WESTMINSTER
FOUNDATION FOR
DEMOCRACY

LEGISLATIVE SCRUTINY

OVERVIEW OF LEGISLATIVE SCRUTINY PRACTICES IN THE UK, INDIA, INDONESIA AND FRANCE

LONDON, NOVEMBER 2018

ACKNOWLEDGMENTS AND DISCLAIMER

This document is the product of the Westminster Foundation for Democracy (WFD). It was made possible through funding received from the United Kingdom's Foreign and Commonwealth Office (FCO) and the Department for International Development (DFID).
It was published in November 2018.

The document has been compiled by Franklin De Vrieze on behalf of WFD, with contributions from Liam Laurence Smyth, Chakshu Roy, Agus Wijayanto and Anthony Weber.

WESTMINSTER
FOUNDATION FOR
DEMOCRACY

LEGISLATIVE SCRUTINY

OVERVIEW OF LEGISLATIVE SCRUTINY PRACTICES IN THE UK, INDIA, INDONESIA AND FRANCE

LONDON, NOVEMBER 2018

TABLE OF CONTENTS

Figures

ACRONYMS

BALEG	Legislative Committee of the DPR (Indonesia)
CEC	Committee for the Evaluation and Control of Public Policies (France)
CSO	Civil Society Organisation
DFID	Department for International Development (UK)
DIM	Inventory of issues (Indonesia)
DPD	House of Regional Representatives (Indonesia)
DPR	House of Representatives (Indonesia)
EU	European Union
HoC	House of Commons (UK)
HoL	House of Lords (UK)
IALS	Institute of Advanced Legal Studies (London)
MEC	Evaluation and Control Mission (France)
MoJ	Ministry of Justice and Human Rights (Indonesia)
MP	Member of Parliament
MPC	Mixed and Parity Committee (France)
MPR	People Consultative Assembly (Indonesia)
OPC	Office of the Parliament Counsel (UK)
PAC	Public Accounts Committee
PBL	Parliamentary Business and Legislation Committee of Cabinet (UK)
PLS	Post-Legislative Scrutiny
Prolegnas	National Legislative Program (Indonesia)
PRS	Parliamentary Research Service (India)
UK	United Kingdom of Great Britain and Northern Ireland
UoL	University of London
WFD	Westminster Foundation for Democracy

INTRODUCTION

This paper highlights the procedures and practices in reviewing legislation in selected parliaments, while recognising the differences deriving from the countries' variety of historical backgrounds, political situations and the adopted constitutional and political systems.

The paper provides an overview of legislative practices in the UK, India and Indonesia. Considering the distinct institutional characteristics of each country, each chapter highlights:

- The constitutional and legal basis for the parliament's legislative powers;
- The structures within parliament which play an important role in the review of legislation;
- The legislative process, including the procedural steps and the role and responsibilities of the main stakeholders in the process.

This publication is informed through a range of sources. Firstly, there are the constitution of each country and the rules governing the structure and procedures of each parliament, known as the Rules of Procedure and (in Westminster-derived parliaments) the Standing Orders. Secondly, information was obtained from the websites of each parliament, some of which are highly developed and provide a great deal of information about parliamentary procedure, while others are more rudimentary but still provide some useful data. Thirdly, this publication relied on published scholarly material on the details of legislative procedure in the respective parliaments and parliamentary systems, wherever available. Finally, some of the information is directly based on the authors' professional experience of working in the respective parliaments.

This paper has been compiled by WFD for the purpose of informing discussions with key interlocutors in partner parliaments. The selected case studies might be of relevance to the partner parliaments when assessing its own legislative processes.

WFD sees value in comparative overviews, as they bring the most relevant or best-fit options to the table, which can be considered for incorporation into the national parliament process. Comparative overviews provide the opportunity to identify lessons learned and improve parliamentary practice based upon the experience of various countries, without imposing any national model.

The document has been compiled by Franklin De Vrieze on behalf of the Westminster Foundation for Democracy (WFD). Valuable contributions were made by Liam Laurence Smyth (Clerk of Legislation at the House of Commons) for the chapter on the legislative process in the UK Westminster Parliament, Chakshu Roy (Parliamentary Research Service PRS in India) for the chapter on the overview of the legislative process in the Indian Parliament, Agus Wijayanto (WFD's Country Representative in Indonesia) for the chapter on Indonesia's legislative process, and Anthony Weber (PhD candidate) for the chapter on the French parliament.
The document has been peer-reviewed by David Thirlby, George Evans and Dina Melhem of WFD.

I. PARLIAMENT'S ROLE IN LEGISLATIVE REVIEW

One of the main tasks of parliament in a democratic system of governance is to consider, debate, review and adopt legislation. No matter how or by whom a draft law[1] is developed, parliament's job is to review the draft law prior to deciding whether or not to adopt the law, with or without amendments.

The first chapter of this publication will discuss four features of parliament's legislative review role. The first section will discuss the main principles and stages of the scrutiny process conducted by parliament. The second section will discuss the rationale and means by which parliament can consult the public on draft legislation. The third section will analyse how a country's constitutional system affects parliament's role in reviewing legislation. The fourth section of this chapter will discuss the importance of the full cycle approach to legislative review.

1. Institutional scrutiny process by parliament

In most democratic countries, there are two aspects to the review of draft legislation by parliament: the institutional scrutiny process and the public consultation process. Across different parliaments, these two processes usually have the following characteristics.

The exact process by which a parliament reviews or scrutinises a draft law is varied and depends on a number of factors. However, there are a few principles that are recognised as best practices for forming the foundation of a review.

The first principle is called "Multiple Votes". It suggests that a parliament considers a draft law and votes upon it more than once before it is considered adopted. This enables the MPs to pass a law knowing it did so on more than a whim, a momentary absence of critical thought or a temporary lack of the full picture of all available information.

The second principle is called "Measured Consideration". It recommends that each stage of the review process is given enough time. Preferably, there is a period of several days, or more, between each stage of the review process. This enables concerned citizens and groups to consider the content and for MPs and parliamentary groups to conduct consultations before deciding how they will vote. Again, like the need for multiple votes, this ensures that the parliament and its MPs have thoroughly and thoughtfully considered the proposed law.

In several parliaments, the possibility of fast-tracking of legislation has been established. While fast-tracking of legislation is sometimes considered necessary when there are time or constitutional constraints (for instance on passing enabling legislation in Colombia following the peace agreement), it has also been observed that, on occasion, fast-tracking can be highly controversial and undermine the democratic legitimacy of the legislation and of the institution of parliament as a whole. There is thus a clear need to ensure thoroughness of scrutiny when legislation is fast-tracked, and/or make binding requirements for Post-Legislative Scrutiny.

The common stages of the institutional review process in parliament[2] are as follows:

- **Committee Stage:** A smaller group of MPs representing a cross-section of the parliament considers bills in detail and sometimes conducts public consultations.[3] The objective is to look at each clause of the draft law and to propose any amendments to improve it. Where more than one committee reviews the draft law, it is generally accepted that one committee should report back to the plenary the agreed upon amendments. In some parliaments, the draft law returns with amendments made to the proposed

1 In some countries, "draft Law" is called "project law", based on the French terminology: Projet de loi or proposition de loi.

2 The language of part of this section is based upon the text of the Agora-website: https://agora-parl.org/resources/aoe/parliamentaryinstitution/legislative-review-processes

3 Some parliaments have "standing committees" to review Bills. The UK House of Commons has ad-hoc Bills Committees and the House of Lords has Grand Committees.

law and in other parliaments the proposal returns with a report recommending amendments for consideration.

- **Review in Principle:** This stage can occur before or after the committee stage and is the first vote in the plenary session of the parliament on a draft law. The details are not to be debated but MPs are to decide if the general concepts and principles of the law are appropriate and if the law should continue forward for a more detailed review.
- **Clause-by-Clause Review:** Once the draft has been approved in principle and reviewed in detail by one or more committees, it is presented to the plenary for debate on the individual clauses of the draft law. The recommendations of the committee(s) are considered along with the original wording of the draft.
- **Final Approval:** After the draft law has been voted on in principle and each clause has been voted upon by the plenary of the parliament, the final version of the draft law, with or without amendments, is voted upon.

Once adopted, the law is presented to the Head of State for signature. Depending on the political system, there is some flexibility in whether the Head of State must agree to the proposed law, or has the possibility to return it to parliament for reconsideration.

A law enters into force once published in the official journal or the Gazette, or a few days after its publication allowing time for citizens to know about it. This depends on the political system. It is important to note that the date the law enters into force is different from the date it is adopted.

2. Public consultation process

In many democratic countries, there also exists a parliamentary public consultation process on draft legislation, in addition to parliament's own institutional review process.

It is only when a draft law is introduced in the parliament that most citizens become aware that there is a proposal for amending an existing law or to create a new law to regulate an aspect of one's life. It is vital that the process by which a parliament reviews a draft law includes an opportunity for citizens and organisations to comment on the draft law. There are two reasons for this: (i) draft laws are often improved as a result of feedback and comments from citizens that will be living and working within the confines of the new law; and (ii) citizens are more likely to accept the content of a new law and, therefore comply with it, where they have had a chance to affect its content.

It is at the committee stage of the review process that citizens and organisations will be engaged.[4] There are several means by which a committee can consult the public:

- **Surveys:** In some countries, committees can commission research that includes the tabulation of public opinion on a specific subject. This will result in a more scientific, quantitative set of data. Such surveys can be done by parliament or by hiring external professionals.
- **Web-based consultations** on draft laws or specific topics, through online surveys or a broader request for comments. Committees should be cautious as online consultations can be co-opted by interest groups or may reflect only a segment of the population that has access to internet.
- **Field Visits:** In order to get a first-hand look at the impact of a draft law, committees can travel outside of the parliament (and the capital) to visit specific communities or groups that are impacted by the issue regulated by the draft law.
- **Public consultations** are informal meetings in which citizens and civil society groups are asked to provide comments on a draft law or a subject matter being investigated by the committee. These meetings may look similar to public hearings, discussed below, but are less formal and allow for a freer exchange between committee members and citizens.
- **Private Meetings** with select groups and individuals that are affected by the work of the committee can provide a more detailed and nuanced level of knowledge that can enhance what has been gained from more public engagements.
- **Public Hearings** are a subset of public consultations, being a formal meeting in which citizens and groups are asked to testify before the committee. Such proceedings are often recorded, and the media is present. The result

4 This depends on the consultation on the draft law that has been conducted ahead of the its submission to parliament, when policies are set out and the draft law is conceptualised.

is a formal record of how those impacted by a draft law or subject matter are affected and their recommendations for change.

3. Parliament's legislative role in different constitutional systems

MPs are chosen according to a variety of different electoral systems, and the parliaments function according to different structures and operations, shaped by different constitutional systems. As the balance between parliament and government in the legislative process varies across different countries, the procedures for reviewing and passing laws in parliaments are inevitably different.

Nevertheless, one can identify certain patterns within the diversity of legislative procedures. These patterns derive from traditions of political, constitutional and legal thinking that have been both inherited from colonial and global practice and from local institutions and traditions. They are not unique to a specific parliament and can be found across the parliamentary world.[5]

Constitutional systems affect parliament's role in the legislative process. Broadly speaking, constitutions across the world are conventionally classified as either presidential or parliamentary, or as having features of both systems (usually called "semi-presidential" systems).

The key difference between the presidential and parliamentary systems is the method for selection of the head of government and whether the cabinet is accountable to the parliament. Systems where there are two separate elections for the head of government (called the president) and the parliament and a clear separation of powers between the two branches of government are classified as presidential. Systems where there is one election for the parliament, and the parliament then elects a head of government (usually known as a prime minister), who is answerable to the parliament, are classified as parliamentary.

Constitutional systems are a major factor determining the role of the parliament in law-making. While the focus of parliaments' work in parliamentary systems is on the review of legislation proposed by executive government, parliaments in presidential systems both review government legislation and initiate their own legislation. It can be said that parliaments within a parliamentary system are generally relatively weak in law-making terms compared to parliaments in a presidential system. This is because a Prime Minister must control a majority within parliament in order to stay in office, while a directly elected President can remain in power even if they do not have majority support in the legislature. Therefore, a Prime Minister can routinely expect to have their legislation passed in a parliamentary system, while in a presidential system the President may face a hostile parliament opposing the government's programme. Thus, parliaments in presidential systems generally have a much greater role in the legislative process than do parliaments in a parliamentary system. Presidential legislatures often draft their own bills, question the policy objectives of government Bills and/or propose amendments.

Parliament's powers on legislation are often exercised through parliamentary committees, whose role is shaped by the constitutional system in which they function. One of the parliaments with a prominent role in the legislative process is, for instance, the Indonesian House of Representatives (DPR), which functions within a presidential political system. It does not only initiate and draft bills, it frequently proposes amendments to government Bills. Since drafting bills and amendments is difficult to do in a large plenary session, it is usually delegated to committees. Therefore, legislative committees of parliaments in presidential systems are usually very powerful organs which can determine the fate of a draft legislation, both in terms of its content and whether it is passed at all.

