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# COMMON CAUSE

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## TEMPLE *or* TALKING SHOP

What  
Ails Indian  
Parliament?

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## **PARLIAMENTARY REFORMS: WHAT'S ESSENTIAL AND WHERE TO BEGIN?**

What ails Indian Parliament? Rather than evoking simple answers, the question raises more questions. Can Parliament work for people when politics is fuelled by money and muscle power? Is Parliament the sole custodian of democracy? If the Parliament is sick, are the other institutions relatively healthy? What about the judiciary, the executive, the party system, the President's office or the media?

For me, the question conjures up conflicting emotions. My India shines when I compare us with a dictatorship or a dysfunctional state, of which there are many in the neighbourhood. But I feel embarrassed when I reflect on where we could have easily been. I feel great when the world admires India's colossal election exercise which has improved consistently over time. But the satisfaction vanishes when I see the kind of leaders this splendid system churns out. I cheer when the courts expose corruption and cronyism but feel ashamed when the judiciary is charged with corruption and nepotism. But the most disturbing thing for me is to witness the decline of the grand institutions such as our Parliament.

The founding fathers of our Constitution saw Parliament as a moral authority as much as a legislature. For Nehru, Parliament was like a badge of India's commitment to democracy. Despite the flaws, the Indian Parliament still represents the legitimacy of the political system, never mind how chaotic things might appear to be. It has evolved a political culture of its own: of non-violent political contestation. If the chaos and pandemonium in the House can absorb dissent and avert conflicts on the street, the disruptions we detest so much may not be such a bad thing after all!

The Parliament is also an apt mirror of the Indian society. So, in spite of the decline in standards, it still mirrors the diversity of India, its chaos and contradictions, its plurality of public interests. It works, deep-down, as an emblem of India's unity in diversity, as a metaphorical link between the state and its diverse people. Indian Parliament can work as a bridge between our democracy and the constitutional values of Justice, Liberty, Equality and Fraternity. And that is why it is imperative for our generation to preserve its legacy and to halt its decline. Let me stick my neck out and diagnose some ills as they come across to me.

The biggest concern about Indian Parliament is that from the first decade of its existence, the quality of everything has fallen, right from the decorum of the House to the standards of deliberations to the output of legislative business. This means that the quality of laws being passed could be substantially better with more meaningful debates and less brinkmanship. The least said is best about the quality of members elected. But the flip side is that the character of Parliament today is more representative of wider India than it was in the forties and fifties. The social character then was more elite with a fair share of MPs belonging to better educated, upper caste, and upper class, backgrounds.

Today this composition has undergone a sea change, and thankfully so, with more and more members coming from plebeian, dalit and OBC, backgrounds. This has coincided with a democratic upsurge among the marginalised communities which are a lot more aware of their interests than they have been in the past. Full marks to all political parties for giving tickets to more and more subalterns but no marks for giving preference to thugs, rabble rousers and deep pockets on the basis of winnability. This is a classic example of one step forward and two steps backwards!

In many ways the idea of representation itself has changed along with changing demographics. Originally, each constituency was supposed to represent roughly the same number of electorate.

However, today the largest constituency, Malkajgiri in Telangana, represents almost 30 lakh voters while the smallest, Lakshadweep - a Union Territory, represents just under 50,000 electors, according to the Election Commission of India data released in 2014. The EC data says that the total electorate size in the largest five constituencies is over 15 times of the smallest five. If we were to level out population-wise delimitation (say by dividing Malkajgiri into two), we would end up punishing those states which have succeeded in implementing family planning at the cost of those who have failed miserably. In other words, UP and Bihar may get the gift of more constituencies, which may not be acceptable to, say, Kerala or Karnataka.

Another big concern is the stagnation of the parliamentary committee system, a time-tested tool of healthier deliberations. It is well-known that in Indian politics the game of numbers takes precedence over principles or ideologies. A robust parliamentary committee system circumvents the number game for wider consultations. It ensures that every legislation passes through layers of discussions between diverse stakeholders, irrespective of the majority of a single party in the House. However, the new norm is that rather than addressing flaws, the ruling parties are in a hurry to get a legislation passed by hook or by crook, and with minimum involvement of ad hoc, standing or other committees provided in the system.

One of the reasons why even good MPs cannot make a big difference is that the political parties obsessively control their flock. Individual members can hardly take a nuanced position on a legislation, even on a moral ground, because disobeying the party line can cost them their membership of Parliament. The anti-defection law ensures that the parties are able to keep a stranglehold on individual MPs as discussed at length in this issue of Common Cause journal.

So it is the parties and not the representatives who call the shots in Parliament and state assemblies. But let us face it, India's political parties follow a highly regressive and undemocratic systems of internal governance. Candidates are picked not from the cadre of active members but from a pool of loyalists, family members, aids and acolytes. The membership is offered on anything but ideological ground, sometimes by giving a missed call to the party president! (Of course the 'members' are forgotten as fast as they are aggregated by a computer generated algorithm). Then there are established rules of the game. For instance, arch enemies from hostile parties are most welcome to join -- and to get rewarded for backstabbing rivals. High stake splits and mergers can attract even better rewards. The rule of thumb is that one-upmanship would always prevail over party's principles.

So what happens if the business as usual continues? Where do we begin the parliamentary reforms? We believe that in India a process of simultaneous deepening and shallowing of democracy is going on. We can lament the failures but, arguably, things are also improving in many crucial areas. But it is equally true that the system's entrenched interests are hard at work to nullify these gains. We also know that one constructive change leads to more success, provided we treat reforms as a continuum rather than as an event. And hence, the issue of parliamentary reforms is linked to judicial, administrative, economic and electoral reforms, among others. But a good place to start would be to change the way our political parties function.

This issue of Common Cause is dedicated to Indian Parliament. Curated by Anumeha, the articles by known experts seek to provide a perspective on what is not working or what needs fixing. Please send in your comments or suggestions to [feedback@commoncause.in](mailto:feedback@commoncause.in).

**-Vipul Mudgal**

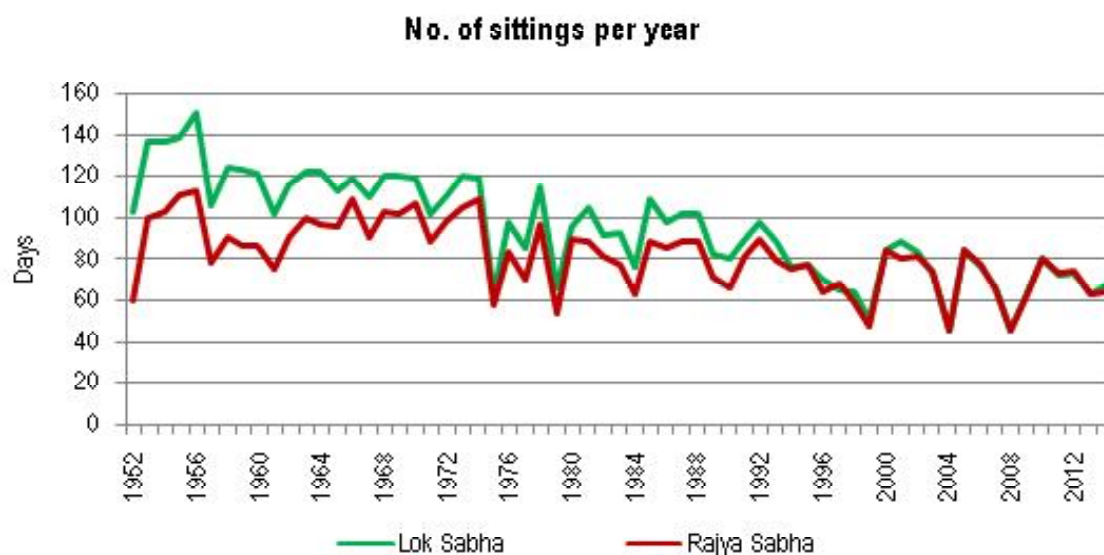
## REVITALISING THE INDIAN LEGISLATURE : CAN WE REVERSE THE DECLINE?

*\*M. R. Madhavan*

Parliament is one of the key institutions of governance in India. It makes laws, oversees the functioning of the government, sanctions and monitors government spending, and represents the interests, hopes and aspirations of all citizens.

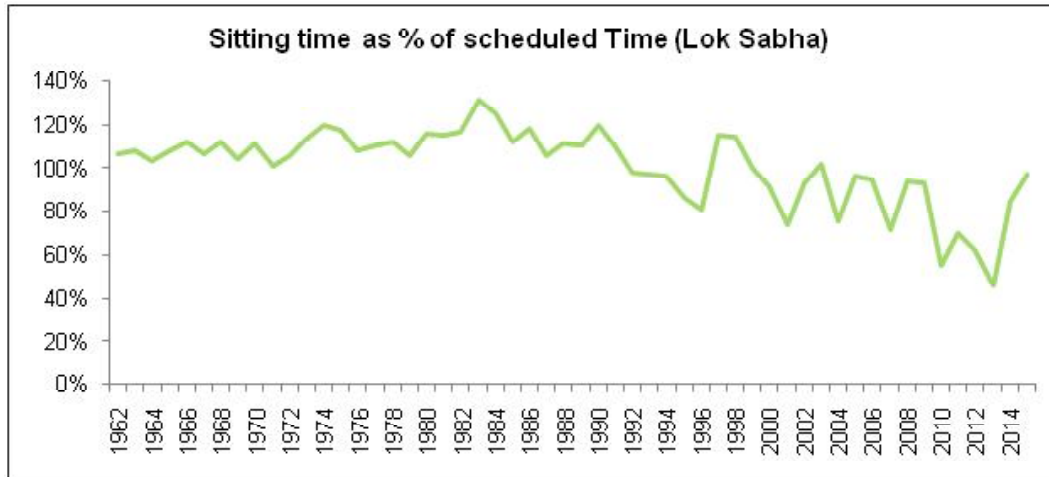
There are clear indicators of decline in the performance of the Indian Parliament over the last few decades. Two indicators tell the story clearly (see Charts 1 and 2). First, the number of days that Parliament sits every year has declined sharply<sup>1</sup>. In the first three Parliaments (1952 to 1967), Lok Sabha sat for an average of 122 days per year. This figure fell to an average of 72 days since 2000. Second, even on days that Parliament meets, a significant amount of time is lost as MPs disrupt the proceedings to draw attention to various issues. In the last Lok Sabha (2009-2014), about a third of the scheduled time was lost to disruptions. The net effect of these two trends is that the total time that Parliament meets has dropped sharply.

Chart 1. The number of sittings per year has declined steadily



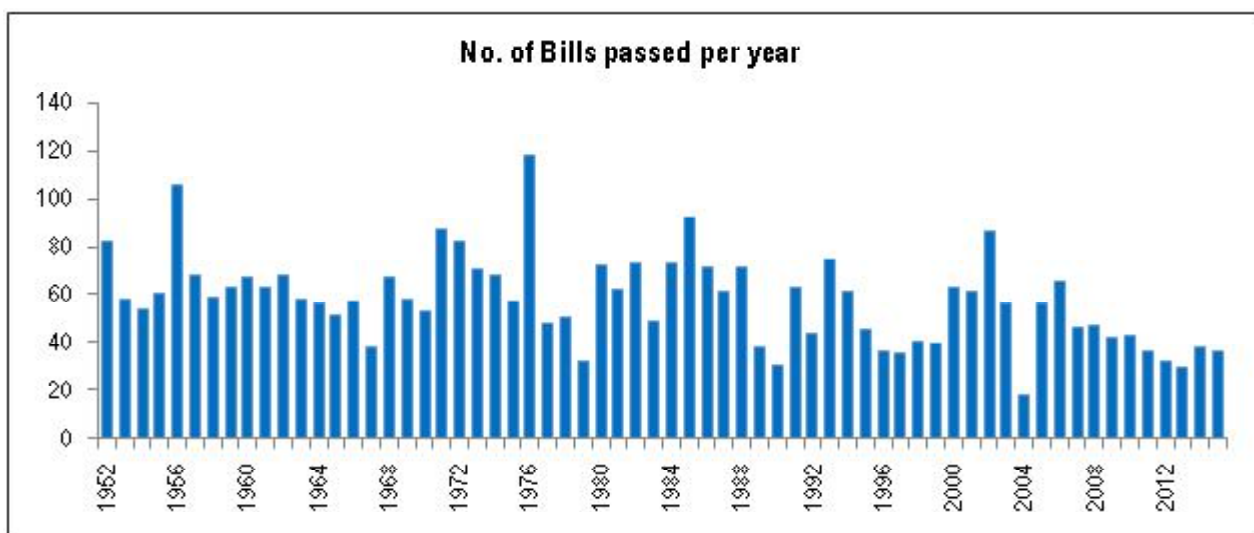
1. All data related to the Indian Parliament, unless otherwise indicated, have been collated by PRS Legislative Research from Lok Sabha and Rajya Sabha websites, and the Statistical Handbook published by the Ministry of parliamentary Affairs.

**Chart 2. A significant amount of scheduled time is lost to disruptions**

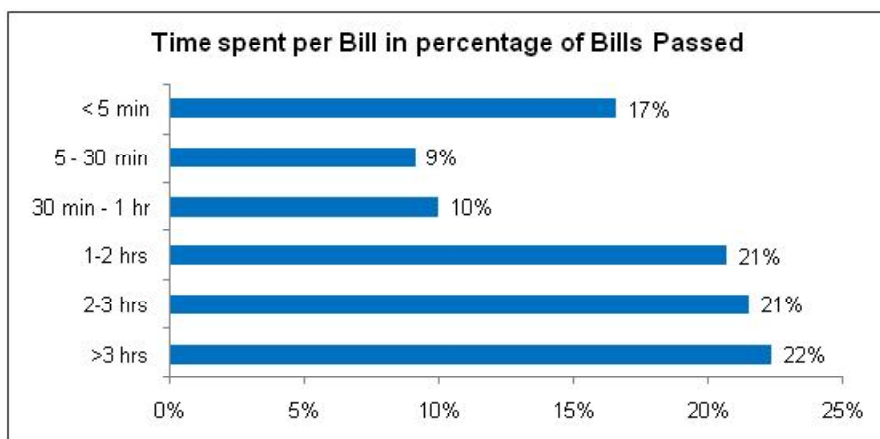


The reduction in time available for business in the House has, arguably, led to a decline in the quality of parliamentary work. The number of Bills passed by Parliament has declined over the years (Chart 3). This may not necessarily be a bad outcome - one may argue that the newly independent country was creating an appropriate legal code in the first couple of decades, and that we do not need many new laws. However, one cannot dispute the need for Parliament to carefully scrutinize all Bills before they are passed. During the 15th Lok Sabha, about a sixth of all Bills were passed within five minutes, and just a fifth saw discussion over three hours (Chart 4).

