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## **Introduction**

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

## Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

## **Description**

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

# **DIVERGENT LEGISLATURES: A CROSS-NATIONAL ANALYSIS OF LAW-MAKING POWERS IN FOUR DEMOCRACIES**

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## **Abstract**

‘People always want welfare, development, and good governance. As long as you are delivering, people are with you’<sup>1</sup>. This quote essentially establishes that only when citizens are ensured adequate infrastructure, security, and socio-economic development and many other things that are required for running their livelihood peacefully they will cooperate with the government. This cooperation has to be gained, as only with the support of the people, a nation can function effectively and achieve its developmental goals. This can be achieved only if the people of the country are also involved in the law making process. So this paper examines the diverse governance frameworks of the following country; USA, UK, Germany and India and analyses the operational structure of each nation’s legislative system.

**Keywords:** Legislative powers, federalism, comparative constitutional law, democracy, parliamentary system, separation of powers.

## **INDIA’S LEGISLATIVE POWER**

A foundational principle of federalism is the distribution of powers between Centre and state. Therefore, the legislative, executive and judiciary is divided between the Centre and state not by statutory enactment but by the Constitution itself. India’s legislative power date back to charter act, 1833 enacted by British Parliament. The act, gave the governor general powers over entire British India. He had the power to amend, repeal, or alter any law in British India, to control the civil and military affairs of the company, etc. Another important feature of this act is the addition

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<sup>1</sup> N. Chandrababu Naidu

of the fourth member to assist with drafting laws and regulations. However, this member did not have a right to vote in the council's executive decisions.

In 1919, the government of India act, 1919 (also known as Montagu-Chelmsford reforms) was passed as Indian leaders insisted the colonial rulers to give the Indians the power to govern themselves in return as many Indians fought in favor of British in World War I. This act introduced the diarchy system. This was brought with intent to introduce Indians to self-government gradually, while keeping crucial matters under British control. Under this system, the administration of provincial subjects was divided into 2 categories; reserved and transferred subjects. Reserved subjects included more 'essential' or 'sensitive' areas like finance, police, land revenue, and irrigation which were under the control of Britishers. Transferred subjects included areas such as health, education, agriculture, and local self-government which were managed by Indian ministers, who were elected from provincial legislative councils.

Initially the system of the diarchy was introduced in the provinces only but later in the government of India act, 1935 diarchy system was introduced in the Centre and was abolished in the provinces. This act laid down the foundation of distribution of powers between the Centre and State by introducing three lists, i.e., federal list, provincial list and concurrent list. Federal list included matters of national importance such as defense, foreign affairs, currency and coinage, customs and excise, communication (railways, airways, and telegraphs) and atomic energy and came under the direct control of the central government. Provincial list included subjects of regional interest such as public health and sanitation, education, police, agriculture, local government and fisheries to be administered by the provinces. Concurrent list allowed both the central and provincial governments to legislate matters of regional interest that require national importance. It included subjects like criminal law and procedure, civil procedure, marriage and divorce, bankruptcy and insolvency, trusts and trustees, civil rights and contracts. If a conflict arose between central and provincial legislation on a subject within the concurrent list, the central law would prevail.

When constitution was enacted in 1950, it adopted the similar system of distribution of powers as in government of India act, 1935. Power of the parliament and state legislatures to make laws were defined in Part XI, chapter I, from article 245 to article 255 of Indian constitution.

The constitution of India divides the legislative power of parliament and state legislatures in two ways

- a. *With respect to territory*
- b. *With respect to subject matter*

- a. With respect to territory<sup>2</sup>

According to article 245, subject to the provisions of the constitution, parliament has the power to make laws for the whole or any part of the territory of India and the state legislature have power to make laws for the whole or any part of the state

- b. With respect to subject matter<sup>3</sup>

With respect to subject matter, powers to make laws were entrusted to the parliament and state legislature in article 246 and in the seventh schedule. The article is as follows:

- 1) Article 246(1): parliament has the exclusive powers to make laws in subject matters enumerated in list I in the seventh schedule (Union list). List I contains 97 subjects. Subjects enumerated in the union are of national importance such as Defense, war and peace, foreign jurisdiction, citizenship, railways, highways, currency, RBI, banking, union public services, etc.
- 2) Article 246(2): parliament and legislature of a state subject to article 246(1), has the power to make laws in subject matters enumerated in list III of the seventh schedule (Concurrent list). List III contains 47 subjects. Subjects in this list are of local importance that require national attention. They are criminal law, marriage and divorce, bankruptcy and insolvency, forests, civil procedure, criminal procedure, trust and trustees, factories, boilers, electricity, etc.

