

Union Legislature

Envisaged role & actual record

- Reasons for the decline of Parliament.
- Give suggestions to arrest this decline.

Significance of Parliament of India.

- Parliament of India is not visualised as any other Legislative Chamber in conventional sense. Rather it was visualised as the most important agency for social revolution in India. India did not go for the violent revolution as China rather preferred peaceful, Constitutional means of social transformation. Constituent Assembly expected Parliament to be the main agency of achieving the India of their dreams.

One of the earliest work on Working of Parliament in India is of Morris Jones.

With great sense of appreciation for Parliamentary democracy in India he mentions that if Paricles can claim Athens to be the school of Hellas, Nehru can also claim India to be school of Democracy in Asia.

West/
Greek

Prof. M.P. Singh - Though there is a legitimate reason for pride & celebration with the functioning of Parliamentary democracy in India. But there is no scope for getting complacent. There are many dysfunctional aspects associated with the

functioning of Parliament in India.

According to M.P. Singh, the decline of Parliament started with the breakdown of Congress hegemony.

Parliament of India failed to perform its Constitutional obligation of ensuring executive accountability when emergency was imposed in country with approval of Parliament. He supports the decline of Parliament thesis.

He points following dysfunctional aspects associated with Indian Parliament

- Presence of criminals
- Destructive opposition
- Lack of Parliamentary ethics
- Inflated ego of Parliamentarians, not giving due recognition to alternative democratic spaces
- Representational imbalance where because of the population policy imbalance has emerged. Southern states are overrepresented & northern states of underrepresented.
- He is critical of schemes like MPLA and LAD which goes against principle of separation of power.

Local Area Dev.

Valerian Rodrigues & B.L. Shankar in their book "The Indian Parliament: A Democracy at work" do not subscribe to the decline of Parliament thesis. Indian Parliament is still evolving. The present crisis is because of increasing plebianisation of Indian democracy.

Balveer Arora ~~arora~~ also do not support decline of Parliament thesis. Rather links it to increasing democratisation in the country. On the other hand scholars like Dipankar Gupta believe that "Grammar of Anarchy" is taking over the Parliament.

outlook
speech
of
Ambedkar

Country is witnessing street politics.

~~Country~~ There is a total transformation in Parliamentary culture, parties meet as if they are adversaries, debates are rare & informed debates are rarer.

Views of Subhash Kashyap.

There is a complete disconnect betⁿ people & Parliament.

Views of Vice President Hadon 13th Aug 2013.

Every single rule & every single etiquet has been violated. If honourable members want to make it a federalisation of anarchy its different thing.

Citizen's report on Governance publish prepared by 'social watch' published by Oxford.

Cost of Parliament to country is much more than other countries.

Disruption is a better strategy for opposition rather than confronting govt with facts & figures.

Bill are passed without debate

To add above observation it can be mentioned that in 9th Lok Sabha,

19 bills including 1 C.A. Bill passed in a single day. 15th Lok Sabha was the most unproductive. L.S. lost 42% of its time & RS lost 20% of its time. In LS just 18% of the time meant for Question Hour could be utilised & in RS 29% of the time. One hour of Parliament cost ₹25 Lakh to the exchequer.

World Bank has given 6 parameters for evaluating Legislative institutions.

- Financial

It means Parliament, an institution of accountability but how much accountable Parliament is w.r.t. its own accountability.

- Compliance

Parliament makes rules for others. How much rule they uphold?

- Efficient

How productive Parliament is in organising its work.

- Effectiveness

Whether Parliament is successful in bringing change in real life.

- Relevance

How much respect people give to Parliament.

- Sustainability

Is prestige of Parliament increasing or declining.

14/12/14

Problems related to Parliamentary Democracy in India

Context of the problems

Decline of Parliament

Factors responsible for decline of Parliament.

- Party system

Importance of political parties & necessity of reforms.

- India is a representative democracy.

The office bearers of representative institutions belong to political parties. Thus real power lies in political parties. To quote Max Weber "Political parties are power Houses".

Problems associated with Indian party system

→ Presence of large no. of political parties.

- Fragmentation of national parties
- Rise of regional parties with limited agenda
- Religion & caste based parties.
- Lack of intra-party democracy
- Dynasty rule
- Lack of transparency w.r.d. financial aspects
- Inadequate statutory provisions dealing with political parties.