**Chart 3. There is a decline in the number of Bills passed per year**

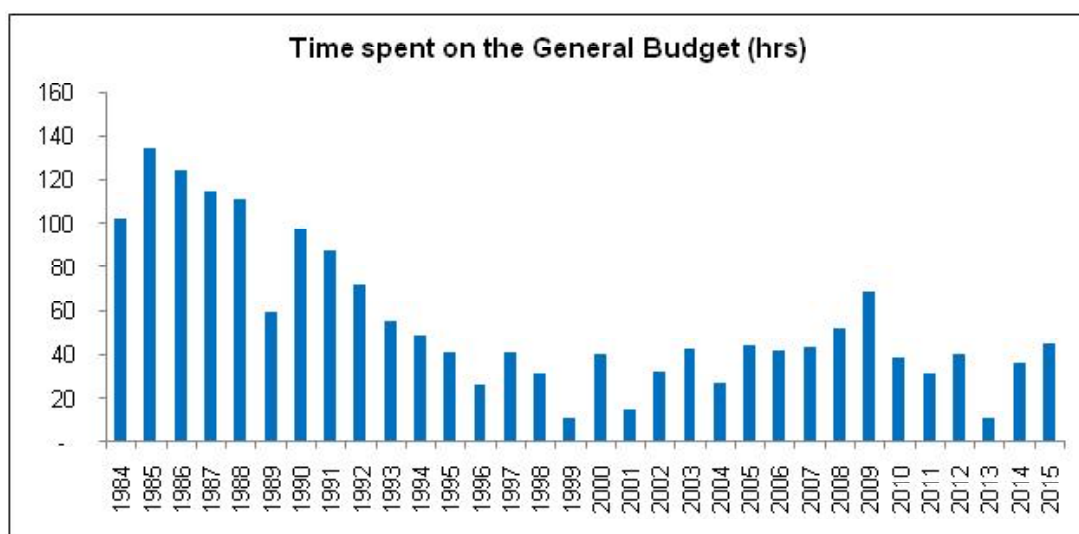


**Chart 4. About a fourth of all Bills were passed with little debate**



Two other indicators also show the deterioration in the quality of work. Each House of Parliament has a Question Hour each day, in which ministers respond to questions asked by MPs. Though the questions are known in advance, MPs can ask supplementary questions. This mechanism is designed to hold ministers to account for their policies and actions. In the five-year period of the last Lok Sabha, 61% of the Question Hour was lost to disruptions. Consequently, only 15% of the listed questions were orally answered. The other indicator is the time that Parliament spends in discussing the government's budget proposals. The Constitution requires all taxes and all expenditure to be approved by Parliament (Lok Sabha, since these will be money Bills). Chart 5 shows that there has been a steep drop in the time that Lok Sabha spent discussing the budget. This has resulted in a large part of the union budget being passed without the demands being discussed in the House (Chart 6).

**Chart 5. Lok Sabha has spent less time on discussing the budget in recent years**



**Chart 6. About 10-20% of the budget is discussed by Lok Sabha (all amounts in Rs Crore)**

Year	Total	Discussed	Guillotined	% Guillotined	Ministries Discussed
2004	339,300	-	339,300	100%	0
2005	384,844	57,217	327,626	85%	4
2006	448,109	74,053	374,057	83%	3
2007	547,020	29,017	518,003	95%	3
2008	597,662	223,734	373,928	63%	4
2009	887,194	187,495	699,699	79%	6
2010	982,483	157,911	824,572	84%	3
2011	1,119,732	209,113	910,620	81%	4
2012	1,292,455	107,872	1,184,583	92%	4
2013	1,400,396	-	1,400,396	100%	0
2014	1,452,312	81,405	1,370,908	94%	4

Source: Compiled from Union Budget documents and "Bulletin-I" of Lok Sabha.

These indicators show that there is ample scope to improve the overall functioning of Parliament. In the remaining part of this article, we discuss various steps that can be taken towards this goal.

### **The Anti-Defection Law and Recording of Votes**

In 1985, Articles 102 and 191 (disqualification of MPs and MLAs), of the Constitution were amended and the Tenth Schedule was added. This amendment (also known as the anti-defection law) detailed the process and the conditions under which an MP or an MLA would be disqualified from their position if they switched parties. Importantly, they would also be disqualified or if they voted (or were absent during a vote) in the legislature in a manner contrary to the direction given by the party. In other words, every MP has to vote in accordance with the party whip, failing which they would lose their seat in Parliament.

The anti-defection law was brought in to counter the "evil of political defections". It builds in a false assumption that all members of a political party agree on all policy issues. Typically, political parties are coalitions of people with broadly similar points of view, but there is significant difference in their positions on many issues. For example, it is not uncommon to see legislators in the US or the UK vote across party lines on many contentious issues. The anti-defection law removes the possibility of people within a party having a disagreement on any issue.

The anti-defection law has adversely affected the functioning of Parliament due to the following reasons. The role of an MP is to critically examine legislative proposals and policy decisions, and take a decision whether they are in overall national interest. [Of course, such decision will be



determined by the MP's ideology, impact on their constituents, and many other factors but the important point is that they make the decisions after weighing the consequences of the policy or legislation.] The anti-defection law takes away this decision making power from the MP and places it with the party leadership. This means that the MP will have to vote according to the party's diktat even when such direction goes against their beliefs, or against the interests of their constituents. If an MP has no decision making power (as this has been surrendered to the party bosses), what incentive would they have to research and understand the nuances of a Bill and weigh the consequences of its proposals? And lack of such an incentive would weaken the quality of debate on any issue.

This also removes a key check on the government. During the last 30-years of coalition government, the leader of the ruling party had to convince his coalition partners (leaders of other parties) to issue directions to their members to support a Bill or a motion. This process built in a minor check as at least a few party leaders had to be convinced before getting a majority support. In a situation where one party has a simple majority, the party leader can issue a whip and get majority support on any issue. The Parliament becomes simply a debating chamber with little real power. Of course, MPs can risk their membership and oppose the directive but they are unlikely to do this except in rare circumstances when they feel very strongly about an issue.

This law also weakens the accountability of MPs to the voters from their constituencies. MPs are expected to explain their voting decisions to their electorate, and this accountability mechanism works through the election process. That is, the MPs who cannot give account of their actions may find it difficult to get re-elected. One sees this mechanism working in the US elections, as former Senators are quizzed on their voting patterns. However, the anti-defection law breaks this process as MPs can just say that they voted in accordance with the directions given by the party leadership.

The irony is that the anti-defection law seems to fail when the stability of the government is in doubt. The last occasion of a no-confidence motion was in 2008 (following the nuclear deal with the US), when 21 MPs defied the party whip<sup>2</sup>. It has also not worked when the party leadership decides to move out of a coalition, as the DMK and Trinamool Congress did in the last couple of years of the 15th Lok Sabha (when UPA-2 was in power). The anti-defection law should be repealed. After all, it is not present in any mature democracy in a form that an MP is disqualified for defying the party whip. Parties can take action by suspending or expelling the MP from the party membership but should not have the power to cancel the membership to Parliament. After all, that membership was obtained through an election process. A slightly weaker proposal would be to restrict this law to votes that determine the stability of the government, i.e., no-confidence motions and Money Bills in Lok Sabha. A private member's Bill introduced in 2010 by Mr Manish Tewari in Lok Sabha had this formulation, but the Bill lapsed when the MP was appointed as a minister.<sup>3</sup>

A related issue is the near-absence of recorded votes. Most Bills and motions are passed by a voice vote. Only if the voice vote is challenged, is a division (recorded vote) called. Therefore, in most cases, we do not have any record of how an MP voted, or even whether he or she was

2. 21 MPs cross-voted during Parliament trust motion," The Economic Times, July 23, 2008.

3. Bill No. 16 of 2010, introduced by Manish Tewari, MP in Lok Sabha, available at <http://164.100.24.219/BillsTexts/LSBillTexts/asintroduced/411ls.pdf>, accessed on September 15, 2016.

present in the House at the time of the vote. The only exception is in cases of Constitutional Amendments which need the support of two-thirds of the members present and half the total membership.

During the five years of the 15th Lok Sabha (2009-2014), votes were recorded only on 19 Bills of the 179 that were passed. The previous Lok Sabha was even worse, with divisions in eight out of 248 Bills.

To press the point, recorded voting gives information to citizens on the behaviour of their representatives. For example, when the Criminal Laws (Amendment) Bill was passed in 2013, amending rape laws (following the Nirbhaya incident and the Justice Verma Committee report), some of the clauses were put to division. The Lok Sabha proceedings show that 203 MPs were present in the House at that time. Hence, citizens can ask the other MPs the reason for their absence during such important debates.

One way forward is to require that the final vote on every Bill be recorded. This is easy to implement given that there is an electronic voting system in both Houses. Indeed, the British Parliament routinely records all votes despite the cumbersome process of the members having to walk out to the lobbies and being manually counted.

Any small group of MPs can also get this implemented. The Rules of Procedure of Lok Sabha and Rajya Sabha require a division if any MP challenges the Speaker's decision on the voice vote. If a group of MPs decide to use this challenge for the final vote of every Bill, the objective of having a record can be achieved.

### **Convening of Parliament and Determining the Agenda.**

The Constitution states that the Parliament sessions are held when called for by the President, and also that the President acts on the aid and advice of the council of ministers. Therefore, the Cabinet headed by the Prime Minister decides when the Parliament will be convened. The dates of the session are also decided by this process, and there have been occasions when the session has been closed ahead of the originally announced date at the request of the government<sup>4</sup>. This leads to an interesting conundrum. A key role of the Parliament is to hold the government to account, and the government can decide when Parliament will meet. Unless the government needs a Bill to be passed, it can defer a parliamentary session, thus weakening the accountability role of the Parliament.

An extreme example of the use of this power was seen in 2008. The Rules of Lok Sabha state that a motion (or a similar one) cannot be taken up more than once during a session. Parliament was called for a two-day session in July with the only business being a no-confidence vote, after some parties supporting the minority coalition government indicated withdrawal of their support. The government won the trust vote, but the sessions held during October, and November-December (usually, the Winter Session) were all termed a continuation of the two-day session and called the Monsoon Session. This prevented a second no-confidence motion that year.

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4. For example, Lok Sabha was adjourned on May 11, 2016, two days ahead of the announced schedule.

A related issue is the manner in which the daily business list of the House is determined. Each House has an all-party Business Advisory Committee which sets the daily agenda. This committee makes its decisions by consensus. The agenda not only includes which issues are to be taken up but also the types of debates (such as whether there would be a vote or not at the end of the debate). There may be occasions when the government may wish to avoid a voting motion, such as when a coalition partner has an opposing interest and will have to show its hand. There may be other occasions when the government does not want a debate to take place on an issue. Given that the agenda is determined by consensus, the government can prevent a debate on an embarrassing issue. Even if the Rules were to be changed to require such decision by a vote, the government would have the majority support in Lok Sabha and it can prevail over other parties. This process also makes the oversight role of the Parliament weaker.

There are at least two ways to address these issues. One, the calendar for the full year can be announced in advance, with any changes being made only in extreme circumstances. This will reduce the discretion of the government in tactically managing the schedule. It will have the added benefit of enabling MPs to better plan their schedule given their multiple roles in the Parliament, in the constituencies, and often being members of various delegations and statutory bodies.

A second possibility is to require that a Parliament session be convened if a significant minority of members give a written petition to the President. [This will require a Constitutional Amendment, but a convention can be built if the government agrees to the principle]. This number has to be set below the 50% mark as the government always has majority support in Lok Sabha. For example, a no-confidence motion has to be taken up if 50 Members (about 10% of the strength) demand it, and a motion to impeach a judge is initiated after a written notice by 100 Lok Sabha or 50 Rajya Sabha members (about 20% of the strength). An interesting aside is that, the joint proposal of the Indian National Congress and the Muslim League in 1916 for the Imperial Legislative Council within the British Empire included a provision for calling a special session if one-eighth of the members asked for it<sup>5</sup>.

Indeed, a similar rule can be made for the daily business agenda. Jay Panda, who is an MP, has suggested that an issue should be taken up if one third of the members desire it<sup>6</sup>. The British Parliament follows a different process. It allows the agenda to be set by the Leader of the Opposition for 20 days every year (they meet for about 150 days, about double that of the Indian Parliament)<sup>7</sup>.

In sum, a set of reforms on the manner in which Parliament session dates are determined and the daily agenda decided could change the power balance between the legislature and the executive. This will enable the legislature to perform better in its constitutional role of being a watchdog over the government.

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5. The Congress-League Scheme, December 1916, Chapter III, Article 7, reproduced in B. Shiva Rao, *The Framing of India's Constitution* (New Delhi: Universal Law Publishing Company, 2004), vol. 1.

6. B. Panda, "Restoring the House," *Indian Express*, December 6, 2011.

7. Order No. 14(2), *Standing Orders of the House of Commons*, September 2012, <http://www.publications.Parliament.uk/pa/cm201213/cmstords/614/614.pdf>.

## **The Question Hour**

The first hour in Lok Sabha (and the second in Rajya Sabha) is called the Question Hour, in which MPs ask questions to ministers. Each day of the week is earmarked for specific ministries and departments; questions have to be submitted ten days in advance, which the minister answers; supplementary questions can then be asked. Through this process, ministers are held accountable for the policies and performance of their ministries.

One important issue is that the time allocated for Question Hour is often lost to disruptions. Whereas, the Parliament may sit late to complete other business, there is no such facility for the Question Hour. For example, during the last Lok Sabha, 61% of the time of Question Hour was not utilized as members disrupted proceedings and the House was adjourned. Having Parliament meet for more days every year and reducing disruptions would be a way forward to enable more questions to be answered.

A second issue relates to topics that cut across ministries. As ministers respond to topics under their respective ministries, there may be issues that slip through the gaps. The British Parliament has instituted a Prime Minister's Question Time during which the Prime Minister responds to all questions. Perhaps, a similar procedure could improve the oversight of Parliament over the government.

