3

Indian Parliament

LEARNING OBJECTIVES

In this Chapter, you will learn about:

- Basics of Indian Parliament
- Issues of Recent Concern in Parliamentary Functions

3.1 BASICS OF INDIAN PARLIAMENT

3.1.1 Introduction

> "*The people elect you to rulership, the wide glorious quarters elect you. Be seated on this high point in the body of the state and from there vigorously distribute the natural wealth and material prosperity to the people*"

—Atharva Veda

The democratic governments across the world are majorly classified into parliamentary and presidential form, based on the nature of relation between the organs (i.e, the executives and the legislatives) of their government. In the parliamentary form of government, the executives take care of the legislature by framing the policies and acts and so can be held accountable by the legislature. Whereas, in the presidential form, the executive is not responsible to the legislature for its policies and acts, and thus independent of the legislature.

One of the most defining and distinguishing feature of parliamentary form of government is that the council of ministers are drawn from the legislature itself and the continuance of their office is contingent upon the support of the legislature. Thus, they should enjoy majority support from the legislature, and they are collectively held responsible to the lower house of the Parliament, which is directly elected by the people.

In the Parliamentary system of India, the leader of majority party in the Lok Sabha – or the House of the People – is chosen to head the government, and he becomes the Prime minister. Rest of the council of ministers are appointed by the President on the recommendation of the Prime Minister, and these ministers are members of either house of the Parliament, in case they are not, they have to become member of either house within 6 months from the date of appointment. The Prime Minister and his Council should enjoy the support of the Lower House, this house has the power to remove the government by passing a no-confidence motion against it. When such no-confidence motion is passed, it may lead to resignation of the government and paves way to the formation of a new government or fresh elections in case no party/coalition could form a stable government.

There is also a major difference in who heads the government and the state. In the parliamentary government, one heads the government and another person heads the state. On the other hand, both the government and the state are headed by the same person (the president) in the presidential government.

The parliamentary government is also called the Westminster model of government, cabinet government or responsible government and this form of government is being followed in Britain, India, Canada, Japan and many other countries. The parliamentary system originated in the British parliament which is located in Westminster and hence named 'Westminster model'. Parliamentary government is called a cabinet government because the cabinet (executive) is the main core of the parliamentary system. It is also known as 'responsible government', since the cabinet (executives) is held responsible by the legislature (parliament) and holds office as long as it enjoys the confidence of the latter.

The British system of government can be described as the 'prime ministerial government', because the power, influence and position of the prime minister have increased drastically off late. The same applies in the Indian context as well.

3.1.2 Why India Chose Parliamentary Government?

The Indian constitution provides for a parliamentary form of government both at the centre (Articles 74, 75) and in the states (Articles 163, 164). But while framing the Indian constitution, a dilemma whether to choose parliamentary or presidential system prevailed amongst the constituent assembly. Finally, the British parliamentary system was agreed upon by the founding fathers in consensus. The reasons were already dealt in the Chapter 'General Framework of Governance', it is explained in brief as follows:

1. Since the parliamentary system has been in operation in India since the British rule, the constitution makers felt the familiarity with the system.
2. A democratic executive must satisfy two conditions: stability and responsibility. The Draft constitution in recommending the parliamentary system of executive has preferred responsibility to stability, as stated by Dr B R Ambedkar. This point from Ambedkar, the father of Indian Constitution, shows the preference given to a responsible government which is provided by the parliamentary system.
3. The constitution framers thought that a just-born democracy could not afford to take the risk of a feud or conflict between its organ of government (executive v. legislative), which is prone to happen in presidential system, prevalent in USA. So they looked upon a government which would act conducive and supportive to its organs and go hand in hand for the development of the country.
4. The heterogeneity of Indian states proves to be one of the most complex plural societies in the world. Keeping this in mind, the framers of our constitution chose parliamentary system, as it gives greater possibility for representation of various sections, interests and regions of the country. They also sighted that this might promote a national spirit among the people and build a united India.

3.1.3 Features of Indian Parliament

Parliament is the supreme legislative body of India. The Indian Parliament comprises of the President and the two Houses – Rajya Sabha (Council of States) and Lok Sabha (House of the People).

The Indian parliamentary government has the following features:

3.1.3.1 *De Jure* and *De Facto* Executives

In India, there are both nominal and real executives. The President is the nominal (*de jure*) executive and the prime minister is the real (*de facto*) executive. The prime minister is the head of the government, while the president is the head of the State. The president exercises his power with the aid and advice provided by the council of ministers headed by the prime minister.

3.1.3.2 Majority Party Rule

In the Lok Sabha elections, the party which secures majority seats will be asked to form the government. A prime minister is chosen amongst the party members and he/she is appointed by the president. The council of ministers is also appointed by the president but on the advice of the prime minister.

When no single party can prove majority in the elections, the president can invite a coalition of parties to form the government.

3.1.3.3 Collective Responsibility

Collective responsibility is considered as the core principle of parliamentary government. Article 75 of the constitution states that the ministers are responsible to the Parliament in general and to the Lok Sabha in particular. It means that the Lok Sabha can remove the council of ministers including the prime minister (collectively called ministry) from the office by passing a vote of no confidence.

3.1.3.4 Political Homogeneity

In general, the members of the council of ministers belong to the same political party, so it is expected from them to share the same political ideology. If in the case of coalition government, the ministers are bound by consensus.

3.1.3.5 Dual Membership

The ministers enjoy double membership, that is, they are the members of both the legislature and the executive, meaning, a person cannot be a minister without being a member of the Parliament.

The Constitution states that a minister loses his ministership if he/she does not become a member of the parliament within six months from his appointment.

3.1.3.6 Prime Minister – The Leader

The Prime minister is the leader of council of ministers, leader of the party in power and the leader of the parliament. He plays the leadership role in the parliamentary system of government. He plays a crucial role in the functioning of the government.

3.1.3.7 The Dissolution

The executives in parliamentary system enjoy the right to dissolve the legislature. Before the expiry of the term of Lok Sabha (the lower house), the prime minister can advise the president to dissolve the lower house and hold fresh elections. Simply put, the Lok Sabha can be dissolved by the president on recommendation of the prime minister.

3.1.3.8 Secrecy

The ministers are asked to take an oath of secrecy, administered by the President, before entering their office. They operate on the principle of secrecy and cannot disclose information about their proceedings, decisions and policies.

3.1.4 Powers and Functions of the Parliament

Being the supreme legislative authority of India, the Parliament and the President hold several powers.

3.1.4.1 Office of The President

The President of India is a major component of Parliament. He/she is elected, from a group of nominees, by the elected members of the Parliament of India (Lok Sabha and Rajya Sabha) as well as of the state legislatures, and serves for a term of five years.

Historically, ruling party (majority in the Lok Sabha) nominees have been elected and run largely uncontested. A formula is used to allocate votes so there is a balance between the population of each state and the number of votes assembly members from a state can cast, and to give an equal balance between state Assembly members and national Parliament members.

If no candidate receives a majority of votes, there is a system by which losing candidates are eliminated from the contest and votes for them transferred to other candidates, until one gains a majority.

a. **Powers and Duties of the President**

- He summons and prorogues the sessions of both houses of the Parliament.
- He can even dissolve the Lok Sabha (under the recommendation of the Prime Minister).
- A bill passed by the Parliament can become a law only after the consent of the President.
- The President can use the power of **Pocket Veto** if he disagrees with a bill (the Indian Constitution does not specify a time limit for action to be taken by the President on a bill sent to him/her by the Parliament. Thus, by indefinitely postponing taking action on a bill, the president effectively vetoes it).
- However, if a President receives a bill he/she had previously vetoed and sent back to Parliament, where such a veto has been overruled by another Parliamentary vote, then such a bill becomes an act within fourteen days of the President's receiving it – regardless of his/her subsequent action/inaction.
- At the commencement of the first session after each general election of the Lok Sabha and at the commencement of the first session of each year, the president addresses both houses of the Parliament sitting together.
- He can nominate two members to the Lok Sabha from the Anglo-Indian community if he or she feels that the community is not adequately represented.
- He also nominates 12 members to the Rajya Sabha which consist of persons having special knowledge or practical experience in respect of such matters as the following, namely literature, science, sports, art and social service.
- Articles 111 and 368 deal about the legislative powers of the President.
- When a bill is passed by both the houses of the Parliament and is sent for the assent of the President, he can send back the bill for reconsideration to the Parliament unless it is a money bill or a constitutional amendment bill.
- In case of the returned bill, when the Parliament again passes such bill with or without amendments, and sent to the President again for reconsideration, he has to pass such bill and cannot refuse to give assent.
- Example of such an instance is when the Parliament Disqualification – Amendment Bill, 2006 as passed by both the houses and was returned by the President for reconsideration, it was again passed by both the houses and thus the President had to give

assent to the bill. But there is no time limit which has been specified within which the President has to give his assent in case of ordinary bills.

- Under Article 123, the President is empowered to promulgate ordinances when either of the houses is not in session. It has the same validity and power of a bill ordinarily passed by the Parliament.
- Such an ordinance ceases to operate if the Parliament does not approve it within 6 weeks of its date of sitting.

3.1.4.2 Lok Sabha (The Lower House)

Lok Sabha is also known as the 'House of the People' or the lower house. The Constitution provides that the maximum strength of the House be 552 members. The duration of the lower house, unless it is dissolved sooner, is for five years from the date of its first meeting and it cannot be extended in any case. As per Article 83, the Lok Sabha gets automatically dissolved at the end of five years.

The territorial constituencies from which the members are elected are fixed time to time by the Parliament subject to the condition that the number of such members is limited to 550 until the next census of 2026, as per Article 81.

All the members of the Lok Sabha (except two nominated members) are elected by citizens of India, anyone who is above 18 years of age, irrespective of gender, caste, religion or race, who is otherwise not disqualified to vote for the Lok Sabha.

To be eligible for membership in the Lok Sabha, a person must be a citizen of India and must be 25 years of age or older, mentally sound, should not be bankrupt and should not be criminally convicted. The total elective membership is distributed among the States in such a way that the ratio between the number of seats allotted to each State and the population of the State is, so far as practicable, the same for all states.

A total of 131 seats (18.42%) are reserved for representatives of Scheduled Castes (84) and Scheduled Tribes (47) only.

a. **Power and Duties of Lok Sabha**

Lok Sabha has certain powers that make it more powerful than the Rajya Sabha.

- In matters pertaining to non-financial (ordinary) bills, after the bill has been passed by the House where it was originally tabled (Lok Sabha or Rajya Sabha), it is sent to the other house, where it may be kept for a maximum period of 6 months. If the other House rejects the bill or a period of 6 months elapses without any action by that House, or the House that originally tabled the bill does not accept the recommendations made by the members of the other house, it results in a deadlock. This is resolved by a joint session of both Houses, presided over by the Speaker of the Lok Sabha and a decision is taken with a simple majority. The will of the Lok Sabha normally prevails in these matters, as its strength is more than double that of the Rajya Sabha.
- Money bills (a bill that involves government spending) can only be introduced in the Lok Sabha, and upon being passed, are sent to the Rajya Sabha, where it can be deliberated on for up to 14 days. If not rejected by the Rajya Sabha, or 14 days lapse from the introduction of the bill in the Rajya Sabha without any action by the House, or recommendations made by the Rajya Sabha are not accepted by the Lok Sabha, the bill is considered passed. The budget is presented in the Lok Sabha by the Finance Minister in the name of the President of India.

- The Lok Sabha shares equal powers with the upper house – Rajya Sabha in the following issues:
  - In initiating and passing any bill for constitutional amendment (by a majority of the total membership of the House and at least two-third majority of the members present and voting).
  - In initiating and passing a motion for the impeachment of the President (by two-third of the membership of the House).
  - In the impeachment of the judges of the Supreme Court and the state High Courts (by a majority of the membership of the House and at least two-thirds majority of the members present and voting).
  - Passing a resolution declaring war or national emergency (by two-third majority) or constitutional emergency (by simple majority) in a state.
- If the Lok Sabha is dissolved before or after the declaration of a National Emergency, the Rajya Sabha becomes the sole Parliament. It cannot be dissolved. This is a limitation on the Lok Sabha. But there is a possibility that president can exceed the term to not more than 1 year under the proclamation of emergency and the same would be lowered down to six-month if the said proclamation ceases to operate.
- Motion of no confidence against the government can be introduced and passed in the Lok Sabha. If passed by a majority vote, the Prime Minister and the Council of Ministers resign collectively. The Rajya Sabha has no power over such a motion, and hence no real power over the executive. However, the Prime Minister may threaten to dissolute the Lok Sabha and recommend this to the President, forcing an untimely general election. The President normally accepts this recommendation made by the Prime Minister, unless he is convinced otherwise that the Lok Sabha might recommend a new Prime Minister by casting a majority vote. Thus, both the executive and the legislature in India have checks and balances over each other.

3.1.4.3 Rajya Sabha (The Upper House)

The Rajya Sabha is also known as 'Council of States' or the Upper House. The first sitting of the Rajya Sabha was on 3rd April, 1952 with 216 members. Rajya Sabha is a permanent body and is not subject to dissolution. However, one third of the members retire every second year, and are replaced by newly elected members. Each member is elected for a term of six years. Its members are indirectly elected by members of legislative bodies of the states. Each member has a term of 6 years and elections are held for one-third of the seats after every 2 years. 238 members are to be elected from states and union territories and 12 are to be nominated by the President of India. The minimum age for a person to become a member of Rajya Sabha is 30 years. The fourth schedule governs the allocation of seats for the states and the union territories.

- Representatives of states are elected by the elected members of the Legislative Assembly of the state in accordance with system of proportional representation by means of single transferable vote.
- Representatives of union territories are indirectly elected by members of an electoral college for that territory in accordance with system of proportional representation. Except Delhi and Puducherry, no other Union territory has representation in the Rajya Sabha.

- As per Article 64, the Vice-President of India is the ex-officio chairman of the Rajya Sabha. But he is not the member of the house, and in case any member of the house is elected as the Vice-President he has to vacate his seat in the house.

The Council of States is designed to maintain the federal character of the country.

a. **Special Powers of Rajya Sabha**

Apart from sharing equal powers with respect to ordinary bills, initiating and passing of Constitutional amendment bill and other matters, the Upper house has some exclusive powers. Mainly it was created as a check against arbitrary nature of the lower house. It was called as 'Wise-Chamber' where it was believed that the Upper House with its wisdom and experience guides the lower house. The special powers of Rajya Sabha are as follows:

- As per Article 249, the Rajya Sabha has the power to authorize Parliament to legislate in matters given in the state list in nature of public interest.
- Under Article 312, the Rajya Sabha has the power to create a new All-India Service which is common to both the Centre and the States.

b. **The Need for the Second Chamber**

The system of Bicameral legislature was first set up in India in 1921 under the Government of India Act, 1919. The Government of India Act, 1935 retained the bicameral system. The need for having a second chamber was deliberated elaborately in the constituent assembly. And the overwhelming view of the members of the chamber was to retain in the bicameral system. The following are some of the key points of debate that took place in the constituent assembly:

- The Upper House was considered to be a house of deep reflection and revision which was to be unswayed by the election politics.
- Being a federal chamber and permanent house, that is, not being subject to dissolution, the council of state can effectively counter the direct representative of peoples in the lower house.
- Member of Constituent Assembly, Nazimuddin Ahmad, stated that the second chamber 'introduces an element of sobriety and second thought'. The Parliament of a sovereign nation has to deal with foreign and domestic matters of extreme importance which justifies the need for a second chamber.
- To quote Nazimmudin Ahmad, '*In these circumstances it will be wise for us to have two houses. A popular House is known for its vitality and vigour and that House will have the exclusive power in regard to money. But a second chamber introduces an element of sobriety and second thought, it would be wise for us, especially in view of many foreign subjects which are looming large in our minds, to have a second chamber*'.
- Other members of the Constituent Assembly were of the view that the second chamber would be a reflective and revising chamber.
- Speaking in the Constituent Assembly, Gopalaswami Ayyangar stated that the second chamber would '*hold dignified debates on important issues and delay legislations which might be the outcome of the passions of the moment and checkmate the hasty legislation*'.
- The second chamber was considered to represent the federal character of the country.
- Another member of the assembly, Loknath Misra, wanted the Council of States to be like that of the Senate in USA with equal representation of all states in it.

- Ananthsayanam Ayyangar contended that the second chamber would provide opportunity to people who are interested in politics but unwilling to join in the election process.
- Ultimately it was agreed that the Upper house would be the representative and protector of the interests of the State. With such provision, it would be impossible to represent the interest of the states in the Union legislature.

3.1.5 Role of Indian Parliament

Some of the major roles performed by the parliament are as follows:

3.1.5.1 Legislative Role

The Parliament makes laws on all subjects listed in the Union List. It can also make laws on subjects listed under the Concurrent List. In case there is any conflict or overlapping in the provisions existing in the Union and State enactment, the Union law prevails. In cases when an emergency has been declared, the Union Parliament can also make laws on subjects that fall within the State List. Thus, the legislative power of the Parliament is very wide and far-reaching, they are only curtailed by the Judiciary in case such legislations goes beyond the provisions of the Constitution.

3.1.5.2 Financial Role

The Parliament has been given exclusive powers to provide procedures through which revenue can be raised for the public services. And to achieve that, it imposes taxes and ensures that the money sanctioned for expenditure to various departments of the government has been used for the authorized purposes only. The Budget for the entire country is presented and passed by the Parliament, it includes almost all the important offices of public importance. And in every such budget there is increase or introduction of new taxes which affect the people.

The Parliament also takes decision of allocation of funds, grant-in-aid to the states based on the reports of the Finance Commission, and erstwhile Planning Commission. Thus, the Parliament through the committees like Public Accounts Committee, Committee on Public Undertakings, etc. scrutinizes the report submitted by the Comptroller and Auditor General to keep a check on the executive action. Hence, in the sphere of finance, the Parliament has a very important role to play.

3.1.5.3 Providing and Exercising Control Over Cabinet

Our Parliamentary system blends the legislative and the executive organs of the State in as much as the executive power is wielded by a group of Members of the Legislature who command majority in the Lok Sabha.

To be more specific, the government functions through various ministries under the charge of different ministries. The Parliament provides the ministers and holds them responsible to the elected representatives of the people. The Ministers could be a member of either of the two Houses of the Parliament. The actual execution of government policies as decided by the Parliament is carried out by the bureaucracy headed by a Secretary of the Department.

The Lok Sabha can also pass number of motions censuring the actions of the executives. The ultimate weapon in the hands of the Parliament is the no-confidence motion, which if passed will lead to the resignation of the government.

3.1.5.4 Assessment of the Work of the Cabinet

The Parliament provides the forum through which it ensures that the Cabinet remains in power only as long as it commands majority support in the Lok Sabha which comprises elected representatives of the people. It is one of the most important functions of the Parliament to bring about discussions and critical assessments of the performance of the government departments.

The debates ensure that the weaknesses in terms of performance are brought to light and the ministers and through them the entire executive machinery is kept on toes. There are also number of committees set up by the Parliament to keep check on the executive action, some of the committees are Estimates committee, Committee on Privileges, Ethics Committee, Committee on Subordinate Legislation, Business Advisory Committee, Rules Committee, General Purpose Committee etc.

3.1.5.5 Wide Representation

The parliament provides representation to all sections and regions in the country ensuring that the nation gets to know about various alternative points of view. Such representation ensures that the diversity of the nation is represented and the issues of all section of the society are effectively addressed in the Parliament.

3.1.5.6 An Organ of Information

Parliament is the most powerful organ so far as the information about the functioning of the government is concerned. The information provided in the Houses is authoritative and ministers are bound to provide information on matters of government when so desired by the members. Such information is made public through the media or under the Right to Information Act. Sharing of information is vital in a democracy as it will ensure transparency and will lead to the establishment of good governance, which will ultimately benefit the people.