Conversely, the role of committees in drafting and amending legislation in parliaments in a parliamentary system is more limited. Usually, the legislative procedures in such parliaments formally provide for a committee stage in the law-making process, but the basic policy content and wording of the clauses of bills is rarely likely to change in the committee stage. Although the powers to amend the bill exist also in a parliamentary system, they may not be used that often. The committee stage can provide an opportunity for public consultation on bills but if, as is usually the case, the bill has been drafted within a government ministry, most consultation would have been completed during the ministry's own drafting process.

In summary, one can observe that various

5 Sherlock, Stephen, Legislative Procedures of AIPA Member Parliaments, Published by AIPA Secretariat, Jakarta, September 2015, 122 p.

constitutional arrangements, political and historical legacies and electoral systems give rise to parliaments that have very different relationships with executive government and very different types of involvement in the law-making process. Some parliaments initiate and draft laws, while others are more involved in a process of review of government-initiated legislation. Some parliaments tend to focus on technical issues and refinements to the details of policy and legislation, while other parliaments may draft amendments that challenge the approach being advocated by executive government.

4. Full cycle approach to the legislative process

WFD encourages a full cycle approach to the legislative process. This means that the different stages of drafting, debating, approving, evaluating and amending legislation are considered subsequently and in a holistic approach.

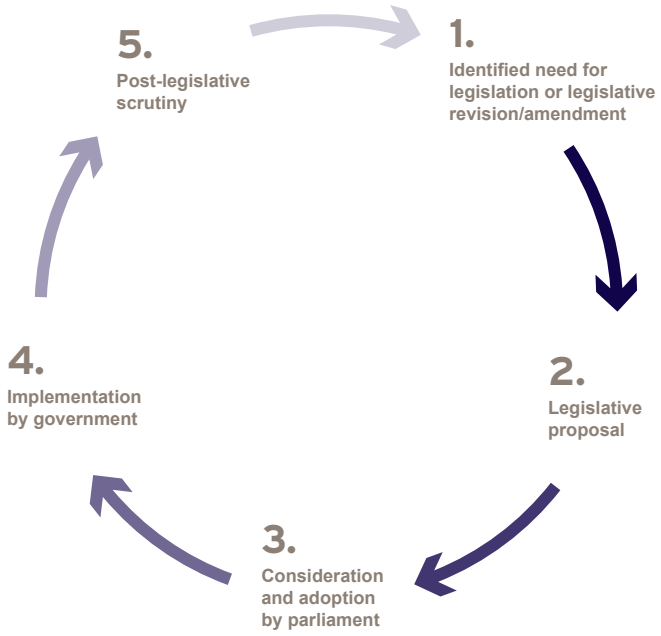


Figure 1: PLS as part of end-to-end legislative process

The full cycle approach in parliamentary work was initially adopted in the budget process, considering the process of compiling the draft budget, debating and approving it, evaluating its effectiveness and considering the audit findings.

A full cycle approach to the legislative process covers first identifying the need for legislation, preparing the policy, drafting the legislative proposal, consideration and adoption of the draft law by parliament, implementation by the government, Post-Legislative Scrutiny, and identifying the need for legislative amendments or the need for new legislation.[6] As part of the Post-Legislative Scrutiny, the extent to which secondary legislation has been issued in a timely manner by the relevant ministry and the impact assessment on the law can feed into possible amendments or new legislation.

6 "Post-Legislative Scrutiny in non-Westminster Parliaments", paper for the Academic Seminar on Post-Legislative Scrutiny by IALS-UoL and WFD, 10 July 2018, by Jonathan Murphy and Svitlana Mishura, Verkhovna Rada of Ukraine.

II. LEGISLATIVE SCRUTINY IN THE UK WESTMINSTER PARLIAMENT[7]

The House of Commons is one of the oldest and foremost legislatures in the world, yet its select committee system has grown in influence only recently. The select committee system (founded in 1979) has provided an ever more influential mechanism for 'shadowing' each department and bringing legislators' views to bear.

In the United Kingdom (UK), the legislative agenda is dominated by the government. This means that there is very little time for non-government Bills to be debated: there are only 13 Friday sittings in House of Commons plenary each year (annual Session). Although non-government Bills (also called Private Members' Bills) are more numerous than government Bills they are far less likely to become law.

Acts of Parliament are primary legislation. Parliamentary sovereignty means that Acts of Parliament cannot be cancelled by the courts. There are however two exceptions to this general rule. Firstly, until the UK leaves the EU, European Union law takes precedence so if there is any conflict between a UK Act of Parliament and EU law, then the EU law applies. Secondly, under the Human Rights Act, the UK courts may declare an incompatibility between a UK Act of Parliament and the UK's international obligations under the European Convention of Human Rights, which the UK adheres to as a member state of the Council of Europe (1949) and which will continue to apply after the UK leaves the EU (it joined in 1973). In the case of finding an incompatibility, the UK law continues to apply but Parliament is expected to legislate to resolve the incompatibility.

Another basic given of the legislative process is that Acts of Parliament, which are primary legislation, can be amended only by another Act of Parliament. Some Acts of Parliament confer power on Ministers to amend primary legislation in order to make consequential provision. However, delegated legislation implementing a new Act of Parliament can sometimes make minor changes to older Acts of Parliament necessary in order to implement the new Act.

I. Pre-Legislative Scrutiny

Policy development: The government prepares legislative proposals for a wide variety of purposes: for example, annual budget Bills, to implement a party programme or to respond to an emergency.

Green Paper: The Ministry often but not always publishes[8] an outline description of alternative proposals for legislation and invites comments from stakeholders with a deadline of about 8-12 weeks.

White Paper: The Ministry often but not always publishes[9] its decision on proposals for legislation with an explanation of the policy.

Cabinet approval: The Parliamentary Business and Legislation Committee of Cabinet (PBL) meets in private to decide which Bills should be given priority to be included in the government's legislative programme announced in the annual Queen's Speech (usually in May). With PBL approval, the Ministry may instruct the expert lawyers in the government's Office of Parliamentary Counsel to prepare a draft of the Bill, to meet the necessary legislative standards of clarity, effectiveness and consistency with existing law.

House authorities: Parliamentary Counsel seek advice in confidence from the parliamentary authorities (the Clerks of Legislation in each House) on any aspects of parliamentary procedure applicable to the proposed Government Bill.

Draft Bill: In a few cases (about six a year) the government may publish[10] a complete drafted Bill for scrutiny by Parliament. Normally, owing to political urgency, a Government Bill is introduced in Parliament and begins its passage as soon as its drafting is completed.

Select committee scrutiny: When a draft Bill is published, it may be referred for stakeholder hearings and an advisory report to either a specially appointed

7 By: Liam Laurence Smyth, Clerk of Legislation, House of Commons, United Kingdom.

8 Publication is in hard copy freely available to all Members of Parliament and (at a small cost) to the public and free of charge on the internet at www.gov.uk

9 Publication in same way as mentioned above.

10 Publication in same way as mentioned above.

joint committee of Members representative of the parties in both Houses, or to one of the permanent advisory select committees (Defence, Education, Foreign Affairs, Health, Transport, etc).

II. Legislative Scrutiny: Parliamentary Stages of Passing a Bill

The government decides which House a Government Bill will start in. However, budget bills always start in the House of Commons: Finance Bills to authorise taxation, and Supply and Appropriation Bills to authorise annual spending totals for each Ministry.[11] Only Members of Parliament (and in the UK Ministers are all Members of either the House of Commons or the House of Lords) can introduce Bills.[12]

First Reading: Every Bill must be published when it is read the first time.[13] Bills passed by the other House (Commons or Lords) are read for the first time when they are received in the second House (Lords or Commons).

Explanatory Material: Each Government Bill is accompanied by the following material:[14]

- Explanatory Notes prepared by the Ministry with a clear description in ordinary language of the background to and contents of the Bill;
- Impact Assessments carried out by the Ministry of the expected effects of the Bill;
- An assessment carried out by the Ministry for the Human Rights Joint Committee of both Houses of Parliament on the compatibility of the Bill with the European Convention of Human Rights;
- An assessment carried out by the Ministry for the House of Lords Select Committee on Delegated Powers of the Bill's proposals to delegate power to Ministers to make secondary or subordinate legislation;

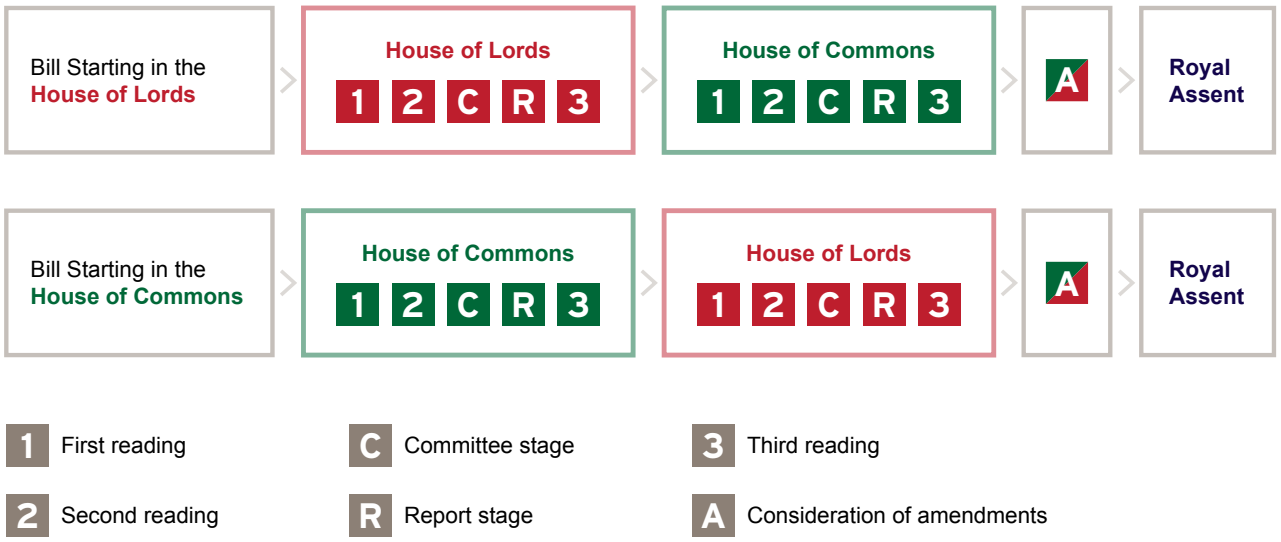


Figure 2: Law making process in the UK Westminster Parliament

11 What is a "money Bill" is decided formally by the Speaker, applying 1911 Parliament Act. The Office of the Parliament Counsel (OPC) will inform parliament clerks what they think a money Bill is or isn't.

12 The exception to the rule is that corporations or municipalities can promote private Bills to seek legislative authority to make bye-laws or to have other special provision applying only to their own activities. These private Bills are now very few (4 or 5 a year) and are subject to additional scrutiny processes set out in the private business standing orders.

13 Publication in hard copy freely available to all Members and (at a small cost) to the public and free of charge on the internet at www.parliament.uk

14 Publication in hard copy freely available to all Members and to Members and the public on the internet at www.parliament.uk and/or www.gov.uk

- Reports from Parliamentary select committees listed on the plenary Order Paper or in the Explanatory Notes as relevant to the Bill; and
- Briefing Paper by the House of Commons (or House of Lords) Library Research Service (this is the document which Members find most useful).

Second Reading: The main principles of a Bill are approved on Second Reading after a debate lasting a whole day (usually four to six hours) in a plenary sitting, normally about two weeks after the Bill's First Reading. The Member in charge (a Member of the House who is also a Minister, in the case of a Government Bill) opens the debate and replies at the end of the debate, which ends in a recorded vote. There are however four exceptions.

- The House of Lords normally gives government Bills an unopposed Second Reading.
- The House of Commons sometimes gives government Bills an unopposed Second Reading.
- In the House of Commons, most non-government Bills are not reached for a decision on Second Reading because the debate on Second Reading has not concluded before the Friday plenary ends after a maximum of five hours.
- Minor and uncontroversial Bills may be referred by the House of Commons to a Second Reading Committee for a debate, followed later by a formal decision on Second Reading without further debate in a plenary sitting of the House of Commons.

Committal: After Second Reading a Bill is committed to a Public Bill Committee for detailed approval of every clause of the Bill. However, the House of Commons sometimes commits Bills to the plenary (Committee of the whole House) for the committee stage of government Bills which are either (a) urgent, (b) of constitutional importance or (c) very uncontroversial. The House of Lords always commits Bills to the plenary (Committee of the whole House or Grand Committee) for the Bill's committee stage.

Programme: Immediately after the Second Reading, the House of Commons approves a programme motion setting the date by which the Public Bill Committee must report the Bill. Depending on the size of the Bill, there are usually about 6-10 sittings of a Public Bill Committee on a Bill.

Commons Public Bill Committee: The composition of Public Bill Committees reflects the proportions of party representation in the whole House of Commons. Appointments are made by the Selection Committee. In the current 2017 Parliament, a typical Public Bill Committee would comprise of 10 Conservative MPs (including a Minister), seven Labour MPs and two Scottish National Party MPs. A new Committee is appointed to consider each Bill. The Public Bill Committee ceases to exist when it has considered every clause of the Bill and reported the Bill to the House. If the Bill has been amended by the Committee, it is published.[15] A pair of senior Members of the Panel of Chairs are appointed to preside over sittings of the Committee, exercising the authority of the Chair with the same impartiality as applied by the Speaker in the Chamber.