## **Legislation**

Parliament makes all laws on topics that fall under the Union List of the Seventh Schedule of the Constitution, and may also make laws on the topics falling in the Concurrent List. The process of legislation is as follows. If a Bill is being introduced by the government, the relevant minister introduces the Bill. Other MPs who are not ministers may also introduce Bills, which are called private member's Bills. If the motion to introduce the Bill is passed (the first reading), the Bill may be referred to a Committee for examination. Following the Committee's report (if the Bill was referred to one), it is taken up for detailed discussion and clause-by-clause voting. At this stage, amendments to the Bill may be considered (second reading). Then the Bill as amended is taken up for the final vote (third reading). After the Bill is passed, it is sent to the other House, which will take up the second and third readings. Then the Bill is sent to the President for his assent, after it becomes an Act. Several Acts allow the government or regulatory bodies to notify rules and regulations (delegated or subordinate legislation).

There can be several reforms in the way this process works. Firstly, private member's Bills are rarely enacted into law. There have been only 14 such instances, and the last one was in 1970. Therefore, private member's Bills have merely become signaling devices for MPs to indicate their support for an issue. In 2015, a private member's Bill (on rights of transgenders) introduced by Tiruchi Siva was passed in Rajya Sabha, and this Bill was debated over several days in Lok Sabha.

However, the debate on this Bill was deferred after the government introduced a Bill on the same topic in the Monsoon Session of 2016. In contrast, the British Parliament has passed 112 private member's Bills since 2001-02, an average of eight per year<sup>8</sup>. The Indian Parliament could also start giving more importance to Bills sponsored by private members, a step towards making them true "legislators".

The second reform could be in the form of a greater scrutiny of the Bill, right from the pre-legislative stage to the post-legislative stage. In the pre-legislative stage, parliamentary Committees could examine draft Bills even before they are formally introduced through the first reading. Parliamentary committees may scrutinize the draft Bill, take evidence from experts and stakeholders, and recommend changes before the Bill is introduced. This process is followed for some (not all) Bills by the British Parliament. After the Bill is introduced, the decision to refer it to a committee is taken by the Speaker in consultation with the concerned minister. During the 15th Lok Sabha, 71% of the Bills were referred to committees; this has dropped to 31% in the first two years of the current Parliament. It would be useful to make the committee examination a mandatory part of the process of passing a Bill, as in the British Parliament. After the Bill is passed, the subordinate legislation is examined by a committee established for that purpose. This committee does not examine all subordinate legislation but only the ones that its officers judge to meet some conditions such as exceeding the permitted level of delegation, being contrary to the parent Act or imposition of a tax. In the two years of the 16th Lok Sabha, this committee has submitted nine reports, and two action taken reports. Currently, the committee has a total staff of 11 persons, all of whom are generalists<sup>9</sup>. Given the important task of filtering all subordinate legislation (a few thousand every year) that these officers perform, increasing the staff strength and adding persons with specialist and legislative skills will enhance its effectiveness.

## Committees

A significant portion of the Parliament's work is conducted through its committees. Parliament has constituted 24 departmental related standing committees which have members from both Houses. These committees examine Bills, scrutinize the working of various departments or specific subjects under them, and evaluate the demand for grants related to the ministries and departments falling under their purview. During the 15th Lok Sabha, 24 committees submitted a total of 1024 reports, which consisted of 145 on Bills, 159 on subjects, 285 on demand for grants, and 423 action taken reports. There are three financial committees: the Public Accounts Committee and the Committee on Public Undertakings, which examine the reports of the Comptroller and Auditor General on government departments and public undertakings respectively; and the Estimates Committee which sees whether government spending is being done with greater economy and effectiveness.

None of these committees have subject specialists on their staff. Recruiting specialized staff and regularly consulting external experts will enhance the ability of the committee to examine various

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8. Successful Private Members' Bills Since 1983, UK Parliament, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN04568>, accessed on September 15, 2016.

9. Committee on Subordinate Legislation, Lok Sabha, available at [http://164.100.47.192/Loksabha/Committee/CommitteeInformation.aspx?comm\\_code=30&tab=2](http://164.100.47.192/Loksabha/Committee/CommitteeInformation.aspx?comm_code=30&tab=2), accessed on September 15, 2016.

issues. Second, ministers do not appear before the committee. Only civil servants do. Therefore, the committee cannot impose accountability on the political executive. Third, the committee hearings are held in closed rooms unlike the proceedings of Parliament which are televised live (and reported by the media, with full transcripts being published). One could argue that closed room discussions help MPs discuss issues freely and makes it easier to build consensus. However, MPs are public representatives and their actions in this role should be easily visible to the electorate. At the very least, the proceedings should be published.

## Conclusion

The decline in the functioning of the Indian Parliament over the last few decades needs to be reversed. This article outlines several steps that can be taken towards achieving this objective. These include some which are relatively difficult to implement as they require the Constitution to be amended (such as the repeal of the anti-defection law, and requiring Parliament to be convened on the demand of a significant majority), some that require the Rules of Procedure to be amended (such as reporting of committee proceedings, referring all Bills to committees), and some that can be done if a few members decide to champion the cause (such as asking for recorded vote for every Bill or voting motion).

There is another aspect that needs attention. There is little public understanding of the role of MPs, and how it differs from that of a local representative such as a municipal councillor or a panchayat member. Citizens often approach MPs with local level problems such as potholes and streetlights, which fall under the purview of the local representative. Not only do the MPs have no power to resolve these issues, they are distracted from their main role of national level law making and overseeing the central government. Creating public awareness about the respective roles of various representatives will help in better targeting various issues of governance.

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**\* M. R. Madhavan heads PRS Legislative Research, New Delhi, and is grateful for detailed discussions on this topic with various colleagues, including Chakshu Roy and Mandira Kala. Kusum Malik helped with collating the data.**

*"I am not afraid of the opposition in this country and I do not mind if opposition groups grow up on the basis of some theory, practice or constructive theme. I do not want India to be a country in which millions of people say "yes" to one man, I want a strong opposition"*

**- Jawaharlal Nehru**

## WHAT MAKES INDIAN PARLIAMENT IRRELEVANT?

*\*Jagdeep S. Chhokar*

*"Let me assure you that for 15-20 years now, we have been attending the elongated funeral rites of the parliamentary system." - Arun Shourie, in The Indian Express, September 18, 2012<sup>1</sup>.*

Before trying to discuss the factors that make Indian Parliament irrelevant, it may be worth spending some effort on making sure that it is indeed irrelevant because trying to find reasons for a something that does not exist is obviously a fruitless exercise.

The most eloquent testimony to the irrelevance of Parliament came from Arun Shourie<sup>2</sup>, as indicated in the quote above. Whether one agrees with Shourie or not, one cannot ignore his views. Wikipedia describes him as a "journalist, author and politician" but he is also a trained economist (with a Ph.D. from Syracuse University in the US). He is also a Magsaysay Award winner and was awarded the Padma Bhushan, the third highest civilian honour by the Government of India way back in 1990. He has been writing on public issues and matter of public interest since around 1975. For him to make such a statement about the parliamentary system is undoubtedly significant.

The context in which Shourie was speaking is important. He said this during an interview in September 2012 when two sessions of Parliament had been almost completely lost due to pandemonium in the Lok Sabha, one on what came to be called the 2G scam and the other on the coal scam. Concern over the Parliament's lack of functioning was being expressed widely. This is exactly the time when a piece appeared in a newspaper titled *Denigration of Parliament*<sup>3</sup>.

The performance of the Parliament has been deteriorating over the years. In 1951, it sat for an average of 125 days a year. After 50 years, the average from the year 2000, has come down to around 70. The actual hours of sitting now hover between 70-75 per cent of the hours available, with occasional peaks amongst many troughs. While the time for discussions for Bills has obviously gone down, so has the number of Bills passed. That average number of Bills passed between 1952 and 1989 was around 65, which has fallen to around forty or below in recent years.

The performance in the year 2012 was particularly telling. In the Winter Session of 2012, the productive time in the Lok Sabha was 53% of scheduled time: i.e. 63 of 120 hours, and in the Rajya Sabha it was 58% of scheduled time; 58 of 100 hours. The reason for this loss of productive time was frequent disruption of both Houses. The Question Hour was no different. The Lok Sabha was able to hold the Question Hour on only 11 of 20 days, and the Rajya Sabha on only 8 of 20 days. The chairman of Rajya Sabha expressed concern over the continued disruption of Question Hour.

The Monsoon Session did no better, actually worse. The Lok Sabha was scheduled to meet for 120 hours and Rajya Sabha for 100 hours. However, the actual productive time was 24 hours in Lok

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1. <http://indianexpress.com/article/news-archive/web/for-1520-years-now-we-have-been-attending-the-elongated-funeral-rites-of-the-parliamentary-system/>, accessed on September 05, 2016.

2. Coincidentally, it was Arun Shourie's father, H.D. Shourie, who set up Common Cause in India in 1980.

3. <http://www.tribuneindia.com/2012/20120906/edit.htm#4>, accessed on September 06, 2016.

Sabha and 27 hours in Rajya Sabha. This made the Monsoon Session of 2012 the worst since the Winter Session of 2010 when *not a single day's work could be achieved*.

The 15th Lok Sabha (since May 2009 to Monsoon Session 2012) was *the most disrupted term of the House in the history of Parliament*. Productive time in this term was 67% of the total scheduled time<sup>4</sup>.

The situation in terms of the time spent on discussing Bills, which is supposed to be the main task of such Houses because of which they are called Legislatures, was even worse. The 15th Lok Sabha spent less than five minutes each on discussing 20% of all Bills passed by it. A total of 20 Bills were passed in this manner. The Rajya Sabha did not fare much better. It passed six Bills after less than five minutes of debate each. Another nine Bills in the Sabha were passed in under 30 minutes of discussion each. The Rajya Sabha passed five Bills with under 30 minutes of debate.

This is the background that raises the question: What makes Indian Parliament irrelevant?

### **What Makes Indian Parliament Irrelevant?**

The short, succinct, and real answer to this question is: Political parties. But such a short answer is hardly satisfactory and therefore needs elaboration. It may be useful to reformulate the question as: HOW do political parties make Indian Parliament irrelevant? To respond to this question satisfactorily, it is necessary to go in to some detail of how the Parliament is constituted.

The simple answer of course that the Parliament is constituted as a result of elections. Citizens at large have come to believe that it is they who “elect” Members of Parliament, which technically they do. But what happens in reality? Do voters really have a “free” choice? Consider the following.

### **What Choice Does a Voter Have?**

Let us assume a constituency has 10 candidates for an election. Theoretically, a voter is free to vote for any of the 10. Assuming that the voter attaches some value to her/his vote, one would like to vote for a candidate who has a reasonable and fair chance of getting elected. This of course does not include some highly committed voters who will vote for a candidate even when they are absolutely sure that the candidate has no chance of being elected at all.

Experience and data show that the number of candidates with a reasonable and fair chance of getting elected in a constituency generally varies between two to four. And these two to four candidates are nominees of the major political parties active in that constituency or the state. Theoretically, once again, it is possible for an independent candidate to get elected but data suggest that the number of independent candidates contesting elections and getting elected has been going down historically.

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4. Figures in these paragraphs are based on data obtained from PRS Legislative Research, <http://www.prsindia.org/>  
5. [www.adrindia.org](http://www.adrindia.org)



## Red Alert Constituencies

There is yet another dimension to the choice that a voter has or does not have. National Election Watch (NEW) and the Association for Democratic Reforms<sup>5</sup> (ADR) in their analyses of affidavits submitted by candidates as a necessary part of their nomination papers under a 2002 Supreme Court judgment, also analyze the number of candidates with criminal cases pending against them in each constituency. A constituency which has three or more candidates with criminal cases pending against them is designated as a “red alert” constituency. This data shows that there were 183 red alert constituencies out of the 543, which works out to 34 per cent in the 2004 Lok Sabha elections. This figure rose to 242 in the 2016 Lok Sabha elections which is 45 per cent of the total seats.

So, in effect, the real choice the voters have is to vote for one of these two to four candidates “selected” by political parties – even if all of them have criminal cases pending against them! What it means is that *a voter’s choice is pre-constrained by choices made by a set of political parties*. And the Parliament consists of such “elected” people.

## How do Parties “Select” Candidates?

This is one of the biggest mysteries of the electoral and political processes of the country<sup>6</sup>. Many analyses have been attempted but there have been no consistent and reliable findings. The only conjecture on which there seems to be agreement is that candidates are selected on the basis of their “winnability”. Despite many attempts, it has not been possible to define what exactly winnability is, or even describe it with any degree of specificity. Analyses have found it to have many components, which include but are not limited to the following: money, muscle (including a criminal past), caste, religion, sect, language, community. Curiously, considerations such as the person having worked among the people of the constituency or doing public service never seems to figure as a component of winnability.

Once the winnable candidates are selected through the mysterious process, they are given “tickets” by the parties which means an authorised representative of the party signs the nomination paper of the candidate with the official seal of the party confirming that the particular candidate is the authorised nominee of that particular party. The final decision of whom to give the “tickets” to, while being shrouded in mystery, is often attributed to what has come to be popularly referred to as the “High Command”. The High Command has different operationalization in different parties. In most it is a single person who is also sometimes referred to as the Supremo. In some, it is a small group of two or three individuals. Of course, all parties claim to have committees who are supposed to make this decision, but everyone knows how it is done. One sure way of identifying who are real decision makers are to observe the size of crowds of ticket-seekers and their supporters outside the houses of major political figures. Usually the size of the crowd is directly proportional to the influence the resident of the house can bring to bear on the final selection of candidates.

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<sup>6</sup>One other being where from and how do political parties get their funds from but this is not the place to discuss that.

Such a candidate gets the privilege of using the symbol that has been allotted to the party by the Election Commission of India. Most parties also give varying amounts of money to the candidates to finance their election campaigns. Rumour has it that some parties actually *take* money to give “tickets” instead of giving money to contest elections! It is, of course, expected that some important leaders of the party will campaign for the candidate.

### **What do the so-called “Elected” Representatives do After Getting Elected?**

This is a critical question. Simple logic would have us believe that since they are the “representatives” of the electorate of the area who have voted them to power, these “representatives” would have allegiance of the people of the area. But our “elected representatives” have longer memories and follow a deeper logic. Sure, the voters of the constituency voted for them to elect them, but they also remember that voters could vote for them only *after* the party gave them the “ticket”. So, their primary allegiance is not to the voters but to those who gave them the tickets – those who constitute the High Command or those who are the Supremoes.

