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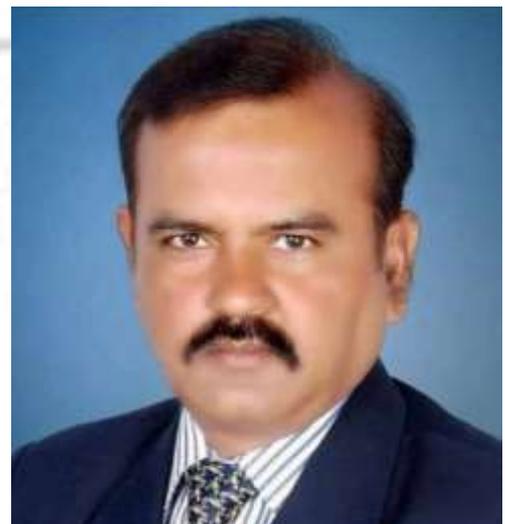
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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

LAW-MAKING PROCESS AND PROCEDURE IN THE U.S, U.K, AND INDIA: NEED AND FACTORS OF DEMOCRATISATION OF LAW MAKING

AUTHORED BY - ADHAM BASHEER ABDUL KADAR

LAW MAKING PROCESS

According to the Collins dictionary, Lawmaking is the process of crafting legislation.¹ Lawmaking is the process of developing, enacting, and codifying legislation, forming the cornerstone of governance in any political system. Laws provide structure to society, define rights and responsibilities, and establish mechanisms for resolving disputes.

Lawmaking is at the heart of any functioning democracy, carried out by legislatures at different level they are local, state (regional), and national (central). These bodies create laws that govern their respective jurisdictions, ensuring order and justice. In democratic state lawmakers remain accountable to the people. While the legislative process is influenced by lobbyists, pressure groups, and political agendas, it ultimately depends on the voters who elect representatives to serve their interests. Even the government budget is part of the lawmaking process, as public spending must be approved through legislation.

However, in dictatorships and absolute monarchies, the process looks quite different. A single leader can impose laws with a mere stroke of a pen, without debate or accountability. This concentration of power is a major concern in authoritarian regimes. Interestingly, even in democracies, a similar mechanism exists, executives can issue executive orders that have the force of law, sometimes bypassing legislative debate. Government agencies, too, can implement regulations that function like laws.

General legislative process

The process of making laws is a fundamental aspect of governance, ensuring that societies operate under a structured legal framework. While the exact procedure varies across countries

¹ *"Lawmaking definition and meaning | Collins English Dictionary". www.collinsdictionary.com (last visited on 15.03.2025)*

and systems of government, most democracies follow a structured process involving proposal, debate, approval, and enactment. The primary responsibility for lawmaking rests with legislatures, which may be unicameral (one house) or bicameral (two houses). In parliamentary systems, such as India and the United Kingdom, the executive (government) is closely linked to the legislature, whereas in presidential systems, such as the United States, there is a clear separation of powers.

The law-making process generally begins with the introduction of a bill, a proposed law in the legislature. In bicameral systems, a bill can be introduced in either house (except for Money Bills, which must originate in the lower house). The bill is then subjected to a first reading, where it is formally introduced but not debated in detail. The second reading follows, during which legislators debate the bill's principles, propose amendments, and send it to a committee for further scrutiny. Committees play a crucial role by conducting detailed analyses, consulting experts, and refining the bill before it returns for further discussion.

Once the bill has passed through the second reading and committee review, it moves to the third reading, where members of the legislature vote on its final form. If approved, the bill proceeds to the second house, where it undergoes a similar process of debate, revision, and approval. In cases where both houses must agree on a final version, any discrepancies are resolved through negotiations. After both houses pass the bill, it is sent to the head of state (President or Governor) for approval. The executive may sign the bill into law, return it for reconsideration, or, in rare cases, reject it entirely (veto).

Once a bill receives final approval, it is published in the official gazette and becomes legally enforceable. In some systems, laws may also be subject to judicial review, ensuring they comply with constitutional principles. The entire process reflects the balance between deliberation, efficiency, and democratic accountability, ensuring that laws serve the interests of the people while maintaining checks on government power.