Large no. of parties make party system too competitive. Hence it results into greater use of money & muscle power to win a battle.

only national parties for LS elections.

One of the reason for proliferation of parties is lack of intra party democracy, high command culture, top down approach w.r.t. selection of candidates. If intraparty democracy prevails & if people are given opportunity to select the candidates, we can stop fragmentation of parties & proliferation of parties. We can also minimize influence of money & muscle power.

The existing statutory provisions w.r.t. political parties are not sufficient.

e.g. w.r.t. registration of parties

At present any group willing to register itself as a political party have to intimate it to Election Commission of India within 30 days of its formation. They have to fill an affidavit expressing their commitment to principles of Constitution like secularism, socialism, etc. EC has a discretion to register a party or not. Above provt

Above provisions are not sufficient.

Once registered EC doesnot have powers to ensure that parties adhere to Constitutional provisions. EC doesnot have power to deregister a party. As per SC Judgement in 2002, deregistering a party is a serious matter.

EC has no such right until & unless there is an explicit statutory provision. It is suggested that law should be amended & EC should be given power to deregister.

At present parties lose their registered status only in 3 situations.

1. If party ceases to exist
2. If party is declared banned under Unlawful Activities (Prevention) Act.
3. If party has acquired registration by fraudulent means.

- Financial transparency

As per CIC political parties come under the scope of RTI. However at present there is a lack of clarity. All political parties oppose the inclusion of political parties in the definition of public authorities in RTI.

Existing provisions for transparency

- As per Representation of People Act (1950), Section 29(c) all political parties have to submit their annual returns to ECI. They have to inform EC about any donation of ₹20,000 & above in order to get the tax relief. EC = ECI
 - Political parties are exempted from paying ~~IT~~ ^{Income Tax} subject to the condition that they file annual IT returns to Income Tax Dept. as per section 13A of IT Act 1961.
- At present because of CIC ruling, citizens can get the copy of ^(Income Tax) IT returns of political parties from IT Dept.

The compliance of the rule of informing EC is very poor. EC has no disciplinary powers except informing IT Dept. EC should have powers to deregister parties in case of non compliance.

— Criminalisation of politics

Presence of money & muscle power in democracies is almost universal. But what is unique is the proportion of the criminals entering into the supreme institutions of law making. Vohra Committee was setup to enquire the nexus among the politicians, criminals, bureaucrats & the corporate class. Report of Vohra Committee has not been made available to the public. According to Christophe Jeffrelot, in India it is not simply "Criminalisation of politics" but "^{politicisation} ~~politicisation~~ of criminals". Earlier criminals were helping the politicians, now they themselves stand in elections. According to SC, presence of criminals in Parliament is anathema to democracy. The no. of criminals in Parliament are continually increasing. In 2004 there were 128 persons against whom criminal cases were pending & 58 out of them were accused of heinous crime like murder, rape.

In 2009, the no. ~~of~~ was 162 with 76 accused of heinous crimes. In 2014, no. increased to 187 & 113 accused of heinous crime.

1. Statutory provisions to deal with criminalisation of politics

• Form 26

As per conduct of election rules 1961, candidate has to fill an affidavit giving criminal antecedents.

In 2002, SC recognized voters' right to information & not only criminal antecedents but they also had to provide info about educational qualification, asset & liabilities.

- As per 13th Sep 2013 ruling, SC recognizes EC's right to reject nomination paper, in case any entry is left blank.

- As per Section 125A of RPA 1951, in case person gives wrong information he can be subjected to 6 months imprisonment or fine or both.

Suggestions of EC

- Affidavit to be counter signed by the political party

- Imprisonment should be increased to 2 years.

Provisions under RPA 1951

- Section 8 deals with the disqualification for standing as a candidate

- Section 8(1)

It mentions certain crimes, if person is convicted of such crimes he/she cannot stand in election for 6 years from the date of conviction

- Section 8(2)

If person is convicted of any of the offences mentioned he/she shall be disqualified from the date of conviction plus 6 years further from the date of release.

- Section 8(3)

8(1, 2, 3) candidates
8(4) already elected.

It mentions certain offences where if person is convicted & punishment is of minimum 2 years then he shall be disqualified for further 6 years from the date of release.