3.1.5.7 Constitutional Role

The power to amend the Constitution vests with the Parliament. Constitutional amendments can be initiated by either of the house and have to be passed by each house by a majority of total membership as well as by two-third majority of members present in voting. In some cases amendments need ratification from half of the Legislative assemblies of the States. There are three types of bills for constitutional amendment which requires:

a. Simple majority: majority of members present and voting.
b. Special majority: two thirds of the members of the present and voting in each of the house.
c. Special majority with consent from half of all the state legislatures: Needs special majority in both the houses along with at least half of the state legislatures giving the consent for the bill.

Such an amending power of the Parliament is not ultimate and absolute. In the following matters, it requires the ratification of legislatures of half of the States.

- Election of the President
- Extent of the executive power of the Union
- Extent of executive power of the states
- Powers relating to Supreme Court and High courts
- Distribution of legislative powers

- Representation of the states in the parliament
- Provision relating to Article 368

Apart from these, the Parliament cannot amend the 'Basic Structure' of the Parliament. Based on the judgment of Supreme Court in *Kesavananda Bharati* case, it was held that the 'Basic Structure' of the constitution cannot be altered. Later when the legislature tried to override this judgment by enacting the 42nd Amendment, the Supreme Court came down again and declared such provision to be unconstitutional in the *Minerva Mills* case. The Supreme Court stated that the power of judicial review was one of the basic features and it cannot be taken away.

3.1.5.8 Judicial Role

Parliament has the exclusive powers to impeach the President and remove judges of the Supreme Court and the High Courts through a prescribed procedure. Parliament can also punish a person for contempt or defamation of the House. It can also punish its members or outsiders for the breach of privilege or its contempt. Thus, it plays a quasi-judicial role in such occasions and such powers have been conferred by the Constitution itself.

3.1.5.9 Elective Role

Elected members of the Rajya Sabha and the Lok Sabha constitute the electoral college for the election of the Vice-President. Along with elected members of the State Legislatures, they form the electoral college for election to the office of the President. Therefore, they have also such elective role to play apart from their other important roles. Election of President is of paramount importance, though not directly elected by the people, he is elected through their representatives. It thus places greater responsibility in part of the Parliamentarians to choose such person whom the people would choose. Parliament thus plays an important role in the electoral process.

3.1.5.10 Role in Creation of States

The Parliament can also by legislation create new states or make changes in the existing boundaries and alter the name of the states. Our Constitution though a federal entity, leans more towards the Centre. The federal system is considered to be 'destructible States of indestructible Union'. Thus, the boundaries, names, territorial extent etc. of a state can always be changed, and such a power is in the hands of the Parliament and not the states themselves. Even if the states are not interested or against such move, they have no power under the Constitution to challenge it. Thus, the Parliament has been bestowed with the ultimate power to create or alter boundaries of the States.

3.1.5.11 Role Played by the Parliament to Address the Grievances of the Public

The meaning of the term Parliament implies that it is a place of discussion of public affairs. The issues which are raised receive due consideration, and the government has to respond to such issues. There are number of devices available to the member to raise question, start discussion, seek information, and put forth the needs and aspirations of the people. The following are some of the devices used:

- Questions
- Motions
- Resolutions
- Short duration discussion

- Calling attention motion
- Special mention
- Discussion on Motion of thanks to the President which is addressed to both houses assembled together
- Motion of no-confidence and confidence in the Council of Ministers
- Discussions on bills
- Zero hour
- Half-hour discussion

All these enable the members to effectively redress the grievances of the people. There are also number of committees such as the Committee on Public Petitions, Finance committees, Welfare of OBCs, Empowerment of Women, Welfare of SCs and STs, on Subordinate legislation, and various Department-related Standing Committees etc.

Thus, all these devices help to highlight the needs of the public before the government. The government cannot ignore issues raised through such fora, because it will be adverse to public interest. Thus, parliament plays an important role to redress the grievances of the public.

3.1.5.12 Other Roles

- Discussion of various issues of national and international importance
- Imposing emergency
- Creation or abolition of state legislature, etc.

The Parliament is considered to the nerve-centre of the democratic politics in India. The Council of Ministers is drawn from the Parliament and they are collectively responsible to the Lower House – Lok Sabha. The Parliament has the sole power to amend the Constitution and legislate. Parliament articulates the needs, aspiration, pain, and the suffering of the people. The accountability of the executive is secured by the Parliament. They question the administrative actions and the wrong-doings. The Council of Ministers who are members of both the Executive and the Legislature, is considered to be 'a hyphen which joins a buckle which fastens the legislative part of the state with the executive part'. This organic connection between the executive and the legislature can also be described in the words of Woodrow Wilson, 'the ministers to lead the Houses – without dictating to them and, the ministers themselves be controlled without being misunderstood'. Hence, there exists close coordination between the executive and the legislature which is seen absent in the Presidential form of government.

3.1.6 Decline of Indian Parliament

India holds the unique distinction of being the largest democracy in the world. For the past 70 years it has shown its resilience and has stood strong against clandestine forces that have challenged its integrity. However, it has to be agreed that our parliamentary system is not immune to challenges and limitations. Though it has provided one of the finest constitutions and legislative systems in the modern era, experts feel that the Indian parliamentary setup is undergoing a steady decline in terms of its accountability and efficacy as the highest law making body in the country.

- Our founding fathers envisioned to create a democratic system in which the legislature, executive and the judiciary will have their own domains of operation.
- While they would have significant autonomy with their respective functions, a system of checks and balances, where one will be responsible to another, would ensure the credible functioning of each institution in this setup – the legislature would create laws,

which will be implemented by the executive, which will in turn be interpreted and enforced by the judiciary.

- In the meanwhile, the executive will be responsible to the legislature and the latter will have to be accountable to the judiciary regarding the constitutionality of the laws made.
- While the system provided for an ideal mechanism for a representative democracy, over the years the three organs have taken turns to ruffle feathers against each other, trying to manifest their importance or to restrict the others' sphere of influence.

On numerous occasions, the judiciary has had strained relationships with both the executive and the legislature. The judiciary has stepped many a times beyond its domain to direct the executive in the name of judicial activism. Passing orders to use CNG (M.C. Mehta v. Union of India, (1991)2 SCC 137) and cleaning of rivers (M.C. Mehta v. Union of India) are a few examples.

The executive on the other hand, doesn't do any less in pushing its powers on the other two organs. The executive has tried to pass laws against the rulings of the judiciary in order to provide relief on a stop-gap basis. Also, while lawmaking is a collective responsibility of the legislature, the past few decades have hardly seen a private member's bill being passed by the parliament or state legislatures. Moreover, the executive has made excessive use of the ordinance route to pass those laws that serve the government's interests and which are likely to be shot down by the legislature.

There are four vital responsibilities of the parliament,

Representation of citizens, law making, oversight of the executive and scrutiny of the budget.

The following briefly outlines the backseat that Parliament has taken over the years, some examples being the declining number of working days and the bills passed. If numbers are an indication of the performance of an institution then on the face of it, the Parliament has fallen short in discharging its constitutional obligation and reveals a steady decline in its functioning. The following shows how parliamentary functioning is declining over time.

1. **Loss of productive time:** Over the past few decades, the Lok Sabha has consistently lost a significant portion of its productive time to disruptions and petty political clashes – the 15th Lok Sabha has been marked as the most disrupted in the history of the Indian Parliament. Such hindrances slow down the law-making process and curb the effective performance of the legislature. The 15th Lok Sabha, passed only 179 out of the total 291 bills introduced. This is the lowest on record by a legislature that lasted a full five-year term.
2. **More ordinances:** The decline in parliamentary functioning has led to the government resorting to the ordinance route as an alternative. The weightage of ordinance as against conventional law creation has increased.

   In the famous D.C. Wadhwa v. State of Bihar (AIR 1987 SC 579), the unbridled use of ordinance by the Government of Bihar was challenged in the Supreme Court. The court observed that the excessive use of ordinance outside the domain of conventional lawmaking is a usurpation of the legislative process and thus a fraud on the Constitution. Nonetheless, governments still make use of ordinances to get laws into place.
3. **Member bill:** Private member bills are essential to ensure fail-proof governance. This is because such bills are likely to be drafted considering the gaps and loopholes in law and policy. Moreover, these members are free from the influence of the government or the cabinet. Despite their potential to serve as effective instruments to

regulate and refine government policies, they have been hardly given importance in our parliamentary system. Since 1952, only 14 private member bills have been passed till date. Though they get introduced before the Parliament, they are hardly given the importance that is given to a government bill.

4. **Debates on budget:** Having an oversight on the government's expenditure is yet another important task of the Parliament. Considering the number of hours being spent on discussing the budget in the recent past, it can be believed that even this function of the Parliament is on a decline. Conventionally, discussions on the Demand for Grants are made in the house following the examination of such demands by parliamentary standing committees. In the past 10 years or so, nearly 95% of the demands are being passed without proper discussion in the house.
5. **Fraud on exchequer:** The daily expenditure incurred by the parliamentary process is quite a burden on the public exchequer, considering the inconsistencies mentioned above. The salaries, office allowances etc., of members of parliament, amount to several crores every year. This is in addition to other perks that they get in kind. As much as it is expected of the government to be accountable, the highest law-making body should as well be equally accountable. The only way to ensure this is by bringing in reforms.
6. **Disruptions in the Parliament:** The Speaker described the constant disruptions of the Lok Sabha by the opposition members as 'Murder of Democracy'. Various incidents such as cash for votes, snatching away the papers when they were presented, hurling of torn papers at the chair, cash for query, displaying placards despite their prohibition, shouting of slogans, ambling the well of the house, defiance of rules, violation of rules of debate, and showing utter defiance to the chair have tarnished the image of the Parliaments before the public. And the most important aspect is that there remains an utter disconnect between the public needs and requirements and the debates and issues dealt with by the Parliament.

Thus, there has been a steady decline in performance of the Parliament. The following can be assessed as the **reasons for decline of Parliament:**

1. The authority which was initially rested on the Parliament has now been taken over by the Cabinet. The Cabinet now has been ultimate decider of important aspects such as summoning of the house, proroguing of the session, preparation of daily time table for the session, providing the inaugural speech to be delivered by the head of the state, and doing numerous other things which fall under the purview of the Parliament.
2. The role played by the members of the parliament has not been up to the level expected of them. The quality, competence, culture and commitment have significantly declined. Large number of MPs show very little interest in attending the Parliament. The attendance records show a dismal picture of nature of absenteeism of our members.
3. The quality of debates in the Parliament has gone down. In the previous era, the debates in the Parliament were characterized by wit, humour and wisdom but today they have been reduced to character assassination, insults and abuses.
4. In the Westminster system of government, the Prime Minister is the leader of the house. Such a person should command respect and should be dignified in his/her approach in the Parliament. Nehru was such a leader, he never missed to attend any

sessions, and he was present throughout in cases concerning important issues. But during the tenure of Rajiv Gandhi it was not so, he as very conspicuous of his absence especially when important issues came up for discussion. Thus, such behaviour of the leader of the house and the government sent out a bad message to both the members in the house and the people outside the house.

5. The virtual monopoly of a single political party for nearly 50 years after independence has made the legislature a rubber stamp authority. This is because all the bills, policies, acts are not effectively debated in the Parliament. The data shows that the Parliament spends very little time in sifting through the acts, bills, amendments which are to be passed. Hence, there is little accountability and the effective check to be kept by the Parliament is absent, here there is thus the dictatorship and dominance by the Cabinet. In the 2008, 14 important bills were passed in a single day, and numerous such voluminous legislations are passed without effective notice or debate, this shows the way in which the accountability of the parliament is bypassed by the government.
6. Even in finance bills the situation was the same. Crores of amount is granted when the Appropriation Bill is placed before the Parliament without any debate. In the 2004–2005 the Railway Budget was passed without any debate and discussion, and the same happened for the general budget also, which was passed without discussion.
7. There has been a steady decline in the number and duration of the sitting of Parliament after the first Lok Sabha. This decline is not only seen in number of hours or sittings, it is also seen in quality and length of debates and its outcomes. The highest recorded sittings were during the first Lok Sabha (1952–1957) which was for 3784 hours (677 sittings). In the year 2011 the Parliament totally sat for a meagre 73 days and 2008 was the worst recorded as the Houses sat for just 46 days. The Parliamentary affairs minister was quoted saying that each disruption to the Parliament cost the exchequer 2.5 lakh a minute.

Commenting on the second session of the 14th Lok Sabha, *The Hindu* observed that,

> '*Parliamentary misconduct has become so routine that it might appear a waste of effort even to discuss the whys and wherefores of it. Forget the daily adjournments and walkouts; in recent times disrupters have spared no occasion, not even the once sacrosanct presidential address. However, when confrontation reaches a point where the very existence of Parliament was questioned, then it is distress time as much for the democracy as for the institution itself*'.

Thus, there is seen a steady decline in nature and functioning of the Parliament. And this has resulted in monetary loss as well as social loss to the people. They have not only lost valuable time, but they have lost the train of development.

3.1.7 Suggestions for Improvement

Since the first day of independence, these pulpits of governance have served the purpose of being a forum for the vast population spread across a multiplicity of ethnic and linguistic diversities. But as discussed prior to this section, parliamentary culture in India has indeed taken a beating. What makes it worse is that without investing much effort on assessing the reasons for decline, the stakeholders concerned treat the situation with overt cynicism.

Over the past seven decades, the structure and functions of Parliament have grown on the principles of democratic socialism, economic democracy and distributive justice. Of late, due to

the information explosion, technological revolution and challenges in administration brought about by LPG (Liberalization, Privatization and Globalization) reforms, along with the age-old principle of Welfare State, etc., have conferred upon the Parliament a larger spectrum of responsibilities. All of the above coupled with the inadequacy of time; limitations in terms of access to information and the sub-standard conduct of parliamentary proceedings have resulted in the creation of mediocre legislation and unsatisfactory parliamentary oversight on administration.

Minimal effort has been taken to develop the essential ingredients to achieve success in parliamentary polity. These include discipline, character, and a sense of public morality, ideologically oriented two-party system and willingness to listen to and to accommodate minority views.

Whenever the government of the day enjoyed a lean majority (that too with the aid of a coalition) and the opposition had little numbers to emerge as an alternative, the Parliament has performed less effectively. Examples of this situation were many a time visible during the 1989–1999 decade. The floor of the house hardly witnessed a constructive legislative process. There was little respect among the members and ministers to the institution, which could be understood by the alarming trends of absenteeism and defection.

- Parliamentary reforms have a decisive role in ensuring sustainable and equitable growth, especially in an era fueled by liberalization and globalization.
- Archaic processes have to be revised, control mechanisms on members should be strengthened, debating and decision-making procedures should be made efficient etc.
- For the Parliament, constant review and revamp should be done to prevent it from becoming obsolete.
- As much as efforts are being taken to do this, it shouldn't be restricted to mere administration of stop-gap measures.
- A full-scale review is essential to provide institutional, structural, procedural and organizational improvement.

What is needed is a full-scale review. We have to be prepared for fundamental institutional – structural, functional, procedural and organizational – changes. The overriding guiding norm and purpose of all parliamentary reforms should be to make both Government and Parliament more relevant to meet the challenges of the times and the changing national needs in the context of the objective of faster economic growth.

Both the Parliament and the Government should be collectively concerned with concurrent and contemporaneous monitoring and evaluation of the implementation of economic reforms, scrutiny of the overall performance of the economy, targets, achievements, shortfalls etc. The following are the reform measures which are needed to be carried out.

1. **Reforms in budget process:** Some serious thinking is called for in the matter of reforming the budget procedure in Parliament and bringing it closer to the needs and constraints of the new situation. The number of occasions on which voting by divisions may be needed during a budget session is very large. Also, the defeat of any demand for grant is deemed to be tantamount to expression of lack of confidence in the Government. There is every possibility of a division being asked for more often only to embarrass the Government. It would be unrealistic to expect all the Members to be present all the time through the session. It would, therefore, be wise to reduce to the barest minimum the number of days on which voting by division is considered imminent. Also, the time may be fixed by agreement and announced in advance with appropriate whips issued and attendance ensured otherwise.

2. **Nodal Standing Committee on Economy:** A Nodal Standing Committee on National Economy with subject-oriented study groups, assisted by scholars and experts, should be constituted to monitor economic policy formulation and implementation. The respective study groups would make performance evaluation on these areas and prepare internal study reports which will be produced to the Committee. These will be presented annually by the Committee to the Parliament. Besides being informative on policy measures of the government, it helps in keeping a constant vigilance and performing reviews on the system as a whole. The insights presented by the committee could be discussed effectively by the houses of Parliament every year.
3. **Better communication to improve public perception:** The Parliament serves as a link between the citizens and the government. But there is a perceived disconnect between the people and the parliament, whenever they discuss its proceedings. They are led to believe that there is hardly any contribution from them in the decision-making process. This was caused due to the ineffective management of public relations in the past. And it has resulted in a poor perception of the Parliament and its members.

   Systematic and conscious efforts are required to rebuild a good rapport between the people and the parliament. For this purpose, the potential of mass media, print publications, online media etc., should be harnessed to get the message across the board. The news channels such as DD News, RSTV and LSTV have to be exploited to the maximum in communicating about the parliamentary proceedings via electronic media. Live coverage of debates and sessions in the parliament will help in building a sense of credibility among the public.
4. **Panchayats and Parliament:** In an era where there are calls from different quarters to decentralize governance, the roles of an MP as against a local body member have to be clearly demarcated. Immense care has to be taken to avoid any conflict or overarching of powers among them. The scope of work for an MP, with respect to his/her constituency has to be restricted to issues of national importance. For effective implementation of those schemes which require the coordination of the two, as in the case of MPLADS, proper brainstorming and planning has to be done to avoid any implementation blunders.
5. **Improving the quality of participation of members:** Proper functioning of Parliament is dependent on the quality of participation of members. From good conduct, insightful questioning to sincere participation in constructive debates, every member should act beyond what his/her party requires. It should begin with proper training and orientation of newly elected members about the conventions, traditions, rules and regulations that determine parliamentary conduct. The curriculum should include things such as adequate knowledge of the constitution, the parliamentary system, the Rules of Procedure and Conduct of Business, etc. Insufficient training and orientation in the past has adversely affected the performance of the members and the parliament at large.
6. **Reducing the expenditure of the Parliament:** The costs involved in maintaining the parliamentary system in our country have always been increasing. One of the most commonly discussed aspects of parliamentary expenditure is the spending on salaries and emoluments of its members. The charges under this heading alone go up to several lakhs a year. This along with the ministerial salaries and that of the members of state legislatures put together would run into crores annually. Prudent fixing of salaries and emoluments is the immediate need of the hour. Moreover, this is one of the expenditures that

are not discussed in the budget. Therefore, it is a moral responsibility of the legislators to take salaries that are not disproportionate to the work they do.

7. **Improving information supply:** Any conversation becomes irrelevant if there is not a valuable sharing of information. Information is one of the essential instruments to have an effective functioning of a participatory democracy. Without this, it would be difficult to have a hold over the arbitrary nature of governance by the party in power. Unfortunately, most of the time, our members rely on official documents and data that have only been published by the respective ministries. More often than not, this information is likely to be inadequate. To address this situation, an independent national information repository, exclusively for the purpose of providing information to members of the parliament, should be created.
8. **Planning legislation and improving its quality:** The quality of our legislative products have been often turned down as haphazard. This is primarily due to the non-compliance in spirit to the process of law making adopted by our constitution makers. There is a need for a dynamic and comprehensive approach to law making

This can be done by:

(i) Streamlining the functions of the Parliamentary and Legal Affairs Committee of the Cabinet.
(ii) Widening the roles of the Law Commission.
(iii) Setting up a Legislation Committee to supervise and coordinate legislative planning.
(iv) Referring all bills to the newly set-up Departmental Standing Committees for consideration and scrutiny, consulting concerned interest groups and finalization of the second reading stage in the relaxed atmosphere of Committees aided by experts thereby reducing the burden of the House without impinging on any of its rights and improving the quality of drafting and content of legislation.