It is not only deeper logic and long memories that make our “elected representatives” have their allegiance to the leaders of their political parties in preference to those who live in the constituencies that they have been elected from, our Constitution *requires* them to do so. More than 30 years ago, our Parliament passed the Constitution (Fifty-second Amendment) Act, 1985, which came into effect from March 01, 1985. It amended Articles 102(2) and 191(2) of the Constitution and added Schedule Ten to the Constitution specifying that if a Member of Parliament votes against the “direction issued by the political party to which he belongs” he “shall be disqualified for being a member of the House.” In other words, if a Member of Parliament dares to vote against the wishes of the party, the member loses his membership of the Parliament.

If we combine this with the conclusion arrived at earlier about the choices that a voter has at the time of voting, we can state the following two fundamental propositions of Indian democracy as it currently functions:

1. *A voter’s choice is pre-constrained by choices made by a set of political parties.*
2. *A so-called elected representative’s choices in Parliament are completely controlled by the political parties they belong to.*

### **How do Political Parties Treat the Parliament?**

The process of reducing the importance and value of Parliament started in the late 1960s and early 1970s. Leaders of political parties started displaying disdain for parliamentary proceedings by not attending sessions of Parliament and through their other behaviour. The days when the first Prime Minister, Jawaharlal Nehru, used to attend all sitting of Parliament, listening to debates and taking part in them, gradually passed into oblivion.

The year 2012 was a watershed in this process. The leader of opposition in one of the Houses of Parliament stated that obstruction of the proceedings of Parliament was a “legitimate tactic for the Opposition to expose the government.” “The Opposition” seemed to be under the impression that

the best way to protect national interest was to not let Parliament function. There were far too many instances of such desecration of the temple of democracy during 2012. In an earlier instance the Leader of the Opposition in one of the Houses announced in the evening that they would not allow the Parliament to function the next day. Disrupting Parliament and not allowing it to function, are arguably very grave offences against democracy, and thus against the nation. Such blatant and premeditated obstruction of the functioning of the highest body of democratic functioning, obviously lowers the importance of Parliament in the public perception.

### **Role of Presiding Officers**

In addition to the total lack of respect shown by political parties, another important issue is the role of the presiding officers of the two Houses of Parliament. It is worth thinking about the duties and responsibilities of the presiding officers. Based on the experience of the last many years, it seems their duties and responsibilities are limited to requesting the members to take their seats, maintain decorum, observe silence, etc., and in extreme cases adjourn the House for two hours, till after lunch, or till the next working day. One wonders, is that all there is to it or should there be something more? It seems strange that the accountability of the presiding officers seems to be limited only to their electors, the members of the Houses, and not to either the House itself as an institution, or to the Constitution, or to what is best called "We, the people".

### **How do Political Parties Function?**

Since political parties actually, not only effectively, control what Members of Parliament do inside the Parliament, it is obvious that what happens inside Parliament is determined by all the political parties put together. That makes it necessary to understand how political parties function.

In a representative democracy such as India, political parties perform a very critical function, that of mobilising and consolidating public opinion on issues of public concern. Under normal circumstances, political parties function on the basis of some ideology. In the political discourse over the last many years, however, ideology seems to have become a concept which is completely alien to the entire political establishment. What political leaders think to be the purpose of political parties, is also a matter of concern. All actions of political parties seem to indicate that the only purpose for which political parties exist is to win elections, acquire state power, and then start working towards winning the next elections. The thought that one of the purposes of "coming in to power" is to govern or administer, does not seem to be a matter of concern for our political parties!

Even when some sections of the political establishment do think of governance, there seems to be a very serious disconnect between what the citizens expect from governance and what the political establishment expects from it. A common expectation, as reflected on the Wikipedia, is, "A reasonable or rational purpose of governance might aim to assure, (sometimes on behalf of others) that an organisation produces a worthwhile pattern of good results while avoiding an undesirable pattern of bad circumstances. Perhaps the moral and natural purpose of governance consists of assuring, on behalf of those governed, a worthy pattern of good while avoiding an undesirable pattern of bad. The ideal purpose, obviously, would assure a perfect pattern of good with no bad."

Following this, citizens expect that governance by elected parties will lead to “good” outcomes for them; the citizens, and “bad” outcomes will be avoided. However, political parties which come to power as a result of elections seem to think that the essential purposes of “governance” are (a) to stay in power for as long as possible, and (b) to take all steps necessary to ensure winning the next elections.

### **Can Something be Done?**

Can something be done to change the behaviour and functioning of political parties, so that they start functioning in a way that is productive for national and public interest?

The main reason political parties tend to overlook national interest in their narrow, self-interest is that they neither consider themselves as public institutions nor do they behave like public institutions. The root cause of this behaviour is the evolution of parties into fiefdoms, owned and controlled by a single individual or a coterie of persons. Given this structure and constitution, it is no surprise that the interest of a particular individual or group of individuals takes priority over everything else, including national interest.

This is also why the mere concept of being a public institution is an anathema to all political parties. It has become abundantly clear over the last three years, when six national parties have blatantly defied a decision of the Central Information Commission holding that they are public authorities under the RTI Act. They maintain that while they do have a moral obligation to be accountable and answerable to the citizens, technically they should not be covered under the RTI Act.

The solution to this doublespeak by political parties — when they say one thing and do its exact opposite, as when all of them claim to be the champions and defenders of democracy in the country while being completely undemocratic in their internal functioning — is to make them internally democratic by law. The Law Commission of India suggested this in 1999 in their 170th report, in the following words: “It is therefore, necessary to introduce internal democracy, financial transparency and accountability in the working of the political parties. A political party which does not respect democratic principles in its internal working cannot be expected to respect those principles in the governance of the country. It cannot be dictatorship internally and democratic in its functioning outside” (Para 3.1.2.1).

Since it is the representatives of political parties in Parliament who make laws, the trickiest part is getting Parliament to enact such a law. That is where the citizens and other public institutions such as the media and the judiciary need to put pressure on the political system.

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## **DEBATING ANTI-DEFECTION LAW: IT'S UTILITY IN A REPRESENTATIVE DEMOCRACY**

*\*Anviti Chaturvedi*

The Constitution provides various grounds on which legislators, both Members of Parliament (MPs) and Members of Legislative Assemblies (MLAs), may be disqualified from the legislature. One of the grounds of disqualification is the 'anti-defection' law. Under this law, legislators are expelled from Parliament and State Legislative Assemblies if they change their party after being elected or if they disobey the directions of their party leaderships. By implication, it strengthens the control of political parties over individual legislators. It was enacted in 1985 as the Constitution (52<sup>nd</sup> Amendment) Act, 1985 to deal with the problem of political defections.

### **What are political defections?**

In a parliamentary democracy that is based on a multi-party system, legislators are elected on a party ticket, or as independent candidates. Political defection is the act of a legislator transferring allegiance from the party on whose platform he was elected to that of another political party.<sup>1</sup> In democracies where the party system is relatively weak, political defections may be punished to encourage party discipline and cohesion, and to discourage switching of parties by legislators for purposes of seeking patronage, influence or public office.<sup>2</sup>

India has now had over three decades of experience with the anti-defection law. This paper explains the anti-defection law as it stands today, presents the Indian experience of implementing this law, and addresses the various merits and demerits of having such a law in a parliamentary democracy.

### **India's Anti-Defection Law**

India's anti-defection law is captured in Articles 102 (2), 191(2) and the 10<sup>th</sup> Schedule of the Constitution. These provisions lay out the grounds and procedure for disqualifying legislators on account of defection, in both Houses of Parliament, State Legislative Assemblies and State Legislative Councils. This means there is a preference for political stability over freedom of speech, dissent and conscience.

There are three types of legislators in Parliament and State Legislative Assemblies: (i) members belonging to political parties, (ii) independent legislators, and (iii) members nominated by the President (for example, Lok Sabha has two Anglo Indian nominees and Rajya Sabha has 12 nominated members who have special knowledge or experience in the fields of literature, science, art or social service).

With regard to a member who belongs to a political party, the 10<sup>th</sup> Schedule says that the following two grounds will be considered as grounds for defection: (i) voluntarily giving up membership of their political party, or (ii) voting or abstaining from voting contrary to any direction of their political party (i.e. voting to dissent with his party). The law provides room for dissent only in two situations: if the member takes prior permission from his party, or if the action is condoned by the party within 15 days from the voting. In such cases, he will not be considered a defector. Note that a member

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<sup>1</sup> "Politics of Defection in India in the 1980s", PM Kamath, Asian Survey, Vol. 25, No. 10, October 1985.

<sup>2</sup> "Global parliamentary Report 2012", Inter-parliamentary Union, April 2012, <http://www.ipu.org/pdf/publications/gpr2012-full-e.pdf>.

is said to belong to the political party by which he was set up as an election candidate. If a member is found to have defected, he will be disqualified from the legislature.

Nominated members have the option of joining a political party within six months of their nomination. If they do so they will be treated as ordinary members of that party. However, if they choose to join a political party after six months, they will be disqualified as members of the House. Similarly, with regard to independent members, joining a political party after election will lead to disqualification on the ground of defection.

While the above framework broadly lays out what is considered to be defection in the country, it is important to note the exceptions to the general rule as well. Firstly, the 10<sup>th</sup> Schedule permits a Speaker or Deputy Speaker of Lok Sabha, Deputy Chairman of Rajya Sabha, or presiding officers of the State Legislative Assemblies and Councils to resign from their party and rejoin it after completion of their tenure, without incurring disqualification. Secondly, it permits a party to merge with another party if two-thirds of its members in the legislature vote for the merger. Thirdly, the law originally permitted a split in a party if one-third of its members in the legislature were in favour of the split but this provision was removed in 2003.<sup>3</sup> The purpose of removing it was to address bulk defections that continued to take place in the country.

Another important question is who decides whether a legislator is subject to disqualification under the anti-defection law. This power vests with the Speaker or Chairman of the House, and their decision is considered as final. The 10<sup>th</sup> Schedule also deals with a scenario when there is a defection by a Speaker or Chairman. In such cases, the House may elect another member to decide the question, and this member's decision is final. The 10<sup>th</sup> Schedule also says that no court shall have jurisdiction with regard to any matter related to disqualification under the Schedule. However, this provision was struck down by the Supreme Court (see discussion below) allowing courts to retain judicial review in these matters.<sup>4</sup>

### **The Indian Experience: Interpretation of the Law by Courts and Presiding Officers**

In the last three decades, enforcement of the anti-defection law has raised some challenging questions and issues. These include key issues related to actions which come under the ambit of defection, implications of having an anti-defection law in a parliamentary democracy, and the role of presiding officers and courts in deciding defection matters. Some of these issues have been discussed below.

### **Does the Anti-Defection Law Violate Freedom of Speech and Expression of Legislators, and Principles of parliamentary Democracy?**

In the case of *Kihoto Hollohan vs Zachillhu*, it was argued that the 10<sup>th</sup> Schedule is destructive of the basic principles and values that are necessary for the sustenance of parliamentary democracy, such as the freedom of speech, right to dissent and the freedom of conscience.<sup>4</sup> The petitioners

<sup>3</sup> The Constitution (91st Amendment) Act, 2003.

<sup>4</sup> *Kihoto Hollohan vs Zachillhu*, 1992 SCR (1) 686.

<sup>5</sup> "255th Report: Electoral Reforms", Law Commission of India, March 2015, <http://lawcommissionofindia.nic.in/reports/Report255.pdf>.

argued that these freedoms are guaranteed under the Constitution, and must not be interfered with. However, the Supreme Court rejected this challenge, on the ground that the law is targeted at addressing unprincipled defections, which cannot be protected under freedom of conscience or the right to dissent or intellectual freedom.<sup>4</sup>

### **What is the Role of Presiding Officers in Context of Anti-Defection Law?**

The 10<sup>th</sup> Schedule provides presiding officers of legislatures with the power to decide cases of defection. However, it has been noted that as the Speaker is dependent upon continuous support of the majority in the House, he may not satisfy the requirement of an independent adjudicating authority.<sup>5</sup> In the past, decisions of the Speakers with regard to disqualifications have been challenged before courts for being biased and partial.<sup>6</sup> Several expert committees and commissions, including the Dinesh Goswami Committee (1998), Commission to Review the Constitution (2002) and the Law Commission (2015) have therefore recommended that defection cases must be decided by the President or Governor for centre and states respectively, who shall act on the advice of the Election Commission. This is the same practice that is followed for deciding questions related to disqualification of legislators on other grounds, such as holding an office of profit or being of unsound mind, under the Constitution.<sup>7</sup> However, note that the Supreme Court has upheld the provision granting the presiding officer the power to take these decisions on the ground that,

“The Speakers/Chairmen hold a pivotal position in the scheme of parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to take far reaching decisions in the functioning of parliamentary democracy. Vestiture of power to adjudicate questions under the Tenth Schedule in such constitutional functionaries should not be considered exceptionable.”<sup>4</sup>

### **Can the Courts Review Decisions of the Presiding Officers Regarding Anti-Defection?**

Note that the 10<sup>th</sup> Schedule originally barred courts from exercising jurisdiction in anti-defection matters, and declared the Speaker’s decision as final. However, the Supreme Court has struck down the provision barring jurisdiction of courts as unconstitutional.<sup>4,8</sup> It held that this bar interferes with Articles 136, 226 and 227 of the Constitution that give the Supreme Court and the High Courts power to exercise judicial review. The court reasoned that in such a case the provision ought to have been ratified by one-half of state legislatures as per Article 368 of the Constitution. Without ratification by states, it held the provision to be invalid. Therefore, the courts may continue to

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<sup>6</sup> Mayawati vs Markandeya Chand, AIR 1998 SC 3340; Balchandra L. Jarkiholi vs B.S. Yeddyurappa, (2011) 7 SCC 1.

<sup>7</sup> Section 103 and 192 of the Constitution of India, 1950.

<sup>8</sup> Paragraph 7 of the 10th Schedule, Constitution of India, 1950.

<sup>9</sup> Ravi S. Naik and Sanjay Bandekar vs Union of India, (1994) Supp (2) SCC 641.