In case person is arrested for following

- > hoarding, adulteration
- > under Dowry (Prohibition) Act
- > Prevention of Sati Act

In above case imprisonment is for even 6 months, person shall be disqualified for further 6 years from the date of release.

Section 8(4)

According to this, sitting MP & MLA shall not be disqualified immediately in case he is convicted of a crime by trial court subject to the condition they appeal against the judgement within 3 months of the order & they shall not be disqualified until the final disposal of appeal.

On 10th July 2013 in Lily Thomas case

SC has declared Section 8(4) as

'ultra vires' (it is not in your jurisdiction to make laws).

Views of EC

A person should be disqualified even when competent court has framed charges w.r.t. those crimes where imprisonment is for 5 yrs or more.

To stop the misuse it was suggested that above should apply only for those cases which have been filed 6 months before the election.

- It has also been suggested that in case any commission of enquiry also finds person guilty he/she should be disqualified.

SC direction on 27th Aug 2014

- SC advised govt. that charged persons should not be appointed as ministers.

Suggestions

- Political parties should refuse giving tickets to such persons
- Fast track courts should be established for speedy trials.

SC judgement in Jan Chaukidar case

- If any person is in lawful police or judicial custody, person shall have no right to stand in elections.

10/7/18

The reason is section 62(5) prevents person imprisoned from voting. This judgement has been nullified by bringing an amendment in RPA.

preuse
to oppose
imprisoning

27th Sep. 2013 PUCL vs UOI case
pending since 2002.

SC gave direction to introduce NOTA ^{option} in EVMs.

However, the decision is not sufficient to stop the entry of criminals. Decision is more w.r.t. ensure the right of secrecy of ballot. Earlier also person could exercise similar option but such option was not available on EVM.

As per rule 49(0) he has to fill separate form 17(A).
It is suggested that along with NOTA,
right to reject & right to recall should
also be introduced.

— Role of money in elections

According to Christophe Jeffrelet, the
use of money power in elections is a ^{negation} ~~radication~~
of democracy because it puts people under
the rule of money rather than rule of law.
Elections in India have become a major
outlet for criminal & black money.

Though there are restrictions on the expenditure
by the candidates, but such laws are insufficient.

Provisions related to use of money in elections

- In India, political parties are dependent on private donations since beginning.
- In 1968, Govt. banned corporate donations.
The impact of ban was the entry of black money in elections.
- Later on in 1985 Company Act was amended & corporate donations permitted under certain conditions.
Both Company Act & ~~RPA~~ ^{RPA} bans political parties from receiving funds from foreign companies or their subsidiaries.

There are expenditure limits on candidates. At present for LS constituency, for big states limit is ₹70 lakh & small states ₹54 lakh.
For Legislative Assembly, in case of big states, limit is ₹28 lakh & small states ₹20 lakh.

The expenditure limit is unrealistically low.

- As per
- Section 77 of RPA 1951, it is mandatory to keep separate account of all expenditures by the candidate & his election agent from the date of nomination till the declaration of results. Failure to maintain account is electoral offence under section 171 (I) of IPC.
- Expenditure beyond the prescribed limit comes under electoral corrupt practices under section 123 (6) of RPA.
- Section 78 of RPA 1951:

Every candidate has to lodge a true copy of election expenses with district electoral officer within 30 days of completion of elections. Failure to do so may result into disqualification under Section 10-A of RPA.

Flaws in

- Limit is only on the candidate but not on political parties. In Amarpath Chawla case, SC held that expenditure by political party for enhancing the prospects of the candidate shall be counted within the expenditure limit of the candidate. However it excludes expenditure by the party w.r.t.
 - Travel expenses of star campaigners.
 - Expenditure done by party for promotion of general party programme
- Balaji Subramaniam case:
SC directed EC to bring party manifestos

under model code of conduct. W.r.t. to the freebies ^{promised} offered by the political parties, political parties have to inform the source from where they will be fulfilling these promises.

Suggestions

- RTI should be amended & political parties should be clearly brought under RTI Act.
- EC should have power to deregister the parties
- State funding of elections to be introduced at least for national parties.
- Expenditure Limit on political parties

Defections

Problem of defections

- The phenomenon of 'aaya Ram - gaya Ram' has also become the idiom of Indian politics.