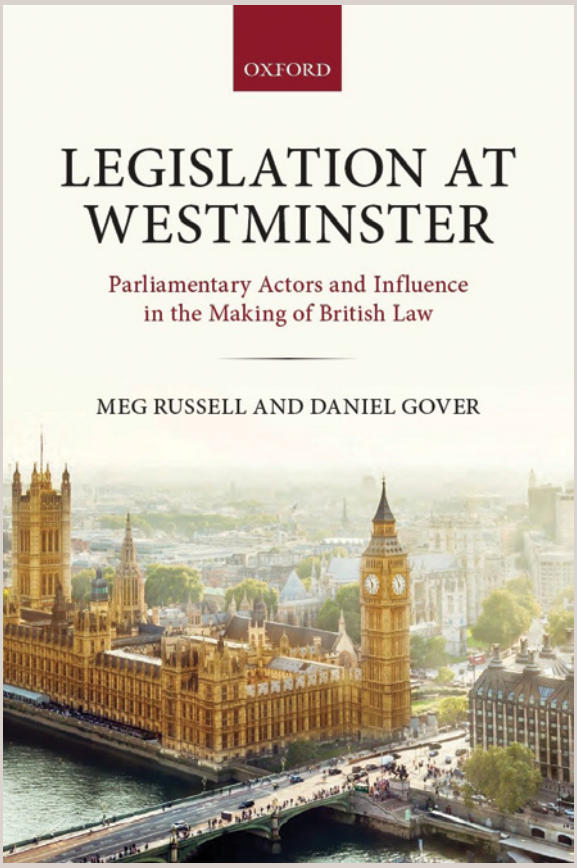
Committee hearings: Commons Public Bill Committees hold up to three sittings of public hearings with stakeholders, about two weeks after the Second Reading debate, before beginning the debates on consideration of the Bill. All stakeholder hearings are open to the public; proceedings are streamed on the internet at www.parliamentlive.tv and are sometimes televised; and a complete transcript is published the following day on www.parliament.uk. The House of Lords does not hold hearings on Bills except in the very few cases (one a year at most) when a Bill is committed to a select committee after Second Reading. The House of Commons does not hold public hearings on Bills which have been passed by the House of Lords, or which have been committed to the plenary (Committee of the whole House) for the Bill's committee stage.

Committee debates: The Public Bill Committee takes a decision on every clause of the Bill. Before each clause is approved, the Committee debates any amendments which have been tabled in writing at least two days in advance and which are selected by the Chair for debate. Any amendments made by the committee take effect unless reversed at a later stage by the plenary or in the second House of Parliament.[16]

15 Publication in hard copy freely available to all Members of Parliament and (at a small cost) to the public and free of charge on the internet at www.gov.uk

16 All committee debates are open to the public; proceedings are streamed on the internet at www.parliamentlive.tv and are sometimes televised; and a complete transcript is published the following day on www.parliament.uk.

Parliament's power on legislation in the UK



The Westminster Parliament is a highly visible political institution, and one of its core functions is approving new laws. Yet Britain's legislative process is often seen as executive-dominated, and parliament as relatively weak. Meg Russell and Daniel Gover's new book Legislation at Westminster is the most detailed study of the British legislative process for over 40 years, and challenges these assumptions. This book provides important additional insights to the different stages of the legislatives process as mentioned further on in this publication.[17]

Westminster Parliament is becoming stronger and more influential to the legislative process. Many government amendments proposed for bills introduced to parliament in fact respond to earlier proposals from non-government parliamentarians.[18] Most government amendments with substance are traceable to parliamentary pressure, putting new attention on what is parliamentary influence. There are more actors in the legislative process in the UK than commonly understood.[19]

The obvious actor to start with is government. Most Bills that reach the statute book are drafted by government lawyers and piloted through Parliament by Ministers. Behind the scenes are numerous others, including civil servants organised in 'Bill teams' who support the process. It is well-known how government consults with external stakeholders/relevant interest groups before legislating; but Ministers and civil servants also pay close heed to parliamentarians' views at the early stages. The need to prepare 'parliamentary handling strategies', including 'possible concessions and fall-back positions' is openly acknowledged in the government's own Guide to Making Legislation. As one civil servant put it, Parliament is part of the 'climate of opinion which shapes how the legislation is framed'.

The next most visible actors are opposition parties. They often greet legislation with noisy complaints (though actually, much legislation is also received relatively consensually), and they are responsible for proposing by far the largest number of amendments. But many such amendments are not actually targeted at change. A lot are 'probing', just to facilitate debate on the government's proposals. Others are 'signalling' or 'gameplaying' amendments, to demonstrate the opposition's merits, or to embarrass the government. One of the opposition's most important contributions is the ability to 'politicise' issues, drawing attention to possible defects, which in turn encourages government to think through policy carefully before introduction.

Government backbenchers are sometimes considered to be the most influential actors at Westminster, given Ministers' need to maintain their support and votes. Yet the way they influence the process is subtle, with concerns often expressed behind the scenes. When taking into account parliament's likely reactions

17 Meg Russell and Daniel Gover, Legislation at Westminster: Parliamentary Actors and Influence in the Making of British Law, Oxford University press, 2017.

18 In the UK system, the non-government parliamentarians can be backbenchers (from the ruling party or parties) or opposition front-bench MPs.

19 https://constitution-unit.com/2017/08/23/legislation-at-westminster-and-how-parliament-matters-more-than-many-people-think/

to a Bill, this group is hence very important – so much so that Ministers (who after all come from the same party, or parties) frequently internalise backbenchers' concerns. This group can be very important in putting matters onto to the government's agenda and keeping them there – for which they can use tools often considered unimportant, such as early day motions and Private Members' Bills.

Non-party parliamentarians are relatively little-known actors, but crucial in the House of Lords. They are rarely the main protagonists in conflicts with government, but their views and impact on culture are important. They help to encourage rational, rather than purely partisan, debate in the House of Lords, requiring ministers to respond to evidence, and provide explanations, rather than appealing only to party loyalty.

Pressure groups play a key role in parliamentary influence, again helping to ensure that debates are evidence-based. Different external groups may both support and oppose the government's position, and Parliament is a very public forum for these arguments to be played out.

Report stage debates: Amendments which have been tabled in writing at least two days in advance and which are selected by the Speaker for debate are considered in (normally) plenary sittings for up to about four hours. The Speaker's selection of amendments is conducted impartially and mainly on technical grounds taking into account the relevance of the amendment to the Bill.[20] There is no selection of amendments or programming of debate in the House of Lords, although the government suggests how amendments on a similar subject may be grouped for debate.

Third Reading: A short (up to one hour) debate takes place in plenary immediately after the end of the report stage debate. In the House of Lords further amendments may be made to the Bill by the plenary at the Third Reading stage.

Agreement between the Houses: When the Bill has been passed by one House (Commons or Lords) it is passed to the other House (Lords or Commons) where the Bill must pass through the same stages: First Reading, Second Reading, Committee, Consideration (Report) and Third Reading. Any changes made by the second House come back to the first House which may accept, alter, reject or replace the changes made by the second House. The second House then considers the changes which were not accepted by the first House, and may accept, alter, reject or replace the changes made to the second House's changes by the first House. Exchanges between the Houses continue until the final set of changes is accepted. It is possible, but very unusual for no agreement to be reached between the Houses, in which case the Bill cannot make any further progress.

20 All plenary debates are open to the public; proceedings are broadcast on the dedicated BBC Parliament channel and also streamed on the internet at www.parliamentlive.tv; and a complete transcript is published within a few hours on www.parliament.uk.

Westminster Parliament shapes government legislation in subtle ways

While parliamentary select committees play no formal role in agreeing legislation, they are surprisingly important. The views of these respected committees, and the evidence that they provide can be important both to those defending and attacking government positions.

Westminster Parliament plays a central role in shaping government legislation, but in various, often subtle ways. The above-mentioned book highlights several 'faces of parliamentary power' in the legislative process. These are probably common to some extent in all parliamentary systems:

Visible changes through amendments, which is the most obvious place to look for influence but tells only a small part of the story.

'Anticipated reactions', whereby government changes its plans in expectation of how parliament will react.

More subtly, government internalising – relatively automatically and unconsciously – what parliament will accept. This is more likely in 'parliamentary' (rather than presidential) systems, because government ultimately depends on Parliament's support for its survival, making open legislative conflict more hazardous.

Issue politicisation and agenda setting, whereby parliamentarians use their powers to put policy issues onto the agenda – either to press for action, or through focusing on the most questionable proposals in government Bills.

Accountability and exposure, by which government proposals are subjected to thorough scrutiny on the public record, requiring ministers to defend their positions. These last two powers feed powers 1-3.

Once all of these different faces of power are considered, Parliament is very far from peripheral in the legislative process – instead it is central to that process. It offers more than just 'legitimation' for government policy: it actively shapes that policy, from the very earliest stage of agenda setting to when it is finally agreed. Contrary to popular belief, the Westminster Parliament can indeed properly be described as a 'legislator'.[21]

21 See also: Meg Russell and Philip Cowley, The Policy Power of the Westminster Parliament: The "Parliamentary State" and the Empirical Evidence; in: Governance: An International Journal of Policy, Administration, and Institutions, Vol. 29, No. 01, January 2016, p. 121-137.

Royal Assent: Bills passed by both Houses of Parliament always receive the Royal Assent and become law as Acts of Parliament. There is no veto or delay by the Head of State (the Queen). The exact date of Royal Assent is determined by the Government. It is normal for Royal Assent to be signified to several Acts at the same time, but possibly up to a few weeks after being passed. When Royal Assent is notified, the Royal Assent will always include at the same time all the Acts passed by both Houses of Parliament which are still waiting for Royal Assent.

Bills must be passed by both Houses before they can receive Royal Assent and become law. However, Bills certified as Money Bills by the Speaker of the House of Commons may be presented for Royal Assent under the Parliament Act if the House of Lords has not passed the Bill within one month. Other Bills passed by the House of Commons but not by the House of Lords may be presented for Royal Assent under the Parliament Act after a delay of at least 13 months: if the House of Lords has not passed the Bill within one month of the House of Commons passing the Bill a second time at least one year after the first time when House of Commons gave the Bill a Second Reading.

The two Houses of Parliament never hold a joint sitting. The only exception is the State Opening of Parliament each year, where the Head of State reads out the Government's programme (the "Queen's Speech") in the House of Lords. The Speaker, Prime Minister and other Members of the House of Commons are invited to stand at the back of the Lords Chamber to hear the Speech being read out. By long tradition, the Head of State is never allowed to set foot in the House of Commons.

III. Post-Legislative Scrutiny

Secondary legislation: Secondary or subordinate or delegated legislation comprises regulations and orders (decrees) made by Ministers using statutory powers in Acts of Parliament. Only Ministers can make delegated legislation, which is formally tabled in Parliament and published.[22] All regulations are accompanied by an explanatory memorandum

22 Publication in hard copy freely available to all Members of Parliament and (at a small cost) to the public and free of charge on the internet at www.gov.uk

published on the internet at www.gov.uk explaining what the regulations intend to do.

Role of the courts: Unlike Acts of Parliament, which are primary legislation, secondary/subordinate/ delegated legislation can be challenged in the courts if Ministers have exceeded their powers under an Act to make such regulations or orders.

Parliamentary scrutiny of secondary legislation: The Joint Committee on Statutory Instruments carries out technical scrutiny of secondary/ subordinate/ delegated legislation to check that it is correctly drafted and within the powers of the Minister. In the House of Commons, debates of up to 90 minutes take place in specially constituted Delegated Legislation Committees appointed by the Selection Committee on the minority (about 10 per cent) of regulations subject to the affirmative (approval) procedure, followed by a decision in the plenary without further debate. Regulations may be approved or rejected; they cannot be amended by either House of Parliament. Three related issues worth mentioning: (1.) A small number of approval debates (about 10 a year) take place in a House of Commons plenary session; (2): A small number of debates (about five a year) take place in a House of Commons Delegated Legislation Committee on regulations subject to the negative (annulment) procedure; (3): In the House of Lords, all approval debates take place in plenary sessions either in the Grand Committee or in the main Chamber.

Other post-legislative scrutiny in Parliament: The permanent subject select committees in the House of Commons may decide to conduct a post-legislative review of an Act of Parliament, possibly based on a Ministry review paper published about three to five years after the Act was passed, holding public stakeholder hearings before publishing an advisory report. The House of Lords occasionally appoints a select committee for the specific task of reviewing an Act of Parliament. Unsystematic post-legislative scrutiny includes starred and unstarred questions, plenary motions and select committee inquiries.

Photo: The UK Parliament select committee system was founded in 1979. © UK Parliament

III. LEGISLATIVE SCRUTINY IN THE INDIAN PARLIAMENT[23]

The institutions of legislatures are the focal point of governance in every parliamentary democracy. As representative institutions they represent the hopes and aspirations of citizens. As law making bodies they are tasked with ensuring that the legal framework in the country is robust and relevant with the times. They play an important fiduciary role in holding the executive branch of the government accountable. And finally, legislative institutions ensure that budgetary allocations put the country on a firm social and economic footing.