<sup>10</sup> “Decision of the Hon’ble Speaker, Lok Sabha on the petition given by Shri Rajesh Verma, MP against Shri Mohd. Shahid Akhlaque, MP under the Tenth Schedule to the Constitution”, Lok Sabha Bulletin-Part II, No. 4424, January 28, 2008.

exercise judicial review over decisions of presiding officers in these cases, but only on limited grounds (eg. mala fide exercise of power or non-compliance with principles of natural justice).<sup>4</sup>

### **What Constitutes Voluntarily giving up Membership of the Party?**

One of the grounds of disqualification is 'voluntarily giving up membership' to one's political party. Given that this phrase has not been defined, courts and presiding officers have had to deal with how to interpret its scope. Does it require an explicit resignation or not? The Supreme Court has held that even in the absence of a formal resignation, an inference can be drawn from the conduct of a legislator that he has voluntarily given up membership to his political party.<sup>9</sup> In the same case, the Court also permitted the Speaker to draw an inference based on photographs published in newspapers and statements made by members. There have been cases thereafter where the Speaker has relied upon newspaper reports to make such inferences. For example, the Speaker of Lok Sabha disqualified a member of the Bahujan Samaj Party based on newspaper reports that he had encouraged people to vote for the Samajwadi Party (SP) in a public meeting of the SP.<sup>10</sup>

### **The Balancing Act: Merits and Demerits of an Anti-Defection Law**

India's experience with enforcing the anti-defection law has been a complex and challenging one. However, its broader implications can only be evaluated when one analyses the merits and demerits of having such a law in a parliamentary democracy.

An anti-defection law recognizes the role of political parties in a parliamentary democracy. This is premised on the assumption that when elections happen, it is the political parties that go before the electorate with particular programmes or manifestoes, set up their candidates and spend funds on election campaigning. When these candidates get elected, political propriety demands that they continue to support the party and its policies, promoting party discipline. Further, it has been argued that the strength of a political party depends upon the strength of its shared beliefs. Public confidence in a party may be undermined if different members of a party are found holding disparate opinions on important legislative and policy issues.<sup>4</sup> In India, prior to the 1985 anti-defection law, there was no mention of political parties in the Constitution.

The other important justification for having an anti-defection law is to reduce political corruption and bribery, and ensure that there is some degree of stability in our governance institutions. It has been noted that often legislators are offered ministerial positions, or personal benefits, to help topple the government of the day by defecting from their political party. In the 1960s, after the Fourth General Election in India, this problem was highlighted for the first time by an expert committee set up under the Chairpersonship of the former Home Minister, Mr. Y. B. Chavan to study the issue of defections.<sup>11</sup> The committee noted that of the 210 defecting legislators in the states of Bihar, Haryana, Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh and West Bengal, 116 were provided ministerial berths

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<sup>11</sup> "Ideas for an Alternative Anti Defection Law", R.Kothandaraman, November 2006, Pg. 1202.

<sup>12</sup> See Article 19, 105 and 194 of the Constitution.

<sup>13</sup> "parliamentary Procedure: Law, Privileges, Practice and Precedents", SubhashC. Kashyap, 2006, Pg. 987.



in the newly formed governments. The committee expressed concern at the indifference of the defectors toward political propriety and public opinion.<sup>4</sup>

However, what are the costs of having an anti-defection law? Firstly, it interferes with the freedom of speech and expression of a legislator. A legislator is guaranteed this freedom under various provisions of the Constitution.<sup>12</sup> The anti-defection law curbs this right by mandating that all members must vote strictly on party lines, and in complete obedience to party whips. By doing this, it takes away the ability of a legislator to vote according to his conscience. It further prohibits voicing dissent against his party's positions and policies, except through intra-party debate. An important question to ask here is that what is the incentive for a legislator to research, think and reason through issues debated in Parliament if he cannot vote in line with his judgement and opinions?

Secondly, an anti-defection law is incompatible with fundamental tenets of a parliamentary democracy. A parliamentary democracy envisages that matters of legislation and policy must be discussed and debated in a legislature. Governments must then respond and defend their legislation and policy, in light of the criticisms raised and alternatives proposed. However, the question is that if votes cannot be altered on the basis of these debates and discussion, what is the purpose of discussing and debating issues in Parliament?<sup>13</sup> Further, prohibition against dissent may undermine the role of Parliament as an effective check on the executive. Take the example of a legislature with the government in clear majority. Once a whip is issued by the ruling party in such a House, there can be no dissent or disapproval voiced by any of the members of the party having a majority. This may have a deleterious impact on government accountability.

Another important cost of an anti-defection law is its impact on the accountability of legislators to their constituencies. Elections in India take place under the first past the post system. Under this system, the candidate who gets the highest number of votes in a geographical constituency is elected from that constituency. If the constituency is dissatisfied with the performance of this person in the next five years, they can vote him out in the next election. The anti-defection law breaks this accountability link between the elected representative and the voter. Legislators can now say that they voted in a particular manner because their party required them to do so. Their justification can be that they exercise no control over their vote and therefore ought not to be held accountable for it. For example, if a voter who believes that FDI in retail is harmful to his interests asks the MP to justify his support on the issue, the MP may say he had no choice given the anti-

<sup>14</sup> "Uttarakhand: Advantage Congress as courts deny rebels a vote in floor test", Livemint, May 10, 2016, Last visited September 16, 2016, <http://www.livemint.com/Politics/4PWNU5VaCawUoZskaGFDK/Uttarakhand-crisis-Disqualified-MLAs-move-Supreme-Court.html>.

<sup>15</sup> NabamRebia vs Deputy Speaker, Civil Appeal No. 6203-6204 of 2016, July 13, 2016.

<sup>16</sup> '21 MPs Cross-Voted During Parliament Trust Motion' The Economic Times, July 23, 2008, Last visited September 16, 2016, <http://economictimes.indiatimes.com/news/politics-and-nation/21-mps-cross-voted-during-parliament-trust-motion/articleshow/3268181.cms>.

<sup>17</sup> "Constitutional Sources of Party Cohesion: Anti-Defection Laws Around the World", CsabaNikolenyi, Working Paper, Oslo-Rome Workshop on Democracy, The Norwegian Institute in Rome, Rome, 2011, <http://www.uio.no/english/research/interfaculty-research-areas/democracy/news-and-events/events/seminars/2011/papers-roma-2011/Rome-Nikolenyi.pdf>.

<sup>18</sup> The Constitution (Amendment) Bill 2010 (Bill No. 16 of 2010) introduced by Manish Tewari, MP, <http://164.100.47.4/BillsTexts/LSBillTexts/Asintroduced/411Is.pdf>.

defection law. If he dissented from the party line, he would lose his seat, and would be unable to work for the electors' interests on several other issues.

The anti-defection law also considerably diminishes the role of an MP in Parliament to that of a person who only follows orders of the party whip. Take a situation when there is no anti-defection law, and the government is required to win the support of the House for its various decisions and policies. Not only would the ruling party have to win the support of the opposition MPs in such a case, but also of its own MPs. By contrast, under the anti-defection law regime, there is no need to develop support of majority of the MPs.

Another question to consider is whether the law has been successful in addressing political defections in India. Whips have been regularly defied both at the centre and states when it comes to important votes and issues affecting government stability. For example, recently in Uttarakhand 9 MLAs of the ruling party sided with the opposition in demanding a counting of votes on an Appropriation Bill that could have potentially led to the downfall of the Congress government.<sup>14</sup> Similarly, about 20 rebel MLAs from the ruling party in Arunachal Pradesh wrote to the Governor expressing lack of confidence in their own government in October 2015; 14 of them were later disqualified by the Speaker on grounds of defection.<sup>15</sup> Even at the centre, during the confidence vote in July 2008, 21 Members of Parliament defied the whips issued by their parties.<sup>16</sup> Therefore, the irony is that while the anti-defection law has destroyed incentives and means for honest and open parliamentary debate to continue in the country on key legislative and policy issues, it has not been able to address the issue of defections and political stability. It may also be important to note that the practice of issuing whips is common, and does not only apply to contentious debates, further stifling debate. In light of this, one needs to question the utility of continuing with the anti-defection law.

International practice is also telling in this regard. Currently among the 40 countries that have an anti-defection law, there is no major country from North America or Europe. More importantly, of these 40 countries, only six have a law that mandates legislators to vote according to party diktat. The remaining countries only disqualify legislators if they are found to resign from their party or be expelled from it. The six countries that deprive legislators to vote according to their will and conscience are India, Pakistan, Bangladesh, Guyana, Sierra Leone and Zimbabwe.<sup>17</sup> In India, a private member Bill was introduced in 2010, that looked to restrict the applicability of the anti-defection law to motions of no-confidence against the government, adjournments motions and Money Bills, i.e. motions which could lead to the fall of the government if it loses the vote.<sup>18</sup> While this Bill has now lapsed, its framework could be looked upon as an alternative to India's current anti-defection law. Such a framework could be a possible 'middle ground' in the objective of balancing the two objectives: addressing political defections and encouraging open and honest debate in our parliamentary democracy.

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<sup>19</sup> "Speech to the Electors of Bristol", Edmund Burke, November 3, 1774, <http://fs2.american.edu/dfagel/www/Philosophers/Burke/SpeechToTheElectorsOfBristol.pdf>.

## Conclusion

The debate around the anti-defection law boils down to a central question that must be grappled with in a parliamentary democracy: what is the role of a legislator? Is a legislator a servant of a party who must obey every direction and command of the party, without exercising any free thought? Or is the role of a legislator to be an ambassador of his constituency voters by being a mouthpiece for their concerns, interests and opinions? Or is a legislator meant to be an elected representative of the country who must exercise his own conscience, reason and judgment to represent the best interests of the nation?

The argument that Parliament is a forum for MPs to debate and decide issues in national interest was raised as far back as 1774 by Edmund Burke.<sup>19</sup> He, in fact, added that an MP would be letting down his country if he did not exercise his own judgment on matters of legislation and policy and only pressed for the interests of his voters. The concept of an anti-defection law is incompatible with this understanding of a parliamentary democracy.

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*"My message, especially to young people is to have courage to think differently, courage to invent, to travel the unexplored path, courage to discover the impossible and to conquer the problems and succeed. These are great qualities that they must work towards. This is my message to the young people"*

**- A P J Abdul Kalam**

## **ELECTORAL REFORMS: INTERVENTIONS BY COMMON CAUSE**

***\*Swapna Jha***

This article attempts to examine if the main obstacle to electoral reforms is an unholy alliance between the ruling party and the opposition, perpetrated by a time tested tactic of delay. The reluctance of successive governments to implement electoral reforms or their propensity to stonewall legislative reforms is indeed worrying. The Opposition too cannot escape their share of blame. Obviously, the only option the electorate is left with is to approach the judiciary.

Over the years, the gap has widened between the elected members' individual caliber and the rising demands of modern legislation. As articulated in other write ups in this issue, there has been an alarming increase in the number of criminals being elected to Parliament and State Assemblies. Their importance was proved in 2008 when the ruling government was able to ward off a no-confidence motion with the help of six jailed MPs who were temporarily released only to cast their vote in order to tilt the balance. The thought that such MPs will frame the best laws to protect our liberty and property is appalling, to say the least.

### **Interventions by Common Cause for a Cleaner Polity**

Common Cause took up this crusade as early as in 1994. It approached the Supreme Court in an effort to bring transparency to the election expenses of the candidates. The primary contention raised in the petition was that the political parties were violating several mandatory provisions with impunity. They were required to maintain audited accounts and comply with the other conditions envisaged under Section 13A of the Income-tax Act in order to be eligible for tax exemption. Most of the parties had done neither and were spending phenomenal amount of money during election, without indicating the source. Thus elections fought with unexplained and questionable sources of money was corroding the fundamental tenets of our democracy. The citizens thus had a right to know the source of expenditure incurred by the political parties and by the candidates in the process of election.

In a landmark judgment, the SC held that the political parties were under a statutory obligation to file regular returns of income and that failure to do so rendered them liable for penal action.

This judgment not only marked a significant progress in the campaign for a cleaner polity, but also paved the way for mandatory declaration of assets by the candidates. In a later development, the right of a common man to have information on the background and the antecedents of the candidate, too, was upheld by the SC.

The Parliament then proceeded to initiate the process of legislation to counter the apex court's order. The Centre issued an ordinance in August 2002 and the President was forced to give his assent. In the following winter session, the Parliament replaced the ordinance with necessary legislation. This legislation too was challenged and the SC held that it nullified the previous order of the Court, infringed upon the fundamental right of electors' to know, and hindered free and fair elections.

In the year 2011, Common Cause along with other civil society members filed a PIL in the apex court for de-criminalizing politics. This PIL sought expeditious disposal of criminal cases against members of Parliament and Legislative Assemblies. It also challenged the vires of Sec 8(4) of the Representation of the People Act (RPA), whereby their disqualification following their conviction was automatically suspended on the filing of an appeal or a revision application by them. In the course of hearing of the PIL, the Court requested the Law Commission to submit its report on specific issues pointed by it. The Law Commission submitted its recommendations in the form of 244th report titled "Electoral Disqualifications". Subsequently, on March 10, 2014, the Supreme Court passed an interim order to the effect that trials in criminal cases against lawmakers must be concluded within a year of the charges being framed. The Court also directed that trials must be conducted on a day-to-day basis, and if a lower court is unable to complete the trial within a year, it will have to submit an explanation to the Chief Justice of the High Court concerned and seek an extension of the trial.

Unfortunately, even after a lapse of more than two years, the order of the apex court is yet to be implemented.

The prayer of Common Cause to hold Section 8(4) of the RPA, as unconstitutional was granted in a separate PIL. The apex court held that the Parliament did not have the competence to provide different grounds for disqualification of applicants for membership and sitting members. Further, deferring the date from which disqualification commenced was unconstitutional in the light of Articles 101(3) and 190(3) of the Constitution, which mandates that the seat of a member will become vacant automatically on disqualification. Historically also, additional protection to legislators in comparison to contesting candidates was discussed and denied in the course of the constituent assembly debates. The proposal of Prof. Shibban Lal Saxena in this regard was not accepted by the Constituent Assembly and he had to withdraw this amendment.

Instead of accepting the salutary verdict of the apex court with grace and taking steps to implement it, the union government chose to nullify its effect by introducing a Bill in Parliament. To make matters worse, during the pendency of the Bill, the government tried to ensure that the tainted legislators, whose disqualification was imminent, were protected from the effect of the judgment by issuing an ordinance. The speed with which all this was proposed shows the eagerness of the elected members to protect one of their own.

In addition to filing petitions to ensure free and fair elections, Common Cause has intervened whenever the power of the constitutional authorities tasked with ensuring free and fair election has been challenged or sought to be diluted. One such instance is given below:

The power of Election Commission (EC) to issue notice under Section 10 A of the RPA, seeking to disqualify a candidate on account of incorrect return of election expenses, was challenged by Mr. Ashok Chavan (former CM of Maharashtra) in the Delhi High Court. The High Court upheld the EC's power to inquire into the correctness of the account of election expenses filed by a candidate following which, Mr. Chavan filed a Special Leave Petition (SLP) against this order. The government filed a counter affidavit claiming that in terms of Section 10A of the RPA and Rule 89 of the Conduct of Election Rules, the power of the Commission to disqualify a person arose only in the event of

failure to lodge an account of election expenses and not for any other reasons, including the correctness or otherwise of such account.