The problem is linked to

- political instability
- Corruption / Horse-trading
more prevalent at state level. But with coalition politics it has become prevalent at Centre also.

To address these problem Xth schedule was introduced by 52nd C.A. Act 1985.

Provisions of Anti-Defection Law

- A person can An MP / MLA can be subjected to disqualification for defections.

Grounds for defection

There are different set of rules for different categories of members.

- For a member of a political party elected on a party seat ticket

- Will be subjected to disqualification if
→ leaves the membership of political party or
→ political party expels that member because of his conduct.

• Status of unattached member

Unattached - members expelled from party but has not left the party.

In all situations speaker to decide whether person is disqualified or not

• A member elected on a party ticket goes vote against party whip.

subject to the condition he has not been condoned by the party within 15 days or has taken prior permission.

- Nominated member

- Nominated member will be subjected to disqualification if nominated member joins any political party after expiry of 6 months.

There are 2 categories of nominated members

1. Nominated member was already a member of political party before getting nominated.

He shall be treated at par with elected member of political party.

2. Nominated member not a member of political party at the time of nomination.

He can join any party within 6 months.

purpose
not clear.

- Independents

They cannot join any political party.

not
don't
make sense

- Wrt. Speaker, S.Dy Speaker & Dy Chairman of Rs shall not be disqualified if voluntarily give up the membership of their party.
- Rejoins the original party after he/she ceases to hold the office
- shall be disqualified if joins any other party by voluntarily giving up membership of his party or after ceasing to hold his office.

Defection in group

Originally defection in group was permissible. There were 2 situations where it was permissible.

1. Situation of split.

If $1/3^{\text{rd}}$ of the members leave the party then anti-defection law would not apply. However by 91st C.A. Act Anti-Defection Law now applies in case of split.

2. Merges.

If $2/3^{\text{rd}}$ of the members of original party join other party they are not subjected to disqualification.

According to SC, if $2/3^{\text{rd}}$ of the members are defecting there is a genuine reason. The possibility of corruption or inducement decreases as no. of persons increase.

15/12/14

Position of Speaker

- Speaker acts as a tribunal. Speaker's decision is final whether member is subjected to disqualification on grounds of defection or not. Act also held that Speaker's decision shall not be challenged in the court of law.
- Kihoto Hollohan case:

SC held Paragraph 7 null & void.

Doctrine of Severability

Speaker's decision comes under the scope of Judicial Review on following grounds

- Colourable exercise of power
- Malafide intension
- Violation of natural justice
- Not based on relevant criteria.

Reason given by SC:

Speaker in India cannot be considered as a totally impartial institution as in case of Britain. Speaker in Britain

- once elected as a Speaker has to give formal resignation from the Party.
- Once a Speaker is always a Speaker.
means Speaker's constituency is uncontested.

Loopholes in the law

- 15 days are available with the party to condone the action. There is a possibility of misuse of this provision.
- It goes against freedom of speech & expression of Parliamentarians which is actually the privilege of Parliamentarians. However for SC, this apprehension is theoretical.

that it impacts fSE. Rather in Indian situations, such provisions are practical necessity.

- 6 month provision for nominated member is difficult to explain.
- Still defection in group is permissible.
- Kevoto Hollohan case resulted into the intervention of judiciary in the internal procedures of the House. ☹
- w.r.t. above following options can be adopted.
 - Like in ordinary situations, power should be with President / Governor which will exercise their power as per recommendations of ECI, or
 - If there is a dispute w.r.t. the decision of the Speaker ultimate decision to be taken by House by majority.
- Anti defection Law in India is advantageous
 - to party in power
- Law Commission of Dinesh Goswami Committee had suggested that disqualification due to defection should apply only in selected situations e.g. During vote of confidence & no confidence, passing of budget, & adjournment motion, etc.
- Private member bill with above objective has been pending since long.
- 91st C.A. Act made some changes to control defections.
 - It has limited the no. of ministerial posts which are not going to be more than 15% of the total strength of Lower House.

- with exception for small states, that ministerial positions shall not be less than 12.
- Person disqualified under anti-Defection Law shall also be disqualified from holding
 - > any ministerial post
 - > any post with remunerations
- Art 361 (b) ↓
- He shall be disqualified until & unless he gets reelected.