Law-Making Procedure in the United States

The process of making laws in the United States follows a structured path outlined in the U.S. Constitution². This process is designed to ensure that laws are debated, scrutinized, and passed

² The Constitution of United.States, Art 1, S 7

through a system of checks and balances. The U.S. Congress, which consists of the House of Representatives and the Senate, is responsible for drafting and passing legislation³. Once a bill is approved by both chambers, it is sent to the President for final approval or veto.

The first step in lawmaking is the introduction of a bill. Any member of Congress can propose a bill, which is then assigned to a relevant Congressional committee for review. However, revenue-related bills must originate in the House of Representatives⁴. Once introduced, the bill is carefully examined by a standing committee, which may refer it to a subcommittee for hearings and expert testimony. These committees play a crucial role in shaping legislation by proposing amendments or rejecting bills that do not meet legislative standards.

If the bill passes committee review, it moves to the floor of the House or Senate for debate. In the House, debates are time-limited, whereas in the Senate, members may engage in filibusters, a strategy used to delay or block legislation. After debate, a vote is taken, and if a simple majority approves the bill, it is sent to the other chamber, where it undergoes the same process of committee review, debate, and voting. If both houses pass different versions of the bill, a Conference Committee is formed to reconcile the differences and produce a final version.

Once both chambers approve the final version, the bill is sent to the President. The President can sign the bill into law, veto it, or take no action. If the President vetoes the bill, Congress can override the veto with a two-thirds majority vote in both chambers. If the President does nothing and Congress remains in session for 10 days, the bill automatically becomes law. However, if Congress adjourns within this period, the bill is effectively rejected through a pocket veto⁵.

After a bill becomes law, it is published in the Federal Register and later codified in the U.S. Code. Federal agencies may also issue regulations to ensure proper implementation and enforcement of the new law. This step ensures that laws are effectively integrated into the legal system.

³ The Constitution of United.States, Art 1, S 1

⁴ The Constitution of United.States, Art 1,S 7,C 1

⁵ The Constitution of United.States, Art1, S 7, C 2

The U.S. law-making process reflects the country's commitment to democratic governance, transparency, and accountability. While the system is complex and often time-consuming, it ensures that laws are thoroughly debated and serve the interests of the people.

Law-Making Procedure in the United Kingdom

The process of making laws in the United Kingdom is conducted within Parliament, which consists of the House of Commons and the House of Lords. This structured procedure ensures that legislation is carefully debated and scrutinized before it becomes law. Once a bill successfully passes through all legislative stages, it receives Royal Assent, the final step before becoming an Act of Parliament.

The first stage in law-making is the introduction of a bill. Bills can originate in either the House of Commons or the House of Lords, though money bills (which deal with taxation or public expenditure) must start in the Commons. At the First Reading, the bill is formally introduced without debate, simply notifying Parliament of its existence. This is followed by the Second Reading, where the general principles of the bill are debated. At the end of this debate, Members of Parliament (MPs) vote on whether the bill should proceed further.

If the bill passes the Second Reading, it moves to the Committee Stage, where a Public Bill Committee (or in the Lords, the Committee of the Whole House) examines it in detail. Each clause is debated, and members can propose amendments. Committees may also call for expert testimony or evidence from stakeholders to inform discussions. After this thorough review, the bill advances to the Report Stage, where MPs or Lords can suggest further changes. Unlike the Committee Stage, this phase focuses on specific amendments rather than reviewing the entire bill. Following the Report Stage, the bill enters the Third Reading, where members discuss the final version of the bill, including all amendments. Unlike previous stages, the focus is not on making changes but on assessing whether the bill, in its final form, is ready for passage. If approved, the bill is sent to the other house (from the Commons to the Lords or vice versa) to undergo the same stages of debate, committee review, and voting. If the second house proposes changes, the bill returns to the originating house for approval of these amendments.

Once both houses agree on the final version, the bill is sent for Royal Assent, a formal process where the reigning monarch approves the bill, officially making it law. While Royal Assent is considered a formality today, it remains an essential constitutional step. After receiving Royal

Assent, the bill becomes an Act of Parliament and is enforceable as law.⁶

This multi-stage process ensures that UK legislation is thoroughly examined, debated, and refined, reflecting democratic principles and accountability. The combination of scrutiny from both houses and the involvement of committees helps maintain the integrity and effectiveness of new laws.