It was ironic that having set up so many Commissions in the past to suggest cures for the ailing democracy, the same executive saw no wrong in the incorrect filing of election expenditure! Thus, it was not only seeking to undo all the good work done by the EC but also unsettling the law already settled by the SC in the past.

It was imperative that Common Cause lend its support to the EC. Hence, in concert with other like-minded civil society organisations and eminent citizens Common Cause filed an intervention application, to defeat the nefarious designs of the government aimed at undermining the capacity of the EC to curb the influence of money power and ensure the purity and integrity of elections. Dismissing Mr. Chavan's SLP, the Court held that the EC was well within its jurisdiction to inquire into the correctness of accounts and order disqualification in cases of incorrect accounts of expenditure. This judgment is a milestone in establishing the right of the EC to take steps to ensure free and fair elections.

### **Initiatives by EC for Electoral Reforms**

Electoral reforms have been engaging the attention of the EC for a long time. The Commission has been regularly addressing the Government on different subjects requiring reforms. As early as in 1997, EC had expressed its serious concern and anxiety towards growing criminalization of politics in a representation made to the then Prime Minister of India. It had recommended that the law be simplified by amending Section 8 of the RPA. The suggestions were:

1. Whoever is convicted of any offence by a court of law and sentenced to imprisonment for six months or more should be debarred from contesting elections for a period totaling the sentence imposed plus an additional six years.
2. If the court is *prima facie* satisfied about involvement of the person accused of serious criminal charges and, consequently, charges have been framed, keeping such person out of the electoral arena would constitute a reasonable restriction for serving the larger public interest.
3. As a precaution against motivated cases, it was suggested that only those cases may be considered for disqualification which were filed prior to six months of an election.
4. It also suggested that persons found guilty by a Commission of Enquiry should also stand disqualified from contesting election.

These views of the EC were reiterated before the parliamentary Committee in its meeting held in 2007. However, the Committee disagreed with the views of the EC as reported in its 18th report.<sup>1</sup>

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<sup>1</sup>Parliamentary Standing Committee 18th Report on Electoral Reforms (disqualification of persons from contesting elections on framing of charges against them for certain offences).

### **Political Reforms- Are Political Parties Interested?**

The health of a democracy depends on the quality of its leaders, who in turn are linked to the way political parties function. Reforms are needed to bring about systemic changes within the functioning of political parties. Efforts to bring about transparency and accountability in the functioning of political parties have been in vain so far. Even under the Right to Information (RTI) Act, political parties declined to accept the Chief Information Commissioner's order bringing them within the ambit of "Public Authorities". When the non-compliance of the order was brought to the apex court's notice, the government is stated to have filed an affidavit claiming this would adversely impact their internal working and political functioning.

As for electoral reforms, it is difficult to believe that any government in the past has been serious about getting an effective Bill passed. Behind the inertia, obviously, is the unwritten consensus between major political parties. Successive governments have been stalling reforms despite adverse public opinion, media pressure, civil society interventions or suggestions made in the report after reports of the various Commissions in the past. While the laws are flawed and political will is lacking, the fabric of democratic politics is being torn apart. And if the trend continues, the fabled Indian democracy will be anything but "for the people".

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**\*Swapna Jha is a Senior Legal Consultant with Common Cause.**

*"Power is of two kinds. One is obtained by the fear of punishment and the other by acts of love. Power based on love is a thousand times more effective and permanent than the one derived from fear of punishment"*

**- Mahatma Gandhi**

*"History shows that where ethics and economics come in conflict, victory is always with economics. Vested interests have never been known to have willingly divested themselves unless there was sufficient force to compel them"*

**- B R Ambedkar**

## CAN LAW BREAKERS BE LAW MAKERS? IS THERE AN OPTION?

***\*Nilesh Ekka/Akanksha Baldawa***

*"All institutions are prone to corruption and to the vices of their members"~ Morris West*

In a democracy, the elected representatives are responsible for governing the country; therefore, it is of utmost importance, that the people who enter the field of politics have a clean image and high moral character. However, the current trends reflect otherwise. Today, by far the most reiterated statistic with regard to the India political scenario is that more than one third Parliamentarians have criminal charges against them with some facing serious charges like murder, attempt to murder, kidnapping etc.

### **Crime and Politics**

The election of criminal elements to the Parliament as well as State Legislative Assemblies and Councils is among the most pressing problems that plague Indian politics today. While criminals are found in almost every profession, it is ironical that individuals facing charges of heinous crimes are able to contest elections, represent the citizens of this country and function as lawmakers of the land, without any major deterrents. Simply put, those who break the law should not make the law.

Despite the best intentions of the drafters of the Constitution and the Members of Parliament at the onset of the Indian Republic, the fear of a nexus between crime and politics was widely expressed from the first general election in 1952. Interestingly, the nature of this nexus changed in the 1970s. Instead of politicians having suspected links with criminal networks, persons with extensive criminal backgrounds began entering politics. This was confirmed in the Vohra Committee Report in 1993, and again in 2002 in the report of the National Commission to Review the Working of the Constitution (NCRWC). The Vohra Committee report pointed to the rapid growth of criminal networks that had in turn developed an elaborate system of contact with bureaucrats, politicians and media persons. A Consultation Paper published by the NCRWC in 2002 went on to say that criminals were now seeking direct access to power by becoming legislators and ministers themselves.

Since the 2002 and subsequently in 2003 judgment of the Supreme Court in *Union of India v. Association for Democratic Reforms (ADR)*, (which made the analysis of criminal records of candidates possible by requiring such records to be disclosed by way of affidavit), the public has had a chance to make informed decisions in elections. The result of such analysis also leads to considerable concern.

For instance, between 2003 and 2013 i.e. ten years since criminal, financial and other background details of candidates contesting elections were made public, 18% of candidates contesting either National or State elections have criminal cases pending against them (11,063 out of 62,847). In 5,253 or almost half of these cases (8.4% of the total candidates analyzed), the charges are of serious criminal offences that include murder, attempt to murder, rape, crimes against women, cases under the Prevention of Corruption Act, 1988, or under the Maharashtra Control of Organized Crime Act, 1999 which on conviction would result in five years or more of jail, etc. As many as 152 candidates had 10 or more serious cases pending, 14 candidates had 40 or more such cases and 5 candidates had 50 or more cases against them.

The 5,253 candidates with serious cases together had 13,984 serious charges against them. Of these charges, 31% were cases of murder and other murder related offences, 4% were cases of rape and offences against women, 7% related to kidnapping and abduction, 7% related to robbery and dacoity, 14%



related to forgery and counterfeiting including of government seals and 5% related to breaking the law during elections.

Criminal backgrounds are not limited to contesting candidates, but are found among winners as well. Of these 5,253 candidates with serious criminal charges against them, 1,187 went on to winning the elections they contested i.e. 13.5% of the 8,882 winners analyzed from 2004 to 2013. Overall, including both serious and non-serious charges, 2,497 (28.4% of the winners) had 9,993 pending criminal cases against them.

The average assets of all candidates analyzed between 2004 and 2013 was Rs. 1.37 crores. The average assets of all MPs/MLAs analyzed was Rs. 3.83 crores. MPs and MLAs charged with serious crimes had higher average assets, Rs. 4.30 crores and Rs. 4.38 crores respectively.

	No. of Candidates Analyzed (2004-2013)	No. of MPs/MLAs Analyzed (2004-2013)	No. of MPs/MLAs with criminal cases (2004-2013)	No. of MPs/MLAs with Serious Charges (2004-2013)
<b>Total</b>	62847	8790	2575	1187
<b>Average Assets</b>	Rs. 1.37 Crores	Rs. 3.83 Crores	Rs. 4.30 Crores	Rs. 4.38 Crores

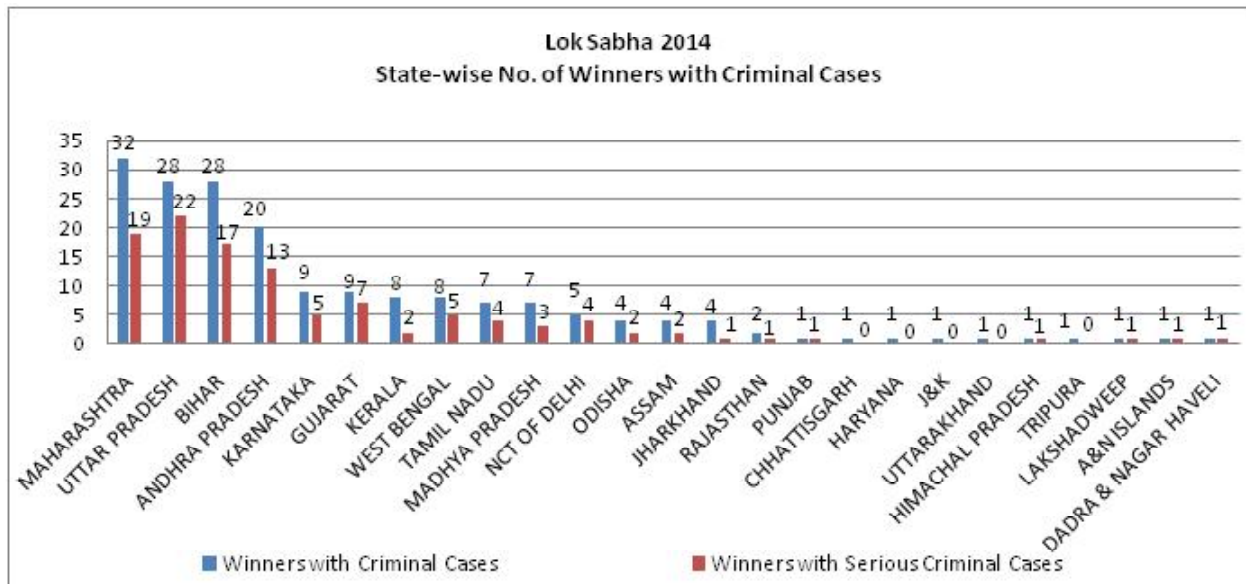
In the current Lok Sabha, 34% or 183 out of the 542 Lok Sabha MPs analyzed have declared criminal cases. 116 MPs have declared cases with serious charges like murder, attempt to murder, kidnapping etc. Further, the prevalence of MPs with criminal cases pending has only increased over time. In 2004, 24% of Lok Sabha MPs had criminal cases pending, which increased to 30% in the 2009 elections and now 34% in the 2014 elections.

Name	2014 Lok Sabha Elections					2009 Lok Sabha Elections				
	Total number of winners analyzed	winners with declared Criminal Cases	% of winners with declared criminal cases	winners with serious declared criminal cases	% of winners with serious declared criminal cases	Total number of winners analyzed	winners with declared Criminal Cases	% of winners with declared criminal cases	winners with serious declared criminal cases	% of winners with serious declared criminal cases
BJP	281	97	35%	61	22%	110	43	39%	21	19%
INC	44	8	18%	4	9%	199	43	22%	14	7%
AIADMK	37	6	16%	3	8%	9	4	44%	4	44%
AITC	34	7	21%	4	12%	19	4	21%	4	21%
BJD	20	3	15%	2	0%	14	4	29%	1	7%
SHIV SENA	18	15	83%	8	44%	11	9	82%	3	27%
TDP	16	6	38%	1	6%	6	2	33%	1	17%
TRS	11	5	45%	5	45%	2	1	50%	0	0%
CPI(M)	9	5	56%	1	11%	16	3	19%	2	13%
YSRCP	9	5	56%	5	56%	0	0	0%	0	0%
LJP	6	4	67%	1	17%	0	0	0%	0	0%
NCP	6	5	83%	4	67%	8	4	50%	3	8%
RJD	4	4	100%	4	100%	3	2	67%	1	33%
JKPDP	3	1	33%	0	0%	0	0	0%	0	0%
JD(U)	2	1	50%	0	0%	19	7	37%	2	11%
IND	3	2	67%	2	67%	6	1	17%	0	0%
Others	39	11	28%	7	18%	99	31	31%	21	21%
<b>Total</b>	<b>542</b>	<b>185</b>	<b>34%</b>	<b>112</b>	<b>21%</b>	<b>521</b>	<b>158</b>	<b>30%</b>	<b>77</b>	<b>15%</b>

**Comparison of Lok Sabha 2014 and 2009: Criminal Cases**

State	Total number of Winners analyzed	Winners with declared criminal cases	% of Winners with declared criminal cases	Winners with serious declared criminal cases	% of Winners with serious declared criminal cases
Uttar Pradesh	80	28	35%	22	28%
Maharashtra	48	32	67%	19	40%
Bihar	40	28	70%	17	43%
Andhra Pradesh	42	20	48%	13	31%
Gujarat	26	9	35%	7	27%
Karnataka	28	9	32%	5	18%
West Bengal	42	8	19%	5	12%
National Capital Territory of Delhi	7	5	71%	4	57%
Tamil Nadu	39	7	18%	4	10%
Madhya Pradesh	29	7	24%	3	10%
Orissa	21	4	19%	2	10%
Kerala	20	8	40%	2	10%
Assam	14	4	29%	2	14%
Jharkhand	13	4	31%	1	8%
Punjab	13	1	8%	1	8%
Rajasthan	25	2	8%	1	4%
Himachal Pradesh	4	1	25%	1	25%
Lakshadweep	1	1	100%	1	100%
Andaman & Nicobar Islands	1	1	100%	1	100%
Dadra & Nagar Haveli	1	1	100%	1	100%
Chhattisgarh	11	1	9%	0	0%
Haryana	10	1	10%	0	0%
Jammu & Kashmir	6	1	17%	0	0%
Uttarakhand	5	1	20%	0	0%
Tripura	2	1	50%	0	0%
Others	14	0	0%	0	0%
<b>Total</b>	<b>542</b>	<b>185</b>	<b>34%</b>	<b>112</b>	<b>21%</b>

### State-wise Comparison of Lok Sabha 2014 and 2009: Criminal Cases



### State-wise Criminal Cases: Lok Sabha 2014

The situation is similar across states with 34% or 1,392 out of 4,072 sitting MLAs with pending cases, with about half being serious cases. Some states have a much higher percentage of MLAs with criminal records: in Jharkhand, 65% of MLAs have criminal cases pending. A number of MPs and MLAs have been accused of multiple counts of criminal charges. In a constituency of Uttar Pradesh, for example, the MLA has 36 criminal cases pending against him including 14 cases related to murder.