If case of conflict between the central and state law on concurrent law, then according to article 254(1), the law made by the parliament, whether passed before or after the law made by the state legislature will prevail and the law made by the state legislature to the extent of repugnancy be void. The law made by the state legislature will prevail if the law made by the state legislature has been reserved for the consideration of the president and has received his assent (Article 254(2)).

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<sup>2</sup> Constitution of India, 1950, Art 245

<sup>3</sup> Constitution of India, 1950, Art 246

- 3) Article 246(3): Legislature of the state, subject to article 246(1) and 246(2), has power to make laws in subject matters enumerated in list II in the seventh schedule (State list). List II contains 66 subjects. Subjects enumerated in the state list are of local importance such as police, public order, public health and sanitation, fisheries, gas and gas-works, treasure trove, tolls, education, etc. If any law made by the state legislature is repugnant to any provision of a law made by the parliament under article 249 and art 250, then the law made by the parliament, will prevail, whether it is passed before or after the law is made by the legislature of state (Article 251).

Article 246-A<sup>4</sup> was inserted by the constitution (one hundred and first amendment) act, 2016 which enables the parliament and state legislature subject to clause (1), to make laws with respect to goods and services tax imposed by the union by such state (Article 246-A(1)) and the parliament has exclusive power to make laws with respect to goods and service tax where the supply of goods or services takes place in course of Inter-State trade or commerce (Article 246-A(2)).

### **Instances where the parliament has power to legislate with subjects enumerated in the state list**

Generally, the Centre and the State are only allowed to legislate in the subjected matters enumerated in list I and list II respectively. They are not allowed to encroach upon the subject matters of each other. But in some extraordinary situations, this system is suspended and the Centre i.e., parliament are entrusted with some powers to legislate subjects mentioned in the state list.

They are,

- 1) When the Rajya Sabha passes a resolution: According to article 249(1)<sup>5</sup>, if the Rajya Sabha passes a resolution supported by 2/3 of the members present and voting that it is necessary or expedient in the national interest that parliament should make laws with respect to goods and service tax provided under Article 246-A and subjects enumerated in the state list, then the parliament has power to make law with that subject matter so long as the resolution exists. Usually, the resolution exists in force for one year and cease to exist after the time

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<sup>4</sup> Constitution of India, 1950 , Art 246-A

<sup>5</sup>Constitution of India, 1950 , Art 249

period of one year unless a resolution is passed for the continuance of the existing resolution. (Article 246(2)).

- 2) When a proclamation of emergency is in operation: According to article 250(1)<sup>6</sup>, while a proclamation of emergency is in operation, parliament has power to make laws for the whole or any part of the territory of India with respect to any matters enumerated in the state list. If the law made by the parliament was incompetent for it to make, then to the extent of the incompetency it shall cease to operate on the expiration of a period of six months after the proclamation has ceased to operate (Article 250(2)).
- 3) If the state gives consent: According to article 252<sup>7</sup>, if a resolution is passed by two or more state legislatures as it appears desirable for the parliament to make law with a subject matter, then it is lawful for the parliament to make law with respect to that subject matter to that states and it shall be applied to those states.

Apart from the subjects enumerated in list I, the parliament has power to make laws for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body (Article 253)<sup>8</sup>.

If a subject matter is not mentioned in any of the lists, parliament has exclusive power to make any laws on that subject matter. It also includes the power of parliament to legislate a tax not mentioned in either of those lists (article 248)<sup>9</sup>.

Any amendment to this constitution can be made in accordance with the procedure laid down in Article 368<sup>10</sup>. Any amendment can be made when a bill is passed in each house by a majority of the total membership of that house and by a majority not less than two-thirds of the members of that house present and voted in favor and after receiving the assent of the president. If such amendment seeks to change

- a. article 54, article 55, article 73, article 162 or article 241, or

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<sup>6</sup> Constitution of India, 1950 , Art 250

<sup>7</sup> Constitution of India, 1950 , Art 252

<sup>8</sup> Constitution of India, 1950 , Art 253

<sup>9</sup> Constitution of India, 1950 , Art 248

<sup>10</sup> Constitution of India, 1950 , Art 368

- b. Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or
- c. any of the Lists in the Seventh Schedule, or
- d. the representation of States in Parliament, or
- e. the provisions of this article,

Then it requires to be ratified by the state legislatures of not less than one-half of the states by resolution to that effect.