Law-Making Procedure in the India

The process of law-making in India is governed by the Indian Constitution, primarily under Articles 107 to 111 for Parliament (CHAPTER II. PARLIAMENT, Legislative Procedure) and Articles 196 to 201 for State Legislatures (CHAPTER III. THE STATE LEGISLATURE, Legislative Procedure). The Indian Parliament consists of two houses: the Lok Sabha (House of the People) and the Rajya Sabha (Council of States). Any proposed law, known as a bill, must pass through several stages before becoming an Act of Parliament. This structured procedure ensures thorough debate, scrutiny, and democratic participation.

The law-making process begins with the introduction of a bill in either house of Parliament, except for money bills, which must be introduced in the Lok Sabha⁷. A bill can be introduced either by a minister (government bill) or by a private member (private member's bill). The introduction requires prior permission, and once granted, the bill is formally presented in the house without any debate at this stage.

The first reading is the initial stage, where the bill's title and objectives are read out in the house. This step serves as a formal notification of the bill's introduction, and no discussion or debate takes place at this stage. The bill is then printed and made available for members to review.

The second reading is the most significant phase of the legislative process, as it involves a detailed discussion on the bill's principles and objectives. This stage is further divided into two sub-stages. First, in the general discussion, members of the house debate the overall intent and purpose of the bill. However, no amendments are made at this stage. Second, during clause-

⁶ <https://www.parliament.uk/about/how/laws/passage-bill/> (last visited on 15.03.2025)

⁷ The Constitution of India, Art 110

by-clause consideration, the bill is examined in detail, with each provision reviewed separately. Amendments can be proposed, debated, and either accepted or rejected.

After the second reading, the bill may be referred to a Parliamentary Committee, such as a Select Committee or a Joint Committee, for an in-depth examination. The committee reviews each clause, consults experts, and may suggest modifications. This stage is crucial in refining the bill and ensuring that it is comprehensive and effective.

Once the committee submits its report, the bill returns to the house for further discussion. Members analyze the committee's recommendations and may propose additional amendments. This stage ensures that the bill incorporates all necessary refinements before moving to the final approval stage.

During the third reading, members engage in a final debate on the bill but do not propose any further amendments. The discussion focuses solely on whether the bill should be passed in its current form. A final vote is then taken, and if the bill is approved, it is sent to the other house (Rajya Sabha if introduced in Lok Sabha, and vice versa)⁸.

The bill undergoes the same process of three readings, committee review, and voting in the second house. If the second house makes amendments, the bill is sent back to the originating house for approval. If both houses disagree on the amendments, a Joint Sitting of Parliament is held, presided over by the Speaker of the Lok Sabha, to resolve the deadlock⁹.

Once both houses pass the bill in identical form, it is sent to the President of India for approval. The President can either give assent, making the bill a law, withhold assent, effectively rejecting the bill, or return the bill (except a Money Bill) for reconsideration by Parliament. If Parliament passes the bill again, with or without modifications, the President must give assent.¹⁰

For state legislatures, a similar process applies. The Governor can approve, withhold, return,

⁸ The Constitution of India, Art 107

⁹ The Constitution of India, Art 108

¹⁰ The Constitution of India, Art 111

or reserve the bill for the President's consideration.¹¹

Once the President gives assent, the bill officially becomes an Act of Parliament and is enforceable as law. The newly enacted law is published in the Gazette of India, and relevant government agencies are responsible for its implementation.

The law-making process in India is designed to ensure transparency, accountability, and democratic participation. By passing through multiple stages, including committee reviews and detailed debates, every bill is subjected to rigorous scrutiny before it becomes law. This ensures that legislation reflects the needs and interests of the people while upholding the principles of the Indian Constitution.

DEMOCRATISATION OF LAW MAKING

Democratization of law-making refers to the process of making legislative procedures more open, participatory, transparent, and accountable, ensuring that the public, civil society, and various stakeholders have a direct or indirect role in shaping the laws that govern them. This process aims to decentralize law-making power, reducing the dominance of political elites, executive authorities, and special interest groups, and instead fostering a system where laws genuinely reflect the will and interests of the people.

