power with Lok Sabha in making the law. A bill must be passed by both the houses before going to the President. In

financial matters, the Rajya Sabha is very weak. In a money bill, the approval of Rajya Sabha is not a matter of importance. While exercising its powers, the Rajya Sabha can ask questions, criticize the policies and politics and move motions of adjournments against the Council of Ministers. There are also a few functions that both Rajya Sabha and Lok Sabha perform jointly. Some of them are approval of the ordinances issued by the President, change in the name of any state, change of the boundaries of any state, creation of a new state, changing the jurisdiction of High Court and Supreme Court judges, changes the qualifications of the members of the State Legislature and the Parliament, revising the allowances and salary of the members of Parliament, the setting up of Joint Public Service Commission for any two or more states, passing of a resolution for abolishing or creating the upper chamber of a state legislature and approval for declaring any emergency.

Rajya Sabha uses the Single Transferable Vote System to conduct their elections. For example, the President is elected through the Single Vote Transferable System which is a type of indirect election. The time period of every Lok Sabha election is 5 years. There are 545 seats in Lok Sabha and 2 seats are given to Anglo-Indians by the President. So the total seats left are 543. Every state allots a specific number of seats to Lok Sabha according to the population of the state. Different people from different states representing different parties gave their name for the candidate list. The party with above 50% of the majority seats that is 272 seats wins the election and the leader of the party becomes the Prime Minister. This is how direct elections are conducted in India. It takes a huge amount of time, money, discipline to conduct direct elections in India. Election for the President is conducted through indirect elections. In India, citizens give their votes to Members of Parliament and Members of Legislative Assembly, and then these Members of Parliament and Members of Legislative Assembly cast their vote for the best suitable president for the citizens. Members of Parliament and Members of Legislative Assembly are also known as direct peoples' representatives. For the election of the President, these Members of Parliament and Members of Legislative Assembly have a certain number of votes. To find out the value of the vote of one MLA, the total population of the State is divided by total MLAs of that state. And then the answer is divided by 1000. The number is the value of one vote of one MLA. In order to find the value of the vote of one MP, the total value of votes of all MLAs is divided by the total number of MPs (Lok Sabha and Rajya Sabha), the outcome will be the value of one vote of one MP. Adding the total values of votes of all MLAs and the total value of all votes of all MPs, we'll have the total votes for Presidential elections. In Indian, the Presidential Elections follow Single Transferable Vote System which is given under Article 55(3) of the Indian Constitution. All the MPs and MLAs will give their vote by ranking them from 1 to 3 (let's say). The total number of votes is divided by 2 and then we add 1 to the answer. The output is the minimum number of votes required by a candidate to win. It's a very complex method, yet one of the oldest and fair ways to conduct elections.

## **Conclusion**

This is the procedural difference between direct elections and indirect elections. In case of emergency, where the Lok Sabha has been dissolved or its dissolution takes place within the time period of two months after the proclamation, the proclamation has to be laid before Rajya Sabha. If Rajya Sabha passes it, it must be approved by Lok Sabha within 30 (Thirty) days of the new meeting of the Lok Sabha. However, if Rajya Sabha itself does not pass the proclamation, the proclamation would cease to be valid. The Lok Sabha can extend its time period under one more circumstance, i.e. under Article 352 of the Indian Constitution. Lok Sabha can be extended by Parliament by law for not exceeding its time period for one year and not extended by 6 months after the Proclamation has ceased to operate. The Speaker and Deputy Speaker are elected by the Members of the House. If the Speaker is not present in the House, then Deputy Speaker acts for him. The Lok Sabha is more powerful than Rajya Sabha in many ways as has already been discussed above. The Cabinet's responsibility makes Lok Sabha more powerful than Rajya Sabha. The Council of Ministers at the center are not responsible to Rajya Sabha but to the Lok Sabha. The houses use different ways to elect their members, Lok Sabha is the temporary house but Rajya Sabha is the Permanent House. Both houses have their own advantages and disadvantages but they both are important in their places.



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