9. **Setting up a Constitution Committee for Amendments:** The executive powers of the Union are collinear with its legislative powers. However, the constituent power should belong to the Parliament. This means that while the government can initiate and orient the legislature to make laws that suit its policies, the parliament has a bigger responsibility in terms of bills that amend the constitution.

- At present, constitutional amendment bills are introduced just like any other ordinary bill in the Parliament.
- While this encroaches on the time of the parliament for passing ordinary bills, it also gives very little time for discussing the need for and the pros and cons of the respective amendment bills.
- Instead of clubbing it with regular business, if it can be put through a scrutiny by a specific committee on constitutional amendments or a body authorized by the Parliament, it would go a long way in ensuring a better standard of amendments.

The scrutiny should go deep into the cause and relevance of the proposed amendments and critically examine each and every provision, in order to produce an outcome, much better than what can be done through the conventional process of law making. This committee could include members of both houses of the parliament and judicial officers/legal experts such as the attorney general or solicitor general to provide insights and inferences about the bills. While it will make the amendment

process much more robust, it will also reduce the possibility of the amendment being turned down by the judiciary as unconstitutional.

10. **Departmental Committees and Parliamentary streamlining:** The setting up of the 27 departmental standing committees has been a remarkable parliamentary reform in the past decades. However, what began as three committees in 1989 on an experimental basis has been increasing ever since, at a progressive pace. Having specific departmental standing committees does help in faster completion of business. However, the overall costs in running such a huge framework of committees necessitate a larger bill of expenditures.

    Parliamentary supervision of administration through committees is supposed to enable good governance and not act as a barrier at all times. For proper conduct of standing committees, the following measures can be adopted:

    (i) Proper closing of pre-budget scrutiny of budgetary estimates and demands for grants before they are voted in the House.
    (ii) Concurrent and contemporaneous examination of the activities of Government departments and matters of national concern in cool, non-partisan atmosphere.
    (iii) Monitoring of performance, relating to financial inputs to the policy objectives and actual outcomes to measure effectiveness and detailed examination of supplementary estimates.
    (iv) Feedback with valuable insights and information to the Parliament and to the Government to review economic proposals.
    (v) Closer and competent inspection of all legislative proposals.
    (vi) Review of the implementation of different laws passed by the Parliament across the respective subjects.
    (vii) Encouraging participation by backbenchers and creating a second level of leadership.
    (viii) Development of skill specialization and expertise in legislative processes among members.

    The committees could, strengthen the government by providing valuable insights for the better functioning of the government and the parliament. With a spirit of cutting-edge professionalism, thee committees could play a major role in accelerating the Parliament towards becoming a forum for meaningful body for multilateral dialogue.

11. **Control over borrowing:** While the budgetary proposals and estimates are reviewed by the several committees in the Parliament, there is no specific committee to oversee the function of public borrowing. A limit on public borrowing will instil a sense of responsibility and an idea and it leaves behind a smaller burden for the upcoming generations.
12. **Discussing committee reports on the floor of the House:** When a committee's report is not read on the floor of the house, it belittles the importance attached to the particular committee. This could result in some very useful recommendations going unnoticed or insufficiently discussed.
13. **Codifying parliamentary privileges:** While members of the parliament are justified in receiving certain privileges in view of exercising their duties, limitless powers or concessions should not be given to them. These privileges are given to the parliament by the people and hence should not be misused. A joint committee may be created to rationalize the extent of privileges offered and recommend appropriate regulations.

14. **Reforming the functions of parliamentary parties:** The parties that have their members as members of the parliament should have the responsibility to train them accordingly. Relevant briefing on the position of the party on specific issues, speech notes and write-ups etc. have to be given prior with proper training in order to avoid any miscommunication on the floor of the house. Free voting on issues shall be called for in case of most discussions on the floor of the house. This will create an environment in the house, free from the influence of parties. Such a measure would also change the way confidence on a government is tested. Only when a government is defeated through a no-confidence motion shall it be asked to resign.
15. **Reforms in quality of debates and discussions:** One of the areas where such a restraint should come in is with time management for discussions and debates. It comes as no surprise that sessions throughout the year have little significant business done, due to unnecessary discussions and resentment towards the party in power by the opposition and vice versa.

    - What begin as rational debates are more likely to end up as adjourned sittings, since political parties try to use the floor to show their wrath against each other instead of using the floors as constructive forums for policy management.
    - This situation can be addressed by having such discussions at the committee level.
    - Besides having enough time for such discussions, it also leaves the floor of the house for debating issues of national importance.
    - Members should be sensitized on the proper use of parliamentary devices such as *Question hour* and *Zero hour*.

    Several other items of business such as Adjournment Motions, Calling the Attention Notices, No-Confidence motions, etc. initiated by Private Members have to be taken up at a dedicated time on a weekly basis. Moreover, parliamentary business can be shared between the committees and the houses equitably, in such a way that neither organ is denied necessary time allotment.
16. **Reform in expression of opinion of the members:** Freedom of expression should be given to every Member of Parliament without compromise. It is one of the basic principles in representative democracy. It is accepted that unparliamentary or objectionable words spoken should be removed from the record of the house's proceedings on the speaker's advice. However, this should not be misused by the speaker to hold an unsolicited control on the opposition members. The same is applicable to television broadcasts of the sessions. As much as possible, proceedings should be telecasted without deleting or muting portions of the sittings.
17. **Reforms in Question hour:** Both houses of the Parliament demarcate an hour each during every day of the session for questions. Essentially, this should be a time where the government is questioned about its policy or a decision or some matter with significant importance. However, this has become a time where discussions are made and hardly five questions are covered in a time where around twenty questions are to be taken up for answering. A proper scrutiny of the list of questions will reveal that a lot of the admitted questions are trivial or ambiguous in nature. At times, some questions of top priority cause a serious dislocation of the proper functioning of ministries in the government. Such practices and processes of raising and admitting such questions must be reviewed and streamlined for effective conduct of business in the Parliament.

18. **Reforms in other motions:** Adjournment motions too are not immune from being ineffectively used. The purpose of this motion is to call the attention of the House for immediate discussion on a matter of urgent public importance, which has not been already included in the List of Business for the day. However, the discretion of admitting such a discussion lies with the speaker. When admission is refused, members keep storming the well and what follows is a tug-of-war between them and the speaker. The solution to this lies in the speaker expressing his/her genuine opinion on the urgent **importance of the issue and maintaining order in the house.**
19. **Other procedural reforms:** Either house of the Parliament has its own set of rules and procedures. All those rules except the ones which have been codified in the Rules of Procedure should be regularly reviewed and they should be removed if they are found to be obsolete. Conventions and procedures should be adapted according to the demands of time and should never be a hindrance to the proper functioning of the Parliament.
20. **Tackling absenteeism:** Yet another problem faced by parliamentary conduct is the increasing incidences of absenteeism among members. It is no less than a threat to democracy. A quorum of at least one-tenth is required for conduct of business in the Parliament. But this cannot be allowed to become a standard minimum attendance requirement for having sessions. As members who represent the people, they should have a moral inclination to attend parliamentary sessions except in cases when they have to attend other duties of high priority. Therefore, a minimum number of hours to be attended by a member can be added to the rules and procedure, in such a way that the member would contribute significantly. Those not complying can be given a deduction in their salaries throughout the session.
21. **Reform in Parliamentary Secretariat:** The success of the parliamentary system lies in the independent and impartial functioning of the parliamentary secretariat. The secretariat should be supplied with the best of the resources available. Besides, they should also be constituted with mechanisms to correspond freely with the ministerial secretariats.
22. **Decriminalization of politics:** The judgment given by the Apex court in the Lily Thomas case will go a long way in decriminalizing the election process, where only an individual without criminal background is fielded by the political parties. The media and the civil society have to distinguish between serious penal offences, financial irregularities and acts of violation of prohibitory orders. These different charges may not be equated with one another.
23. **Linkage between the People and Parliament:** The Parliament is the communication link between the government and public. There is a necessity to establish a good rapport between the two entities. The public and the government have to be brought together. The Parliament belongs to the people and not its members. The members are thus responsible to the public at large. The members should have access to the opinion of the public and the public should also have the access of the Parliament.
24. **Regular orientation programmes:** Improving the quality of the members is one of the most important aspect of the reform process. It is the bound duty of every member to uphold the dignity and decorum of the institution both inside and outside of it. The image of the Parliament will be poor unless the quality of its members is improved. A newly elected member is often lost in the number of traditions,

conventions, rules, regulations, formalities etc. of the parliamentary system. Hence, there is need to institutionalize the process of training for the newly elected members. The curriculum of such training should cover all aspects including, the Constitution, the knowledge about the political system, the Rules of Procedure and Conduct of Business, various other practices, traditions, precedents, do's and don'ts of members, and rules of Parliamentary etiquettes etc. There should also be periodic training imparted to the members on various issues so that the quality of the institution never falls.

3.1.8 Conclusion

The endurance of democracy and freedom in India are completely dependent on the successful functioning of the Parliament. Though we can take pride in the relentless working of this body for the past 70 years, we have to accept that the issues mentioned above are slowly eroding its stand as an institution of legitimacy and a watchtower of democracy. But it is also true that no reform can happen in a single blow. And no single reform can bring about a miracle change. The way ahead should be taken with utmost care and caution by setting up a parliamentary reforms commission, on the lines of a commission instituted in the United Kingdom for a similar purpose. The recommendations of this commission should be presented to the Rules Committee of the parliament, which will present it to the house and suitable reforms can be incorporated. Such periodical initiatives done with a sincere effort will increase the credibility of the Parliament and fortify its character as the watch tower of Indian democracy.

3.2 ISSUES OF RECENT CONCERN IN PARLIAMENTARY FUNCTIONS

3.2.1 Anti-Defection Law-intent and its Impact

Defection is defined as 'to abandon a position or association, often to join an opposing group' which essentially describes a situation when a member of a particular party abandons his loyalty towards that party and provides his support (in the form of his vote or otherwise) to another party.

The Anti-Defection Law was passed through the 52nd Amendment in 1985, which added the Tenth Schedule to the Indian Constitution which detailed the grounds of defections and also prescribes disqualification for the defectors of a house of Parliament/state legislature.

It was again amended by the 91st Amendment Act, 2003. Prior to this amendment, a 'defection' by one-third members of a political party in the legislature was considered to be a 'merger'. This amendment changed and made that, at least two-third of the members of the political party have to be in favour of such merger for it to be valid. It also made mandatory, that those who wish to shift party should resign their seat in the legislature, and hence they have to seek re-election if they wish to defect.

The main intent of the law was to combat '**the evil of political defections**' and to bring in stability to the government. The major unintended consequence of the act is hindering the elected members from voting on their own conscience when there is party whip issued on the matter. To overcome this issue of forced voting, many committees

have been set up to modify the act by amendment and to provide freedom of expression of individual MPs.

3.2.1.1 Intent of Law

Assuming the right intent of lawmakers, the legislation was aimed

1. To reduce the power of money used for alluring elected members to make or break a government and strengthen parliamentary democracy by prohibiting floor-crossing.
2. To bring stability to the government and the political parties; and not let the government to be held at ransom by few elected members.
3. To make elected members responsible and accountable to the group of voters who have casted their vote because their loyalty and affinity to the party.
4. To make the elected member loyal to the political party on whose party symbol and support the person got elected to the house.

However, with hindsight, outlawing party defections invites observers to speculate about the framers' intentions. Was it to produce competitive party systems or to consolidate power within existing parties? It may be led to believe that the law was proposed with some erroneous intentions, and besides that it has led to unintended consequences including an autocratic party system, quelling of dissent and making of false leaders.

Grounds of disqualification by anti-defection act 1985

1. **Member belonging to political parties**
   a. If an elected member voluntarily gives up his membership of a political party.
   b. If he votes or abstains from voting in such House contrary to any direction issued by his political party or anyone authorized to do so (whip), without obtaining prior permission. As a pre-condition for his disqualification, his abstention from voting should not be condoned by his party or the authorized person within 15 days of such incident.
2. **Member elected otherwise than as candidate set up by any political party**
   a. If Independent member joins a political party post-election.
3. **Nominated members**
   a. If a nominated member joins a political party after six months of his nomination to legislature.

3.2.1.2 Authority Concerning Anti-defection

The law states that only the presiding officer, that is, Chairman or the Speaker of a House, can make decisions on disqualification of a member under this Schedule, and his/her decision is final. If a question arises on the presiding officer on the subject of disqualification, then the decision shall be made by a newly elected presiding officer (principle of natural justice). The law states that the Presiding Officer's decision is final and not subject to judicial review. The Supreme Court struck down this condition partly and held that no judicial intervention shall be made until the presiding officer gives his order. However, the final decision can be appealed in the High Courts and Supreme Court.

The Chairman or the Speaker of a House has also been empowered to make rules for giving effect to the provisions of the Tenth Schedule. The rules are required to be laid before each House and are subject to modifications/disapproval by the House.

3.2.1.3 Exceptions Provided in Tenth Schedule

a. **Cases of Split**

No member shall be disqualified for being member of a group which has arisen as a result of split in his original political party and such a group shall consists of not less than one third members of the legislative party concerned.

This provision (paragraph 3) has since been omitted from the Tenth Schedule by the Constitution (91st Amendment) Act, 2003, which came into force with effect from 1 January, 2004. Consequent upon the omission of Paragraph 3, it is not now permissible to claim a split in the legislature party.

b. **Cases of Merger**

At least two-thirds of the members of a party have to be in favour of a 'merger' for it to have validity in the eyes of the law. The tenth schedule states, 'The merger of the original political party or a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.'

The Dinesh Goswami Committee on Electoral Reforms, the Law Commission in its report on 'Reform of Electoral Laws' and the National Commission to Review the Working of the Constitution (NCRWC) all recommended the deletion of the Tenth Schedule provision regarding exemption from disqualification in case of a split.

c. **Exemption to persons elected to the office of Speaker/Chairman or Deputy Speaker/Deputy Chairman**

No disqualification is incurred by a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or of the Legislative Assembly of a State or to the Office of the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State if he severes his connections with his political party after such election. Also, no disqualification is incurred if he, having given up by reason of his election to such office, his membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold such office.

d. **Election to the Office of the President**

Election commission made it clear that political parties cannot issue any direction or whip to members to vote in certain way during the presidential election. Voting and not voting will not fall within the ambit of the anti-defection law

e. Obtaining prior permission before 15 days and not condoned by his party.

f. Voluntarily joining non-legislative party which does not have single member in the legislature.

g. Voting against the party in an ordinary bill for which whip is not issued and does not topple the government on its failure

h. If expelled by the party the person continues to be the member of the house until he/she voluntarily joins a legislative party (e.g. Sasikala Pushpa TN – MP Rajya Sabha)

i. Abstaining from voting due to proven health conditions subject to acceptance of presiding officer of the house.

Advantages and Disadvantages of Anti-Defection Law

Advantages	Disadvantages
The important advantage is that it prevents shifting of allegiance of the members of the party thereby providing stability to the government.	This reduces the accountability of the government to the people and the Parliament.
Importantly it promotes party discipline. It upholds party loyalty as the person who got elected from a particular party is prohibited from shifting to another party.	It interferes with the rights of the individual and his freedom of speech and expression against policies of his party. This effectively curbs dissent within the party.

Important Judgments of Disqualification and the Tenth Schedule by the Supreme Court

The Supreme Court took upon itself to effectively implement the anti-defection law. It in its various landmark judgments has upheld the Constitutional validity of this law. And in other subsequent cases, it established that the Court is the final authority, and it could even question the action of the Speaker, who according the law is the final authority to decide such. The following are the most important judgments of the Court and the main issues it decided upon.

Main Issue(s) in the Case	Judgement of the Court and the Name of the Case
Whether the right to freedom of speech and expression is curtailed by the Tenth Schedule.	The provisions do not subvert the democratic rights of elected members in Parliament and state legislatures. It does not violate their conscience. The provisions do not violate any right or freedom under Articles 105 and 194 of the Constitution. ***(Kihoto Hollohan v. Zachillhu and Others, AIR 1993 SC 412)***
Whether only resignation constituted voluntarily giving up membership of a political party	The words 'voluntarily giving up membership' have a wider meaning. An inference can also be drawn from the conduct of the member that he has voluntarily given up the membership of his party. ***(Ravi S. Naik v. Union of India, AIR 1994 SC 1558)***
Whether a member can be said to have voluntarily given up his membership of a party if he joins another party after being expelled by his old political party.	Once a member is expelled, he is treated as an 'unattached' member in the house. However, he continues to be a member of the old party as per the Tenth Schedule. So, if he joins a new party after being expelled, he can be said to have voluntarily given up membership of his old party. ***(G. Vishwanathan v. Speaker, Tamil Nadu Legislative Assembly, AIR 1996 SC 353)***

Main Issue(s) in the Case	Judgement of the Court and the Name of the Case
Whether paragraph 7 of the Tenth Schedule barring the jurisdiction of courts in cases of disqualification is constitutional.	The paragraph seeks to change the operation and effect of Articles 136, 226 and 227 of the Constitution which give the High Courts and the Supreme Court jurisdiction in such cases. Any such provision is required to be ratified by the legislatures of at least half of the states as per Article 368(2). The paragraph was, therefore, held invalid, as the Tenth Schedule had not received the above mentioned ratification. ***(Kihoto Hollohan v. Zachillhu and Others, AIR 1993 SC 412)***
Whether paragraph 6 of the Tenth Schedule granting finality to the decision of the Speaker/Chairman is valid.	To the extent that the provisions grant finality to the orders of the speaker, the provision is valid. However, the High Courts and the Supreme Court can exercise Judicial review under the Constitution. Judicial review should not cover any stage prior to the making of a decision by the speakers/chairmen. ***(Kihoto Hollohan v. Zachillhu and Others, AIR 1993 SC 412)***
Whether a speaker can review his own decision to disqualify a member under the Tenth Schedule	The Speaker of a house does not have the power to review his own decision to disqualify a candidate. Such power is not provided for under the Tenth Schedule, and is not implicit in the provisions either. ***(Dr. Kashinath G. Jhalmi v. Speaker, Goa Legislative Assembly, AIR 1993 SCC 703)***
Whether the speaker of a legislature is bound by the directions of a court.	The court cited the Kihoto Hollohan case, where it had been said that the speaker, while passing an order under the Tenth Schedule, functions as a tribunal. The order passed by him would, therefore, be subject to judicial review. ***(Ravi S Naik v. Union of India, AIR 1994 SC 1558)***
Whether judicial review by courts extends to rules framed under the Tenth Schedule.	Rules under the Tenth Schedule are procedural in nature. Any violation of those would be a procedural irregularity. Procedural irregularity in immune from judicial scrutiny. ***(Ravi S. Naik v. Union of India, AIR 1994 SC 1558)***
When can a court review the speaker's decision–making process under the Tenth Schedule.	If the speaker fails to act on a complaint, or accepts claims of splits or mergers without making a finding, he fails to act as per the Tenth Schedule. The Supreme Court said that ignoring a petition for disqualification is not merely an irregularity, but a vilation of constitutional duties. ***(Rajendra Singh Rana and Others v. Swami Prasad Maurya and Others. AIR 2007 SCC 270)***

Some recent orders on disqualification by the Speaker for defection.