## US

United states was officially formed when the constitution was adopted, marking the beginning of the federal government. Like many countries, U.S was also ruled by the Britishers from 1607-1783. First English colony was established in Jamestown, Virginia, in 1607 and over years many other colonies were formed. At the whole, thirteen British colonies eventually emerged, each with its own governance but still under British rule. Annoyed and frustrated by British taxes and policies, the colonies began to seek independence. Revolutionary wars began from 1775. In 1776, the colonies officially proclaimed their independence by signing the Declaration of Independence. After gaining independence in 1783, colonies used the Articles of Confederation (1781), to establish a government. But as it was a loosely formed alliance and was too weak, hence constitution was drafted in 1787. As the Americans faced British's centralized tyrannical rule and as each state had its own identity, laws and way of governance, federal system of governance was adopted where states were allowed to govern local matters and central government to govern matters of national importance. The constitution, which established a federal system with 3 branches of the government (executive, legislative, and judicial), was ratified by 1788, and George Washington became the first president in 1789.

### Legislative powers

All legislative powers shall be vested in a congress of the United States, which shall consist of a senate and house of representatives<sup>11</sup>. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States<sup>12</sup>. The Senate of the United

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<sup>11</sup> Constitution of the United States, 1787, Art 1 Sec 1

<sup>12</sup> Constitution of the United States, 1787, Art 1 Sec 2

States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote<sup>13</sup>.

According to Art 1, Sec 8<sup>14</sup> the US Congress shall have the power

- a. To lay and lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States.
- b. To borrow Money on the credit of the United States
- c. To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes
- d. To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States
- e. To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures
- f. To provide for the Punishment of counterfeiting the Securities and current Coin of the United States
- g. To establish Post Offices and post Roads
- h. To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries
- i. To constitute Tribunals inferior to the supreme Court
- j. To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations
- k. To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water
- l. To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years
- m. To provide and maintain a Navy
- n. To make Rules for the Government and Regulation of the land and naval Forces

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<sup>13</sup> Constitution of the United States, 1787, Art 1 Sec 3

<sup>14</sup> Constitution of the United States, 1787, Art 1 Sec 8

- o. To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions
- p. To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress
- q. To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings, and
- r. To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof

According to Amendment X (1791) , the power to legislate on the subject matters where the power to make laws were not delegated to the united states by the constitution, nor prohibited by it to the sates, are reserved to the states respectively. Subject matters in which the states are prohibited to make laws are

1. Foreign affairs and treaties (Article I, Section 10).
2. Coining Money (Article I, Section 10).
3. Imposing Import/Export Duties (Article I, Section 10).
4. Maintaining Armed Forces and Engaging in War (Article I, Section 10).
5. Civil Rights and Equal Protection Violations: States cannot make laws that infringe on individual rights protected by the Constitution, such as freedom of speech, equal protection under the law, and due process (Fourteenth Amendment).
6. To make ex post facto law (Article I, Section 10).
7. Law impairing the obligations of contracts (Article I, Section 10).
8. Title of nobility (Article I, Section 10).

There are certain subject matters where both the union and state can make laws on it. They are taxation , borrowing money, law enforcement, establishing courts, public welfare and health,

environment, education, regulation of banks, etc. if a conflict arises between the laws made by the centre and state, then the federal law i.e., the laws made by the state will prevail due to the supremacy clause<sup>15</sup>.

Any amendment to the constitution, can be proposed by congress if two-thirds of both the House of Representatives and the Senate agree. Alternatively, if two-thirds of state legislatures request it, Congress can call a convention to suggest amendments. For an amendment to become part of the Constitution, it must then be approved by three-fourths of the state legislatures or by conventions in three-fourths of the states, as decided by Congress. Provided, before 1808, no amendments could affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate <sup>16</sup>. This process ensures that amendments have widespread support across both Congress and the states before they are added to the Constitution.

## UK'S LEGISLATIVE POWERS

Unlike other countries, UK's Parliament had its beginning in an informal way only, it was a meeting where the king sought the advice of advisors, nobles and churchmen but acted on his own. The British parliament has origins in 2 early Anglo-Saxon assemblies – the Witans and the moots.

The witans didn't had the permanent membership, but their role was crucial as the monarch could rule the country only with the help of nobles. Later in 1066, when William invaded Britain, he created a much smaller group of permanent groups of advisors known as the Curia Regis – King's council. The king also consulted another larger group of nobles and church known as the Magnum Concilium – Great council. Later, this turned into house of lords. The moots were local assemblies of local lords, bishops, the sheriff and 4 representatives from each village to discuss local issues. This was turned into house of commons<sup>17</sup>.