In India, both federal and state legislatures have the power to make laws. This part of the paper lays down the broad framework of law making and highlights the legislative process followed by the federal parliament of India while deliberating on legislative proposals.

1. A bicameral parliament

The federal parliament of India comprises of two Houses. One House has Members of Parliament who have been directly elected by voters in a general election held every five years. The other House is made up of Members who have been indirectly elected by legislators from states. For a law to be passed in the Indian Parliament it has to be approved by both Houses. The only exceptions to this rule are laws which the Constitution categorises as financial legislation. Such laws can only be initiated and require passing by the directly elected House.

In addition to financial laws, there are two other types of legislation. The first is ordinary legislation. These laws can be initiated in either House of federal

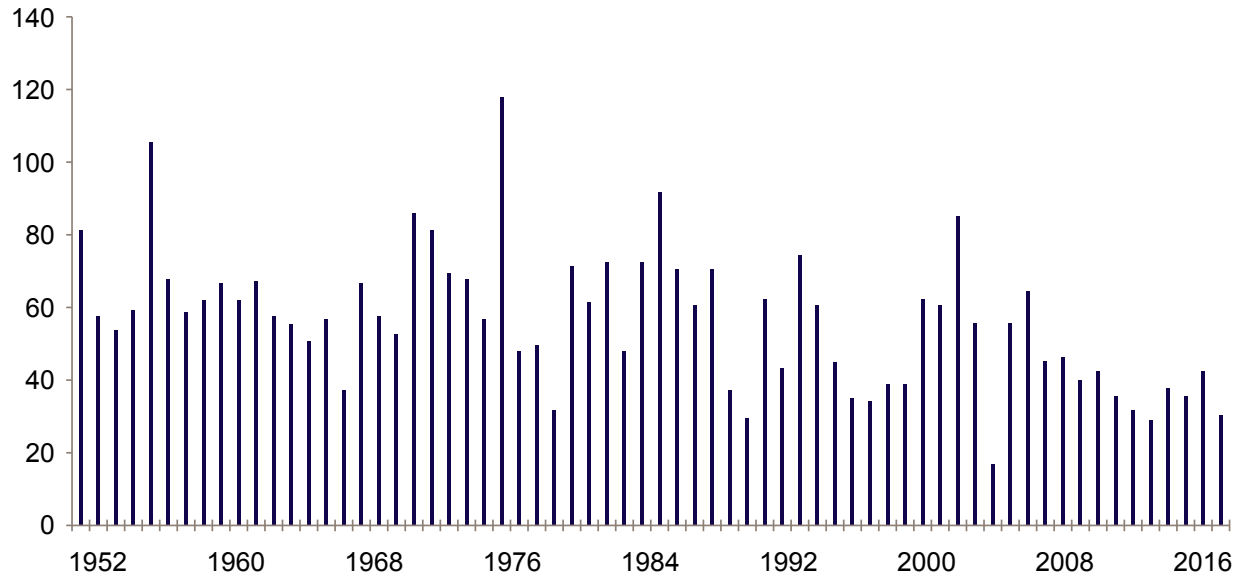


Figure 3: Number of Bills passed by Indian Parliament since 1952

23 By: Chakshu Roy, Head of Legislative and Civic Engagement at the PRS Legislative Research in India.

Parliament. They can be either new legislation which fill a gap in the current legal system, or amendments to an existing law. The second category of law which has to be passed by both Houses of Parliament is a law to amend the Constitution of India. While financial and ordinary legislation only require a simple majority of MPs in a House to be passed, constitutional amendment laws however require two thirds of Members in each House to vote in its favour.

2. Federal parliament and state-level legislatures

The Constitution of India demarcates the subject areas on which either federal or state or both legislatures can exercise their law-making powers. It gives the federal parliament in Delhi the power to make laws on issues of broader policy which are applicable to the entire country. In addition, only the federal parliament has the power to amend the Indian constitution.

Legislatures at the state level have the power to legislate on subject areas like education, health, law and order which are only applicable within the boundary of a particular state.

The executive branch of the government also has the power to make laws. They can do so when the legislature is not in session and immediate legislative action is required. Legislation made by the executive branch needs to be approved by the legislature within six weeks of reassembling for a session.

3. Time to prepare legislation

In India, a proposal to introduce a law can come either from the executive or a private Member of Parliament. Usually it is only legislative proposals that are piloted by the executive which are passed.

In 2014, the executive branch of government introduced a policy on pre-legislative consultation to be followed by every Ministry before submitting a legislative proposal (including subordinate legislation) to the Cabinet.

The policy mandates that a draft Bill be placed in the public domain for 30 days. It is to include a justification for its introduction, financial implications, estimated impact assessment and an explanatory note for key legal provisions. A summary of comments received is to be made available on a website. The draft Bill is then sent for Cabinet approval.

While there is a pre-legislative scrutiny mechanism prescribed, it is not very rigorously followed. Often major Bills have been introduced without being put in the public domain for feedback and comments. Therefore, it cannot be compared to the institutional practice of green/white papers in the UK.

Before a legislative proposal reaches Parliament, a draft copy of the law is put in the public domain to gather feedback. Thereafter, the proposal has to be approved by the Cabinet before it can be taken to the federal Parliament. When a legislative proposal reaches parliament, it is referred to as a 'Bill'.

The idea for a legislative proposal emanates from the government department which is responsible for the subject area. This department reaches out to the Legislative Department under the Ministry of Law and Justice in India for drafting the legislation. The Bill which is drafted (ideally within 30 days) along with a detailed note explaining the need for the Bill is placed before the Cabinet for its approval. After it is approved by the Cabinet the Bill is introduced in the Parliament.

There is no comprehensive dataset about the average time taken for a legislative proposal to go from draft stage to being introduced in Parliament. It might be possible to put this information together for some Bills (which have a greater public presence) but not for every piece of draft law which may or may not reach parliament.[24]

24 Information is available about the time taken by a Bill from the time it is introduced to when it is passed by both houses and sent to the President for his approval.

4. Explanatory materials for draft legislation

When a Bill is put before the Cabinet for its consideration, it is accompanied with a detailed note. The note contains among other things the need, scope and object of the proposed legislation. It also contains the views of other concerned government departments and sets out the implications of the Bill. The Cabinet note also contains a statement on 'Equity, Innovation and Public Accountability'. This detailed Cabinet note is however not made available to Members of Parliament at the time of introduction of the Bill.

When a Bill is introduced in the Indian Parliament, it is accompanied with a Statement of Objects and Reasons, laying out in brief the government's reasoning for the Bill. It also contains a statement on delegated legislation and a financial memorandum which specifies the potential costs that might be incurred with respect to the legislation. Principal Bills are also accompanied with notes on clauses which lay out the description of each clause in the Bill.

Members of Parliament can request a briefing paper from the Parliament Library. The Library usually provides press clippings related to a Bill. This is the gap that a nonpartisan institution like PRS Legislative Research fulfils. In the current Parliament, more than 400 MPs across the political spectrum reach out to PRS for research on Bills and other discussions in the two Houses.

5. Parliamentary scrutiny at three levels

Broadly, a bill goes through three levels of parliamentary scrutiny.

The first level of scrutiny begins at the time the Bill is introduced in parliament. Bills can be introduced in either House of the Indian Parliament. The rules of procedure require a copy of the Bill to be circulated to Members of Parliament two days before its introduction. This gives MPs an opportunity to read the Bill and decide if they want to oppose it by voting against the motion for introduction in their House. If the motion is defeated, the Bill is not introduced.

Photo: The Indian Parliamentary Standing Committee on Agriculture visited Bengaluru on February 02-03, 2015 to discuss the impact of chemical fertilizers and pesticides on agriculture, and the related legislation.

In 2009, for instance, the Law Minister was unsuccessful in introducing the Judges (Declaration of Assets and Liabilities) Bill, 2009 in the indirectly elected House of the federal Parliament.[25] This happened because MPs objected to a clause in the Bill that stated that judges of the higher judiciary did not need to publicly declare their assets. Sensing the mood of the House, the Law Minister decided against moving a motion for introducing his Bill.

The second level of scrutiny takes place when the presiding officer of a House refers the Bill to a parliamentary committee for a detailed examination. The committee invites testimony from the government, subject experts, and stakeholders. Its closed-door meetings discourage political grandstanding by participating MPs. Consequently, the report such a committee produces is usually comprehensive and makes recommendations for strengthening the Bill.

The Bills are usually referred to a specific departmentally related standing committee (made of MPs from both Houses), which is tasked with scrutinising the work of a particular ministry or group of ministries. In some cases, the Bills are referred to a temporary committee made for the specific purpose of examining a Bill.

Referring a Bill to a parliamentary committee is not mandatory. If a Bill has not been referred to departmentally related standing committee a House can have the Bill examined by a temporary committee of its own MPs.

The Indian Parliament has a rich history of Parliamentary Committees. Its Public Accounts Committee has been in existence since 1921.

Specialised committees (like finance, defence, and so on.), took thier final shape in the early 1990s. Members of Parliament from both Houses are part of these committees. They scrutinise legislative proposals initiated by a ministry, its finances, annual reports, and long-term policy documents presented to Parliament. These committees do the heavy lifting of parliamentary oversight of government functioning. To do their work, they are empowered to call witnesses to give evidence and produce documents required by the committee.

Committees examine Bills clause-by-clause and can recommend amendments. However, the government is under no obligation to agree to those amendments.

However, if a Bill has been examined by a committee specifically appointed for the purpose of scrutinising a Bill (and not a departmentally related committee) and this committee recommends the draft of a Bill, the Bill as recommended by the committee is moved in the House for consideration and passing.

When a Bill is referred to a parliamentary committee, it serves a dual purpose. First, it allows a discussion on the technical aspects of the Bill in a closed-door non-political environment. Second, it allows citizens and experts to share their opinion on the Bill with the parliamentary committee. For example, in April 2016, the parliamentary committee of the directly elected House submitted its report on the Consumer Protection Bill.[26] The committee examining this Bill heard the views of 13 organisations representing consumer and industry interests. Officials from the Ministry piloting the Bill and the Ministry of Law and Justice also testified before the committee.

The third level of scrutiny takes place in the two Houses of Parliament when a Bill comes up for consideration and passing. MPs draw upon their experience on the subject and the parliamentary committee's report while discussing the Bill. Nuanced technical points coupled with the cut and thrust of political debate gives shape to the government's legislative proposal. After the debate, MPs propose changes to a Bill. The rules of procedure specify that MPs can move amendments to Bills, which have to be submitted one day before the Bill is to be taken up for consideration. However, the Minister piloting the Bill is under no obligation to voluntarily accept the recommendations of either the parliamentary committee or the other members of Parliament. For an amendment to be made to a Bill, the amendment has to be moved on the floor of the House, during the clause-by-clause passing of the Bill. Amendments can be moved both by the Minister piloting the Bill and also by individual MPs. MPs have to give notice of amendments to a Bill usually a minimum of 24 to 48 hours in advance. During the clause-by-clause passing of the Bill, the Speaker calls upon the MPs to move their amendments and if they would want to press for them. The Speaker does not have a choice and has to call all MPs who have moved an amendment.

25 https://www.livemint.com/Politics/ELQH4C39u5uUmp6SJdVcTN/Opposition-forces-govt-to-defer-judges-assets-bill.html

26 http://www.prsindia.org/uploads/media/Consumer/SCR-%20Consumer%20Protection.pdf

If an MP is able to secure a majority of votes in support of his amendment, then the change is incorporated into the Bill, otherwise the amendment fails.

In the Indian Parliament ordinary and finance Bills are usually passed by a voice vote. However, if an MP demands a recorded vote, then MPs have to express their support or opposition to a Bill using the voting buttons on their seats. Finally, each clause of the Bill is voted upon in the House after which a Bill is considered passed by the House and is transferred to the other House for deliberation and passing. Both Houses of the federal Parliament have to agree to the exact text of the Bill. In the case that a disagreement arises between the two Houses over the text of the Bill, the Constitution provides for a joint sitting of two Houses to break the deadlock between them. So far in the history of the Indian Parliament, a joint sitting of two Houses for passing a Bill has only been called on three occasions. The Constitution provides a safeguard that the disagreement between two Houses on a constitutional amendment Bill cannot be solved by calling a joint sitting of the two Houses of Parliament.

Both Houses of Parliament have equal powers for the passing of legislation. However, money and finance Bills, as mentioned earlier, are neither introduced nor required to be passed by the indirectly elected House. For every other Bill, both Houses have exactly the same powers.

After a Bill is passed by the federal Parliament, it goes for approval to the President of India. After the President accords his approval it is published in the federal register and becomes law.

6. Delegated legislation

After a Bill becomes Law, the executive branch of the government makes rules (delegated legislation) to operationalise the law. These rules provide the nuts and bolts of the law and prescribe how people engage with it on a daily basis. The rules made by the executive branch are placed before both the Houses of Parliament when the Houses are in session. The government usually frames the delegated legislation after a Bill has been passed by Parliament.