The Speaker is the final authority to decide the cases related to defection. The law states that only the presiding officer, that is, Chairman or the Speaker of a House, can make decisions on disqualification of a member under this Schedule, and his/her decision is final. But this decision is subject to the final review by the Judiciary. He has also been empowered to frame rules. The following are some of the important decisions taken by the Speaker regarding defections.

a. **Final order of the Speaker requirements for proving an inability to obey a party whip due to external factors.**

Shri Rajeev Ranjan Singh 'Lalan' v. Dr. P.P. Koya, JD(U), (January 9, 2009). Dr. Koya defied a party whip requiring him to be present in the House and vote against the Motion of Confidence for the government. He claimed he was too ill to be present in the House. The Speaker concluded that Dr. Koya abstained from voting by remaining absent, and the evidence of the 'illness' is not sufficient to conclude that he was so ill that he could not be present in the House.

b. **When can it be said that a party member has deliberately defied a party whip?**

Shri Prabhunath Singh v. Shri Ram Swaroop Prasad, JD(U), (October 3, 2008). Shri Prasad defied a party whip requiring him to be present in the House. In his defence, he denied that any whip was issued or served. The Speaker held that in view of the fact that there is evidence to show that the whip had been delivered to Shri Prasad's house, and had been duly received, it cannot be said that Shri Prasad had no knowledge of the whip.

c. **Whether public criticism of one's political party amounts to defection?**

Shri Avtar Singh Bhadana v. Shri Kuldeep Singh, Indian National Congress, (September 10, 2008). The INC alleged that Shri Bishnoi often dissented from, and criticized the Congress government publicly, and had demanded the dismissal of the government in Haryana. The Speaker held that a person getting elected as a candidate of a political party also gets elected because of the programs of the party. If the person leaves the party, he should go back before the electorate.

d. **Whether stories in the print or electronic media can be taken as evidence of defection?**

Shri Rajesh Verma v. Shri Mohammad Shahid Akhlaque, BSP, (January 27, 2008). It was alleged that Shri Akhlaque joined the Samajwadi Party in a public meeting. It was alleged that at this meeting, Shri Akhlaque had said that at heart, he had always been a member of the SP. The Speaker reasoned that there is no reason why news clippings and stories in the media would be untruthful. The Speaker therefore held Shri Akhlaque disqualified for having voluntarily given up membership of the BSP.

Recommendations of various bodies on Anti-defection law

Body/Committee	Main Reforms Suggested/recommended
Dinesh Goswami Committee on electoral reforms (1990)	• Disqualification should be limited to cases where (a) a member voluntarily gives up the membership of his political party, (b) a member abstains from voting, or votes contrary to the party whip in a motion of vote of confidence or motion of no-confidence.

Body/Committee	Main Reforms Suggested/recommended
	• The issue of disqualification should be decided by the President/Governor on the advice of the Election Commission.
Halim Committee on anti-defection law (1998)	• The words 'voluntarily giving up membership of a political party' be comprehensively defined.
	• Restrictions like prohibition on joining another party or holding offices in the government be imposed on expelled members.
	• The term political party should be defined clearly.
Law Commission (170thReport,1999)	• Provisions which exempt splits and mergers from disqualification to be deleted.
	• Pre-poll electoral fronts should be treated as political parties under anti-defection law.
	• Political parties should limit issuance of whips to instances only when the government is in danger.
Election Commission	• Decisions under the Tenth Schedule should be made by the President/ Governor on the binding advice of the Election Commission.
Constitution Review	• Defectors should be barred from holding public office or any remunerative political post for the duration of the remaining term.
Commission(2002)	• The vote cast by a defector to topple a government should be treated as invalid.

3.2.1.4 Reforms Needed in Anti-defection Law

The step taken to curb the menace of defections was indeed a landmark decision. But much more needs to be done in order to cure the system of such issues. Reforms need to be continuous and concurrent in order to cleanse the political system. The following are few insights:

1. The decision-making power of presiding officers should be limited and should be altered on principle of natural justice, that is, no person shall be judged in his own case.
2. 'Voluntarily giving up membership' should be defined and needs comprehensive revision.
3. Political parties should limit issuance of whips to instances only when the government is in danger and not for other bills, that is, ambient of the law should be restricted to money bill and no confidence motion.
4. The Election Commission had recommended that the decisions under the Tenth Schedule should be made by the President/Governor on the binding advice of the Election Commission. A constitutional amendment vesting the power to decide matters relating to disqualification on the ground of defection with the President/ Governor acting on the advice of the Election Commission would actually help in preserving the integrity of the Speaker's office.

3.2.2 Delegated Legislation – Necessary Evil

The legislature is considered to be the law-making organ of the State. But in the modern times, due to various factors such as complexity of legislation, paucity of time, and fast-changing environment, the legislature is unable to make requisite number of law needed. Hence, there is need for the legislature to delegate its law-making power to its subordinates to ensure smooth functioning of the administrative machinery, as it is not possible for it to deliver the quantity and quality required. And such a legislation, passed by the executive, on behalf of the legislature is called the **Delegated legislation**. The Committee on Minister's Powers stated that, '*the truth is, that if Parliament, were not willing to delegate law-making power, Parliament would be unable to pass the king and quantity of legislation which modern public opinion requires*'.

3.2.2.1 Definitions

The Delegated Legislation is otherwise known as Subordinate legislation. According to Salmond, '*Subordinate legislation is that which proceeds from any authority other than the sovereign power and is, therefore, dependent for its continued existence and validity on some superior or supreme authority. They may be regarded as having their origin in the delegation of the power of Parliament to inferior authorities, which in the exercise of their delegated functions remain subject to the control of the Sovereign Legislature*'.

The Committee on Minister's Powers in England defined delegated legislation, '*as the exercise of minor legislative power by subordinate authorities and bodies in pursuance of statutory authority given by the Parliament itself*'.

Sir Cecil Carr states the following, '*Delegated legislation is a growing child called upon to relieve the parent of strain of overwork and capable of attending to minor matters, while the parent manages the main business. The delegated legislation is so multitudinous that the statute book would not only be incomplete but misleading unless it be read along with the delegated legislation which amplifies and amends it*'.

3.2.2.2 Essential Characteristics of Delegated Legislation

The following are the essential characteristics of a delegated legislation:

1. There should be no extraordinary delay while framing of the subordinate legislation.
2. The administrative authority should not go beyond the powers given in the parent act.
3. Arbitrary and discriminatory rules should not be framed.
4. The rules thus framed should contain, short titles, explanatory notes, reference to earlier amendment, etc. to provide clear understanding.
5. The language used should be clear and simple.
6. Tax or financial levies, charges should not be imposed.
7. Sub-delegation, that is, delegation of a delegated legislation is not encouraged.
8. Essential and important legislative functions cannot be delegated.
9. The rules such framed should not act in retrospect, unless the parent acts provides so.
10. In cases as required, consultation should be made with concerned authorities to frame effective and efficient rules.
11. There should be wide and sufficient publicity to be given to such rules, so that the public gets to know about them.
12. The public interest should be kept paramount while framing these rules.
13. The final authority to interpret these rules are the Parliament and the Courts, the administrative authority themselves are not given such powers.

3.2.2.3 *Reasons for Growth of Delegated Legislation*

The executive has a very vital and essential role to play in the era of 'welfare state'. Hence, it has become imperative to delegate powers to the subordinate authorities for taking necessary decisions. The following are the pertinent reasons for the growth of delegated legislation:

1. **Pressure upon parliamentary time:** The Parliament is burdened with numerous issues that it does not have sufficient time to pay attention to all the matters. It cannot look into all day-to-day aspects of administration, which is therefore left at their discretion. Parliament does not have time to discuss all such matters in detail and hence delegation becomes necessary for better and effective administration.
2. **Flexibility:** The legislative procedures are long and cumbersome. Some of the administrative matters require quick and decisive action, for example bank rate, terrorist acts, foreign exchange, import and export policies etc. and only administrators with sufficient powers can deal with such matters expeditiously.
3. **Emergency:** During emergencies such as war, terrorist acts etc. the country requires immediate steps and actions. And this cannot be made through a legislative process as it will take more time, hence such aspects are delegated and dealt by authorities, hence the executives are empowered to deal with such scenarios.
4. **Technicality of the subject matter:** The Parliamentarians are generally amateurs and they do not have requisite knowledge and technical prowess to address all the issues that arise. Some matters such as, atomic energy, space science, drug and pharma policies, subjects relating to economy etc. are all specialised subjects and they have to be dealt by those people who are experts in these areas.
5. **Experiment:** The legislation procedure by the Parliament is very rigid, and the delegated legislation is flexible enough to make experiments. Certain situations and problems require experiments and this cannot be provided with help of the Parliament.

3.2.2.4 *Advantages and Disadvantages*

Advantages	Disadvantages
It saves the limited time available to the Parliament.	The Parliament has insufficient time to scrutinise these delegated legislations, the Parliament does not effectively review them.
They allow for rapid change	Such change is not effectively managed by the Parliament.
The Parliamentarians lack technical or detailed knowledge regarding the subject matter.	The sub-delegation of powers cause further problem of confusion because of its complexity.
It is effective in quick response to new developments.	The delegation legislation is enormous and it is nearly impossible to keep track about all such delegated powers and this leads to complexity.
It enables quick and minor necessary changes to the statute.	There is lack of publicity of such rules framed, hence public do not know about them.
Withdrawal or amendment of the laws are very easy and can be made without much hassle.	It is regarded as generally undemocratic as most of these rules and regulations are made by the public administrators who are not the elected representatives of the people.

3.2.2.5 Necessary Evil

As per the Committee on Subordinate Legislation, Subordinate Legislation is **a necessary evil**. The tendency to delegate legislative powers to executive agencies has become so wide-spread and dangerous that the very existence and utility of the legislature are at their vanishing point.

Clothing the administrators with legislative power is regarded by many as an act of denial of civil liberties in certain circumstances. It is one kind of surrender of Parliament to the Executive; and it has strengthened the bureaucracy, and may turn democracy into **despotism and arbitrary rule**. Lord Hewart, describes delegated legislation as 'The New Despotism'. He further states that, '*It is not merely that in this instance Parliament is being outmanoeuvred or in that instance the courts have been defied. It is that the whole scheme of self-government is being undermined, and that too in a way which no self-respecting people, if they were aware of the facts, would for a moment tolerate*'.

Sir John Marrott, who also agrees with the view of Lord Hewart, states that, '*It is my profound conviction that the prevailing and increasing disposition on the part of the British Parliament to confer upon the executive quasi-judicial and quasi-legislative functions is wholly mischevious and ought to be resisted. The old despotism, which was defeated, offered a challenge. The new despotism, which is not yet defeated, gives Parliament an anaesthetic. The strategy is different, but the goal is the same. It is to subordinate Parliament, to evade the Courts, and to render the will or the caprice of the executive unfettered and supreme*'.

Mary Parker Follet considered the concept of delegation as a mere myth of the administrative theory. She believed that, 'authority belongs to the job and stays with the job'. Hence, the person who does the job should have the authority to do it. And according to her, the authority belongs to the function (job) and hence it cannot be delegated. And thus the term 'delegation of authority' is an obsolete expression and has no meaning. She also states that, 'Authority must be functional and the functional authority carries with it responsibility'.

Again the speed at which the laws are made and amended through the process of subordinate legislation is likely to endanger the life, liberty and property of the citizens and what is worse 'multiplicity of rules and amendments may exhaust the patience and defy the endurance of those who would understand them'. Yet it has come to stay. The problem now is not how to abolish the system or find a substitute, but how to ensure legislative control over subordinate legislation.

3.2.2.6 Safeguards, Controls and Suggestions

1. **Spelling out the parameters:** It is necessary to spell out clearly the parameters within which the delegated legislation should function. It is important that the legislature do not pass any skeleton legislation which can be completed only through such delegated process. There is need for defining the parameters within which the delegated legislation should operate.

   The following are some of the limitations suggested by the Committee on Subordinate Legislation:

   (i) A financial power may not be delegated.
   (ii) Delegated legislation may not be allowed to have retrospective effect as it is the prerogative of the legislature.
   (iii) Power of judicial review may not be waived or curtailed by these rules.
   (iv) Language should not be ambiguous and be simple and easy to understand.
   (v) Blank delegation, that is, delegation involving rule-making on fundamental issues may be avoided.

(vi) Essential legislative functions, repeal of law and modification in acts may not be delegated.
(vii) Discriminatory rules may be avoided.

The Select Committee of Ministers' Power was appointed by the British Parliament in 1931, declared that the delegation of legislation is an essential aspect of the Public Administration, and if it is formulated properly will result in safeguarding the rights of the individual. The following are the recommendations made by the committee:

(i) The legislative power should be delegated to a trustworthy authority which commands general confidence and not to some officer of inferior status who is unfit to exercise the power.
(ii) If any particular interests are to be affected specially, the authority should consult them before making its laws.
(iii) There should be means of amending or revoking the delegated legislation.
(iv) The limits within which the delegated power is to be exercised ought to be definitely laid down.
(v) Adequate means should be taken to ensure publicity to rules.

2. **Legislative control:** Such control is sought to be achieved by laying the delegated legislation, along with the bill, in the Parliament. Rules in Lok Sabha No. 70 and Rajya Sabha No. 65 mention that a bill involving such proposal of delegation of power shall be '*accompanied by a memorandum explaining such proposals and drawing attention to their scope, and stating also whether they are of exceptional or normal character*'.

This process does not serve much purpose as it is just routine and much information is not shared. The real control over the delegated legislation can be achieved when the rules made by the government is laid before the Parliament. These rules can be amended, changed, modified or removed by the Parliament. But, this aspect is post-mortem, as in India, the rules come in immediately and only later it is laid before the Parliament for the approval. However, in UK it is scrutinised before it comes into force. And in India, even after laying before the houses, it is hardly discussed. Hence, the Committee on Delegated Legislation suggested the following to improve the legislative control:

(i) All acts of Parliament should uniformly require that the rule shall be laid on the table of the House 'as soon as possible'.
(ii) The rules will be subject to such modification as the House may like to make.
(iii) This period should be uniform and should be a total period of 30 days from the date of their final publication.

Committees on Delegated legislation

There are two committees one each in Lok Sabha and Rajya Sabha which extend the control over the delegated legislation. The Lok Sabha Committee was established in 1953 and the Rajya Sabha Committee was established in 1964. Both these committees consist of 15 members. The objectives of the Committee are provided in Rule 320 of the Lok Sabha which is to consider the following:

(i) Whether it is in accord with the general objects of the Constitution or the Act pursuant to which it is made.

(ii) Whether it contains matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament.
(iii) Whether it contains imposition of any tax.
(iv) Whether it directly or indirectly bars the jurisdiction of the courts.
(v) Whether it gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
(vi) Whether it involves expenditure from the Consolidated Fund of India or the public revenues.
(vii) Whether it appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made.
(viii) Whether there appears to have been unjustifiable delay in its publication or in laying it before the Parliament.
(ix) Whether for any reason its form or purport calls for any elucidation.

The committees submit their respective reports to the House. These committees have been doing an exemplary job. They are not only scrutinising the legislations submitted, but also framing norms and standards for the administration to follow in the future. The Parliamentary control over legislation becomes a reality through these committees. But these committees cannot question the policy basis on which such delegation is made.

3. **Judicial control:** The judiciary keeps control over such delegation through two tests:

(a) Substantive *ultra vires*
(b) Procedural *ultra vires.*
(a) **Substantive *Ultra vires*:** Substantive *Ultra vires* is when the contents of the delegated legislation goes beyond the purview of the delegation spirit. Such contention can be invoked under the following circumstances:
(i) Where the parent act itself is unconstitutional
(ii) Where it is unreasonable and malafide
(iii) Where the delegation is in conflict with the Constitution and the Parent Act
(iv) Where it involves sub-delegation
(v) Where it has a retrospective effect
(vi) Where it is excluded from judicial review

In the Indian Express Newspapers v. Union of India, Justice Venkataramiah stated as follows:

'*A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may also be questioned on the ground that it is unreasonable, not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary*'.

(b) **Procedural *Ultra-vires*:** Procedural *ultra vires* is when the substantive legislation fails to comply with the accepted provisions of the Parent Act. The two important requirements for these are

(i) **Publication:** With the publication of the records, it is impossible to keep record of the delegated legislation. In the United Kingdom, there is a Statutory Instruments Act, 1946, which makes compulsory the publication of the delegated legislation. Likewise in the United States, the Federal Register Act, 1935, provides for publication of all federal rules, orders, regulations etc. In India there is no such legislation. In 1960, the government enacted and codified 'Statutory Rules and Order' which initiated the publication of various rules. These were not implemented properly. Hence, there is need to make the publication of such rules mandatory so that it is useful to all the concerned parties, such as the government, judiciary and finally the people. A yearly 'consolidation index' can be drawn to keep track of such delegated legislations.

(ii) **Consultation with affected interests:** Consultation will help to devise an effective and efficient legislation. It will also help promote positive relationship between the government and the affected interests as it would make the facts and consequences of the rules clear. The United States has a system of prepublication of the rules under Section 553 of the Administrative Procedure Act, which enables the system of consultation. In the United Kingdom, pre and post publication are normal feature which is carried on without any rules or legislations supporting it. To quote Lord Chancellor, '*We no longer promulgate the regulations or rules in the Gazette and wait for representations to be made. We go to the trade or interest concerned and deal with it by getting them round the table, hearing what they have to say, and then drafting the rules after obtaining their views*'.

Hence, the government of India and the State governments should take effective measures to publish rules before and after they are made, for effective consultation with the concerned parties. And sufficient time should be given to these interested parties to respond to these rules.

3.2.3 Private Members Bill – An Appraisal

The power to make law is the most important power of the Parliament. This predominant function of law making is carried out through government legislative procedures. Either the government or member of a parliament can initiate legislation for making law.

Private Member Bill is defined as a bill that is initiated by a member of the Parliament who is not part of the government, that is, such a member is only the member of the legislature and not that of the Executive.

Any MP who is not a minister is a private member and he/she can therefore submit a legislative proposal for enacting it as a law. This mechanism provides an opportunity to private members to initiate legislative proposals concerning issues of public interest.

The procedure of Government bills and the Private Members Bill share a lot in common, but vast differences do exist between them.

The commonality between the two is that both follow a similar legislative process and the outcome of such a process is the same.

The difference in procedure between the two bills relate to the following:

- During the process of pre-legislative consultation and drafting
- In aspects relating to initiation, consideration and approval of legislative proposals

The designation 'Private Members Bill' is used in most Westminster system jurisdictions in which a private member is a legislator who is not acting on behalf of executive branch (Britain, Scotland, New Zealand).

3.2.3.1 Procedure of Private Members Bill in the Parliament

a. **Introduction**

The following section deals with the procedure of introducing the Private members bill in the Parliament; this will be helpful in analysing the bill effectively.

In Lok Sabha, the last two and half hours of sitting on every Friday are generally allotted for transaction of Private Members Business, that is, private member's bills and resolutions. If there is no sitting of the house on a Friday the speaker may direct that two and half hours on any other day in a week may be allotted to such bills. Business relating to Bills and Resolutions is transacted on alternate Fridays starting with bills on the first Friday of the session and resolutions on the next Friday and so on. In Rajya Sabha, the whole day after the Question Hour on each Friday is allocated for the transaction of private members business.

The procedure for notice is as follows:

(a) A member who wants to introduce a bill has to give prior notice thereof. The period notice for introduction of a Bill is one month unless the speaker allows introduction at shorter notice.

(b) President's recommendation if necessary should also be applied for by the member. The President's recommendation is necessary for introduction and consideration of this Bill if it involves.

- Formation of new states, alteration of areas and boundaries of exiting states under (Article 3)
- Matters affecting taxation in which states are interested under [Article 271(1)]
- Expenditure from consolidated fund of India.

If President withholds his recommendation for introduction, the Bill cannot be introduced.

The primary responsibility for drafting of private members bill is that of members concerned. The Lok Sabha secretariat nevertheless renders necessary assistance in putting the bill in proper form.

Motions for introduction of all the bills due for introduction on a particular day allotted to private members bills are included in the list of business for that day.