State	Total number of Winners Analyzed	No. of Criminals	% of Criminals	No of Criminals with Serious	% of criminals Crime with Serious Crime
Jharkhand	81	53	65.43%	41	50.62%
Kerala	140	87	62.14%	26	18.57%
Bihar	243	141	58.02%	97	39.92%
Maharashtra	283	160	56.54%	111	39.22%
Telangana	119	67	56.30%	47	39.50%
Andhra Pradesh	174	84	48.28%	39	22.41%
Uttar Pradesh	399	181	45.36%	84	21.05%
Puducherry	30	11	36.67%	4	13.33%
West Bengal	293	107	36.52%	93	31.74%
Odisha	147	52	35.37%	41	27.89%
Delhi	70	24	34.29%	14	20.00%
Karnataka	215	73	33.95%	38	17.67%
Tamil Nadu	223	74	33.18%	41	18.39%
Gujarat	174	54	31.03%	24	13.79%

Goa	40	12	30.00%	3	7.50%
Madhya Pradesh	230	70	30.43%	45	19.57%
Uttarakhand	66	16	24.24%	5	7.58%
Himachal Pradesh	67	14	20.90%	5	7.46%
Rajasthan	200	37	18.50%	20	10.00%
Chhattisgarh	90	15	16.67%	8	8.89%
Punjab	117	17	14.53%	7	5.98%
Assam	126	14	11.11%	10	7.94%
Haryana	90	9	10.00%	5	5.56%
Tripura	60	6	10.00%	5	8.33%
Arunachal Pradesh	60	5	8.33%	5	8.33%
Sikkim	32	2	6.25%	1	3.13%
Jammu & Kashmir	87	5	5.75%	2	2.30%
Meghalaya	60	1	1.67%	0	0.00%
Nagaland	60	1	1.67%	0	0.00%
Manipur	56	0	0.00%	0	0.00%
Mizoram	40	0	0.00%	0	0.00%
<b>Total</b>	<b>4072</b>	<b>1392</b>	<b>34.18%</b>	<b>821</b>	<b>20.16%</b>

### State-wise MLAs with Criminal Cases

From this data it is clear that about one-third of elected candidates at the Parliament and State Assembly levels in India have some form of criminal taint. Data also suggests that one-fifth of MLAs have pending cases with charges being framed against them at the time of their election. Even more disturbing is the finding that the percentage of winners with criminal cases pending is higher than the percentage of candidates without such backgrounds. The increasing percentage of candidates being fielded by political parties in successive Lok Sabha Elections had led to a number of studies that seek to analyze the reason for the same. One such study titled “*The Market for Criminality: Money, Muscle And Elections in India*” by Milan Vaishnav indicates that parties favor criminal candidates as they have access to wealth which in turn allows them to finance elections independently. His paper has found ‘money’ and ‘muscle’ complementing each other in the case of the Indian electoral scene. Data also showed how a larger percentage of candidates (23%) with criminal cases went on to win elections as opposed to candidates with a clean record (13%). All of this has set in place a vicious cycle of sorts, where parties in a bid to increase the ‘winnability’ quotient of their candidates give tickets to individuals with a tainted record. Not only do political parties select candidates with criminal backgrounds, there is evidence to suggest that untainted representatives later become involved in criminal activities.

Another factor for political parties declaring candidates with criminal records is the lack of inner party democracy. There is hardly any candidate selection procedure in most political parties and decisions are taken by the elite leadership of the party.

Thus, the crime-politics nexus demands a range of solutions much broader than disqualification or any other sanctions on elected representatives. It requires careful legal insight into the functioning of the political parties and regulating the internal affairs of parties. Political parties form the Government and hence govern the country. It is therefore, necessary for political parties to have internal democracy, financial transparency and accountability in their working. A political party which does not respect democratic principles in its internal working cannot be expected to respect those principles in the governance of the country. It cannot be dictatorship internally and democratic in its functioning outside.

The National Commission to Review the Working of the Constitution (NCRWC) highlighted similar concerns on the functioning of political parties and recommended a separate law for regulating some of the internal affairs of political parties in order to deal with the crime-politics nexus.

Though the Representation of the People Act (RPA) disqualifies a sitting legislator or a candidate on certain grounds, there is virtually no regulation for the appointments to offices within the organization of the party. Political parties play a central role in Indian democracy. Therefore, a politician may be disqualified from being a legislator, but may continue to hold high positions within his party. Convicted politicians may continue to influence law-making by controlling the party and fielding proxy candidates in legislature. In a democracy essentially based on parties being controlled by a high-command, the process of breaking crime-politics nexus extends much beyond the legislators and encompasses political parties as well.

### **Lack of Financial Accountability in Politics**

The increasing criminalization of politics is coupled with the lack of financial accountability. Of the 3,452 candidates who contested more than one election (including all state assembly elections and the Lok Sabha and Rajya Sabha elections) from 2004 to 2013 as many as 2,967 showed an increase in wealth. The average declared wealth of such re-contesting candidates in 2004 was Rs 1.74 crore, and Rs 4.08 crore in 2013, an increase of 134%. For winners, the average assets went up from Rs 1.8 crore to Rs 5.81 crore, an increase of 222%. The winners were able to increase their wealth much faster than other candidates.

The 2014 Lok Sabha elections also witnessed a very capital intensive campaign by most of the political parties. According to a study by the Centre for Media Studies, a whopping Rs. 30,000 crores was projected to be spent by the government, political parties and candidates in the 2014 general election, making it the most expensive election in Indian history. Of the estimated Rs. 30,000 crores, official spending by the Election Commission of India (ECI) and the Government of India was around Rs. 7,000 – Rs. 8,000 crores.

Most of the election campaigns were centred on the issues of black money abroad and corruption in India. The political discourse, however, did not address the issues regarding black money generated in India, especially during elections and in the functioning of political parties. The ECI reported that during the 2014 Lok Sabha elections, around Rs.300 crores of unaccounted cash and more than 17,000 kg of drugs and huge amount of liquor, arms etc. were seized. This, some claim, is a conservative estimate of the actual amount of illegal and illicit funds mobilized during the elections. The estimation of black money in electoral politics is fraught with methodological difficulties and hence cannot be computed, however, ADR has scrutinized the affidavits submitted by the candidates contesting elections and the financial accounts of political parties submitted to the ECI and the Income Tax (IT) Department indicating the pervasiveness of this issue. Black money, while difficult to trace, can be determined from what remains undisclosed in the financial accounts of the candidate and political parties and the discrepancies found in these submissions.

### **Election Expenditure by Candidates and Political Parties**

Election expenditure and the substantial influx of black money in electoral polls have been a topic of concern over the past few elections. A former Chief Election Commissioner said that the 2012 Uttar Pradesh Assembly Election was marked by the expenditure of over Rs 10,000 crore of black money. If this were to be the case throughout Assembly seats in India, the amount would add up to around Rs 100,000 crores. Over the years, the limits imposed on the expenditure of candidates has been hotly contested by the political community on the grounds that the limits were too low and unrealistic. Despite these claims by the candidates, the expenditure declared by them has been consistently well below the cap on the expenditure imposed.

The candidates and political parties are required to submit their expenditure statements to the ECI after the poll results are announced. In the 2014 Lok Sabha elections, the average election expenditure declared by the candidates was only Rs. 40.30 lakhs i.e. 59% of the limit imposed. A total of 108 (20%) MPs declared that they had incurred no expenses on campaigning through electronic/print media. The underreporting of expenses by candidates during elections warrants scrutiny of their expenditure statements.

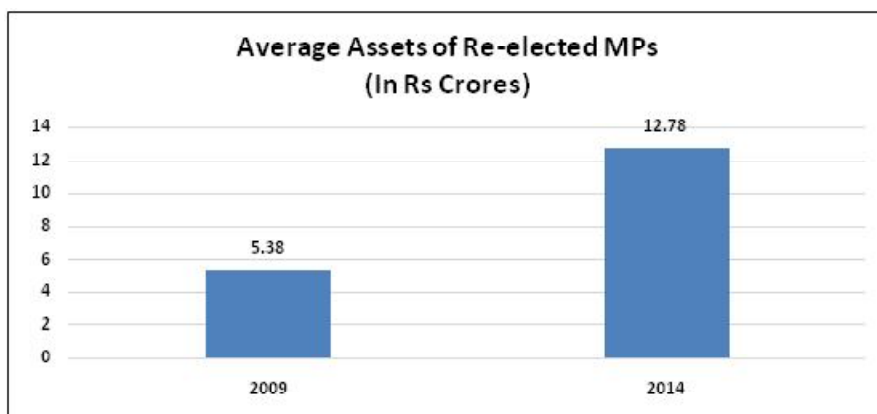
Further, candidates usually do not disclose the sources of funds from individuals, corporations or others. This information is crucial in view of full disclosure and as of now there is no strict penalty on the nondisclosure of such information in the election expenditure statements.

In case of election expenditure disclosed by political parties, even after several notices by the ECI, the statements are submitted woefully late. Investigation into these statements are crucial in the period right after the elections. The more delayed the submission by the political parties are, the more difficult it becomes to question its veracity. Upon comparing the election expenditure statements submitted by political parties and candidates for the Lok Sabha elections in 2009, it was found that while national parties declared giving 138 MPs more than Rs. 14.19 crores, only 75 MPs declared having received any amount from their parties. These MPs declared in their statements only a total of Rs. 7.46 crores received from the political parties.

The elections conducted in the recent past have witnessed a massive investment of money from various industry giants, big corporations, as well as individual donors. Out of the funds collected during Lok Sabha elections, 2014, the national political parties declared in their election expenditure statements that Rs 408.75 crores (35.28% of total funds collected) was by cash. As the parties are not required to provide details of the donors who donated specifically during election period, these donations in cash will remain unknown.

### **Growth of Assets and Disclosure by Candidates**

Extraordinary growth can be observed in the assets of re-elected MPs in the Lok Sabha 2014 elections. Out of 165 re-elected MPs 32 had shown an increase in total assets worth more than Rs.10 crores in five years. Data from citizen watch exercises conducted by ADR during the 2014 Lok Sabha Elections reveals that the assets of 165 MPs who were re-elected to the 2014 Lok Sabha increased by a whopping 137% since 2009. While the mandatory affidavits filed by candidates prior to elections requires them to declare their financials, there is both the lack of a process that allows for the careful scrutiny of these affidavits as well unavailability of the desired resources within the ECI to achieve the same.



**Comparison of average assets of re-elected MPs (2009 vs 2014)**

There are no provisions for the scrutiny of affidavits or the election expenditure of candidates. While efforts have been made by the ECI to involve the IT department in the scrutiny of affidavits of candidates and MPs who show a high growth in assets, there has been little progress in this regard. As per media reports, many candidates pay exorbitant amounts of money to get tickets from political parties. This expenditure is neither accounted for in the expenditure statements of the candidates, nor in the financial accounts of their political parties.

Further, candidates often disclose the cost price of their immovable assets, like agricultural land, commercial and residential buildings etc instead of their market value. There is no provision in the affidavits of the candidates to disclose their sources of income. The lack of any kind of scrutiny in discrepancies such as these in the financial accounts of political parties and the candidates give way to the amassing and transfer of wealth that remains undisclosed to public authorities.

### **Political Party Finances and Disclosure**

The past decade has seen a growing stranglehold of money over elections. The analysis of IT Returns of National Parties between FY 2004-05 and 2011-12 shows that the total income of the parties from unknown sources of income amounted to Rs.3,677.97 crores (75.1% of total income of national parties). The non-disclosure of sources of income of political parties for donations that amount to more than Rs. 20,000 leads to a wide gap in the transparency of funds.

While the Bahujan Samaj Party (BSP) declared a total income of Rs.585.07 crores between FY 2004-05 and 2012-13 of which Rs.307.31 crores were from voluntary contributions, the names and other particulars of these 'voluntary' contributors are not known. While the party has maintained that no donations above Rs.20,000 was received thereby not declaring the names of any donor in 8 years, BSP declared total assets worth Rs. 400.72 crores in the FY 2012-13 out of which they declared immovable assets worth Rs.82.89 crores.

Indian National Congress (INC) and Bharatiya Janata Party (BJP) were earlier found guilty of taking donations from foreign sources by the Delhi High Court. This came into light upon the scrutiny of the contribution reports of the two parties. In view of this, it becomes even more important to have greater disclosure of the

income of political parties to ascertain any vested interest that might influence the party and the candidates who win the elections.

Many cases of bogus companies donating huge sums of money to political parties have also been uncovered. A recent case refers to the contribution reports of the All India Trinamool Congress (AITC). A prominent media report stated that the only contribution to AITC in the year financial year 2013-2014 was made by a company whose legitimacy was questionable.

According to Section 182 of the Companies Act, 2013, no company in existence for less than three financial years can make a donation and the maximum amount that a company can contribute to a political party in a year should not exceed 7.5% of its average net profits during the three preceding financial years. But the media report states that M/s Trinetra Consultant Pvt. Ltd. which contributed to AITC in 2013-14, was registered on April 25, 2011. So, when the company made the contribution on March 31, 2014, it was still 25 days short of the three-year mark.

Further, the media report analyzed that in order to be able to make a contribution of Rs 1.40 crore, the company would have had to make profits of at least Rs 28 crores annually for three preceding fiscal years. During the 2012-13 financial year, the company had registered a loss of Rs 4,121. The performance improved the following year (2013-14) but the net profit was not more than Rs 13,589.

There is a lack of frequent and complete scrutiny of financial disclosures of political parties, i.e. of IT Returns and contributions reports containing details of donors who have contributed more than Rs. 20,000 to a party, by either the IT Department or by the ECI.

### **Role of the Judiciary**

On several occasions, the judiciary has sought to curb this menace of criminalization of politics through several landmark judgments. On 10th July, 2013, the Supreme Court of India, in its judgment of the *Lily Thomas vs. Union of India* case (along with *Lok Prahari v. Union of India*) ruled that any MP, MLA or MLC who is convicted of a crime and awarded a minimum of two year imprisonment is immediately disqualified and loses membership of the house. Section 8(4) of the RPA, earlier allowed the convicted members to hold office until they exhausted all judicial remedies. This section was declared unconstitutional and was a major step in electoral reforms and to likely become a deterrent for political parties to give tickets to candidates with criminal records as they may lose their seat immediately upon conviction.