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<sup>15</sup> Constitution of the United States, 1787, Art VI

<sup>16</sup> Constitution of the United States, 1787, Art V

<sup>17</sup> A short history of parliament ' (Parliamentary Education office) < <https://peo.gov.au/understand-our-parliament/history-of-parliament/history-milestones/a-short-history-of-parliament>> accessed on April 25, 2025

A major change was bought in 13<sup>th</sup> century, where Magna Carta (the ‘Great Chapter’) was signed by King John in 1215. This was the first place where the King’s power were limited and made him subject to the rule of law. The agreement was mainly signed to raise cash for wars and in 1236, first time the term parliament was used when an assembly was formed between the English monarch and his advisors. As King Henry III lost in wars with France, went against the barons and disagreed to rule with the advice of 15-member council of barons, the barons went against the King and waged war against him. Consequently, he was dethroned in 1264 and De Montfort became the Britain’s ruler. Only in De Montfort’s rule, ordinary people, knights from country side were called to attend the parliament and elections were held to house of commons. This became the antecedent for the powers of present-day house of commons.<sup>18</sup> However he was killed by Henry III’s son, Edward. King Edward was in support of the parliamentary system and kept regular meetings.

Initially, the house of lords had strong influence on the monarch than the house of commons. But this scenario changed after when King Edward was waging wars. To raise money for the wars, tax was one of the way, so the monarch sought approval for imposing taxes as it had the greatest impact over the commons. By this way, by the mid-fifteenth century, the house of commons gained equal powers like as house of lords. The power of the commons grew further during the civil war, where the commons challenged the monarch (King Charles I) for the first time openly. It resulted in execution of King Charles I in 1649 and Britain was declared as republic. The monarchy came back in 1660, but still the clash between the monarch and commons continued.

Then in 1707, through the act of union, the country of Scotland and Wales were united to form the country of Great Britain. It was then followed by unification of Ireland through act of Union, 1801. But as violence was erupted and a chaotic situation prevailed, the island of Ireland was partitioned in 1921 to Northern Ireland and Southern Ireland. The smaller section i.e., Northern Ireland was added to Great Britain, to form the United Kingdom of Great Britain.

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<sup>18</sup> Kristiina Cooper, ‘A brief history of the UK Parliament’ (Sep 22, 2014), <<https://www.bbc.com/news/uk-politics-29252332>> accessed on April 26, 2025

The present form of government in UK is a constitutional monarchy. The UK Parliament has three parts i.e., the monarch, the house of lords and house of commons and is of bicameral structure with upper house (the house of lords) and lower house (the house of commons). The upper house currently consists of 805 sitting members and the lower house consists of 650 members. There are two types of legislation<sup>19</sup>. They are,

- a. *Primary legislation*
- b. *Secondary legislation*

- a. Primary legislation

Any bill or an act is known as primary legislation. Generally any bill becomes as a law when it is introduced in either house of the parliament, passed by both the houses and has received royal assent. Any member of either houses can introduce a bill in a house. However, the House of Lords faces certain limitations. Previously, it had the authority to delay legislation for up to two years, but this has now been reduced to a maximum delay of one year. Also, no one in the house of lords has the power to initiate or amend money bills (related to national taxation, public money, etc), further it was limited by the Salisbury convention, which restricts the lords in blocking the government bills that intended to implement policies proposed in election manifesto. However, they are not completely ignored as their role is crucial for shaping the legislation and is referred as ‘revising chamber’<sup>20</sup>.

- b. Secondary legislation

Secondary legislation or delegated legislation is through which the government ministers confer power by an act to make laws, rules, regulations or orders.<sup>21</sup>

However this applies to general laws of the country only, the procedure will not apply to certain subject matters where

- The Scottish Parliament through Scotland Act, 1988
- The Welsh Parliament through government of Wales Act, 1998

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<sup>19</sup> Cabinet office, ‘Legislative process: taking a bill through Parliament’ (Gov.UK Feb 20, 2013) <<https://www.gov.uk/guidance/legislative-process-taking-a-bill-through-parliament>> accessed on April 26, 2025

<sup>20</sup> Alice Lilly, Emanuela Marku, Joshua Jakupi, ‘House of lords’ (Institute for Government, Oct 17, 2023) <<https://www.instituteforgovernment.org.uk/explainer/house-of-lords>>, accessed on April 26, 2025

<sup>21</sup> Cabinet office, ‘Legislative process: taking a bill through Parliament’ (Gov.UK Feb 20, 2013) <<https://www.gov.uk/guidance/legislative-process-taking-a-bill-through-parliament>> accessed on April 26, 2025

- The Northern Ireland Assembly through 1998 Belfast Agreement or Good Friday Agreement

Has devolved powers to make laws on certain subject matters.

There are also certain subject matters in which the following have the powers to make laws with the consent of the UK Parliament. They are known as Reserved Powers

A. Scottish Parliament<sup>22</sup>

Devolved matters

The subject matters in which the Scottish parliament has power to make laws are agriculture, forestry and fisheries, benefits, consumer advocacy and advice, economic development, education and training, elections to the Scottish Parliament and local government, energy, etc

Reserved matters

The subject matters in which the Scottish parliament has power to make laws with the consent of the UK Parliament are benefits, betting and gambling, broadcasting, currency, data protection, foreign affairs, postal affairs, etc.