After the bills have been introduced and before these are taken up for consideration in the House, the committee on private members bills and resolutions classifies the bills according to their nature, urgency, importance, and allots precedence accordingly for the purpose of consideration of the house. The time for their discussion is also allocated by the committee. And such relative precedence of Bills in a particular category is determined through a ballot.

b. **General Discussion – Motions after Introduction of Bills**

The member concerned may move any of the following motions:

1. The bill be taken into consideration.
2. The bill be referred to a select committee or to a joint committee thereon.

3. The bill be circulated for the purpose of eliciting opinion thereon.

When all the clauses and schedules of the bill have been considered and adopted by the house, the member in charge of the bill can move that the bill be passed. If the motion is adopted, the bill is deemed to have been passed.

c. **Committee on Private Members Bills and Resolutions**

The Committee consists of 15 members nominated by the speaker. The functions of committee is to examine the bill, allot time to such bills and perform other functions related to the bills as may be assigned to it by speaker from time to time.

Once the bills are taken up for consideration, the government is left with the following three options.

(a) To reject it, in which case government ensures that motion for the consideration of the bill is negative.
(b) To support it, in which government answers that the bill is passed.
(c) To give assurance that it will incorporate the points raised in a comprehensive legislation.

3.2.3.2 Analysis of Private Members Bill

a. **Private Members Bill – Golden Age**

The golden age in the context of Private Members Bill coincides with the Prime-Ministership of Nehru, which is often referred as the golden age of India's parliamentary democracy. Nehru's government encouraged such Bill's and ensured their passage in both the houses. Nehru took personal interest in strengthening the system and attended discussions and debates. The government respected the knowledge and commitment of MPs sponsoring the Private Members Bills, enlarging the scope of their engagement with the proceedings of both the houses.

With the active support of the government, individual parliamentarians could enact a new bill, and achieve praise for their legislative initiatives. Both the houses took active interest in Private Members Bills in terms of conducting informed debates by holding multiple sittings and meticulously scrutinizing the bills in the select/joint committees.

During 1952 and 1970, out of 14 Private Member Bills passed, 5 of them originated in Rajya Sabha and 9 in Lok Sabha. In terms of members, barring 2 independent members the rest were from the Congress party.

Apart from enacted Private Members Bills, there were also occasions when a number of such Private bills were taken up for consideration, giving opportunities for MPs and government to engage in a constructive debate.

This period also epitomized a healthy tradition of parliamentary debates during the consideration of these bills. Members of the Congress party enjoyed so much freedom that they could pilot Bills on subjects which ran counter to the stated ideals of the party. It was a vibrant phase during which governments approach towards Private Members Bill remained positive.

b. **Private Members Bill – An Oppositional Era**

During the Prime Minister ship of Indira Gandhi especially during 1971–1977 and 1980–1984, the attitude towards such Bills got changed. During this period, not a single Private Members Bill received government support. It largely remained a routine

and banal exercise. Because of the non-existent intra-party democracy members of the Congress party did not enjoy the freedom to express themselves independently and Private Members Bill was mainly seen as an opposition activity as majority of Bills were moved by members of opposition.

Even during Janata Government 1979, members of opposition parties still had higher stakes in Private members Bill procedure during post-Indira Gandhi period.

Only 14 private members bills passed since. They are listed in the following list as compiled by *PRS India*:

1. **The Muslim Wakfs Bill, 1952:** The bill was for providing better governance and administration of Muslim Wakfs and the supervision of Mutawallis' management of them in India. The bill was introduced by Syed Mohammed Ahmed Kasmi in the Lok Sabha and passed in 1954.
2. **The Code of Criminal Procedure (Amendment) Bill, 1953:** It was introduced by Raghunath Singh in the Lok Sabha, the bill was passed in 1956. The bill aimed to empower the revisional court to stay or suspend the final orders of lower courts.
3. **The Indian Registration (Amendment) Bill, 1955:** This bill was moved by S.C. Samanta in the Lok Sabha and was passed in 1956. The bill aimed at removing the anomaly of recording castes and sub-castes of parties in a deed for registration, as India is a secular state.
4. **The Proceedings of Legislature (Protection of Publication) Bill, 1956:** This bill was brought by Feroze Gandhi in the Lok Sabha, it was passed in 1956. It aimed to protect journalists reporting on parliament proceedings and to define by law the privilege available to publications made in good faith of reports of proceedings of legislatures.
5. **The Women's and Children's Institutions (Licensing) Bill, 1954:** It was introduced by Rajmata Kamlendu Mati Shah in the Lok Sabha and passed in 1956, the bill was to regulate and license orphanages and other institutions caring for women and children under 18 years of age and to provide for the proper custody, care and training of their inmates.
6. **The Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Bill, 1954:** The bill was introduced in the Rajya Sabha by Raghubir Singh aimed to get certain monuments included in the list of Monuments of National Importance declared in the principal Act of 1951.
7. **The Hindu Marriage (Amendment) Bill, 1956:** It was introduced in the Rajya Sabha by Seeta Parmanand and passed in 1956, this bill says that when both the parties belong to the Hindu religion and are marrying under the Special Marriage Act, they will be governed by the Hindu Succession Act, 1956.
8. **The Code of Criminal Procedure (Amendment) Bill, 1957:** It was introduced by Subhadra Joshi in the Lok Sabha and passed in 1960. To remove the hardship caused to a woman in spending money on litigation when her husband commits the offence of bigamy.
9. **The Orphanages and Other Charitable Homes (Supervision and Control) Bill, 1960:** It was introduced in the Rajya Sabha by Kailash Bihari Lall and passed in 1960, the bill was to provide for the supervision and control of orphanages and other charitable institutions for their better management.

10. **The Marine Insurance Bill, 1959:** The bill was introduced by M.P. Bhargava in the Rajya Sabha and was passed in 1963, this bill modified the law relating to marine insurance.
11. **The Hindu Marriage (Amendment) Bill, 1962:** It was Introduced in the Lok Sabha by Diwan Chand Sharma, the bill was passed in 1964 to make the right to apply for divorce available to both the parties in case of a decree for judicial separation or restitution of conjugal rights instead of the right being available only to the party who obtained the decree.
12. **The Salaries and Allowances of Members of Parliament (Amendment) Bill, 1964:** It was introduced by Raghunath Singh in the Lok Sabha and was passed in 1964. It was aimed to raise the salaries and allowances of members of the Parliament in order to meet the high cost of living. Also to provide air travel facilities.
13. **The Indian Penal Code (Amendment) Bill, 1967:** It was introduced by Diwan Chaman Lall in the Rajya Sabha and passed in 1969 it was to enable works of art to be exempted from the penal clauses in the principal Act relating to punishment for obscenity.
14. **The Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Bill, 1968:** It was introduced in the Lok Sabha by Anand Narian Mullah and passed in 1970 aimed to enlarge the appellate jurisdiction of the Supreme Court in regard to criminal matters.

The rights of Transgender person Bill 2014 passed by Rajya Sabha is the first private members bill to get Upper House approval in the past 45 years.

3.2.3.3 Impact and Value of Private Members Bill

Significance of these bills cannot be measured merely in terms of numbers passed. Even unsuccessful proposals of the bills, had made members engaging in a meaningful debate on the subject of the bills and mobilizing support from different sections of the house.

Another prime determinant of success of such bills is its passage into law. Given the challenges they face, it is not their primary objective in introducing bills, a number of different motivation exists, which includes, addressing a gap in the law, seeking to change an existing area of government policy and raising the issue for further discussion and publicity.

The impact and value of these bills may be considered under following heads. Various Private Member Bills enacted for the following reasons:

1. **Legislation on contentious issues:** Private Member Bills are preferred methods for introducing legislation on contentious issues of social reform on which public and parliamentary opinion may be too sharply divided for the government to take initiative.
2. **Introduction of new ideas:** Private Member Bills are useful instrument in introducing new ideas into legislative process and ensure that they are discussed and enacted.
3. **Benefit the government:** Government gets the knowledge and expertise, vigilance and attention of the private members especially of the opposition on issues of public interest.
4. **Publicity and public opinion building:** If this Bill reflects an issue of abiding public interest to which government has not accorded any priority such a bill is likely to attract much public attention. Proactive media reporting and an informed public debate can force government to consider the Private members bill.

5. **Enhancement of the stature and profile of private members:** It seeks to enhance the unique 'Parliamentarian as legislator' role of MPs. It enables MPs to articulate various shades of public opinion for common good. It sharpens their legislative acumen and empowers private members.

3.2.3.4 *Obstacles to the Success of Private Members Bill*

1. The procedure is distinct from the government bills procedure. The procedural hurdles which hampers the such Bills are
   a. One month notice for introduction.
   b. Ceiling to number of bills that can be introduced by a member during a session.
   c. The relative precedence of these Bills to be held through Ballot process, which is irrational and some deserving bill to be discussed wait for long time.
   d. Prior presidential recommendation for introduction of certain Bills which includes matters concerning Article 3, Article 274 (1) & Article 117(3). If President withholds his recommendation, then the Bills cannot be introduced. This provision is derided as 'Paternalistic relic of limited democracy'. Since recommendation of the President is withheld on many occasions based on the advice of executive.
   e. **Paucity of time and Friday schedule** – Two and half hours earmarked on alternate Fridays is a limiting provision. Lack of adequate attendance of MPs on Fridays struggles to a mars sufficient support in the plenary due to member's weakly constituency commitments. MPs are often not seen as lawmakers and seldom judged on policy accomplishments. Also there is no regulation on the time taken by members while participating in the debate on these bills, which therefore leads to consuming vital time.
   f. **Absence of drafting support** – Legislative drafting requires legal knowledge, specialist competence, and adequate human and material resources. The expertise in law making and financial support are not made available to private members. Often government holds back its support to these bills on grounds of flawed drafting.

3.2.3.5 *Government Influence and Control*

Government attitude is the most important factor in determining the success of such Bills.

Government looks for an opportunity to arrogate time available for these Bills under one pretext or other since government does not want to be seen lacking legislative ideas, it lack enthusiasm in supporting the Private Members Bill. It is evident from the fact that

a. Around 56% of Private Members Bills in Lok Sabha and 65% of Private Members Bills in Rajya Sabha are withdrawn, since in Lok Sabha, members are not able to mobilize requisite support and government assurance that it will be bringing out comprehensive legislation, the Private members withdraw their bill. But government is seldom serious in bringing out legislation. Since this assurance is not monitored from the perspective of securing executive accountability.
b. Since Independence, 28% of these bills have been rejected when the government disagrees with the legislative intent of the bill.

3.2.3.6 Conclusion

Overall it is important to note that as many as 712 Private Members Bills were taken up for consideration by both the hours during first 14 Lok Sabhas, but only 14 of those bills got enacted. This calls for serious analysis of the procedure and other aspects that impedes its success. The Private Member Bill procedure should form a part of parliamentary reform agenda in India.

3.2.4 Criminalization of Politics and Politicization of Criminals

A budding criminal generally begins his activity at the local level by starting with petty crimes. And in big cities, it moves on to selling country liquor, gambling, betting and prostitution etc. The politicians use such criminals for their own selfish ends and the criminals and their cartels seek patronage and protection to carry on their illegal activities. Napoleon may be quoted here, he stated that because of great complexity with politics, that there could be no established ethics associated with it. He noted that politics and ethics seldom went together. And it at all they did, it was because of an omission, or such an ethical principle itself was distorted to suit the political ends and goals. The administration and the Police are the first causalities of the criminalization of politics, as it results in a situation of law which is neither fair nor impartial.

What is could be constituted as crime at very outset? As per *Oxford dictionary*, an action or omission which constitutes an offence and is punishable by law. And as per dictionary.com, an action or an instance of negligence that is deemed injurious to the public welfare or morals or to the interests of the state and that is legally prohibited can be defined as a crime.

The political setup seems to be suffering from multi-organ failure; and every organ seems to have stopped functioning in so far as the life of a common man. There is clear evidence of degradation of political order everywhere. The state which is both omnipresent and weak, has vacillated, and its responses vary over a wide range: indifference, intermittent concessions and repression.

The method of repression has been ineffective and this in turn has showed the breakdown of civil machinery used for protection creating a much worse law and order situation, this thus has led some section of citizens to take up protection themselves by organising private army.

The saddest situation was when the Home Minister expressed his inability to do anything regarding the prevailing lawlessness and the Prime Minister himself being helpless in the face of corruption charges faced by his ministers, who refused to tender resignation despite his advice, as was seen in the previous UPA government, where despite averments of Prime Minister Dr. Manmonhan Singh to the presence of corrupt politicians in his cabinet, who were named in various scams such as the Commonwealth games scam, 2G scam etc. was unable to remove them because of the coalition compulsion and electoral politics.

The present Prime Minister Narendra Modi, in his maiden speech in the 16th Lok Sabha, made an appeal to all the Members to raise above the petty political considerations and made a joint appeal on behalf of the members to the Chief Justice of India to ensure speedy trial of the law makers who were facing various charges under the law. But no headway has been made in this regard.

As per the analysis made by the *Association of Democratic Reforms* (ADR), the candidates charged with crime have a 2:1 chance of winning elections compared with those who have a clean record. Hence, those who have criminal record have a better chance of winning that those who are clean.

The Supreme Court in the recent case of *Manoj Narula v. Union of India*, noted that '*A democratic polity, as understood in its quintessential purity, is conceptually abhorrent to corruption and, especially*

corruption at high places, and repulsive to the idea of criminalization of politics as it corrodes the legitimacy of the collective ethos, frustrates the hopes and aspirations of the citizens and has the potentiality to obstruct, if not derail, the rule of law.' And it also stated that, 'Criminalisation of politics is an anathema to the sacredness of democracy' and 'Criminalisation of politics, it can be said with certitude, creates a dent in the marrows of the nation'.

Despite such observations, the Supreme Court held that, '*While it may be necessary, due to the criminalization of our polity and consequently of our politics, to ensure that certain persons do not become Ministers,* ***this is not possible through guidelines issued by this Court****. It is for the* ***electorate to ensure that suitable*** *(not merely eligible) persons are elected to the Legislature and it is for the Legislature to enact or not enact a more restrictive law. It is not for this Court to lay down any guidelines relating to who should or should not be entitled to become a legislator or who should or should not be appointed a Minister in the Central Government. This being the position, the* ***burden of appointing a suitable person as a Minister in the Central Government lies entirely on the shoulders of the Prime Minister*** *and may eminently be left to his or her good sense. In this respect, the Prime Minister is, of course, answerable to Parliament and is under the gaze of the watchful eye of the people of the country'.*

Thus, the Supreme Court refused to interfere with the matters of appointment of tainted members as Ministers, as it was considered to be the prerogative of the Prime Minister and it would be encroaching upon the powers of the legislature if it does so.

The political leaders are maintaining double standards and double faces, acting in public and revealing real intention in private. The entire election process has been taken over by the money power and the criminal elements surrounding it.

Nani A. Palkhivala, the eminent constitutional expert observes in '*Squandered legacy*' Published in Hindustan Times in 1997, that '*I do not think India, in its entire history of five thousand years, has ever reached a lower level of degradation than it has reached now…. The picture that emerges is that of a great nation in a state of moral decay, of which crime, chaos and corruption are three of the several facets. India at fifty is sick and sad'.*

Despite this observation it would be wise to recall the memorable words of Dr. Rajendra Prasad on 26th November, 1949. He had this to say:

> '*Whatever the Constitution may or may not provide, the welfare of the country will depend upon the way in which the country is administered. That will depend upon the men who administer it. It is a trite saying that a country can have only the Government it deserves. Our Constitution has provision in it which appear to some to be objectionable from one point or another. We must admit that the defects are inherent in the situation in the country and the people at large.* ***If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective Constitution****. If they are lacking in these, the Constitution cannot help the country. After all, a Constitution like a machine is a lifeless thing.* ***It acquires life because of the men who control it and operate it, and India needs today nothing more than a set of honest men who will have the interest of the country before them'****.*

3.2.4.1 Vohra Panel Report

The Government constituted a committee with Union Home Secretary N.N. Vohra as Chairman, and Secretary R&W, Director I.B., Director C.B.I. Special Secretary Home as members to look into the matters related to crime in politics and administration.

The report categorically pointed out that the crime syndicates and the criminal mafia organisations have developed enough clout, money power, and has established associations with the administrators, political leaders and others. The report observes the following:

'An organized crime syndicate/Mafia generally commences its activities by indulging in petty crime at the local level, mostly relating to illicit distillation/gambling/organized satta and prostitution in the larger towns… In the biggest cities, the main source of income relates to real estate forcibly occupying lands/buildings. Procuring such properties at cheap rates by forcing out the existing occupants/tenants etc., Over time, the money power thus acquired is used building up contacts with bureaucrats and politicians… The money power is used to develop a network of muscle power which is also used by the politicians during elections'.

The Director of Central Bureau of Investigation has reported that '*the nexus between the criminal gangs, police bureaucracy and politicians has come out clearly in various parts of the country*'.

The Director of Intelligence Bureau in the report has also stated that

'there has been a rapid spread and growth of criminal gangs, armed senas, drug mafias, smuggling gangs, drug peddlers and economic lobbies in the country which have, over the years, developed an extensive network of contacts with the bureaucrats/government functionaries at the local levels, politicians, media persons and strategically located individuals in the non-state sector'.

In this context, the Director of Intelligence Bureau in the report has given the following examples:

1. In certain states like Bihar, Haryana and UP, these gangs enjoy the patronage of local-level politicians, cutting across party lines and the protection of Government functionaries. Some political leaders become the leaders of these gangs/armed senas and, over the years, get themselves elected to local bodies, State Assemblies and national Parliament. Resultantly, such elements have acquired considerable political clout seriously jeopardizing the smooth functioning of the administration.
2. The big smuggling syndicates having international linkages, have spread into and infected the various economic and financial activities, they indulge in various illegal activities including hawala transactions, circulation of black money and operations of vicious parallel economy causing serious damage to the economic fibre of the country. These syndicates have acquired substantial investigating and prosecuting agencies extremely difficult; even the members of the judicial system have not escaped the embrace of the Mafia.

   Director of Intelligence Bureau in the report has stated that '*the network of Mafia is virtually running a parallel Government pushing that State apparatus into irrelevance. Criminalization of politics has been responsible for the problems related to law and order in our nation*'.

   Thus, the essence of the Vohra Committee report is that '*Crime Syndicates flourish under political patronage*' and '*the politician-criminal nexus was running a parallel government pushing the State to insignificance*'.

3.2.4.2 *Criminalization of Politics*

L.S. Rathore in his Presidential Address in XII-Rajasthan Political Science Conference on the topic 'Political Culture of India's Ruling Class' observed that, '*Another feature in the political culture of ruling class is the politicization of crime and the criminalization of politics. Politicization of crime involves the competitive use of anti-social forces for the mobilization of party funds, for management of elections, for organizing meetings and conferences and even for recruiting workers at lower levels from among anti-social elements. It also means the misuse of criminal intelligence as a political tool for blackmailing political opponents*'.

'*Criminalization of politics means direct entry of criminals into the political parties and legislatures, including parliament, it also means the use of criminal methods and tactics to influence political processes and procedures*'.

No other vocation yields better and quicker results than politics, hence there is increase in taking over of the politics by crooks, rogues, criminals and other anti-social elements.

And today politics is no longer decent; the public life is encroached by hooligans and hoodlums. Notorious criminals, gangsters, smugglers and murderers are gaining control over the political system. Till recently these elements were only at the periphery of the political system, and now they have got considerable clout and power to manipulate the system itself.

The former Chief Minister of Bihar, Mr. Lalu Prasad Yadav once made a statement in the assembly that, some members came to the assembly carrying arms and that very soon there would be firing inside the house if such practice is not curbed. Thus, such an incident shows how criminalisation has grown in politics.