MPs are given ample time to move a motion for amending the rules placed in their House. In addition, a parliamentary committee of each house examines in detail some of the rules placed before their house. Both houses of Indian Parliament have a dedicated committee which examines delegated legislation formulated by the government.[27]

7. Post-Legislative Scrutiny in India

There is no mandatory requirement for Post-Legislative Scrutiny in India. There are some mechanisms which exist for scrutinising existing legislation. But these mechanisms are not standardised in their approach to scrutiny. The Law Commission of India, for example, scrutinises the existing legislation more from a legal standpoint. The Comptroller and Auditor General of India might look at legislation from a performance standpoint. There also have been few instances of a departmentally related standing committee examining either the working of a complete legislation or its working in specific areas. These practices do occur though there is no prescribed and consistently followed mechanisms for Post-Legislative Scrutiny.

27 https://indianexpress.com/article/opinion/columns/lost-in-implementation-budget-session-4615819/

IV. INDONESIA'S LEGISLATIVE SCRUTINY[28]

Indonesia is a republic with a presidential system. The President is the head of state and, at the same time, the head of government. For several decades, Indonesia was under authoritarian regimes, which made its political system very 'executive heavy'. The President was very powerful, and the Parliaments only acted as rubber stamp. When the Asian monetary crisis hit Indonesia hardin 1997, the reform movement gained momentum in Indonesia, forcing President Soeharto and his new order regime to fall in 1998 and resulting in the first multi-party democratic election in 1999.

The new Parliaments reformed the Constitution (1999-2002), which drastically changed the face of Indonesian democracy. Before the reform, the President was elected by the People's Consultative Assembly (MPR), the Supreme House whose Members consisted of the Members of the House of Representatives (DPR) and the appointed representatives of provinces and community-based organisations. Following the reform, the President is now directly elected. The House of Representatives (Lower House) was given parliamentary powers of legislation, budget and oversight. The Upper House, called the House of Regional Representatives (DPD), was established. All Members of the two Houses are elected. MPR is now the joint sitting of the two Houses. MPR's roles is reduced to only amending the Constitution and officially inaugurating the elected President and dismissing the President once impeached.

Although Indonesia has lower and upper Houses, Indonesia does not apply a bicameral model. The real parliamentary power lies in the hands of the DPR. The lower House holds the power to pass legislations, to appropriate the government budgets, and conduct governmental oversights. Whereas the DPD, the upper House, can only propose and participate in debates of legislations in the DPR and submit budget and oversight suggestions to the DPR on very limited number of affairs concerning regional autonomy. The DPD also has no decision-making power in those parliamentary processes.

1. The Legislation Process in Brief

Indonesia's Constitution rules that the Indonesian DPR holds legislative powers. The DPR must debate each Bill with the President for joint approval before they can pass it into law. To exercise this legislative power, the DPR passed Law number 12/2011 on law-making processes to regulate the detailed legislation-making processes in Indonesia. During the Bill debates in the DPR, the President is represented by relevant Ministries or agencies. The DPR and Ministries or agencies must jointly agree on all the issues debated in the Bills, only then can DPR pass those Bills into laws. The President is then obliged to sign the passed laws and to promulgate them. If the President refuses to sign a passed law because they change their mind, the law will automatically become effective within 30 days, even though the President has not signed it.

The DPR passed Law 27/2014 on Parliaments to outline the detailed roles and responsibilities of the Lower House (DPR), the House of Regional Representatives or the Upper House (DPD) and the sub-national parliaments (DPRD), including the roles and responsibility of each House in the legislation making processes. To guide its internal process, the DPR includes detailed step-by-step instructions for law-making within the Parliament in its rule of procedures.

Bills can originate from the DPR, the President or the Regional House of Representatives (DPD). If from the DPR or DPD, a Bill can be proposed by an individual Member of Parliament (MP), a group of MPs, a Committee, or a group of Committees. The DPD, however, can only propose a Bill concerning regional autonomy, relation of central and local governments, establishment or dissolution of local government, balanced allocations of central and local government budgets and management of natural/mineral resources, including sharing of revenues obtained from extracting them. However, if a Bill comes from the President, it is prepared and proposed by relevant Ministries or agencies, on

28 By Agus Wijayanto, WFD's Country Representative in Indonesia.

behalf of the President.

The following is a step-by-step overview of the law-making process in Indonesia.

2. Planning

The Law on law-making consists of five phases: planning, formulation, debate, passing and signing plus promulgation.[29] The DPR then passes law onto Parliament which gives an additional role to the DPR's Legislation Committee (BALEG) to conduct monitoring, reviews and evaluation of the passed laws[30]. When combined, the two steps outline the complete cycle of legislation-making in Indonesia.

In the planning phase, the DPR and the President develop the Agenda of the National Legislations (Program Legislasi Nastional or Prolegnas), which is a list of Bills to be debated within the next five-year parliamentary term. The planning process is conducted at the beginning of a parliamentary term, soon after the Parliament, the new President and his cabinet ministers are sworn in. The DPR identifies its legislative needs through MPs, Committees, and various consultations with the society or citizens. Whereas the President determines the government's legislative needs based on their campaign vision and promises.

The BALEG leads the planning process. Within the DPR, the BALEG will invite individual or groups of MPs and/or Committees to propose Bills. The individual MP or group of MPs must submit their proposal to the Legislation Committee via their party caucuses (factions)[31]. Committees can only submit two Bill proposals per year or 10 proposals for five years relevant to their jurisdictions. The Upper House (DPD) also submits their Bill proposals to BALEG. In addition, the BALEG also welcomes Bill proposals from the public, often submitted by civil society organisations, interest groups, and so on. The BALEG leadership will shortlist fromthe incoming proposals and select the most preferred at the BALEG working and plenary meetings.

Within the Government, the planning process of national legislations is coordinated by the Ministry of Justice and Human Rights (MoJ). All other Ministries and government agencies must submit their Bill proposals to MoJ, which will select the Bills based on governmental priorities.

Bill proposals from MPs, Committees, Ministries/agencies, and CSOs must be submitted in writing and include the title of the proposed Bill, completed with justifications explaining, but not limited to, the following: the urgency, objectives, expected impacts, scope and coverage of, and targeted beneficiaries of the Bills.

The MoJ will then send the final government shortlist of Bill proposals to the BALEG. The MoJ, on behalf of the President, debate the final list with the BALEG. The BALEG will then present this final five-year plan of legislations in the plenary to be officially adopted using the DPR's regulation. Every year, the BALEG and MoJ evaluate and discuss this five year-year plan to agree and determine annual priorities. When urgent need for new law is identified, but the Bill is not yet listed, the BALEG and MoJ can include a new proposal in the annual priority list.

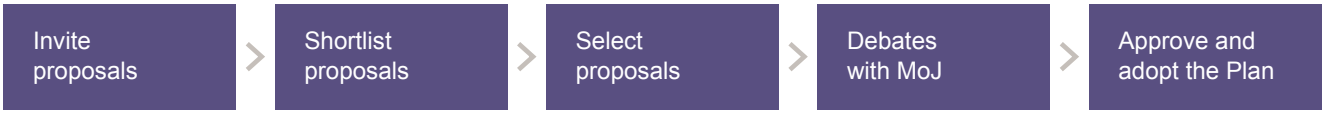


Figure 4. Steps in Planning National Legislations by BALEG

29 Law Number 12/2011 on Law-making describes these steps in a great detail, completed with explanatory notes giving comprehensive guideline on the formats, structure, grammatical aspects, punctuations, etc.

30 Law Number 27/2014 on Parliaments endows a new role to BALEG to monitor and review passed Laws and use the results as inputs for the subsequent legislation planning.

31 MPs from similar party must group themselves in a party caucus. Policy decisions in DPR are made in committees, but always based on party decisions, leaving a very small room for an individual MP to go along his/her own route. At the moment, DPR has 10 party caucuses.

During the planning process, however, the BALEG and the MoJ are accommodating of proposals without commitment to actually passing them. This means Prolegnas has often become simply a long wish-list of Bills. The BALEG rarely considered workloads or capacity of MPs or committees to carry out non-legislation roles (budget and oversight roles). Consequently, the DPR consistently failed to meet the target of the national legislation plan. For instance, Prolegnas 2009 to 2014 listed 247 titles of Bills and the DPR passed only 103 or 42% of them. In 2015, the BALEG and MoJ agreed to develop a more realistic number of Bills in the 2015 to 2019 Prolegnas. They planned to debate and pass 184 Bills. The DPR, however, passed less than 10 per cent of the total Bills listed in the Prolegnas. The failure of the DPR and the President to meet their Prolegnas goal is also due to the long duration of Bill debates in the DPR.

3. Formulation and Pre-Legislative Scrutiny

In this formulation phase, the MP, Committee, or Ministry whose proposal has been listed in the plan of national legislations must start preparing the next step by developing a detailed position paper on their proposed Bill. The position paper is a document called 'Naskah Akademik' developed using rigorous academic methodologies with reference to academic researchers and/or legal studies. The paper should clearly present the identified problems and solutions offered by the proposed legislation based on theoretical and empirical evidence. The paper should be written in the following format: Title, Foreword, 1. Introduction, 2. Theoretical and Empirical Reviews, 3. Evaluation and Analysis of Related Legislations, 4. Philosophical, Sociological and Juridical Basis, 5. Affected Beneficiaries, Key Contents of Provisions in the Legislation, and 6. Closing. The paper should also include the cost and benefit analysis of the proposed Bill.

Based on the position paper, the MP, Committee and Ministry will then draft the detailed provisions of their Bill. To prepare the position paper and the Bill, the MP and Committee can request assistance from the Parliamentary Expertise Support Agency (BKD), particularly the Centre for Research and the Centre for Legislative Drafting. Alternatively, an MP or Committee can also seek external support from CSOs, interest groups, universities or think tanks which have interests or specialties in the proposed Bill subject. Whereas government ministries mostly have their own internal research centre and legal bureau to prepare the paper and draft Bill.

The MP and Committee will then submit their position papers and Bills to the BALEG to be analysed for pre-legislative scrutiny. The BALEG will review the submitted draft Bills to check the compliance of the provisions in the draft Bills against the Constitution, including the nation's five principles (Pancasila) and human rights principles. The BALEG will scrutinise the draft Bill to ensure its fitting with the existing laws. The BALEG will also refine the format, structure, wording, punctuations, and so on, in reference to the Law on law-making. The BALEG has 20 days during a session period to conduct the pre-legislative scrutiny. If the BALEG finds the draft requires reformulation, it will present the case to the plenary. The BALEG will have two session periods (with possible extension) to redraft the Bill involving the sponsoring MPs or Committees. When the pre-legislative scrutiny is completed, the BALEG will send the draft Bill back to the sponsoring committee to be presented in the DPR's plenary session. The Plenary will then declare the draft Bill as DPR's official Bill.

For government Bills, a similar process of pre-legislative scrutiny is conducted by the Ministry of Justice.

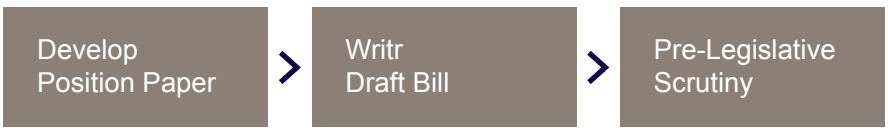


Figure 5. Formulation of Draft Bill in DPR

4. Debate

DPR debates a Bill in two stages. The first debate is conducted at a subject committee with three sessions. If the committee cannot finish the debates within the given time, it can request an extension to the plenary session. Whereas, second stage debate is done at a plenary session.

After a draft is declared an official Bill in the plenary, within a maximum of seven days, the Speaker must send the Bill to the President with a covering letter. The President will assign the relevant Ministry to prepare a document called an Inventory of Issues (DIM) consisting of comments, objections, and proposed amendments to the Bill (clause-by-clause). Within a maximum of 60 days after receiving the letter from the Speaker, the President must send his DIM to the DPR with a covering letter addressed to the Speaker. In the letter, the President must detail which Ministry will debate the Bill with the DPR. Upon receiving the President's letter and the DIM, the DPR will announce the President's letter and the DIM to the plenary session. The Steering Committee[32] will then convene to decide which committee will be assigned to debate the Bill with the Ministry.

The President sends a Bill originating from the government with a covering letter to the Speaker of the DPR. Upon receiving the letter, the DPR will present the Bill to the plenary. The Steering Committee will then convene to decide which committee will debate the Bill. The assigned committee must prepare the DIM within 60 days. The DPR will then send the DIM with a covering letter to the President and schedule a debate with relevant Ministry.

The Speaker of the DPD will send its proposed Bill with a covering letter to the DPR's Speaker. The DPR's Speaker will present the Bill to the plenary and take a decision on whether to accept with revision or reject the Bill. If the DPR's plenary accepts the Bill without revision, within a maximum of seven days, the DPR's Speaker will send the Bill with a covering letter to the President, who will then assign a Ministry to prepare the DIM within a maximum of 60 days. When ready, the President will send this to the DPR, which will schedule debates with the Ministry. If the Bill is accepted with revision, the Steering Committee will refer the draft Bill to the BALEG for revision. The BALEG will have 30 days to revise the document with a possible extension of 20 days. When the Bill is ready, the DPR will send the Bill to the President. The DPD's MPs or Committee can also participate in DPR's committee debates. They, however, can only present their considerations to the BALEG or other committees, but they do not have any decision-making power.

Photo: Expert staff from the Legislation Committee in Indonesia meet with civil society organisations to discuss narcotics policies.