B. Welsh Parliament<sup>23</sup>

Devolved matters

The subject matters in which the Welsh parliament has power to make laws are Agriculture, fisheries, forestry and rural development, Culture, Economic development, Education and training, Environment, Food, etc.

Reserved matters

The subject matters in which the Welsh parliament has power to make laws with the consent of the UK parliament are The Constitution, Public service, Political parties, Single legal jurisdiction of England and Wales, Tribunals, Foreign affairs, Defence, etc

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<sup>22</sup> 'Devolved and Reserved Powers' (The Scottish Parliament Parlamaid na h-Alba) <<https://www.parliament.scot/about/how-parliament-works/devolved-and-reserved-powers>> accessed on April 27,2025

<sup>23</sup> 'Powers' (CyMRAEG, Sep 1, 2020) ,<<https://senedd.wales/how-we-work/our-role/powers/>> accessed on Apr 27, 2025

### C. Northern Ireland Assembly<sup>24</sup>

#### Devolved matters

The subject matters in which the Northern Ireland Assembly has power to make laws are health and social services, education, employment and skills, agriculture, social security, pensions and child support, housing, economic development, etc

#### Reserved matters

The subject matters in which the Northern Ireland Assembly has power to make with the consent of the UK parliament are firearms and explosives, financial services and pensions regulation, broadcasting, import and export controls, navigation and civil aviation, etc.

## GERMANY

The Basic Law for the Federal Republic of Germany is the constitution for the Federal Republic of Germany. It was adopted on 1949 by the Parliamentary Council. The first articles of the Basic law covers the Fundamental rights of the citizens and it also contain provisions concerning organisation, setting into action and giving shape to the basic and unamendable principles in this area. The Permanent constitutional bodies include Bundestag, Bundesrat, Federal Cabinet, The Federal President and the Federal Constitutional Court. The legislative branch of the government is dealt by the Bundestag and Bundesrat. The executive branch is dealt by the Federal cabinet and the Federal President. The judicial branch is dealt by the Federal Constitutional Court.<sup>25</sup>

### Bundestag:

The German Bundestag is the national federal Parliament and it is the lower house of the federal legislature and also its seat is in Reichstag building in Berlin. It is elected in a single

<sup>24</sup> What are the powers of the Northern Ireland Assembly' (Northern Ireland Assembly) , <  
[<sup>25</sup> The Basic Law <  
\[https://www.bundesverfassungsgericht.de/EN/BasicLawLegalBasis/TheBasicLaw/thebasiclaw\\\_node.html\]\(https://www.bundesverfassungsgericht.de/EN/BasicLawLegalBasis/TheBasicLaw/thebasiclaw\_node.html\) >  
 accessed 16 May 2025](https://www.niassembly.gov.uk/about-the-assembly/what-are-the-powers-of-the-northern-ireland-assembly/#:~:text=Under%20the%201998%20Belfast%20Agreement,as%20the%20Northern%20Ireland%20Executive)> accessed on Apr 27,2025</a></p>
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federal election. The President of the Bundestag acquires second highest position of state in Germany after Federal President.<sup>26</sup>

#### Bundesrat:

It is also a constitutional body acting as a link between the Federation and Federal states and also it meets in prussian house of lords. It represents the states at federal level and it is also the upper house of the federal legislature. The Bundesrat represent both the state as a whole (Federation) and the constituent federal states (16 lander). These 16 federal states influence federal legislation through Bundesrat. Within 16 landers it is composed of minister Presidents and Federal state ministers.<sup>27</sup>

#### Composition:

The federal government of Germany consists of federal chancellor and federal ministers. (Art: 62)<sup>28</sup>

#### Division of power:

The lander have the power to legislate unless federation confer legislative power over a subject and the division of authority between both shall be governed by the basic law regarding exclusive and concurrent legislative power. (Art: 72)<sup>29</sup>

#### Exclusive legislative power of federation:

The lander shall have the power to legislate exclusive power of federation extends to which they are expressly authorised to do by the federal law. (Art: 71)<sup>30</sup>

Subject matters which come under it, is covered under (Art: 73)<sup>31</sup>

Art 73(1) includes:

1. Foreign affairs and defence including protection of civilian population

<sup>26</sup> *Deutscher Bundestag* < <https://www.bundestag.de/en> > accessed 16 May 2025

<sup>27</sup> *Bundesrat* < <https://www.bundesrat.de/EN/homepage/homepage-node.html> > accessed 17 May 2025