Kuldip Nayar, a renowned journalist, wrote in the Indian Express of August 7, 1995 that, '*according to the Chief Election Commissioner, 180 out of the 425 members of UP legislative Assembly had criminal records and the last general elections in Bihar were contested by as many as 243 candidates against whom charges were pending. In 1977, the Bihar Assembly had 10 MLAs who were history sheeters; by 1990, there were 40. Kalyan Singh, the Chief Minister of Uttar Pradesh, expanded his ministry in the last week of October 1997 to include every defector and criminal who supported him in the Assembly*'.

According to the leading magazine *India today*, '*of the 424 members of the Vidhan Sabha, 132 are suspected criminals, 16 of them now actually sit cabinet in the meetings presided over by Kalyan*'.

Former Election Commissioner *G.V.G. Krishnamurty*, while addressing press persons on 20th August,1997, said '*as per records, 40 members of parliament have criminal cases pending against them while nearly 700 members of state assemblies out of 4072, are named in criminal cases*'. According to him it was an internationally established norm that 'Law breakers cannot be allowed to be lawmakers', and which India must also follow.

Harinder Baweja, in his 'Changing face of Indian Parliament' report published in *India today, 1996* observes, that the teak panelled walls of the 11th Lok Sabha will shelter a host of elected representatives charged with the most brutal of crimes....Name the crime, and chances are you'll find an MP charged with it. Uttar Pradesh leads the way. A record 435 candidates with criminal backgrounds stood for election; 27 of these actually made it to Parliament. Leading the list is the BJP with 14 MPs, though they are charged mostly with petty cases. The SP has 7 MPs with criminal records, of whom 4 are history-sheeters. The BSP has 3 MPs named in criminal cases and the Congress, one.

As per the report published in Hindustan Times in 1998, at the eve of 12th Lok Sabha elections, there were 150 out of 4708 candidates all over the country, against whom charges of murder, rape, robbery and extortion had been made at one point of time or the other. In spite of the initiative taken by the Election Commission (EC) to debar historysheeters from seeking election to legislatures, at least 15 persons with criminal antecedents have made it to the Lok Sabha.

As per the Report published in *Outlook* magazine in 2004, 128 MPs in the 14th Lok Sabha had criminal charges against them. Of these, five MPs across the political spectrum score roughly the one-third of the crimes committed. A dozen had murder charges against them, another 10 had been charged with attempted murder. Around 11 of these were in public perception, known as 'dons'.

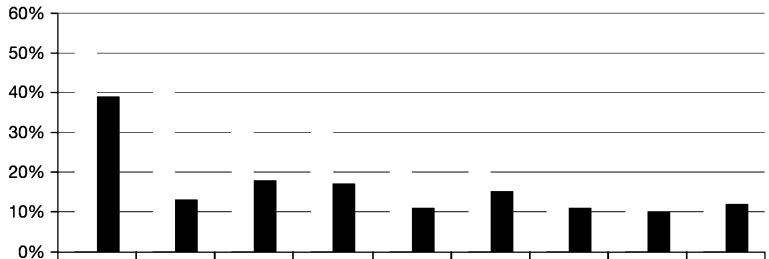
India Today magazine published in 2004, that 'the NDA has 37 MPs with criminal charges. Of 138 BJP MPs, the EC lists 26, about 20 per cent, with criminal charges. Out of 145 congress MPs, 15 close to 10 per cent, have criminal charges against them. The RJD has 40 per cent MPs with criminal charges while the BSP has over one-third 'tainted' MPs.

A preliminary analysis of the candidate **data compiled by the Association for Democratic Reforms (ADR)** for the Lok Sabha and Assembly elections gives an idea of the degree to which criminalisation has seeped into Indian politics.

This report examines the self-sworn affidavits submitted to the Election Commission of India by over 10,700 candidates who contested the Lok Sabha 2004 and 2009 elections and also takes a preliminary look at the number of criminal candidates who contested for the current Lok Sabha election. The analysis done by ADR from these affidavits has been further used and analysed to understand the patterns of criminalisation in our political system.

From ADR's compilation of data on 5380 candidates who contested the Lok Sabha election 2014, 17% have declared criminal charges in the affidavits submitted to the Election Commission; 10% have declared serious criminal charges such as murder and rape charges. Aam Aadmi Party (AAP) candidate S.P. Udayakumar, Kanyakumari constituency, Tamil Nadu, faces the highest number of criminal cases – 382 including 19 charges related to Attempt to Murder (IPC section 307) and 16 charges related to sedition (IPC section 124A). He is closely followed by M. Pushparayan, also an AAP candidate, Thoothukudi constituency, Tamil Nadu, with 380 criminal cases.

Figure 3.1 shows the proportion of candidates with criminal charges fielded by some major parties. Among the six national parties (the Indian National Congress [INC], the Bharatiya Janata Party [BJP], the Nationalist Congress Party [NCP], the Bahujan Samaj Party [BSP], the Communist Party of India [CPI], and the Communist Party of India (Marxist) [CPI-M]), the NCP has the highest percentage of candidates with criminal candidates (57%) followed by the CPI (M) (40%). The NCP also has the highest percentage of candidates with serious criminal charges (39%) followed by the BJP (18%).



	NCP	CPI (M)	BJP	CPI	INC	SP	BSP	AAP	AITC
Candidates with Criminal Charges	57%	40%	34%	34%	23%	23%	18%	16%	13%
■ Candidates with Serious Criminal Charges	39%	13%	18%	17%	11%	15%	11%	10%	12%

FIGURE 3.1 Party-wise Candidates with Criminal Charges, Phase 1-Phase 5, Lok Sabha Elections 2014 *Source:* Association for Democratic Reforms.

States that top the list with the highest percentage of candidates facing criminal cases are Goa (32%), Kerala (29%), Bihar (26%) and Jharkhand (26%). On the lower end lie Rajasthan (6% candidates face criminal charges), Haryana (7% candidates face criminal charges) and Assam (7% candidates face criminal charges)

Among the 232 constituencies analysed 94 (41%) have at least three candidates with criminal cases.

The proportion of MPs in the 15th Lok Sabha facing criminal charges is not only high but actually increased between the 2004 and 2009 Lok Sabhas (see Figure 3.2). The proportion of MPs facing serious criminal charges (like murder, kidnapping and extortion) also showed an increase from 12% in 2004 to 14% in 2009.

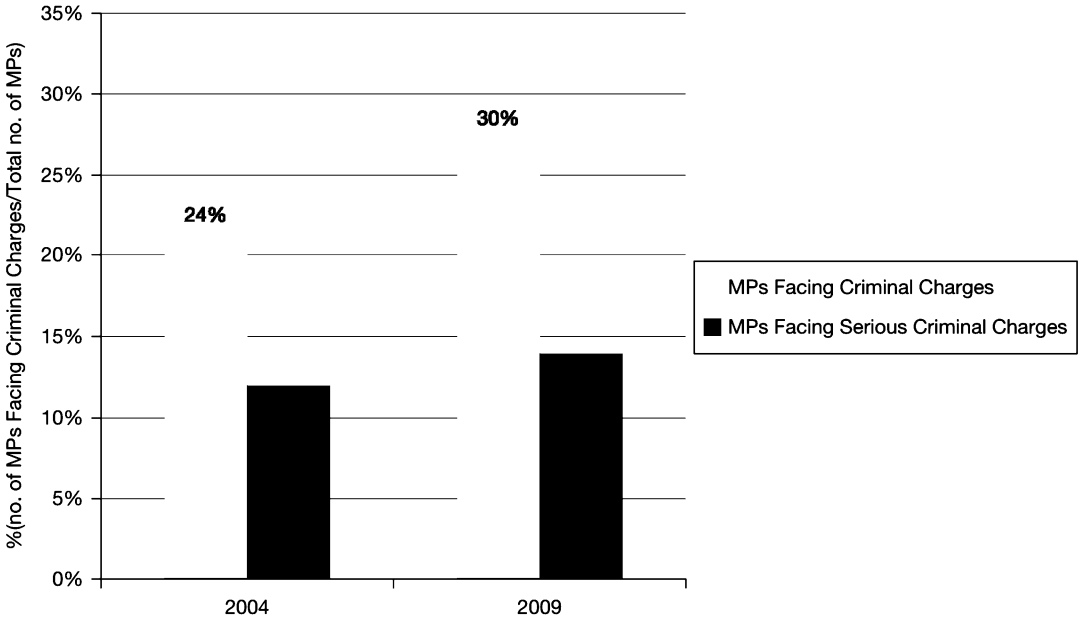


FIGURE 3.2 Proportion of MPs Facing Criminal Charges Lok Sabha 2009 *Source:* Association for Democratic Reforms.

TABLE 3.1 Serious IPC charges faced by MPs Lok Sabha 2009

IPC Section*	Offence	No of MPs Accused	No. of Women MPs Accused
307	Attempt to Murder	26	1
302	Murder	17	
304	Culpable homicide not amounting to murder	3	
384	Extortion	2	
364	Kidnapping or abducting in order to murder	7	
124	Assaulting President, Governor, etc., with intent to compel or restrain the exercise of any lawful power	7	
395	Dacoity	6	
471	Using as genuine a forged document or electronic record	6	

IPC Section*	Offence	No of MPs Accused	No. of Women MPs Accused
332 & 333	Voluntarily causing hurt or grievous hurt to deter public servant from his duty	22	1
353	Assault or criminal force to deter public servant from discharge of his duty	32	2

*Note: List is not exhaustive
Source: Association for Democratic Reforms

The current Lok Sabha has 76 MPs accused of multiple serious crimes with an average of three cases each (see Table 3.1). Out of the 37 political parties represented in the Lok Sabha, MPs from 22 parties face serious criminal charges.

In 25 constituencies, the number of candidates with criminal charges was higher than the number of candidates without any criminal charges (without taking independent candidates into account). For the recent Lok Sabha elections, out of the 1566 candidates analysed by ADR, 18% have declared criminal charges and 10% have declared serious criminal charges in their affidavits.

Figure 3.3 shows the levels of criminalisation among the candidates contesting elections and among winners, for both the 2004 and the 2009 Lok Sabha elections.

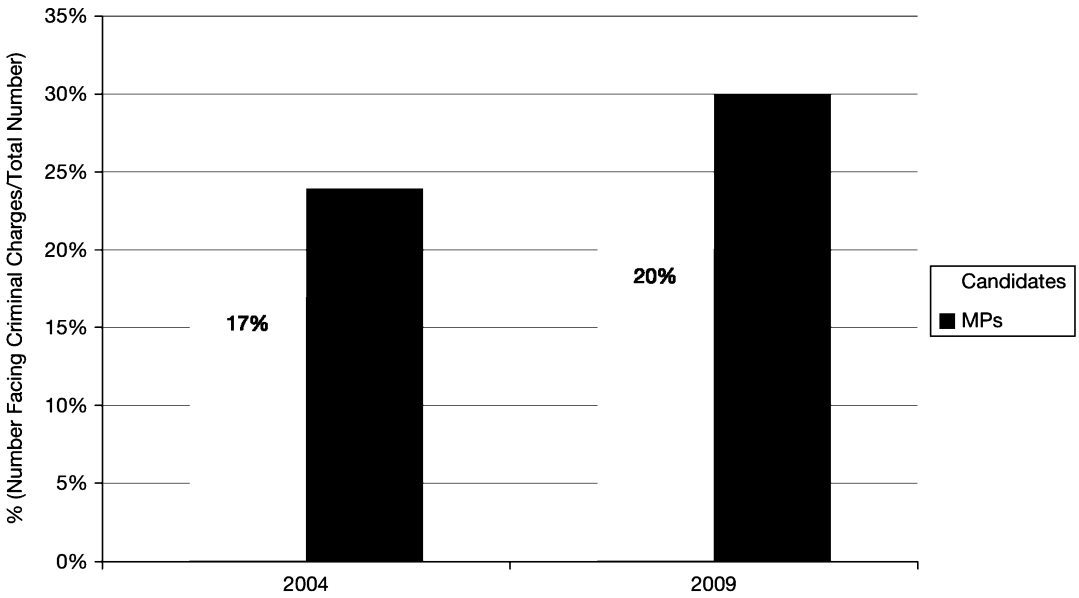


FIGURE 3.3 Percentage of Candidates and MPs Facing Criminal Charges for Lok Sabha 2004 and Lok Sabha 2009 *Source:* Association for Democratic Reforms.

3.2.4.3 Criminality and Winnability

The evident link between criminality and the probability of winning is further reinforced when we look at the winnability of a candidate. While any random candidate has one in

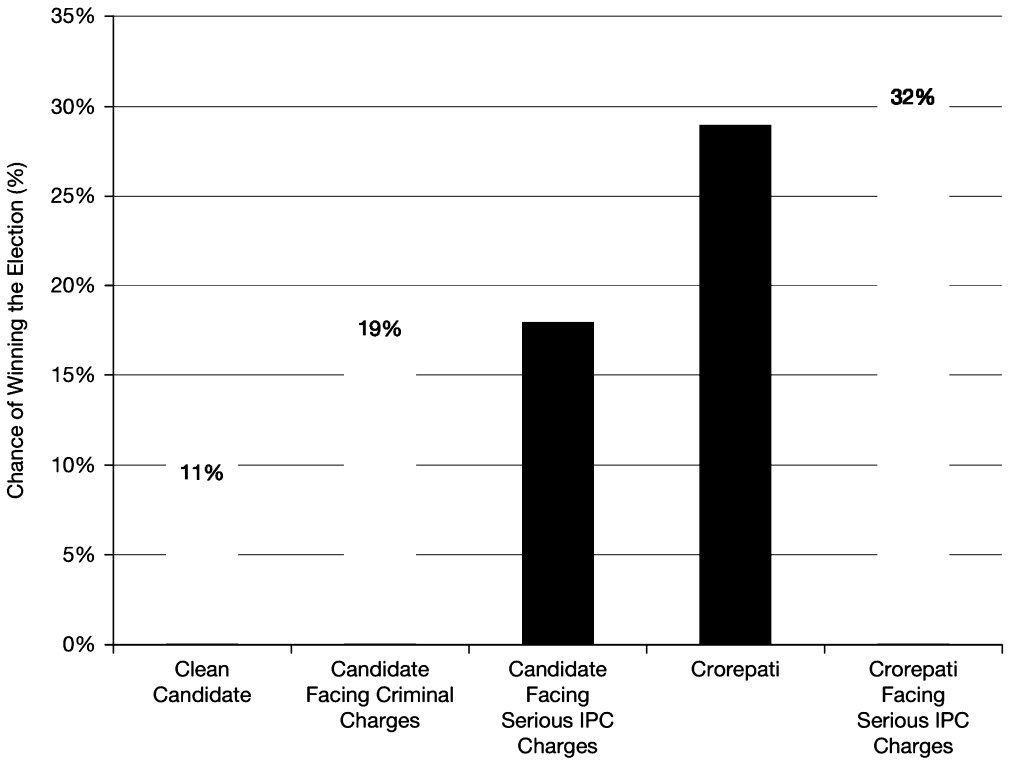


FIGURE 3.4 Candidate Winnability in 2009 Lok Sabha Election *Source:* Association for Democratic Reforms.

eight chances of winning a Lok Sabha seat, a candidate facing criminal charges is twice as likely to win as a clean candidate. The picture is no different for women candidates. Among the major parties (with more than 10 candidates), those that lost the election were on an average cleaner (14% candidates had criminal charges) than those that won (26% candidates had criminal charges).

Twenty-four MPs who had criminal charges against them and won in the 2004 Lok Sabha election, won again in the 2009 Lok Sabha election (see Figure 3.4). Eleven current MPs facing serious criminal charges have been given tickets to contest the Lok Sabha election, 2014. Of these, Ganesh Singh (BJP), Naveen Jindal (INC) and Avtar Singh Bhadana (INC) won both the Lok Sabha 2004 and the 2009 elections. This shows that political parties continue to give tickets to candidates despite the fact that they have criminal cases pending against them.

Another notable pattern is the vital link between money power and muscle power. There are more candidates as well as MPs with criminal backgrounds in the top 25% of declared asset value than in the bottom 25%. While a clean crorepati had a 29% chance of winning the Lok Sabha 2009 elections, a crorepati facing criminal charges had a 29% chance of winning. The chances increased further to 32% for a crorepati facing serious criminal charges.

For major parties, Figure 3.5 shows that the value of assets increases from candidates to winners and to winners with criminal charges (NCP is an exception).

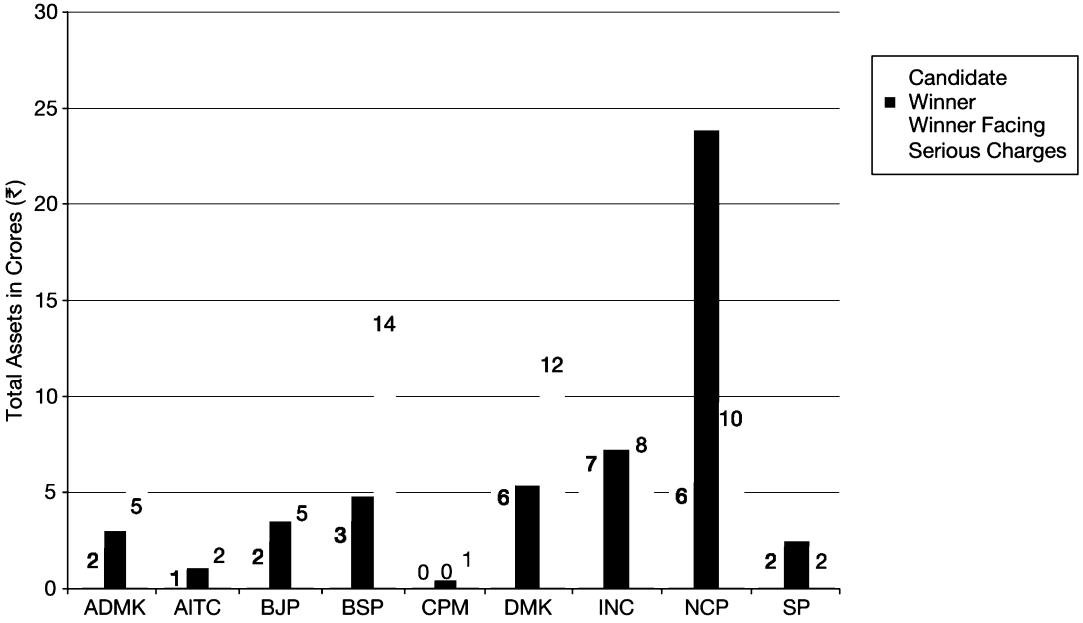
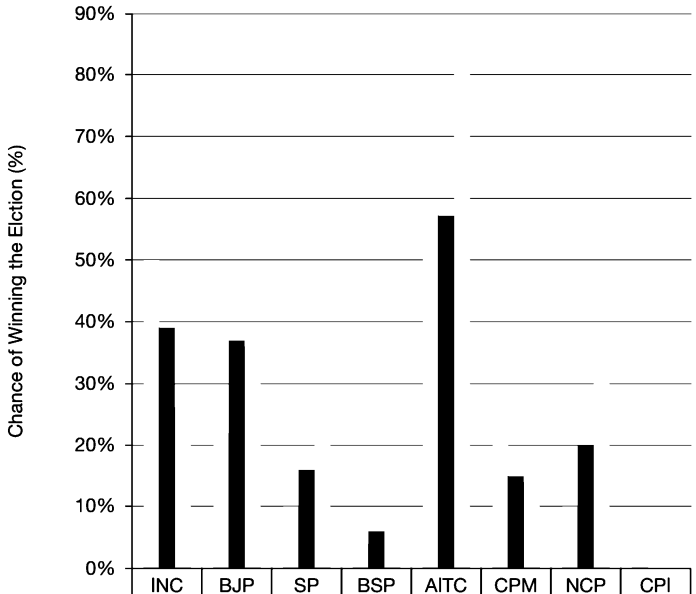


FIGURE 3.5 Party-wise Average Asset Value *Source:* Association for Democratic Reforms.

Figure 3.6 shows party-wise winning chances for candidates for the Lok Sabha election 2009.