32 The Steering Committee consists of the Speaker, Deputy Speaker, Chairs and the Secretary of Party Caucuses (Factions) and MPs nominated by party caucuses proportionately to their seats in DPR.

The Committee and relevant Ministry debate the Bill using the submitted DIM to reach a mutual agreement on all identified issues. As decisions within the DPR are made based on party lines, the Committee Members will debate the Bill along the line of the party decisions. When the committee and line ministry finish debating and reach an agreement on all issues listed in the DIM, the committee will present the final Bill to the Speaker for second stage debate in the plenary session. In this second stage, no actual debates take place as all issues have been mutually agreed by the committee and relevant Ministries. This stage, therefore, is often a session to pass the Bill into law. However, if Committee Members and the government failed to reach a joint agreement on any issues in the DIM, the committee will refer the Bill to the plenary for a vote.

5. Passing

After the DPR and the President (represented by the Minister) reach joint agreement, at the same plenary session, the DPR leadership presiding the plenary will call for a final decision from the plenary session through consensus. If the plenary fails to reach consensus, DPR will take the decision through a vote. When all or the majority of MPs agree to pass the Bill into law, the Speaker will then declare that the Bill is passed into law.

6. Signing and Promulgation

Within a maximum of seven days, the DPR must send the documents to the President to be signed. If the President has not signed the new law fifteen days after the DPR sends it, the DPR speaker will send a letter to remind the President. If the President decides not to sign the new law, it will automatically become effective law within thirty days of the passing by the DPR and the President is obliged to promulgate it.

7. Post-Legislative Scrutiny

The Post-Legislative Scrutiny in Indonesia is conducted by the BALEG and relevant subject committees. The BALEG focuses on monitoring and reviewing the legal aspects of the passed law to assess whether or not: the government has enacted all the secondary legislations, the provisions of the law are applicable, the provisions of the law contradict other legislations, etc. The BALEG will then use the findings as inputs for its annual legislative planning. Post-Legislative Scrutiny in Indonesia is also carried out by subject committees overseeing the ministries/ agencies implementing the laws. The Committees, however, focus on different aspects than the BALEG, namely on the effectiveness of the laws in achieving their objectives.

Photo: Civil society organisations present representatives of the Legislation Committee with a petition paper on narcotics politics in Indonesia.

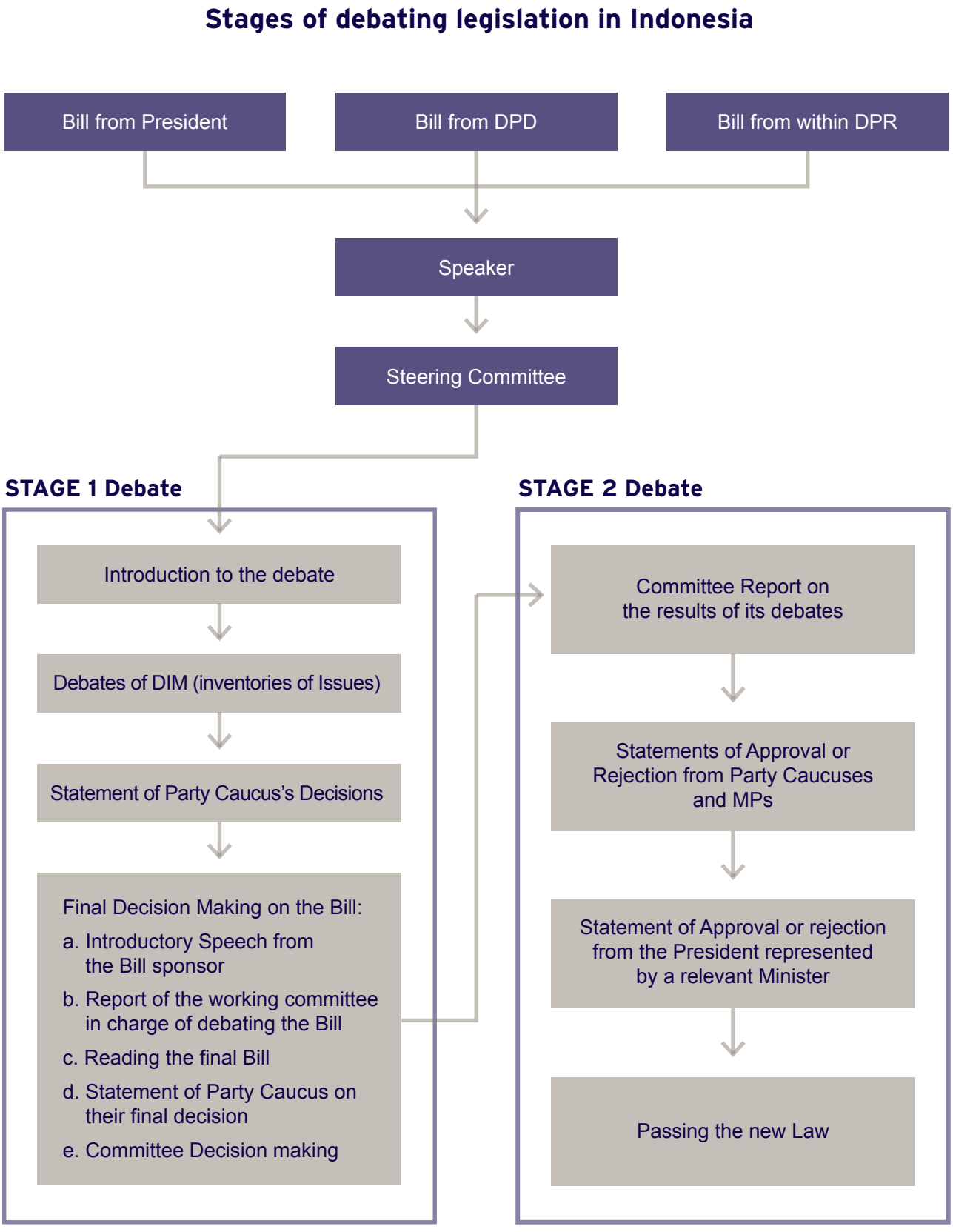


Figure 6: Stages of debating legislation in Indonesia

Bills originating from the President

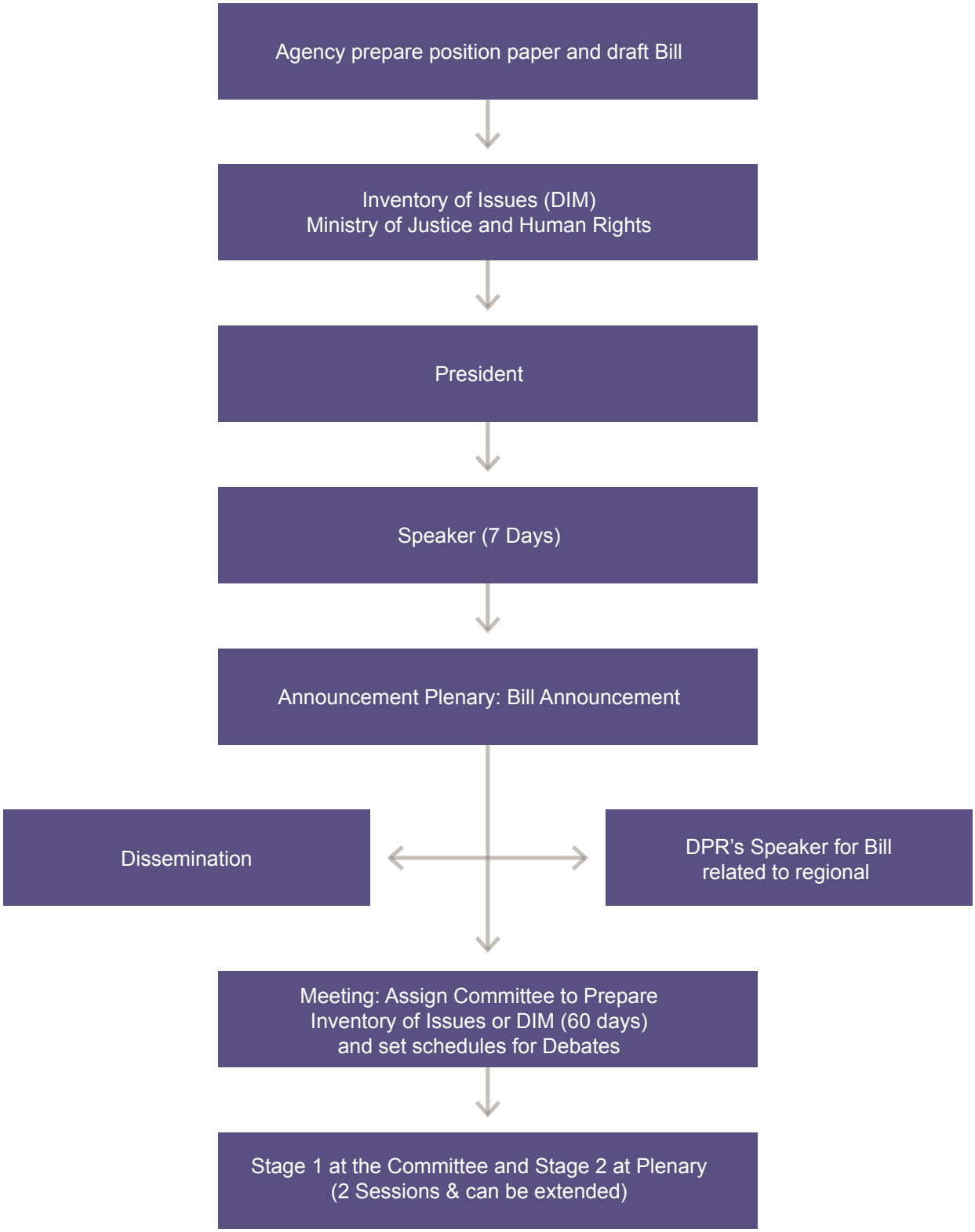


Figure 7: Legislative process for bills originating from the President (Indonesia)

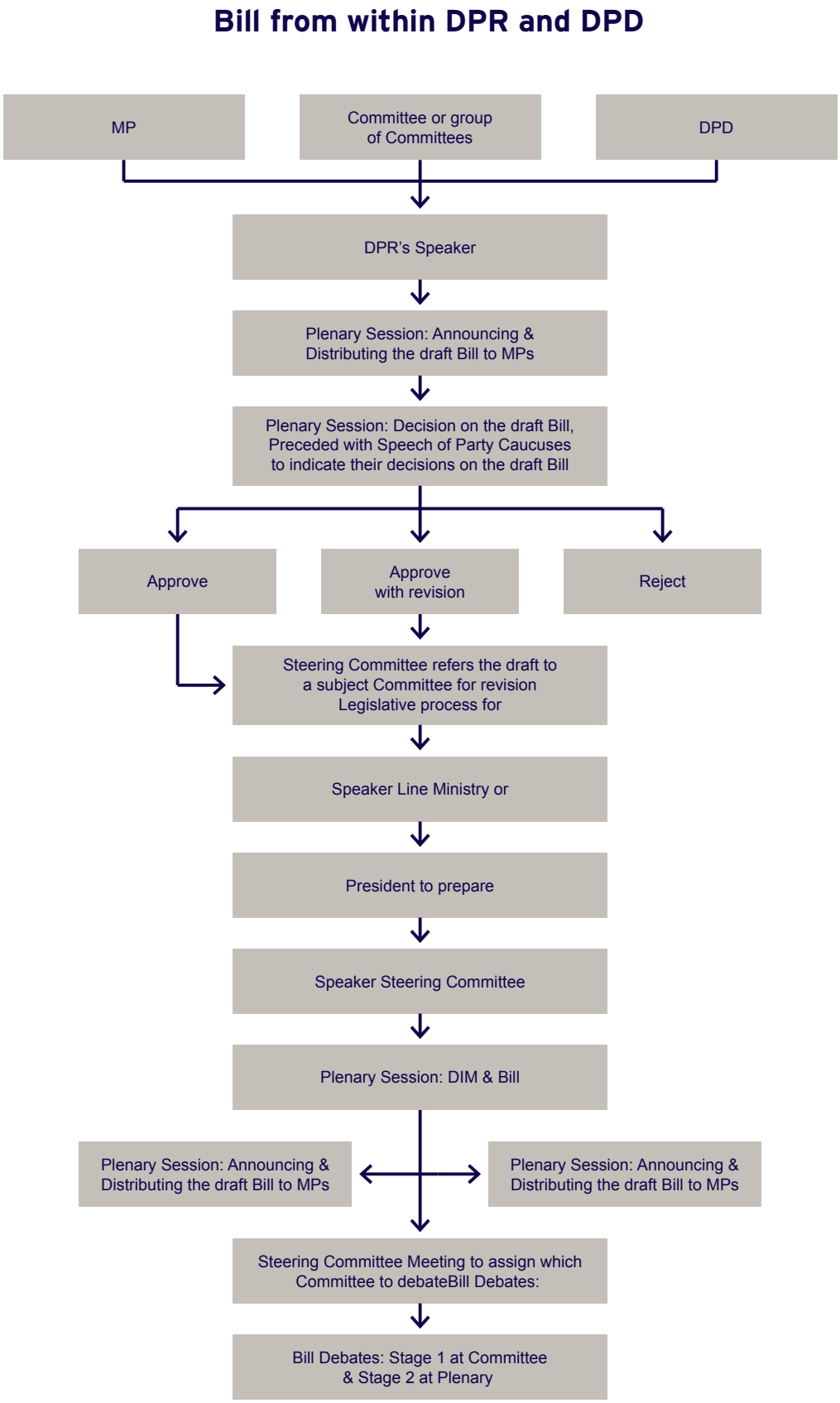


Figure 8: Legislative process for bills originating within DPR and DPD

Bibliography

European Commission, Engaging and Supporting Parliaments Worldwide: Strategies and methodologies for EC action in support to parliaments, European Commission/EuropeAid, Brussels, 2010, 196 p.