<sup>28</sup> Basic Law for the Federal Republic of Germany, 1949, Art 62

<sup>29</sup> Basic Law for the Federal Republic of Germany, 1949, Art 72

<sup>30</sup> Basic Law for the Federal Republic of Germany, 1949, Art 71

<sup>31</sup> Basic Law for the Federal Republic of Germany, 1949, Art 73

2. Citizenship
3. Freedom of movement, passports, residency registration, identity cards, immigration, emigration and extradition
4. Currency, money and coinage, weights and measures, and determination of standards of time
5. The unity of customs and trading area, treaties regarding commerce and navigation, free movement of goods, exchange of goods and payment with foreign countries including customs and border protection
- 5a. safeguarding German cultural assets against removal from the country
6. air transport
- 6a. operation of railways wholly or predominantly owned by the federation (federal railways), construction, maintenance and operation of railway lines to federal railways and levying of charges for usage of these railway lines
7. postal and telecommunication services
8. the legal relations of persons employed by the federation and by federal corporations under public law
9. industrial property rights, copyrights and publishing
- 9a. protection by the Federal Criminal Police Office against the dangers of international terrorism when a threat transcends the boundary of one land, when responsibility is not clearly assignable to the police authorities of any particular Land or when the highest authority of an individual Land requests the assumption of federal responsibility
10. cooperation between the federation and the Lander concerning
  - a) Criminal police work
  - b) Protection of the free democratic basic order , existence and security of the federation or of a Land (protection of the constitution)
  - c) Protection against activities within the federal territory which by the use of force or preparation for the use of force ,endanger the external interests of the Federal Republic of Germany, establishment of a Federal Criminal Police Office and international action to combat crime
11. statistics for federal purposes

12. Law on weapons and explosives
13. benefits for persons disabled by war and for dependents of deceased war victims as well as assistance to former prisoners of war
14. production and utilisation of nuclear energy for peaceful purposes, construction and operation of facilities for serving such purposes and protection against.<sup>32</sup>

Concurrent legislative power: (Art 72)<sup>33</sup>

Art 72(1) of the basic law for the federal republic of germany describes the concurrent legislative power which entitles lander have the power to legislate as long as federation does not exercise its power to legislate over a subject matter.<sup>34</sup>

Art 72(2) of this law deals that federation have the power to legislate the matter which falls within the items of 4, 7, 11, 13, 15, 19a, 20, 22, 25 and 26 of paragraph (1) of Art 74. <sup>35</sup>

Art 72(3) of this law deals that if federation has exercised its power to legislate then the lander can exercise its power to legislate with variance to that of that legislation with respect to

1. Hunting ( except for law which requires hunting licenses)
2. Protection of nature and landscape management ( except general principles governing the protection of nature, law on protection of plant and animal species or the law on protection of marine life)
3. Land distribution
4. Regional planning
5. Management of water resources (except fro regulations related to materials or facilities)
6. Admission to institutions for higher education nad requirements for graduation in such institutions
7. Taxes on real property

Federal laws on thes matter shall enter into force not earlier than six months followed by their promulgation unless otherwise provided with the consent with the Bundesrat.<sup>36</sup>

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<sup>32</sup> Basic Law for the Federal Republic of Germany, 1949, Art 73(1)

<sup>33</sup> Basic Law for the Federal Republic of Germany, 1949, Art 72

<sup>34</sup> Basic Law for the Federal Republic of Germany, 1949, Art 72(1)

<sup>35</sup> Basic Law for the Federal Republic of Germany, 1949, Art 72(2)

<sup>36</sup> Basic Law for the Federal Republic of Germany, 1949, Art 72(3)

Subject matters of concurrent legislative powers is discussed in the Art 74 which includes:

1. Civil law, criminal law , court organisation and procedure(except for the law governing pre-trial detention), the legal profession,notaries and the provision of legal advice
2. Regisration of births , marriages and deaths
3. Law of associations
4. Law concerning residence and establishment of foreign nationals
- 4a. repealed
5. Repealed
6. Matters concerning refugees and expellees
7. Public welfare( except for the law on social care homes)
8. Repealed
9. War damage and reparations
10. War graves and graves of other victims of war or depotism
11. Law relating to economic matters (mining, industry, energy, crafts, trades, commerce, banking, stock ex-changes and private insurance), except for the law on shop related to closing hours, restaurants, amusement arcades,display of persons, trade fairs, exhibitions and markets
12. Labour law , including the organisation of enterprises,occupational health and safety and employment agencies, social security inclusive of employment insurance
13. Regulation of educational and training grants and promotion of research
14. Law regarding expropriation to the extend of matters enumerated in Articles 73 and 74
15. Transfer of land, natural resources and means of production to public ownership or other forms of public enterprise
16. Prevention of abuse of economic power
17. Promotion of agricultural production and forestry(except for the law on land consolidation ) ensuring the adequacy of food supply, the importation and exportation of agricultural and forestry products, deep -sea and coastal fishing and preservation of it