	INC	BJP	SP	BSP	AITC	CPM	NCP	CPI
Clean Candidate	50%	22%	10%	4%	58%	21%	10%	8%
■ Candidate Facing Criminal Charges	39%	37%	16%	6%	57%	15%	20%	0%
Candidate Facing Serious IPC Charges	26%	36%	22%	9%	80%	14%	33%	0%

FIGURE 3.6 Party-wise Winning Chances for Candidates, Lok Sabha Election 2009 *Source:* Association

Uttar Pradesh (UP), Gujarat and Maharashtra top the list with the highest percentage of MPs accused of criminal and serious criminal offences. UP elected 31 MPs with criminal charges, (contributing 54% of criminal MPs from UP) 23 of which are accused of serious crimes. Fifteen of these twenty-three are *crorepatis*. Similarly, in Maharashtra 10 of the 11 MPs facing criminal charges are crorepatis; in Gujarat five of the seven MPs facing criminal charges are *crorepatis*.

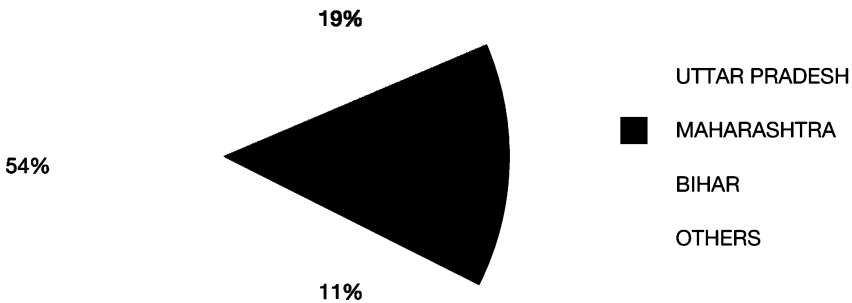


FIGURE 3.7 State-wise Percentage Share of MPs Facing Criminal Charges *Source:* Association for Democratic Reforms.

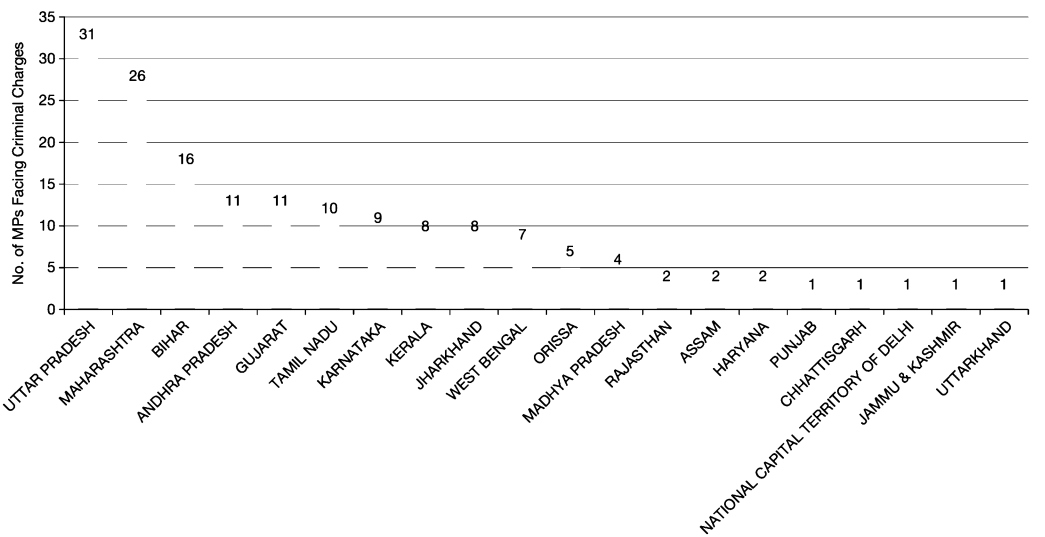


FIGURE 3.8 State-wise Number of MPs Facing Criminal Charges, Lok Sabha 2009 *Source:* Association for Democratic Reforms.

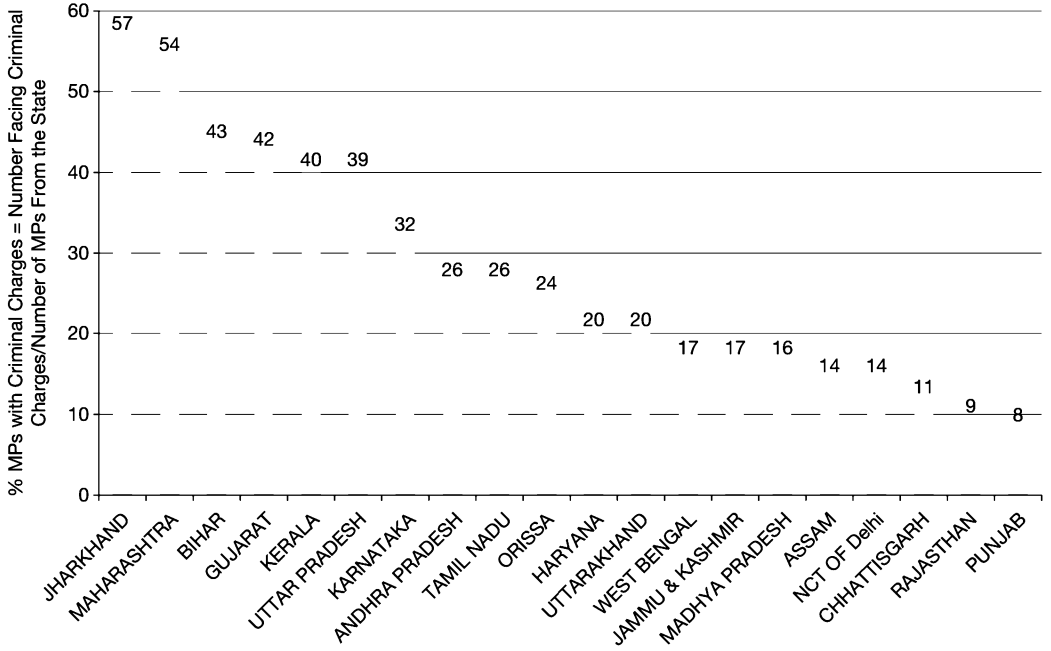


FIGURE 3.9 State-wise Proportion of MPs Facing Criminal Charges, Lok Sabha 2009 *Source:* Association for Democratic Reforms.

The public perception that has been built over years is that politics and criminals have come to join hands together. The politics has been criminalised and the criminals have been politicised. The important reason for this is the reduction in quality of people entering politics. The days are gone when the MP or an MLA was considered to be a 'gapcloser' between the government and the public, acting as a catalyst between the masses and the government, and instead today he is considered to be a 'potential blackmailer' or 'freewheel dealer'.

The days are gone when stalwarts like Nehru, Kamaraj, Sardar Patel, Lal Bahadur Shastri, the people who wore their integrity and honesty on their sleeves. They had strong pro-people behaviour, and commitment and dedication towards public cause.

When the violence, booth capture, election rigging became order of the day, the advantage was with those who could either themselves resort to doing such acts or get others do it for them. Many of such gangsters realised that rather than helping other people win election through such acts, they themselves could, through such illegal and anti-social acts, get elected, and become ministers and legislators. And from that pedestal they could not only mock the state police but also plunder the wealth of the state. Former Bihar Director General of Police, says that, 'Until 1967, criminals were helping their political masters. Then they began to seek power themselves'. And the result therefore was entry of criminals into the legislature.

L.S. Rathore in his Presidential Address observed that, '*So brutalized has become politics today that we are handing over the country to underworld. The day is not too far when India shall have a new generation of ruling class led by these buccaneers and criminals: and that day is too near when the gangsters are going to take "giant strides" in politics*'.

The Lok Sabha passed a historic resolution at the special session of the Parliament on the occasion of the golden jubilee of independence, August 26 to September, 11997 observed the following:

> '*the meaningful electoral reforms be carried out so that our parliament and other legislative bodies be balanced and, effective instruments of democracy and further that political life and processes be free of the adverse impact , on governance of undesirable extraneous factors including criminalization*'.

3.2.4.4 *Consequences of Criminalisation*

The primary sacrifice at the altar of criminalisation is that of governance, along with transparency and accountability. Expensive election campaigning favours candidates with strong financial background. Such candidates, when elected, seek to recover their expenses besides securing a corpus for the future election as quickly as possible, especially in the era of coalition governments with tenuous stability.

The average number of years that criminal cases against MPs have been pending is seven (until 2009). Kameshwar Baitha, JMM, Palamau, Jharkhand, has declared 10 cases of murder, which have been pending for an average of 12 years. Ramakant Yadav, BJP, Azamgarh, Uttar Pradesh, has declared a murder case which has been pending for 25 years (see Table 3.2).

TABLE 3.2 Years of Pending Cases, Lok Sabha 2009

S. No	MP/Party/Constituency/State	Details of Offences	No. of Years for Which the Cases have been Pending (as per Affidavits Filed in 2009 Elections)
1	Adhikari Sisir Kumar, AITC, Kanthi, West Bengal	Rioting and theft	28 years
2	Ramakant Yadav, BJP, Azamgarh, Uttar Pradesh	Murder	25 years
3	Ramkishun, SP, Chandauli, Uttar Pradesh	Attempt to commit robbery	24 years
4	Gandhi Dilipkumar Mansukhlal, BJP, Ahmednagar, Maharashtra	Concealing with intent to facilitate design to wage war	24 years
5	Venugopala Reddy Modugula, TDP, Narasaraopet, Andhra Pradesh	Attempt to murder	23 years
6	Kameshwar Baitha, JMM, Palamau, Jharkhand	Murder	20 years
7	Abdul Mannan Hossain, INC, Murshidabad, West Bengal	Attempt to Murder	20 years

Not all is lost though. A comparison of top 10 MPs with criminal charges in 2004 and 2009 Lok Sabha elections reveals that the number of MPs with serious criminal backgrounds has declined. For the top 10 MPs with serious criminal charges, the total number of cases

decreased by 42%, count of serious IPC charges reduced by 32% and murder charges were reduced by 55%.

3.2.4.5 Efforts to Prevent Entry of Criminals into Politics

CPI's Indrajit Gupta says that, *'Criminalization of politics is worrying because Parliament is losing its credibility'*. Jai Pal Reddy, a leader of JD says, *'All parties have a nexus with criminals. The links just differ in degrees from party to party …. And in nature from State to state'*. As far as India is concerned, the criminal politics nexus goes beyond politics, it is not just the scramble for power. This runs so deep and wide that it virtually occupies every space in the state.

As Justice V.R. Krishna Iyer stated, corruption in public life begins with money in elections. Our system of elections is loaded with muscle power and money power, and these are abundantly available with the underworld. Section 77 of the Representation of People's Act puts an upper limit on the expenses incurred by a candidate. Other such election laws also recognise the danger of illegitimate money entering the political system through the election process.

But there are no regulations to control the money entering as donations to the political parties. These remain unaccounted for and are used in the election process. During the initial period, big businessmen and the industries sponsored and supported the political parties and its candidates. This practice continued and continues, and is supplemented by the kickbacks and the commissions received from foreign transactions. Experts are of the opinion that the political parties do not have enough legitimate money to fight elections, and hence are dependent on other sources for funding their campaign. And if the state starts to fund elections, may be such practices can be controlled and avoided. Such a state funding of elections is followed in Germany and United States of America.

Justice M.B. Shah's judgement in Electoral Reforms case on 2nd May, 2002, struck a blow to the Indian democracy by giving the voters right to know the full details about the person they are voting for.

And the Election Commission immediately on 28th June, 2002, implemented the Supreme Court's order within the specified time of two months. The Election Commission also sent recommendation to the government to amend the Forms 2A to 2E of the Conduct of Election Rules, 1961 which deals with the nomination process. The Commission also ordered the candidates to file the following information to the returning office:

1. Past criminal convictions
2. Pending criminal cases carrying a conviction of more than two years
3. Assets
4. Liabilities
5. Educational qualifications

The Supreme Court's judgement is based on two important principles:

(i) The citizen's right to know and informed, under Article 21.
(ii) The power and duty bestowed upon the Election Commission by virtue of Article 324 to conduct elections.

Every citizen has the right to know about the background of the person whom he is electing, and such information should not be hidden from the electorate.

The candidates have no reason to hide their background from the people whom they are going to represent, and if they do, they have no business in public life. The Supreme Court has not invented anything new, it has worked out the provisions within the framework of the

Constitution. There is sufficient precedent in both relating to right to know as well as the powers of the Election Commission.

3.2.4.6 Recent Decision by the Supreme Court

In a landmark judgement, the Supreme Court in 2013 ruled that the elected representatives cannot remain and continue in their office even if they had appealed to the higher court. The Court ruled that the representatives will be immediately disqualified from such date, if they are convicted.

The bench presided over by Justice A.K. Patnaik struck down Section 8(4) of Representation of People's Act as unconstitutional, this provision protected the membership of an MLA or an MP if he/she files an appeal within three months of date of conviction.

But this judgement did not act in retrospect, and thus sitting MLAs and MPs who were convicted before this verdict were not disqualified. Henceforth, an MLA or an MP will immediately be disqualified under Section 8 (1), (2) and (3), if he is convicted. Their membership will be protected if their conviction is stayed by the appellate Court.

This ruling jolted the political class, as henceforth if convicted they had no protection and will immediately be disqualified. The political parties then have to be very careful in selecting the candidates for election, as candidates having pending cases against them have their fate hanging in balance as the conviction will result in disqualification and therefore a new election to that particular constituency. No party would want to spend time, money and energy fighting for another election, and people too will become apathetic and the party will lose their support. Hence, the parties will be very careful in selecting their members to be fielded in the election.

The Supreme Court rejected the review petition filed by the government in the abovementioned case and upheld its verdict. It was an embarrassment for the entire political class. The review bench termed the judgement as 'well considered', and stated that it was 'not inclined' to grant review of the judgement which struck down the Section 8 (4) of the Representation of the People's Act.

The government immediately reacted by enacting an ordinance which was withdrawn subsequently due to public pressure.

3.2.4.7 Time-Bound Trials for Legislators

The Supreme Court has once again intervened to cleanse the political system, in trials involving MPs and MLAs, it has fixed a deadline of one year from the date of framing of charges. The Court now wants to ensure the tainted persons do not continue office, hence methods such as repeated adjournments, dilatory tactics etc. which delay the conviction and subsequent disqualification has been sought to be removed.

The Apex Court has asked the trial courts to expedite trials and finish them within a year; and if they are unable to do so, they should explain the reason for such delay to the Chief Justice of the concerned High Court. The delay in criminal justice system has worked to the advantage of the political class who are facing various charges in offences relating from corruption to attempt murder.

Many political leaders have managed to prolong their trial for years and they in the meantime stand in elections and get elected repeatedly and raise even to become Chief Ministers. Many such leaders stall the trial process by getting stay order or interlocutory orders from the higher court. The Criminal Procedure Code does not mention any time limit for completion of trials, but Section 309 says that once the examination of witness begins, then the trial has to be proceeded on a day-to-day basis until examination of all witness is over. This provision is rarely

followed because of various reasons. It is impossible for a trial court to conduct the proceedings as the MLAs and MPs are influential and they engage lawyers who act to delay, and thwart the legal process. And thus the present judgement addresses this issue and empowers the trial court to refuse to grant routine repeated adjournments.

3.2.4.8 Conclusion

India Today magazine in 2004 published that, '*It is unfortunate that no countervailing force to check criminalization of politics is emerging. In recent court orders ranging from Supreme Court to High Courts to lower courts the Judiciary has been busy stumping the criminal politician, quashing his bail applications, ordering his arrest warrants and sending him to jail from hospitals. Unlike the campaign against tainted ministers in Parliament, this battle is neither partisan nor for each-finger-accusing the rival three-points towards you*'.

The **Association for Democratic Reforms (ADR)** in its report, suggests the following, The Supreme Court and the Election Commission of India (ECI) have undertaken some commendable steps for reforming the electoral process. But these two constitutional bodies are also bound by the laws enacted by the elected legislative body.

The ECI has achieved considerable success in containing the role of muscle power through measures such as the effective implementation of the model code of conduct and the setting up of the expense monitoring cell. Mandatory declaration of assets and existing criminal charges in self-sworn affidavits to the ECI prior to elections has brought in some transparency

Supreme Court judgments disqualifying convicted MPs and MLAs (*Lily Thomas v. Union of India, 2013*), barring those in jail from contesting (*Chief Election Commissioner vs. Jan Chowkidar, 2013*), directing the EC to bring the issue of election related freebies under the ambit of the Code of Conduct, the Allahabad High Court banning caste and religion based political rallies are all attempts to change the system. However, implementation of these judgements has faced unequivocal opposition from all the political parties. When the Supreme Court in its recent intervention (*Lily Thomas v. Union of India, 2013*) sought to prevent convicted MPs from continuing in office, the legislators promptly geared up to nullify the judgment through an ordinance. While the Supreme Court should be commended for taking long strides, judicial reforms targeting speedy disposal of cases could go a longer way in decriminalising the Parliament. The Supreme Court's recent order setting a deadline for the lower courts to complete trial in cases involving lawmakers within a year of framing of charges is a welcome step in this direction.

There is a widely anticipated participation of first time voters who are likely to constitute 10% of the electorate. This expected increase in voter turnout and recent civil society activism over issues, such as corruption, have stirred some awareness among voters in the 2014 Lok Sabha election. Whether this will make a difference to the criminal composition of the Parliament remains to be seen.

Levelling the electoral field by addressing the role of money power in elections is a pressing imperative. Deeper research into state-funding of elections and devising a metric to quantitatively measure the performance of individual MPs are areas of far-reaching consequences to the criminalisation of politics.

3.2.5 Rival Representative Claims of Parliament and Civil Society

3.2.5.1 Representative Claim of Parliament

Parliamentary government presumes that legislature holds the delegated sovereignty of the people (popular sovereignty). The locus of popular sovereignty remains unspecified in the Constitution due to the multiplicity of views within the constituent assembly on this question. Some argued that the Parliament is repository of sovereignty of people and some were of the view

that sovereignty of people rest with head of the state since the government cannot by definition be representing the whole people. It was assumed that popular sovereignty needed a fixed locus.

K.T Shah's self-styled innovation of a referendum can be cited for sovereignty of people.

> '*Now this constitution does not provide for reference to the people, notwithstanding the fact that we talk again and again of the peoples sovereignty of the people being ultimate sovereign of this country. Our reference to the people, or consultation with people is expressed if at all only in a quinquennial election, a general election to the parliament. In a general election, however, so many issues are mixed up; so many cross-currents take place; so many moves and countermoves happen that the consultation with the people, or the verdict of the people on such variety of issues is only nominal, if I may say so without any disrespect. If you sovereign, if you want that the people be consulted in emergency when your two organs of power , viz., the legislature and the executive, are unable to agree , then the test will lie in your readiness to consult people*'.
>
> —(CAD, vol.VII, 10 December 1948:980)

3.2.5.2 Claim of Parliament

Recent time's power of the representative claim of the Parliament has been indeed derived from the **delegated power of electorate**. In various conflicts with judiciary this principle has been deployed repetitively to contrast the **unrepresentative character of judiciary**. This is quite evident in Shah Bano judgement.

The Supreme Court in Mohd. Ahmad Khan v. Shah Bano Begam and others held that if a divorced woman is able to maintain herself, the husband's liability ceases with the expiry of the period of iddat (three menstrual courses after the date of divorce, that is, roughly three months), but if she is unable to maintain herself after the period, she is entitled to have recourse to Section 125 CrPC. In the general election, 1984, Indian National Congress won absolute majority in the Indian parliament.