In many democratic nations, the law-making process is dominated by the executive and political elites, with minimal public participation. Important bills are often rushed through legislatures without sufficient debate or scrutiny, and executive orders or ordinances allow governments to bypass parliamentary oversight. This lack of inclusivity leads to laws that may serve political, corporate, or bureaucratic interests rather than the broader public good. Democratization of law-making ensures that citizens are not just passive recipients of laws but active participants in their formulation, thereby strengthening democracy and trust in governance.

To achieve democratization, governments must adopt mechanisms for public participation such as public consultations, referendums, legislative hearings, and citizen assemblies. Strengthening parliamentary committees to analyze bills and invite expert and public opinions

¹¹The Constitution of India, Art 200

can ensure better law-making. Additionally, greater transparency in legislative proceedings, including public access to draft laws, voting records, and committee discussions, can enhance accountability. Furthermore, legal literacy programs should be implemented to empower citizens with the knowledge needed to engage effectively in legislative matters.

Despite its importance, democratizing law-making faces several challenges. Political resistance, lack of public awareness, executive dominance, and limited access to legal information often prevent meaningful participation. In many cases, laws are drafted using complex legal language, making them difficult for the general public to understand. Additionally, corporate lobbying and special interest groups may exert undue influence, sidelining public concerns. Addressing these issues requires strong legal reforms, digital access to legislative processes, and greater civic engagement to ensure that law-making becomes a truly democratic exercise.

A truly democratic law-making process enables active involvement of lawmakers, public consultation, and meaningful debates to ensure that laws reflect the interests of the people rather than being dictated by a select few. To assess the extent of democratization in law-making, several key factors must be examined, including the time taken to pass a bill, the level of participation in legislative discussions, the quality of debates, and the number of amendments proposed and accepted¹². These elements collectively determine whether a legislative process is open and deliberative or controlled and exclusionary.

One of the fundamental indicators of democratization in law-making is the time taken to pass a bill. A well-functioning legislative process requires adequate time for scrutiny, discussion, and revision before a bill becomes law. In many democratic countries, proposed legislation goes through multiple readings, committee reviews, and public consultations to ensure that all aspects are considered before final approval. However, in cases where bills are rushed through with limited debate or executive orders, the democratic process is weakened. For instance, frequent use of ordinances and fast-track legislation bypasses public scrutiny and legislative oversight, leading to laws that may not adequately address the concerns of citizens. While excessive delays can create inefficiencies, hasty law-making undermines democratic accountability and the quality of legislation.

¹² Malavika J, *Democratization of Law-Making: A Critical Evaluation of the Existing Strategies with Particular Reference to Kerala* (2022) (Unpublished Ph.D. thesis, National University of Advanced Legal Studies).

Another key factor in evaluating democratization is the level of participation in legislative discussions. A truly democratic legislature allows diverse political representatives to contribute to debates and decision-making. However, in many cases, participation is limited to a few dominant voices, with opposition members and independent representatives often sidelined. A high level of participation ensures that laws are discussed from multiple perspectives, incorporating the needs of various sections of society. In contrast, when laws are passed with minimal discussion or party-line voting, it raises concerns about whether legislative processes are genuinely democratic or merely symbolic exercises controlled by the ruling government.

The quality of debate within legislative bodies is another crucial element of democratic law-making. Meaningful debates should involve fact-based discussions, expert testimonies, and considerations of legal, social, and economic implications. Unfortunately, in many cases, legislative debates are reduced to political rhetoric, party conflicts, or hasty approvals, leaving little room for thorough analysis. A strong legislative process requires that elected representatives engage deeply with the subject matter, address public concerns, and critically evaluate proposed laws. Weak or absent debates often result in laws that lack clarity, are legally ambiguous, or face strong public resistance. For instance, major laws passed without detailed discussion or expert consultations have often led to legal challenges, protests, and policy reversals.

Additionally, the number of amendments moved and accepted is a critical measure of how open and responsive a legislature is to suggestions and improvements. A high number of proposed and accepted amendments indicates that lawmakers are actively engaged in refining legislation and ensuring that it serves the public interest. Conversely, when amendments are routinely rejected or not even considered, it suggests that law-making is controlled by a select few, reducing its democratic legitimacy. In some cases, ruling parties override opposition amendments, leading to laws that do not fully address concerns from all sectors of society. Democracies that allow frequent and meaningful amendments create laws that are better suited to real-world application and widely accepted by the population.