18. Urban real estate transactions, land law (except for law related to development fees) and the law on rental subsidies, subsidies for old debts, homebuilding loan premiums, miners' homebuilding and pit villages
19. Measures to combat human and animal diseases which pose a danger to the public or are communicable disease, admission to the medical profession, ancillary profession or occupation , law related to pharmacies,medicines,edical products, drugs, narcotics and poisons
- 19a. Economic viability of hospitals and the regulation of hospital charges
20. Law on food products inclusive of animal used in their production, law on alcohol and tobacco, essential commodities and feedstuffs , protective measures in connection with marketing of agricultural and forest seeds and seedlings, protection of palnts against diseases and pests and protection of animals
21. Maritime and coastal shipping , navigational aids, inland navigation, meteorological services, sea routes and inland waterways used for general traffic
22. Road traffic , motor transport, construction and maintenance of long-distance highways as well as collection of tolls for the use of public highways by vehicles and allocation of revenue
23. Non-federal railways, except mountain railways
24. Waste disposal, air pollution control, noise abatement(except for the protection from noise related to human activity)
25. State liability
26. Medically assisted generation of human life , analysis and midification of genetic information ,regulation of organ, tissue and cell transplantation
27. Statutory rights and duties of civil servants of the Lander, municipalities and other corporations established under public law and judges in the Lander , except for their career regulations, remuneration and pensions
28. Hunting
29. Protection of nature and landscape management
30. Land distribution
31. Regional planning
32. Management of water resources

33. Admission to institutions of higher education and requirement for graduation in such institutions<sup>37</sup>

Items which are specified in 25 and 27 requires consent of the Bundesrat. (Art 74(2))<sup>38</sup>

Introduction of Bills (Art 76)<sup>39</sup>

Bills are initially introduced in Bundersatg by the federal government, bundesrat or by the lower floor of Bundestag. (Art 76(1))<sup>40</sup>

Federal governmental bills shall be introduced in bundesrat initially and recommendations and suggestions shall be made within six weeks if it requires extension it may extend to nine weeks depending upon the scope of bill. In case of acceptance or recommendations required is urgent in that case federal government may pass the bill to bundestag after three weeks and if bundesrat was not able to give recommendations or acceptance to the bill after six weeks then it will be transferred to bundestag without any delay. In case of bills to amend basic law or transfer of sovereign powers with respect to Art 24 and 25 the period may extend to nine weeks notwithstanding above mentioned. (Art 76(2))<sup>41</sup>

Legislative Procedure(Art77):

Once Federal Laws are adopted by the Bundestag and then President of Bundestag will forward it to the Bundesrat immediately. After receiving An adopted bill within three months the Bundesrat will call a committee for joint consideration of bills composed of both the members of Bundesrat and Bundestag. The composition and proceedings of this committee shall be reuglated by rules of procedure adopted by Bundestag with the consent of Bundesrat and also its consent is required for a bill to become law. The Bundestag need to vote it for second time if adopted bill requires amendment. The objection raised by majority of the votes of the Bundesrat it may be rejected by the decision of the majority of the members of the Bundestag. If the Bundesrat adopted

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<sup>37</sup> Basic Law for the Federal Republic of Germany, 1949, Art 74(1)

<sup>38</sup> Basic Law for the Federal Republic of Germany, 1949, Art 74(2)

<sup>39</sup> Basic Law for the Federal Republic of Germany, 1949, Art 76

<sup>40</sup> Basic Law for the Federal Republic of Germany, 1949, Art 76(1)

<sup>41</sup> Basic Law for the Federal Republic of Germany, 1949, Art 76(2)

objection for a majority of atleast votes of two third and its rejection by the Bundestag shall require two third including atleast a majority of the Bundestag members.<sup>42</sup>

Amendment of the Basic Law (Art:79):

The Basic Law can be amended only by a law which is expressly amending or supplementing its text or provisions. And also any such law which shall be carried out by two-third of votes of members of Bundestag and the members of Bundesrat. This amendment of law affecting the division of Federation into Lander and their participation in legislative process or the provisions laid down from Article 1 to 20 is inadmissible.<sup>43</sup>

Legislative Emergency (Art: 81):

The circumstances which has been described in Article 68, the Bundestag is not dissolved then the Federal President at the request of the Federal Government and with consent of the Bundesrat may declare legislative emergency with respect to a bill and if the Bundesrat rejects the bill even though Federal government has declared to be urgent. The same shall be applicable if a bill has been rejected even though Federal Chancellor had combined it with Article 68. After the state legislative emergency has been declared the Bundestag again rejects the bill or accepts it in a version of Federal Government declares unacceptable the bill shall be deemed to have become law as to the extent to the consent of Bundesrat. The same shall apply if the Bundestag does not pass the bill after the reintroduction within four weeks. If any bill got rejected by the Bundestag during the term of office of a Federal Chancellor it may become law in accordance with Article (81(1) and 81(2)) with the period of six months after the first declaration of a state of legislative emergency. After the termination of this period no further declaration of this emergency shall be made during the term of office of the same Federal Chancellor. This law may neither be amended nor abrogated nor suspended in whole or in part by a law enacted with respect to Article 81(2).<sup>44</sup>