After the Shah Bano judgment, there was uproar in the Muslim community, fearing that the Congress will face decimation in the polls, Congress headed by the then prime minister Rajiv Gandhi enacted an act titled The Muslim Women (Protection of Rights on Divorce) Act 1986 that nullified the Supreme Court's judgment in the Shah Bano judgment. Diluting the Supreme Court judgment, the act allowed maintenance to a divorced woman only during the period of iddat, or till 90 days after the divorce, according to the provisions of Islamic law. This was in stark contrast to Section 125 of the Code. The 'liability' of husband to pay the maintenance was thus restricted to the period of the iddat only.

3.2.5.3 Microscopic Representation

In India, important shift occurred in principle of representation moving towards greater descriptive representation which mandates MPs to mirror the composition of diverse society. There is an increase in representation of backward castes due to mobilization by political party representing these groups. In case of Muslim minority or women, both of which remain hugely under-represented, compared to their proportion in the population. The idea that members of a particular group can comprehend and represent interest of these groups remains the basis for parliamentary system of government.

It's being argued that despite becoming more representative parliament has become less mindful of its representational role as an assembly of people as a whole. The civil society activists want the representative democracy to

1. Properly represent the preference and aspirations of the citizen
2. Be accountable to those who have elected them

3.2.5.4. Executives Undermining the Legislature

a. **India–United States Civil Nuclear Agreement**

The United States of America and the Republic of India signed an agreement of nuclear cooperation, it is known as the US–India Civil Nuclear Agreement or Indo-US nuclear deal. The joint statement was made by then Indian Prime Minister Manmohan Singh and then U.S. President George W. Bush on 18th July, 2005, under which India agreed to separate its civil and military nuclear facilities and to place all its civil nuclear facilities under International Atomic Energy Agency (IAEA) safeguards and, in exchange, the United States agreed to work toward full civil nuclear cooperation with India.

As details were revealed about serious inconsistencies between what the Indian Parliament was told about the deal, and the facts about the agreement that were presented by the Bush administration to the US Congress, opposition grew in India against the deal. Left Front, whose support was crucial for the ruling United Progressive Alliance (UPA) to prove its majority in the Indian parliament, continued to oppose the nuclear deal. The left front had been a staunch advocate of not proceeding with this deal citing national interests. UPA faced confidence vote in the Lok Sabha after the Communist Party of India (Marxist) led Left Front withdrew support over India approaching the IAEA for Indo-US nuclear deal. The UPA won the confidence vote with 275 votes to the opposition's 256, (10 members abstained from the vote) to record a 19-vote victory. This is a very clear indication of executive's dominance in the Parliament and the representatives opposing voices are ill-considered.

b. **Representative Claim of Civil Society**

One among the pillars of democracy, Judiciary, which has been the principal antagonist of the Parliament is being replaced by civil society in recent times. This recent phenomenon of confrontation between civil society and the Parliament can be interpreted as contest of two principles: the **republican** and **liberal** citizenship.

Judiciary, a premier institution in India has been challenging the Parliament on of what sort of departures from the constitutional principle of equality are consistent with the constitutional commitment to social, economic and cultural differences.

The judiciary appears to be the conservative protector of individual rights and freedom and executives-in-legislature as the progressive socialist force for social justice.

Today role of judiciary in relation to the Parliament has been replaced by the popular mobilization of civil society.

Theorists of democracy have also paid attention to questions of **participatory** democracy, **strong** democracy and **deliberative** democracy. These express the profound dissatisfaction with the quality of democracy trapped inside representative institutions. There has been greater ineffectiveness of representative institutions in achieving the **core ideals of democracy** which includes

(i) Active political engagement of citizens
(ii) Creation of political consensus through dialogue means
(iii) Design and implementation of public policies

In the context of India's democracy, its representative institutions seem to define its democracy. The apprehension of more popular mobilization of civil society seems to be sign of vulnerability and fragility of its democratic institutions to substantiate their representative claim in responsive legislation and policy.

Though the idea of popular sovereignty and popular rule that ultimately authorizes representative institutions, it is the very same principle of popular sovereignty that questions the legitimacy of these institutions. The contest is much over the questions of who really represent the people **(Parliament or civil society)** and not much about the institutional arena in which democracy is expressed.

Parliament	Civil Society
Authorized by constitution and representatives elected by legitimate procedure.	Represented by popular leaders outside political institutions backed by visible support of society.

c. **Nirbaya case**

In December 2012, a 23-year-old student was brutally gang-raped and tortured in Delhi and later succumbed to her injuries. Uproar followed the incident in the capital and the Parliament was compelled to introduce stricter laws to deal with sex crimes against women. A judicial committee headed by J. S. Verma, a former Chief Justice of India and one of India's most highly regarded Chief Justices and eminent jurists, was appointed by the Central government to submit a report within 30 days to suggest amendments to criminal law to sternly deal with sexual assault cases. The committee urged the public in general and particularly eminent jurists, legal professionals, NGOs, women's groups and civil society to share 'their views, knowledge and experience suggesting possible amendments in the criminal and other relevant laws to provide for quicker investigation, prosecution and trial, and also enhanced punishment for criminals accused of committing sexual assault of an extreme nature against women'.

The report indicated that failures on the part of the government and police were the root cause behind crimes against women. On 3rd February, 2013, the Criminal Law (Amendment) Ordinance, 2013 was promulgated by President Pranab Mukherjee. It provides for amendment of the Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure, 1973, on laws related to sexual offences. The ordinance provides for the death penalty in cases of rape. On 22 December 2015, Rajya Sabha passed the Juvenile Justice Bill, which proposed that the accused who are above 16 years of age will be treated as an adult in the court of law.

d. **Neduvasal Hydrocarbon Project Agitation**

On February 15, 2017, India's central government announced the award of contract for development and extraction of hydrocarbons from 44 contract areas nationwide, including 28 on-land fields and 16 offshore. Within a day of the announcement, protests broke out in Neduvasal, a village in Pudukottai district in southern Tamil Nadu. People from all walks of life participated in the protest garnering support for villagers' claim of damage to agricultural land and environmental degradation, if the project is furthered. The agitation halted the project and union and state ministers ensured the agitators that their demands will be met and the central government has assured the protesters that further permission will not be granted to the project till the people are

consulted and operators are required to follow strict environmental norms for the use of operational land.

e. **India Against Corruption (IAC): The Civil Society Attack on Parliament**

A people's protest was organized in over 50 cities across India, to demand the passage of **a strong Lokpal (ombudsman) bill**, in the wake of revelations about misconduct in Commonwealth games and corruption in allocation of 2G spectrum. A draft of such bill was prepared by Team Anna with Anna Hazare being iconic leader of the team comprising Kiran Bedi, Santhosh Hedge, Prashant Bhushan and Aravind Kejriwal.

Over few months team Anna was consulting with different political parties with a view to build consensus on their proposed draft of Lokpal legislation. Anna went to fast at Jantar Mantar in Delhi to press this demand. There was a popular anger against the deluge of scams and the government capitulated to demand for a joint drafting committee that would include government nominees and members of civil society in equal proportion.

The committee couldn't meet consensus due to disagreement on details of the bill's provisions. When this exercise failed to yield results Anna again went to fast and found enthusiastic support from across the country.

Parliament passed a 'Sense of House' resolution accepting three principles which was put forward by Anna Hazare as non-negotiable

- A citizens' charter
- The lower-level bureaucracy to be brought within the ambit of the Lokpal
- The establishment of Lokayuktas in the states

Issues of giving Lokpal a constitutional status remained a point of contention and there was inadequate support for constitutional amendment.

When there was a lag in passing of Lokpal bill in the Parliament, Aravind Kejriwal decided to start a political party, Aam Aadmi Party (AAP) , which reiterates the commitment to the passage of a strong anti-corruption law applicable to both politicians and bureaucrats, but now seeks to achieve through participating in electoral system and also achieved stunning success in Delhi legislative assembly though it couldn't sustain a government.

A mobilization has been split into a movement and a party each representing one pole of the debate about representation.

In the recent confrontation by the civil society and parliamentarians, political party's arguments have been more in nature of ring fencing the Parliament and asserting rather than justifying or defending its supremacy. Civil society argues by dismissing parliamentary supremacy as they reiterate the original principle of popular authorization while also denying that popular authorization lies at the root of constitutional parliamentary supremacy.

Kejriwal solution to this problem is that people be given direct control over law-making process to a certain degree. And he proposes **two** ways in which this can be accomplished. The **first** is to **give people the initiative to propose laws via gramsabhas** and his **second** proposal is to ascertain the people's opinion on all laws in the Parliament and state legislatures.

Even in countries which have referendum provided in their constitution, this is a mechanism only of the last resort on particular contentious issues. It is not a routine method of decision making and making every citizen participate in every single legislation will elongate the time to pass any law, and also the more fundamental question is the envisioning of state legislatures and parliament as simple post office, processing the aggregate wisdom of gramsabhas.

The second claim by IAC that of authentically representing the wishes and aspirations of Indian people by citing the number of people who gathered in Anna Hazare's fast. This has become unfortunate because the validity of the claim became a simple function of numbers instead of strength of arguments offered in public reason and persuasion. There is also a further rick that other groups which claiming large supporters may make other claims that are less acceptable. On what basis can we arbitrate the representational claim of one segment of civil society as legitimate and other is not? For instance both corporates and civil society can call to speak in national interest: first in the name of prosperity of nation, and the second for welfare of citizens. As both claim to represent in name of collective good--- how, and by whom, might such representational claims be arbitrated?

f. **Conversation of rival claims**

In modern democracies both legislatures and civil societies make legitimate representational claim and these forms of representation be viewed as complementary, rather than adversarial. In Indian context, civil society has three intertwined fallacies of **Concept, Precept and Practice.**

First, civil society overstepped its role of demanding accountability and sought to blur the boundaries by dictating the exact content of legislation by insisting on particular draft of the law.

Second, civil society paid no attention to the fact that power shifted from the Parliament to be centralized to executive. Under conditions of increasing concentration and centralization of power to executive, neither the civil society nor parliamentarians' take adequate cognizance of this reality of shifting of power.

Finally it is arguable that the democratic deficit that the IAC pointed to is substantively a problem of the party system and unaccountability of political parties that have domesticated the Parliament rather than performance of the Parliament itself.

The Parliament has become more representative in descriptive terms simultaneously become unresponsive in legislation and governance and avoid accountability. There is no evidence in constitutional debates that MP's argued for parliamentary sovereignty, which asserts that they have been more inclined in increasing their sphere of operations.

In the debate on Lokpal bill, MP's defended Parliaments' prerogative and exclusive mandate to legislate. They asserted the principle of constitutional supremacy, checks and balances in the constitution, exclusive power of lawmaking by the Parliament. In spite of these assertions of parliamentary supremacy, thirty-four of the forty amendments proposed by the non-governmental members were accepted by the joint drafting committee.

Parliamentarian's position on this matter was summed up by T.K.S Elangovan in a simple straightforward way.

'The parliament has certain powers. It has its own supremacy and its own inherent powers. We are here to enact laws in the country. There may be demands but it is for the parliament to decide whether these demands are right or otherwise. It is because after two and half years from now on, the members if this house has to go to people to seek their votes; tell them what we have done; tell them how we have acted; and tell then what steps we have taken against corruption. We have to go to the people. It is the responsibility of not only the ruling party but also of the opposition parties. The people will judge us. Then it is left to civil society to go to the people and say that this government has not acted against corruption. So you need not to vote for them. This is democracy.'

This establishes quite clearly the absence of any principled justification for parliamentary sovereignty, and its relationship of sovereignty to people. Parliamentarians also do not acknowledge the constitutional ambivalence on this question

Parliament is having a legitimate right to represent since they derive legitimacy from election covering entire adult population of the country. Also the constitution gives it legitimate functional competence as the pre-eminent forum for lawmaking.

Civil society has been described as domain of action of bourgeois citizen and also been considered as undermining the democratic governance, at least until such time as they can prepare themselves to become mass organisations, internally democratic, and can generate the ability to connect citizens across the spectrum with the institutions of state. These raise questions that whether the claims of anti-corruption campaign less deserving of attention since it was made by civil society and not by political society.

A section of IAC entering politics suggests that it accept superior legitimacy of elected bodies and centrality of elections on universal adult suffrage to the principle of representation is established even when the locus of popular sovereignty remain unresolved.

3.2.5.5 Conclusion

Returning to introduction, the representational claim of the Parliament bespeak the liberal conception of citizenship which is challenged by republican conception of citizenship articulated by civil society mobilization against corruption. The liberal concept permits us to have elected institutions that may not adequately reflect views of every citizen but provide an institutional framework within which rival claims can be articulated. The republican conception is more appealing for active citizens who are willing to participate in public affairs and holds the key to a polity marked by civic engagement. The conversation between these two distinct principles is today at stake in India.

3.2.6 Measuring the Effectiveness of the Indian Parliament

The questions of how effective the particular session of a Parliament is? Or how effective is this Lok Sabha from the previous one? are hard to answer in an objective manner.

At a macro level, it can be said that the objective of the party elected to power is to improve the well-being of the citizens. This may be carried out by enacting appropriate laws, keeping effective control over the executive for implementation of such laws, and allocating such finance as required. The overall effectiveness on improving the quality of life of the citizens by such policies can be measured with help of indicators such as the Human Development Index, and measuring changes associated with it.

At a more detailed level, the effectiveness can be seen by focusing on the specific functions of the Parliament which are prescribed by the Constitution. In this chapter, to help measure the effectiveness of the Parliament and its various functions, a list of metrics has been given which is based on the research done by PRS India.

There is a limited scope of subject and content of evaluating the effectiveness of the legislative bodies. A few international assessments in this subject have been listed as follows:

1. The Commonwealth Parliamentary Association has recommended benchmarks for the Democratic Legislature. They have set standards for the procedural and institutional structures of the legislature.
2. The World Bank Institute has published a study, Legislative oversight and Budgeting-A World perspective (Stapenhurst, Pelizzo R, Olson D, von Trapp L, World Bank Institute, 2008), this includes a metric to assess the effectiveness of the legislature. For example, they list out a number of oversight tools such as committee hearings and questions, and they measure the number of times these tools have been used.
3. The Inter-Parliamentary Union has developed a toolkit to measure performance of the legislatures (Evaluating Parliament – A self-assessment toolkit for parliaments, Inter-Parliamentary Union, 2008). In this they have asked the Parliamentarians to grade a number of parameters on a scale of five. For example, they ask how effective is the Parliament in scrutinising the appointments to executive posts and holding their occupants accountable, and the Parliamentarians have to list the choice based on the scale.

The criteria to judge the effectiveness of the Parliament can be either qualitative or quantitative. The qualitative criterion though is very difficult to assess and measure in an objective manner. For example, we can easily count the number of bills passed, but it is difficult to judge the quality of such legislations. Even while measuring quantitatively, it would be difficult to say whether higher number is positive or negative indicator. For example, a large number of government bills passed in a particular session might indicate the effective functioning of the legislature, but on the other hand this may mean that, very less time is dedicated for the discussion of the bills and that legislature is not able to effectively scrutinise the proposals of the demands made by the executives.

With these constraints, the following framework for measuring the effectiveness of the Parliament has been devised. The following are the main functions of the Parliament based on which a number of parameters have been suggested to measure the effectiveness. They are

- Legislation
- Oversight
- Representation
- Budgeting

The main challenge is to identify which of these parameters can be used effectively to measure the performance and another is whether an aggregate index could be made by combining all these parameters.

The following are some of the metrics used to evaluate the effectiveness of the Parliament.

3.2.6.1 Legislation

Metric	Remarks
Type of Legislation:	
– Total number of original bills and legislations introduced by the government and private members, respectively. – The ratio of Government Bills to that of Private members bills. – Total time spent in discussion of the Private Members bills – The number of times the government has given assurance to take up a private member bill.	The number of Private members bill reflects the initiative taken by the MPs in formulating new laws. Government assurance to take up these bills by private members demonstrates the impact it has on initiatives made by private members on the legislative process.
Keeping track of legislation:	
– Monitoring whether the legislation is effectively implemented (also checking whether adequate finance has been allocated for effective implementation of the legislation.)	While determining the financial provision allocated, it should be borne in mind that such finance allocated to achieve the bill's stated objective is often quoted less.
Work of Standing Committee and Ad Hoc Committees on bills:	
– Number of recommendations of committees that have been accepted and adopted by the government as amendments to bills – Average number of sittings per bill	This measures the effectiveness a standing committee has on the law making. And the quality aspect of such recommendation is difficult to measure.
Quantity of law:	
– Total amount of time the MPs spent on debating the bills in the Parliament. – Percentage of time spent on legislative activities in the Parliament – Average time spent in discussing the bills – The time taken to discuss each bills shows the effective time spent in scrutinising the bill.	– The number of new laws and the time spent on discussing them are easily measurable and describes the priority of the Parliament to legislate.
Quality of law:	
– Quality of speeches made during a debate – Quality of the laws enacted 1. Percentage of enacted laws struck down by the Courts on grounds of constitutional invalidity 2. Percentage of enacted laws amended subsequently by the Parliament, within a. 3 years b. 3-5 years	It is almost impossible to devise an effective measure to judge the quality of legislative debates. When laws are struck down by the Courts as unconstitutional, shows inadequate and ineffective scrutiny by the legislature, and if the law is amended within a short period of time, this also shows that it was not well drafted in the first place.

Metric	Remarks
Monitoring of delegated legislation:	
– Number of times objection has been raised by MPs to the enactment of delegated legislation under relevant statute and such has been discussed in the Parliament – Work of Parliamentary Standing Committee on Subordinate Legislation 1. Number of sittings of the committee 2. Number of reports issued by the committee	Many laws delegate the implementation to the executives subject to the approval by the Parliament. MPs perform this duty both on the floor of the house and in the standing committee on subordinate legislation. The quantity of work carried out by this committee is measurable, but its quality is not.

3.2.6.2 Oversight

Metric	Remarks
Oversight through the committee system: – Number of issues taken up for discussion – Average number of sittings of the committee for issuing report	This measures the effective use of the committee system and the extent to which the committee examine issues in their keeping check on the executive.
Oversight through Parliamentary questions and interpretations: – Quality of the questions asked – Number of starred questions actually discussed during the question hour – Time lost due to interruptions	Considerable amount of time is lost because of the interruptions made, hence this metric is used to determine the actual time spent for questioning the executive activity. While determining the quality of the questions asked is critical to determine the effectiveness of the Parliament.

3.2.6.3 Representation

Metric	Remarks
Total number of issues raised by the Lok Sabha MPs under rule 377 which have an impact on their constituencies.	This metric enables quantitative ascertainment of amount of time spent by the MPs in monitoring government activities that have an impact on their constituencies.
Total number of questions asked by the Lok Sabha MPs during the Question Hour which will have an impact on their constituencies.	

3.2.6.4 Budgeting

Metric	Remarks
Ex ante consideration and approval of the budget of the government: – Quantity of time devoted to discussion of budget in the Parliament	The proposal of the government is first examined by the standing committee and then it is discussed on the floor of the house. Several other parameters may be used to measure the effectiveness of this scrutiny at these levels.
1. Number of meetings of parliamentary standing committee to discuss on budget 2. Ratio of amount of money spent to that of number of pages of the report of the committee. It is used to ascertain the time spent on discussing the big-ticket spending 3. Ration to the number of pages in the report to that of number of line items in the budget	
Number of recommendation of standing committee accepted and incorporated into the budget	
Monitoring government expenditure after the approval to ensure that it has conformed to the terms approved by the Parliament: – Number of issues raised in the debates based on the reports of Comptroller and Auditor General of India – Time spent on questioning the financial improprieties based on reports of the media – Number of issues raised by the Public Accounts Committee. Number of their recommendations accepted by the government – The Public Accounts Committee holds the executive accountable to the findings made by the CAG. It also enquires whether the government funds were used for the purpose for which it was allocated.	– Time spent in discussion of CAG reports and debates over financial improprieties indicates the parliamentary vigilance over expenditure of public finances.