Fox, R & Korris, M., Marking Better Law: Reform of the legislative process from policy to Act. London: Hansard Society, 2010.

Guide to Making Legislation, published by the UK Cabinet Office, July 2017, 352 p.

Russell, M., Gover, D., & Wollter, K. , 'Does the Executive Dominate the Westminster Legislative Process?: Six Reasons for Doubt'. Parliamentary Affairs. 2015, 69 (2): 286-308

Russell, Meg and Cowley Philip, The Policy Power of the Westminster Parliament: The "Parliamentary State" and the Empirical Evidence, in: Governance: An International Journal of Policy, Administration, and Institutions, Vol. 29, No. 1, January 2015, p. 121-137.

Russell, Meg and Gover, Daniel, Legislation at Westminster: Parliamentary Actors and Influence in the Making of British Law, Oxford University press, 2017.

Seidman Ann W., Seidman Robert B. and Matsiborchuk Valeriy, Legislative Deliberation and the Drafting Process: The Drafter's Role, in: The Theory and Practice of Legislation, Volume 1, 2013 - Issue 2, p. 341 - 386.

Sherlock Stephen, One ASEAN: Many Systems; Legislative Procedures of AIPA Member Parliaments, Published by AIPA secretariat, September 2015, 122 p.

The National Assembly in the French Institutions, Published by: Assemblée nationale – Service des affaires internationales et de défense, November 2014, 594 p.

V. LEGISLATIVE SCRUTINY IN THE FRENCH PARLIAMENT[33]

Since its birth, which dates from the Revolution, the French Parliament has undergone many changes. There was a time, under the Third and Fourth Republic, when it was in its golden age and had very broad powers, but these powers that caused a deeply unstable government, ultimately leading to the rationalised parliamentarism of the Fifth Republic where the Parliament's political influence is very limited.

The French political system is characterised by a strong executive power which limits the field of the law and parliamentary prerogatives. The Constitution of 4 October 1958 provides, for example, that the Government may legislate by decrees and ordinances (Article 38) and may itself judge the admissibility of parliamentary initiatives (Articles 40 and 41).

The French Parliament and the semi-presidential regime.

One of the specificities of the French political system is the "semi-presidential" system, a hybrid system between the presidential and parliamentary systems. Thus, in France, the government is responsible before the parliament (characteristic of the parliamentary system), but in return, the head of state, elected by direct universal suffrage (characteristic of the presidential system), has the right to dissolve the assembly (characteristic of the parliamentary system). Finally, unlike Westminster-style parliamentary systems, there is an incompatibility in the French system between ministerial functions and the parliamentary mandate, a strict separation between ministers and deputies or senators.

If the legislative initiative is divided between the Bills from the government and the Bills of the members of Parliament, we see that most of the laws are of governmental origin and that the legislative agenda is dominated by the executive power. Two weeks out of four are reserved for an agenda set by the government. The government decides on the list of texts it wants to put on the agenda, sets the order in which they will be discussed, and decides on their date of discussion. Finally, one week out of four is designated for control of government action, another week out of four is set aside for a legislative agenda set by each assembly, and only one day per month is devoted to initiatives of the opposition or minority groups. However, the Parliament's internal rules provide for the existence of a "programmed legislative time" (Articles 49 and 55), which sets the duration of the discussions. In this case, the Conference of Presidents, which organises the debates, preserves the right of expression of the opposition groups, which hold about 60% of the time of all the groups[34].

Initially established by the authors of the 1958 Constitution, committees were limited to six to limit their influence. However, since 1958, the work of the standing committees has always been a major factor in the drafting of laws, which led the constitutional revision of 2008 to further strengthen the mechanism of the committee system and to add two other standing committees to the National Assembly, for a total of eight in the National Assembly and seven in the Senate.

Conversely, the sovereignty of the French Parliament is limited to two levels. Firstly, the laws of the Parliament, whether governmental or not, can be annulled by the Constitutional Council when certain laws or regulations do not conform to the Constitution. The Constitutional Council is an important institution in the French political system since it has jurisdictional authority: it can indeed block the adoption of a law that does not conform to the rules and values of the Constitution, but also to its preamble where is the Declaration of the Rights of Man and Citizen. However, note that

33 By : Anthony Weber, PhD candidate in Political Science, Chaire de recherche sur la démocratie et les institutions parlementaires, Laval University, Canada.

34 However, this programmed time is not applicable to finance laws and constitutional laws.

the Constitutional Council is not in the hierarchy of courts (as may be the case for example for the United States Supreme Court), its authority is limited to the control of constitutionality[35]. Another limit for the sovereignty of the French Parliament is the European decision-making level. By virtue of the primacy of Community law in the European Union, permitted by the Costa vs Enel judgment of 1964, in the event of a conflict between French law and EU law, EU law prevails. The superiority of European law over national laws therefore implies an additional limit in the admissibility of parliamentary initiatives. After presenting the position of parliament in the French political system, let us now turn to the legislative process.

I. Pre-Legislative Scrutiny

There are four main types of law in France: "ordinary laws", "constitutional laws" (that revise the Constitution), "organic laws" (that specify the methods of organisation and operation of the public authorities), and finally the "laws of finance".

The bill: the government's initiative:

Overview of Policy Development: Government Bills must first be accompanied by an impact study that also contains their objectives and rationale. These projects must then go through prior consultations such as that of the Council of State, before reaching the Council of Ministers for approval. Once approval has been granted, Bills can be tabled in the National Assembly or Senate Bureau before being placed on the agenda.

Impact study: these are public documents setting out the reasons and objectives of the project. Such studies present the potential impact of this project in most public areas such as the economy, finance, environment, and jurisdiction[36].

Prior consultations: each bill must be examined by the Council of State but also by the Economic, Social and Environmental Council, as well as, if necessary, by independent institutions or agencies related to the project. The Council of State is the highest administrative jurisdiction in France, and as Articles 38 and 39 of the Constitution provide for it, it seizes Bills and draft orders before their submission in the Council of Ministers.

The Council of Ministers: after the advice of the Council of State, a Council of Ministers is organised to decide the final text of the draft law.

The proposal of law:

The proposal of law emanates from one or more members of Parliament. Its development is less demanding because no consultation of the Council of State is mandatory, and no impact study is required. As provided for in Article 34 of the Constitution, the proposition law must deal with the same issues of draft laws. Nevertheless, the proposals of laws are framed: the Government can oppose a proposal to aim at increasing the expenditure of the State (article 40 of the Constitution), and more generally, the budget of the State, like that of the social security, cannot be defined by any Bills, but by government-initiated Bills only.

II. Legislative scrutiny: parliamentary stages of the passing of a Bill

The French legislative process is divided into three main stages: the tabling of the text, the parliamentary examination and the promulgation of the text by the President of the Republic[37].

The submission of the text: the government is free to table its Bill in the National Assembly or the Senate. Regarding the proposed law, it must be submitted by one or more deputies or senators, in the Bureau of the assembly. The Bureau of each assembly then decides on the admissibility of the proposal. Once submitted, any text is sent for review to a standing or special committee.

Examination in the committee: The committee charged with treating a text designates a "rapporteur" among its members. This rapporteur

35 In France, the Court of Cassation dominates the hierarchy of private law, and the Council of State dominates administrative law.

36 Organic Law n ° 2009-403 of April 15, 2009 relating to the application of articles 34-1, 39 and 44 of the Constitution

37 "Specific legislative procedures" are planned because: either of the scope of certain texts like the finance laws, or of their particular place in the hierarchy of norms like the organic laws, or of these two reasons at the same time as the constitutional laws.

Photo: In France, the government is free to table legislation in the National Assembly or the Senate. © French Parliament

has an important role in the "instruction" of the project or the proposed law, because it meets the different organisations concerned with the text, and then presents its report to the other members. The commission then has the right to propose new legislation, to adopt the text as originally drafted or to reject the text[38]. At the end of its work, it adopts the report which presents its conclusions.

Registration on the agenda: To be discussed in open session, a bill must be placed on the agenda of the meeting. The Constitution provides for a minimum period of six weeks between the tabling of a text and its discussion at the meeting[39].

Examination in session: divided into two phases, the examination procedure in session is very similar to that of the examination in committee. First of all, there is the minister's hearing, followed by that of the rapporteur, the general debate and the rapporteur's answers. This is the general examination phase. Then there is the examination of each article and the related amendments, the vote of each of them, explanations of the vote, and finally the vote on the whole. This is the detailed examination phase. The text adopted by the first assembly chosen is then transmitted to the other assembly which examines it in turn, according to the same modalities: examination by a commission, registration on the agenda, discussion in public session.

The "shuttle" between the two Houses: any Bill is examined successively in the National Assembly and the Senate, with the aim of adopting an identical text.

First reading: the text is the subject of a first reading by the assembly chosen. The reading begins with a committee examination, then its inclusion in the agenda, and a discussion in public session. The text is then forwarded to the second assembly that performs the same review steps. If the second assembly adopts the text without modification, the text is definitively adopted, at first reading. Otherwise, the shuttle continues at the second reading.

Successive readings: if the two assemblies do not agree, the articles of the text are discussed again at a second reading, or even a third or more until the adoption of an identical text is agreed.

The conciliation procedure: to accelerate the final vote of a text, the government can initiate the creation of a "mixed and parity committee" (MPC). This commission brings together seven deputies and seven senators (with an equal number of substitute members), its goal is to reach consensus between the two chambers. If no agreement is found, the

38 With the exception of the draft constitutional law, finance law and social security financing law.

39 These deadlines do not apply to finance, social security financing or crisis state bills.

National Assembly, resulting from direct universal suffrage, has the last word. If there is a compromise, the Government may submit the text for the approval of one and then of the other assembly.

Bicameralism in France

The French Parliament is bicameral and is composed of two chambers: the National Assembly with 577 deputies, and the Senate with its 348 senators. The National Assembly is the lower house, elected by direct universal suffrage, the Senate is in the upper house, elected by indirect universal suffrage and its essential role is to represent local authorities. French bicameralism is asymmetrical, as in many other countries: the National Assembly has more powers than those of the Senate. Indeed, it alone can question the responsibility of the Government by voting, for example, for a motion of censorship or by refusing its confidence. In the event that the chambers cannot agree on a text, the Government may decide to give the "last word" to the National Assembly in the legislative procedure. Finally, the National Assembly has the power to table the Bill of finance and prolong the examination time. The Constitution thus gives the National Assembly a prominent place in the legislative procedure. With the exception of these three elements, the two assemblies have similar powers. On the other hand, the Senate has certain specificities that distinguish it from the National Assembly. For example, the Senate cannot be dissolved, and while the deputies are elected by direct universal suffrage, senators are elected by a college of about one hundred and sixty thousand electors composed of: deputies, regional councillors, departmental councillors and councillors from Paris.

Promulgation of the Text by the President of the Republic: the final adoption of a draft or a legislative proposal closes the parliamentary phase of the legislative procedure. The adopted text is sent to the President of the Republic, who has the power to promulgate the laws, within 15 days. However, the promulgation of a law can be delayed or prevented in two cases. In the first case, if a new deliberation is requested by the President of the Republic, in the second case, if the Constitutional Council judges that the law does not conform to the Constitution.

III. Post-legislative process

Decrees and ordinances: it is possible for the executive to pass a text by decree or ordinance. Their fundamental difference is that the decree allows the government to intervene in the regulatory field, while remaining subordinate to the law in the hierarchy of standards. While on the other hand, the order allows the government to intervene in the legislative field. The decree is a written regulatory decision issued by the executive branch, not Parliament. It is an act of the application of a law, published in the Official Journal and which can introduce rules applicable to all, or concerning only one person. The ordinance is provided for in Article 38 of the Constitution and allows the Government to take measures in the field of law (Article 38 of the Constitution). The order must be authorized by Parliament. Parliamentarians vote a "law of empowerment" to delegate their power in a specific area and for a limited period. Once this law has been passed, the ordinance is issued by the Council of Ministers, signed by the President of the Republic, promulgated and enters into force. However, at the same time, this order takes the form of a "ratification Bill" which must be tabled in Parliament, which must approve it. If this order is not approved then it is cancelled and can no longer enter into force.

Rationalised parliamentarism: a tool for the French Parliament?