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<sup>42</sup> Basic Law for the Federal Republic of Germany, 1949, Art 77

<sup>43</sup> Basic Law for the Federal Republic of Germany, 1949, Art 79

<sup>44</sup> Basic Law for the Federal Republic of Germany, 1949, Art 81

### COMPARITIVE ANALYSIS

Feature	USA	UK	Germany	India
Distribution of powers	US follows the federal system and is the first country to introduce the system of federation. Major power rests with the State as it is coming together federation	UK doesn't follow federalism. But it has given some power to Scotland, Wales and Northern Ireland	Germany follows the principle of federal government with the centre and lander (states)	India follows the federal system where the power is divided between the centre and states. Major power rests with the centre as it is a holding together federation
Subject matter	The law making power of the centre rests with the centre known as Congress and has the power to make laws on subject matters mentioned in Article I, section 8 of the U S Constitution and states have power to make laws on subject	Generally the parliament has the power to make laws for the entire country. But for Scotland, Wales and Northern Ireland certain subject matters are devolved for them to make laws. For general laws of the country,	The central law making power is given to the parliament under Article 72(2) and the states have the power to make laws which is not mentioned under centre's list	The parliament has power to legislate on subject matters mentioned under list I of schedule 7 (Article 246(1)) and legislature of state has power to legislate on the subject matters enumerated under list II of schedule 7 (Article 246(3))

	matter which are neither delegated to centre nor prohibited for state to make laws	there are two types of legislation i.e., primary legislation and secondary legislation.		
Citizenship	There is a dual citizenship and the centre have the power to make laws regarding citizenship rights	The primary authority to legislate on citizenship is parliament.	Germany allows multiple citizenship with Bunderstag having the power to legislate on citizenship	There is only single citizenship and the centre have the authority to legislate on it
Concurrent power	There are certain subject matters where both the union and state can make laws on it. They are taxation, borrowing money, law enforcement, if a conflict arises between the laws made by the centre and state,	There is no concurrent subject matters as UK is a constitutional monarch country	Subject matters under concurrent list is mentioned under Article 74 of the constitution	Subject matter under concurrent list are mentioned under list III of Schedule 7

	then the federal law i.e., the laws made by the state will prevail due to the supremacy clause (Article VI).			
Amendment	<p>Any amendment to the constitution, can be proposed by congress if two-thirds of both the House of Representatives and the Senate agree.</p> <p>Alternatively, if two-thirds of state legislatures request it, Congress can call a convention to suggest amendments.</p> <p>For an amendment to become part of the Constitution,</p>	<p>The UK constitution can be amended by a simple majority vote in Parliament</p>	<p>The Basic Law can be amended only by a law which is expressly amending or supplementing its text or provisions. And also any such law which shall be carried out by two-third of votes of members of Bundestag and the members of Bundesrat</p>	<p>Any amendment can be made when a bill is passed in each house by a majority of the total membership of that house and by a majority not less than two-thirds of the members of that house present and voted in favor and after receiving the assent of the president. For other matters such as matters affecting the federal system it requires to be</p>

	it must then be approved by three-fourths of the state legislatures or by conventions in three-fourths of the states, as decided by Congress			ratified by the state legislatures of not less than one-half of the states by resolution to that effect.
Residuary powers	States have the power to legislate on matters that are neither mentioned under centre list nor prohibited for state to make law on it	Centre have powers to legislate on residuary subjects	States have power to legislate on residuary subject matters	Centre have powers to legislate on residuary subjects(Article 248 )

**Conclusion:**

According to Black’s Law Dictionary Legislature is defined as “A body of persons organised and vested with authority to make laws for a political unit such as a nation or state”. This research paper has given how the legislative power being handled by constitutional bodies in different countries namely USA, UK, Germany and India and a comparative analysis is made to know how each legislative power is operative for making laws for their own land for better governance. Though each country holds their own constitution either written or oral format the nature of constitution gives a description of how each government is functioning namely USA follows federal system, UK follows centralisation, Germany follows democracy and federalism, and India

follows quasi-federalism. However, all legislatures of countries are working to make laws and alter laws if needed for healthy functioning of government and to maintain peace in that country. From this research it can be concluded that single structure or system need not be followed in forthcoming days , it can be altered when time comes as per the needs of the people and the society.