MPLAD scheme

It was introduced in 1993 where MP to give ₹ 1 cr which is now extended to ₹ 5 cr/annum

Purpose:

- For the development in MP's constituency & priority should be given to projects like infra dpt, health, community halls, etc.
- MPs & Rs can choose any district from his state.

Nominated member can choose any district in the country.

Criticism

- It is against the principle of separation of power of federalism
- " —
- > The areas on which MPs have to spend come within jurisdiction of state govt.s
- > At present, municipalities & local self govt.s also exist. They suffer from lack of resources.

The fund should have been allocated to these bodies. Reports show that local bodies have not been consulted by MPs

- It is against Separation of Powers
 - > Parliamentarians performing the role of executive
- It sacrifice principle of accountability

Ideally executive should propose, Parliament should examine the demand & sanction the money. Parliament has to check that money is spent as sanctioned.

Opinion of SC

- SC held that scheme is not against the principles of separation of powers or federal structure.
- Mere mismanagement of funds by some MPs is not the reason to scrap
- SC acknowledged that scheme has benefited the local community.
- Scheme is for public purpose
- It appears as if MPs are performing the role of executive but their role is recommendatory.

National Commission for Review of Working of Constitution, 2nd ARC Report Titled Ethics in Governance suggest that the scheme violates separation of powers & federalism.

Since SC has not found scheme unconstitutional now the remaining controversial issues to be taken care are

- Poor utilisation of funds.

- funds do not lapse
- no standard procedure of sanctioning a project.
- No mandatory requirement to consult local self bodies.
- CAG reports show that funds have been misused for building private properties & shopping complexes.
- Scheme is against the principle of equality because it gives advantage to MP in elections over other candidates.

Recently govt. has launched 'Sansad Adarsh Gram Yojana' for which no new fund is created. Existing funds under MPLAD, Backward Regions' Grant Fund, etc. to be used.

- Role of opposition in India

Opposition is also responsible for decline of Parliament. The role of opposition is critical in the success of Parliamentary democracy. That is why special status is given to opposition.

In Britain it is called as 'Her Majesty's Opposition' which also forms 'shadow cabinet'.

In case of India, the position of LoP is recognized under salary & allowances of LoP Act 1977. His rank is at par with Cabinet Minister. LoP is present in many selection committees like for NHRC, Lokpal, CIC, CVC, appointment of eminent persons in NJAC.

As per Marlanakar rule, the party whose strength is at least 10% of the total strength of the House means enough for the corum of the House, the leader of such party gets the status of LOP. This rule is incorporated in Direction 121(1) in Parliament (Facilities) Act 1998.

Opposition in India has various means available to ensure accountability of executive like Question Hour, Zero Hour, Motions,

- Parliamentary Committees.
- Role of opposition in India has not been as per sound Parliamentary culture. Instead of debates on the floor of the House, opposition prefers disruption & walkout.

Instead of Parliamentary Committees or Dept Committees, their main interest has been Joint Parliamentary Committees which are constituted in investigation of scams.

- The Parliamentary ethics expects that opposition should have its say but govt. should have its way.

Position of Speaker

- Ordinarily the position of speaker is of dignity. Speaker has following functions
 - > To ensure the smooth conduct of Parliamentary business
 - > To allow opposition to hold executive responsible by giving them time for raising questions
 - > Speaker has to maintain order in the House.
 - > It also has quasijudicial functions w.r.t. anti-defection law.

- Speaker's job is becoming more challenging because of proliferation of parties, coalition politics & destructive role of opposition.

- Earlier speaker's institution in State Legislative Assemblies have been accused of partiality but now even Speaker of LS also face similar allegations.

- It is important to restore the dignity of Speaker. Either India should adopt the British tradition or it can go for US. tradition.

US. tradition:

- In U.S.A. speaker is a purely political post.
- In U.S.A. , Speaker can openly support his party members.
- His sole is just to conduct the meetings of the House.
- In case of objections on speaker's decision, and disciplinary matters, etc ultimate power lies with the House itself.

- With globalisation, new challenges have emerged.

- Globalisation has taken lot of sovereignty out of domain of nation states & national Parliament.

- Because of globalisation, lot of technicalities have emerged in legislations. There is lack of adequate training of Parliamentarians to be able to understand such complexities.