The role of the French Parliament is to vote for the law (art.24 of the Constitution). But since the 1958 constitution, Parliament's powers have been limited by a reduction in the scope of the law and by an expansion of the regulatory field. For example, the government can act by decree, and if an elected representative proposes a law or an amendment, the government can oppose the inadmissibility under section 34 of the Constitution. That said, Parliament has many tools to carry out its two main functions: legislating and controlling government action. When legislating, Parliament may submit a bill, and in the course of the discussion of this proposal or of a government bill, Parliament may add, amend or delete articles, by making amendments. Nevertheless, in France, the vast majority of the laws voted come from the initiative of the government. On the other hand, when it controls, the Parliament has many

means of verifying the correct application of the laws. First of all, it has the means to inform itself by written, verbal questioning (with or without debate), current issues, information missions and working groups. It also has the means of investigation thanks to the commissions of investigation, and the possibility of putting the responsibility of the Government at stake in a motion of censure.

Role of the courts: The decree includes "visas," which are reminiscent of the texts on which the decree is based. These visas serve as a legal basis for the provisions of the project. Then there is a device divided into several articles, which specifies the content of the decree and its legal consequences. As with the field of law, it is up to the Constitutional Council, and not directly the courts, to block a decree that does not comply with the Constitution.

Parliament's post-legislative control: Law enforcement has become one of Parliament's most important tasks. Its purpose is to verify the correct application of the laws passed, the conditions for their implementation. In practice, the Constitution provides for a week of sitting per month reserved for the control of the Government's action and the evaluation of public policies (Article 48 paragraph 4), with the possibility for Parliament to create commissions of inquiry or information missions to collect information (Article 51-2). In addition to this, several instruments are available for effective post-legislative monitoring: hearings of standing committees on evaluation reports; the development of structures such as the "MEC" (Evaluation and Control Mission, which evaluates the results of certain public policies each year) and the "MECSS" (Evaluation and Control Mission of Social Security Funding Laws); and lastly, the Committee for the Evaluation and Control of Public Policies (CEC) which allows the National Assembly to apply its evaluation function as provided for in Article 24 of the Constitution. In addition to this, there are three kinds of parliamentary delegations in the French Parliament, additional tools of control. The role of these delegations is to follow the general activity and the means of the application of certain laws. For example, the Parliamentary Delegation for Women's Rights and Equal Opportunities for Men and Women, the Parliamentary Delegation to Intelligence and the Delegation to Overseas.

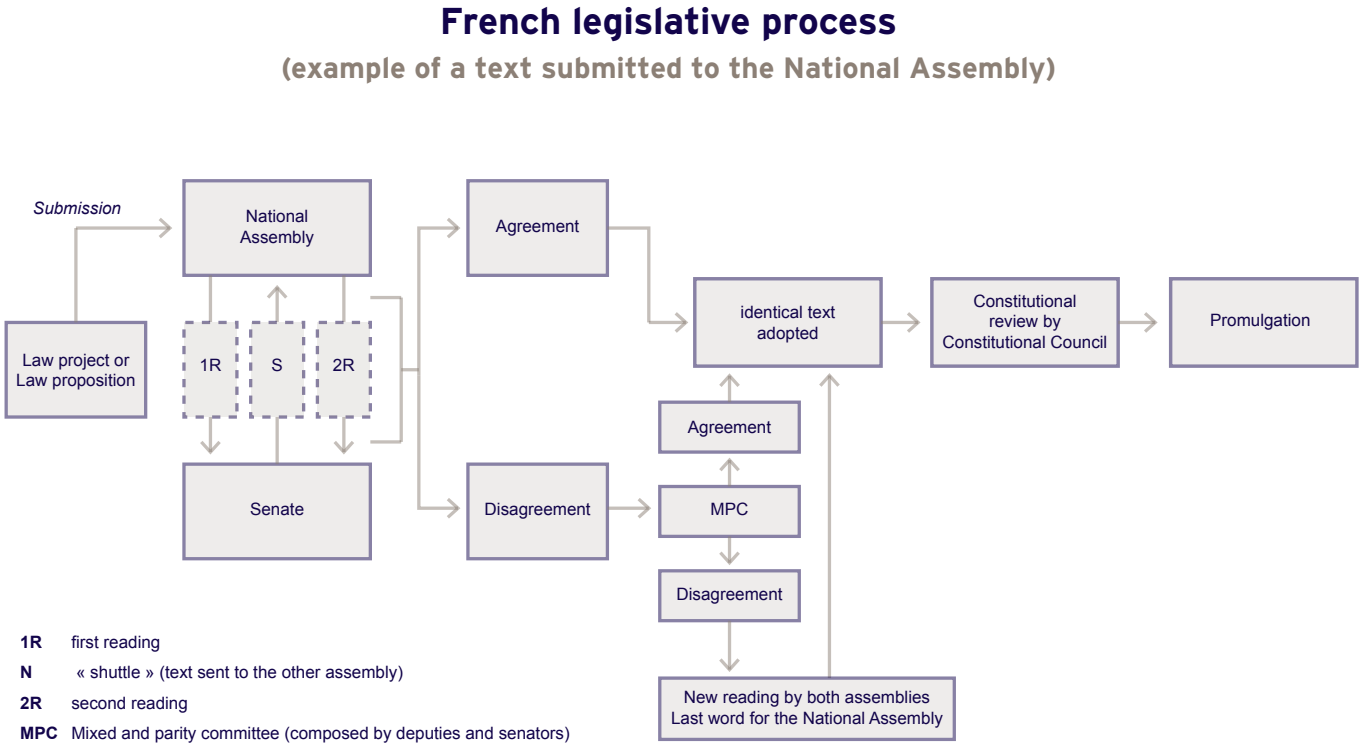


Figure 9: French legislative process

Bibliography

The National Assembly in the French Institutions, Published by: Assemblée nationale – Service des affaires internationales et de défense, November 2014, 594 p.

French Constitution of October 4, 1958 (art. 24 ; art.34 ; art.38 ; art.40 ; art.41 ; art.48-4 ; art.51-2).

Organic Law n ° 2009-403 of April 15, 2009 relating to the application of articles 34-1, 39 and 44 of the Constitution

Parliament's rules of procedure (art.49 ; art.55)

Court of Justice of the European Communities (ECJ): Costa vs Enel judgment of 1964

VI. CONCLUSION

COMPARISON OF LEGISLATIVE SCRUTINY PRACTICES IN THE UK, FRANCE, INDIA AND INDONESIA

We have, in our case studies, quite different political systems. India, which has inherited the British model, shares a parliamentary system with the United Kingdom, while France has a semi-presidential system and Indonesia, heir to a recent authoritarian past, has a purely presidential system. These differences, added to the varying degrees of evolution of their political systems, imply rather different power relations between the executive and the legislature. It is therefore interesting to discuss here the differences and similarities that these countries are experiencing in their legislative process, in order to bring to light and compare their legislative control practices.

Regarding the role of parliaments, we will make three main remarks. The first is that we are in the presence of four asymmetric bicameralisms where the upper house, elected indirectly, has less power than the lower house. Thus, in the case where the two chambers are in disagreement on the same text, even after several readings, it is the lower house elected by direct universal suffrage which has the last word. Moreover, in Indonesia we find the most asymmetrical bicameralism, since the Upper House has almost no power during the legislative process. Secondly, the sovereignty of parliaments is limited, in particular by the existence of tribunals (as in the United Kingdom) or by other bodies with legal powers that verify the conformity of Parliament's laws with existing laws (the Constitutional Council in France, BALEG in Indonesia, the Law Commission in India). In the French and British cases, the sovereignty of parliaments is also limited by the existence of European law to which national law is subject. Finally, for each of the countries studied, the government largely dominates the legislative agenda. In France, the rationalized parliamentarism of the Fifth Republic limits the scope of parliamentary initiatives. In the United Kingdom, Parliament has little time to debate and the laws are, as in France, generally issued by the government. In India as in Indonesia, only legislative proposals from the executive are generally adopted.

Nevertheless, the dominance of the executive on the legislative agenda does not prevent the legislature from legislating and controlling the application of laws: during the pre-legislative period, the legislative initiative can come from the government as well as from the parliament. In the case of a government initiative, we are talking about a "Bill." In each of the countries studied, the Bill must be accompanied by justifications and impact studies. However, we do not find the same rigor in the pre-legislative procedure in each country. For example, in India, it is expected that the public will be consulted on the Bill, but in reality, it is rare for the government to respect this procedure. On the other hand, France and the United Kingdom developed a very rigorous law-making process, incorporating prior consultations. For example, in France, before the Bill is discussed and adopted in the Council of Ministers, it must be examined by the Council of State and the Economic, Social and Environmental Council. In the United Kingdom, it is the government's "Office of Parliament Counsel" that assists in the preparation of the bill and determines its compliance with existing laws. It should be noted, however, that the United Kingdom stands out for the documentation that the government can produce at this pre-legislative stage, with the publication of a "green book" to solicit comments from stakeholders, and the publication of a "white book" where one enters their decision on the proposed legislation, with an explanation of the policy. On the other hand, Indonesia is very different from other countries because of the level of collaboration that exists between the lower house and the president at the time of law making. Indeed, they work together at the beginning of the legislature, not on a bill but on a list of several bills planned for the next five years. The drafting of bills is coordinated by the Ministry of Justice and Human Rights, which then sends the Legislative Council (BALEG) a selection of the highest priority Bills. Last but not least, the number of legislative proposals in Indonesia is limited, while in other countries it is instead the areas which are limited (such as finance).

Once the pre-legislative stage has passed, the text can be tabled in one of the two parliamentary chambers, where legislative control begins. The countries studied all have a more or less established and well-equipped committee system: a designated committee receives the text and has the opportunity to hear the government and produce reports to

prepare the discussions in public session. However, some differences remain in practice. In the United Kingdom, consideration in the committee is preceded by a reading of the bill in the House (first reading) and a second debate on the principles of the bill (second reading). After this step, the designated committees review the articles of the law, can propose and vote amendments. Once voted, the text is sent to a "Public Bill Committee," which is a committee created for each review of the Bill, it is this committee that gives final approval. The project is then "reported" to the House where MPs vote definitively. In France, on the other hand, when a Bill or draft law is submitted to Parliament, the designated committee begins its examination without preliminary debate. At this stage, a "rapporteur" of the law, from the committee, must prepare a report on the project, after having met the organisations concerned. This report will help committee members better educate themselves on the Bill. After consulting this report, the committee may debate and amend, adopt or reject the legislation. A final committee report is developed to present these changes. In public session, every article rejected or amended by the committee must be voted before the final vote, which is why the deliberation is longer than in the United Kingdom, because in the United Kingdom the detailed examination and the vote of each Article is made before the public session by the Public Bill Committee.

The Indonesian parliament follows a similar procedure where Bills are sent to the committees by the topic, and where the proposed amendments can also be submitted during the parliamentary review. But before the amended text is sent to the plenary, BALEG must accept the amendments and may even revise the content of the text, before the last deliberation and the last vote that will take place in public session. In India, the examination procedure in committee is more flexible and less systematic than in France or the United Kingdom. Indeed, it is not mandatory for the government to send a Bill to a designated standing parliamentary committee. In other words, a chamber may have the Bill examined by a temporary committee composed of its own members. Another characteristic of the Indian Parliament: no amendment can be submitted to the committee, as they must all be tabled for debate and vote. Once an identical text is adopted between the two chambers, the Bill can be promulgated. In France, before the president promulgates the law, the Constitutional Council must confirm that the law conforms to the Constitution. In the United Kingdom, the promulgation must be made by the monarch, by giving her "consent," it is the "Royal assent." Finally, in Indonesia as in India, it is up to the President to promulgate the law.

Once the law is promulgated, the role of Parliament is to control the application of the law. However, there are quite different practices between countries with regard to post-legislative scrutiny. France has substantial capacity to control the application of the laws, with control bodies of the evaluation of the public policies which are added to the usual verification work of the permanent committee (the MEC, the missions of information, parliamentary delegations). Nevertheless, in the United Kingdom, even though post-legislative scrutiny is reserved solely for parliamentary committees, a committee called the Joint Committee on Statutory Instruments is specifically dedicated to the control of secondary/subordinate/delegated legislation whereas such a system does not exist in the French Parliament, because no committee is specially created to control the admissibility of the decrees of the government. In India, there is no requirement for post-legislative scrutiny, some mechanisms exist but none are standardised or systematised in their approach to the review. In Indonesia, the committees fulfil this control work, the BALEG also carries out this work but only on the legal aspect of the laws.

Legislative control has, in each parliament, characteristics specific to the institutional history of its country. But although their political systems are different, France, the United Kingdom, India and Indonesia share the main phases of their legislative processes: the drafting of a bill or of a proposition of law, its parliamentary examination in committees and in open session, its adoption and promulgation, and finally, its post-legislative scrutiny. Yet, as we have seen, these steps are not followed as rigorously and systematically in each country. In the pre-legislative stage, transparency and access to information are important in the UK, whereas this step is much less thorough in India. The organisation of work in the committee can also vary from one country to another, each parliament having its specificities. In France, there is the presence of a "rapporteur" who instructs the deputies on the Bill, in the United Kingdom we have a "Public Bill Committee" which is specially created for the examination of the Bill, and in Indonesia BALEG, a Legislation Council that has the possibility to revise the texts proposed by the commissions. Finally, we find the most disparity in the post-legislative control phase, a step that appears to be more or less followed depending on the country, with, on the one hand, many instruments made available to the French Parliament, and on the other in India, where there is no requirement to carry out the enforcement.

WESTMINSTER
FOUNDATION FOR
DEMOCRACY