

## THE OTHER HOUSE

*Why legislative councils serve little purpose*

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**S**INCE THE NARENDRA MODI-LED National Democratic Alliance came to power last year, the biggest obstacle to the government implementing its legislative agenda has been the Rajya Sabha, where the Bharatiya Janata Party and its allies are in the minority. Key bills have been repeatedly stalled by an aggressive opposition in the upper house, and these stalemates have spurred considerable debate about the role, and the relevance, of a second, indirectly elected branch of the legislature in a democracy.

There have been some sound arguments made for the importance of the Rajya Sabha in the Indian democratic system. Less thought has been given to the place of legislative councils—the second houses at the state level. In India, seven states currently have legislative councils—Bihar, Jammu

and Kashmir, Karnataka, Maharashtra, Uttar Pradesh, Andhra Pradesh and Telangana. The state of Odisha is in the process of forming a second house, and has constituted a panel of state assembly members to study the legislative councils of Karnataka and Maharashtra and submit a report to the state government. With the issue under discussion, bicameralism at the state level requires serious re-examination.

During the writing of the constitution, the constituent assembly was, in general, not keen on such councils. Of the ten members who spoke in the debate on them, only two stood in their support; the majority considered the councils

**ABOVE: Only seven states in India currently have legislative councils, including the country's newest state, Telangana.**

to be unnecessary and expensive. BR Ambedkar described the state legislative councils as a proverbial “curate’s egg—good only in parts.” The outcome of the debates was that the constitution made no permanent provision for the councils, leaving it to each state assembly to retain or abolish them. Since independence, Punjab, West Bengal, and Tamil Nadu have abolished their legislative councils. Andhra Pradesh abolished its council in 1985, but reversed the decision in 2006. Rajasthan and Assam have passed resolutions in recent years to create legislative councils, but they are yet to be constituted.

Much of the discussion on the relevance of legislative councils mirrors the larger discussion of bicameralism at the central level. Supporters offer three major justifications. The first is that they “cool” the legislation of the first house—to borrow George Washington’s word about the role of the Senate in the United States—which may act rashly in the political heat of the moment. The second argument is that in a federal structure, the second chamber maintains a balance between interests of the units and that of the union. The third argument is that it provides a platform for some individuals who are not likely to be selected in the ordinary election process. It is worth examining each of these arguments.

Supporters of the first argument maintain that a directly elected first chamber may take many decisions hastily, out of the purely political compulsions of the ruling majority. Since elections to the second house are staggered (members have a six-year term, and one-third of them retire every two years), it is claimed that the body is less influenced by sudden shifts in the political mood, and that it also provides a thread of continuity to the legislative agenda. Thus, supporters say that councils impart sobriety and reflection that can improve the quality of legislation.

But this argument does not hold water, since, as they are envisaged, the powers of the councils to influence the decisions of the assemblies is negligible. This is because, unlike the Rajya Sabha, the very existence of a legislative council is in the hands of the lower house. (One-third of the members are even elected by the assembly.) A state’s legislative council can be abolished if the assembly passes a resolution to that effect. It is unlikely, therefore, that a council can arrest the progress of any legislation that has the support of the assembly, be that legislation hasty or well thought through, trivial or revolutionary. Moreover, unlike the Rajya Sabha, the suggestions of a legislative council on bills are not binding on the lower house.

In 1969, the Congress was defeated by an Akali Dal–Jana Sangh coalition in Punjab, and by the United Front in West Bengal—both governments proceeded to abolish state legislative councils, which had Congress majorities. Similarly, in 1985, the Telugu Desam Party abolished the legislative council in Andhra Pradesh after defeating the Congress. The following year, in Tamil Nadu, the ruling Anna Drav-

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ida Munnetra Kazhagam government abolished the council, to prevent the rival Dravida Munnetra Kazhagam from securing a majority there. Thus, the very survival of a legislative council depends on the whims of the ruling party, and the idea that it may be able to exert any pressure on assembly-supported legislation is fallacious.

The second argument in favour of legislative councils is that the house plays an important role as a consortium of representatives from provincial units. In the case of the Rajya Sabha, this is valid to an extent. The central and state legislatures are bodies that work on the same terrain, that of lawmaking, and the presence of representatives elected by state lawmakers can conceivably balance out central and state views. In the case of legislative councils, however, this is less convincing, since the lower local-level bodies that elect members of the council are not legislative bodies. It is thus of less importance that they be represented in the state-level legislative process, particularly through a separate house.

The third argument for a second chamber is that it makes space in politics for intellectuals who may not be able to face the heat of an election. In the Rajya Sabha, 12 seats are reserved for people nominated by the president for their contributions to art, literature, science or social services. One-sixth of the council seats are similarly reserved for nominations by state governors. But this argument does not withstand scrutiny either. In his influential work *The Problem of The Second Chamber*, the British political theorist Harold J Laski described such a provision as an antithesis to democratic politics. “In a democratic society no one is entitled to the palm without the dust,” he wrote, “yet that is exactly involved in this proposal. If men of great intellectual distinction desire a place in public life they will always be able to find it; and if they are permanently rejected by the electorate they are not entitled to creep into it by a door over which the citizen body cannot stand on guard.” Indeed, such people can participate in governance through committees, boards, commissions and other such bodies where their special competence can be utilised by the government. The route through the second chamber is neither logical nor ethical.

Another aspect of the composition of legislative councils is also hard to defend—a twelfth of seats are reserved for candidates elected by teachers, and a twelfth for those elected by graduates. The special provision for these two electorates, and no other, is untenable in a democratic system. In fact, the special allowance could arguably lead to an unhealthy politicisation of the intellectual sphere, with the desire to be elected by teachers or graduates influencing interactions in the academic world.

A global survey by the Canadian academic Louis Masicotte in 2000 showed that a second chamber is a minority preference—only one-third of the countries surveyed had opted for a bicameral structure at the central level. Bicameralism is even rarer at the state level. The survey found that out of over 450 state legislatures worldwide, only 73—of which 49 are in the United States—had second houses. (This number included Indian states.) Thus, the prevailing wisdom appears to be in opposition to these bodies.

None of this implies that there are no problems with lower houses in India. But these are problems that should be addressed through tackling root causes within the lower

houses themselves—such as by increasing the number of sitting days to improve the quality of legislation, or heightening the representative character by shifting away from a first-past-the-post system to, say, a mixed-member proportional representation system.

Whatever the Odisha government's intentions in moving to set up a second house, the larger arguments against the system are pertinent to the situation. The BJP and the Congress in the state have rejected the committee advising the government on the formation of the council as they were not consulted when the committee was formed. The Communist Party of India (Marxist) and the fledgling Freethought Party of India have also opposed the idea of the legislative council. Some intellectual voices from Odisha, such as the writer Satakadi Hota and the political commentator Panchanan Kanungo, too, have critiqued the government's moves. Funding salaries and perks for 49 legislators—the size of the proposed council in the state—is not an inexpensive proposition. To enable it would be regressive, and civil society and the opposition parties in Odisha must continue their efforts to prevent the government from taking this step. ■