However, this was a threat to the unholy nexus of crime and politics and the government tried to overturn the decision of the Supreme Court of India. The Representation of the People (Second Amendment and Validation) Bill, 2013 was introduced in the Rajya Sabha on 30th August, 2013 which proposed that representatives would not be disqualified immediately after conviction. The Indian government also filed a review petition which the Supreme Court dismissed. This move by the government was vehemently opposed by the civil society. On 24th September, 2013, a few days before the fodder scam verdict, the government tried to bring the Bill into effect as an ordinance. However, Rahul Gandhi, Vice President of the INC, made his opinion very clear by tearing up the ordinance. Subsequently both the Bill and the ordinance were withdrawn on 2nd October, 2013.



Given below is a list of elected representatives disqualified after conviction by a court of law:

Representative	Party	Representation	Case	Date of conviction	Status
Rasheed Masood	Congress	Rajya Sabha MP from Uttar Pradesh	convicted for 4 years in MBBS seats scam	September 2013	Disqualified
Lalu Prasad Yadav	RJD	Lok Sabha MP from Saran, Bihar	convicted for 5 years in Fodder scam	September 2013	Disqualified
Jagdish Sharma	RJD	Lok Sabha MP from Jahanabad, Bihar	convicted for 4 years in Fodder scam	September 2013	Disqualified
Babanrao Gholap	Shiv Sena	MLA from Deolali, Maharashtra	convicted for 3 years in disproportionate assets case	March 2014	Disqualified
T. M. Selvaganapathy	DMK	Rajya Sabha MP from Tamil Nadu	convicted for 2 years in cremation shed case	April 2014	Resigned
Suresh Halvankar	BJP	MLA from Ichalkaranji, Maharashtra	convicted for 3 years in power theft case	May 2014	Disqualified
J. Jayalalithaa	AIADMK	Chief Minister of Tamil Nadu state MLA from Srirangam, Tamil Nadu	convicted for 4 years in disproportionate assets case	September 2014	Disqualified. But acquitted by Karnataka High Court. Appeal Pending in Supreme Court of India.
Asha Rani	BJP	MLA from Bijawar, Madhya Pradesh	convicted for abetting suicide of maid	November 2013	Disqualified
Kamal Kishore Bhagat	All Jharkhand Students Union	MLA from Lohardaga (Vidhan Sabha constituency), Jharkhand	convicted for attempt to murder case	June 2015	Disqualified

Another important judgement given by the Supreme Court in the case of *PUCL vs Union of India* in which the Supreme Court upheld the citizen's right 'not to vote; or 'None of the above' (NOTA) as a mechanism of negative voting. The court directed the Election Commission to include in the Electronic Voting Machine (EVMs) a button for NOTA and give the voter right to express their dissatisfaction against all the candidates in secrecy.

Nearly 60 lakh voters opted for the NOTA option in the 2014 Lok Sabha elections. In the recently held elections in five states of Tamil Nadu, Kerala, Assam, West Bengal and Puducherry, NOTA count was more than the victory margin in 62 out of 822 constituencies that went to polls. NOTA polled close to 17 lakh votes in these five states.

However, this is only a start and not the end. ADR and other civil society organizations have constantly advocated to include a further step wherein if the NOTA votes are more than the winning candidate votes, then there should be re-election and all the candidates who contested should be disallowed and fresh candidates should be given tickets. This will force the political parties to pick the right candidates and who are capable and have a clean background. Since political parties spend a huge amount of money in election campaigns, this will ensure that they pick their candidates carefully and would help in keeping unscrupulous elements out of the electoral fray.

As per the 2002 judgement referred to earlier, the court ruled that voters' right to information was fundamental and in order to make an informed choice, the court ordered every candidate to submit an affidavit with nomination papers giving correct information about their educational qualification, details of financial assets and importantly, their criminal background. Politicians found a way around this judgment. They left blank columns which demanded information which were uncomfortable. The Supreme Court in 2013 put an end to this practice and ruled that if a candidate left columns blank, then the returning officer could reject the nomination papers.

The Supreme Court has made great strides towards ensuring a cleaner polity, setting up significant barriers to entry to public office for criminal elements as well as instituting workable mechanisms to remove them from office if they are already in power. The same view is echoed by the several committees and commissions in the past which have recommended fundamental changes to laws governing electoral practices and disqualifications. However, the lack of political will in incorporating these recommendations is quite clear and therefore the citizens of this country have to depend upon the Courts and the ECI to enforce these changes.

In the context of the data demonstrating the growing prevalence of criminalization of politics, Supreme Court judgments responding to this growth and the reluctance of political parties to take decisive action to prevent it, reform of the law not only becomes imperative but an urgent necessity.

## **Solutions**

Many felt that Prime Minister Narendra Modi's speech in the Rajya Sabha, back in 2014, in which he emphasized the urgent need to cleanse the Parliament of members with a tainted record through the judicial mechanism, brought with it much reason for hope, placing the ball in the Prime Minister's court. While the Supreme Court opposed this on grounds that fast tracking only a certain category of cases was undesirable, fast-tracking of cases is actually an accepted norm especially since the legislature is an important constitutional body. It is not that the law of the land has not been concerned with the growing criminalization in politics. Section 8 of the RPA, 1951, disqualifies a person convicted with a sentence of two years or more from contesting elections. Yet, it falls short for those under trial even for heinous crimes who continue to contest elections. The irony in the situation is quite blatant, for while under trials, are barred from voting, the case is not the same with MPs and MLAs who are under trial. They continue to hold office until convicted. In this regard, the 20th Law Commission's 244th Report on Electoral Reforms, has felt that disqualification on conviction has proven to be incapable of curbing the growing criminalization of politics. Instead, disqualification must take place at the level of framing of charges for offences that have a maximum punishment of five years or more and where cases have been framed at least a year prior to the date of scrutiny of nomination papers. Moreover in cases where charges have been framed against MPs and MLAs, the trial must take place expeditiously and concluded within a year.

One possible way to cure the Parliament of its criminal elements involves a refusal on the part of political parties to give tickets to candidates with criminal cases. In fact the NOTA option on EVM's was introduced in order to encourage political parties to think before giving tickets to criminal elements. A number of other suggestions have also been proposed ranging from the "Right to Reject" all candidates in a constituency, to making political parties liable for any false declarations made by candidates. It remains to be seen which laws will be implemented to debar candidates with criminal cases to contest elections.

Another way out is the continued role of the civil society in keeping a close check on the Parliament and advocating for a change. Till date, much has been achieved by civil society, ranging from mandatory declaration by contesting candidates of their criminal and financial details, the initiation of the RTI (Right to Information Act), the efforts made to declare political parties as "public authorities", among many others. In 2013, ADR had written to elected representatives across the country, requesting them to voluntarily disclose their Income Tax Returns, a move that was supported by 28 MLAs and MPs. The civil society then is acting. However, the desired goals are far from achieved and will perhaps come through only when the multiple perspectives within the civil society are streamlined into one strong voice, instead of dissipating into different paths.

The role of the citizens in achieving a clean Parliament is perhaps just as significant as any other remedy. The surest way to bring about decriminalization is if voters stop voting for tainted candidates and stop selling their vote in exchange for benefits in cash and kind. It is important for citizens to understand that if they keep electing candidates with criminal records, 'good governance' will be almost impossible to achieve. The ECI as well as civil society organizations such as ADR have been running massive voter awareness campaigns, encouraging people to go out and vote; to vote only after making an informed choice and to not 'sell their vote'. In this digital age, the ability of these organizations to use social media and mobile technologies to their advantage in reaching out to the masses will determine how effectively the citizens can be sensitized to the issue. The role of citizens in rejecting candidates with criminal cases will also be determined by the choices presented to them by political parties, a fact that is further dependent on the extent of transparency in the internal functioning of political parties.

The need for a comprehensive Bill to strengthen political parties has been felt for some time. The Law Commission headed by Justice Jeevan Reddy and the Working Committee to Review the Constitution headed by former Chief Justice, M.N. Venkatachaliah have addressed this issue. A Bill titled 'The Political Parties (Registration & Regulation of Affairs, etc.)' was drafted by a committee chaired by Justice M.N. Venkatachaliah. Currently there is no comprehensive law regulating the functioning of political parties and the adoption of this Bill would be a step forward.

Political Parties have much to gain in paving the way for transparency and accountability in their functioning. The loss of public trust in the political establishment has a lot to do with the inaccessibility of political parties other than during election campaigns, their opaque finances, and their tendency to allot party tickets to candidates with serious criminal cases. The seriousness that the political community displayed in their election campaigns towards combating the issue of black money and corruption needs to be extended to their own finances and their way of functioning.

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## DEMOCRACY DISRUPTED-THE INDIAN EXPERIENCE

*\*Anumeha*

### Overview

That representative democracy and parliamentary institutions have persevered in India for over six decades, and are still going strong, is indeed a tribute to their strength and resilience.<sup>1</sup> However, our pride is tempered by our growing sense of cynicism about the falling standards of parliamentary debates and practices, and a sure decline in the quality and conduct of its members, many with criminal records.

All these have been compounded by frequent parliamentary logjams or disruptions returning with alarming regularity. Common Cause has been much concerned about the increasing instances of logjams which not only undermine the legislature but also affect governance and waste public resources. Earlier issues of this journal have dealt with legal, political, economic and ethical angles of disruptions. In this article we examine the powers of presiding officers in Parliament vis a vis disruptions/misconduct and also look at the instances when they have acted against unruly members. Over the years, not only the Parliament but the State Legislative Assemblies too, have been witness to unprecedented scenes of violence, sloganeering, protests and unruly behavior. A few such incidents have been collated in this article.

### Powers of the Speaker

The Rules of Procedure and Conduct of Business in Lok Sabha, i.e. Rules 373 and 374 respectively, confer upon the Speaker the power to order the withdrawal of member and suspend a member. Rule 374 (A) (incorporated in 2001) provides for automatic suspension of a member on account of grave disorder triggered by the member coming into the well of the House or abusing the Rules of the House persistently and wilfully obstructing its business by shouting slogans or otherwise. Rule 375 details the power of the Speaker to adjourn the House or suspend any sitting.<sup>2</sup>

In August, 2015, the Lok Sabha Speaker, Smt. Sumitra Mahajan named and suspended twenty five Congress Lok Sabha members for five days for “persistently and wilfully obstructing” proceedings in the House by invoking Rule 374(A). She maintained that she took this “decision for the future good of Parliament”. She underlined that the “opposition must have its say, but the government also must have a way.” She also said that she hoped to give parliamentary proceedings ‘a fresh start’ with her ‘stringent decision’ against obstructionism in the house.

This move by the Speaker was not entirely without precedents. In 2013, the decision of the then Lok Sabha Speaker Meira Kumar to suspend the protesting members of Seemandhra region on

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<sup>1</sup> A Background Paper on Working of Parliament and need for Reforms available at <http://lawmin.nic.in/ncrwc/finalreport/v2b3-1.htm>; last accessed on Oct 6, 2016

<sup>2</sup> Handbook for Members of Lok Sabha, Chapter II, Page 72, available at <http://164.100.47.132/LssNew/members/handbook.aspx>, Rules of Procedure and Conduct of Business in Lok Sabha, Chapter XXVII, available at <http://parliamentofindia.nic.in/lr/rules/rules.html>; last accessed on Oct 6, 2016

<sup>3</sup> <http://indianexpress.com/article/india/india-others/i-suspended-25-cong-mps-for-the-future-good-of-parliament-says-sumitra-mahajan/>, The Indian Express, Aug 4, 2015; last accessed on Oct 6, 2016

two occasions resulted in a legal debate on whether the Constitution bestowed the Speaker with such powers. Twelve MPs were suspended in the first and nine in the next instance.<sup>4</sup> Ms Kumar had suspended the members by invoking Rule 374 A, which did not require a vote of the House.

Even earlier the power of suspension had been evoked by the Speaker. In 1989, sixty three opposition MPs were suspended after the then parliamentary Affairs Minister H K L Bhagat had moved a resolution seeking their suspension for the remainder of the week which amounted to three days. These members were demanding that the Thakkar Commission report on Indira Gandhi's assassination be tabled in Parliament.<sup>5</sup>

As is evident from the examples cited above, Speakers are well within their powers to suspend members if they are faced with grave disorder. However, the Speaker's power is circumscribed by the opinion that other members of the House share on the act in question. The rise in the number of political parties and varied political interest has made it harder for the Speaker to find consensus between members on use of disciplinary powers. Hence Speakers have increasingly relied upon their powers of persuasion as against disciplinary powers.<sup>6</sup> The Speaker's decisions and application of Rules are based on the circumstances before him. Changing political scenarios have strained the office of the Speaker in novel ways of which increase in disruptions is the most obvious problem faced by him.

### **Analysis of Rule 374 (A)**

Former Lok Sabha Secretary-General and constitutional expert P.D.T. Achary, expressed his views on the use of Rule 374 A for suspending members from the House. He said that this Rule had been invoked for the first time in Indian parliamentary history in 2013 and that too twice in one session. During 2011-12, some MPs from Telangana had been suspended by invoking Rule 374, i.e., after getting the House's nod through a motion. Mr. Achary observed that Rule 374 A suffered from Constitutional infirmities: "Under this rule, automatic suspension of members ordered by the Speaker can be rescinded by the House at any time. This provision in a way diminishes the prestige of the Speaker. Rules cannot be made which have the effect of diminishing the prestige of the Speaker."

In the opinion of Mr. Achary, this rule could not be invoked even on occasions of grave disorder as it was not practicable for any Speaker to suspend all unruly members citing this rule. Hence, a rule which could not be enforced uniformly due to practical difficulties should not be retained in the rule book. To vest the power of suspension in the presiding officer thereby, transferring the exclusive right of the House to him/her would be against the spirit of the rules and conventions, and practices, of legislative houses.

Speaking further on the Speaker's roles and responsibilities, Mr. Achary opined that the 'powers' of the Speaker have not been defined in the Constitution. Whereas Article 95, empowered the Deputy

<sup>4</sup><http://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/speakers-power-to-suspend-members-suffers-constitutional-infirmities/article5110868.ece>; last accessed on Oct 6, 2016

<sup>5</sup><http://timesofindia.indiatimes.com/India/Naidu-counters-Cong-jibe-says-63-MPs-barred-in-1989/articleshow/48353096.cms?>; last accessed on Oct 6, 2016

<sup>6</sup>The Hindu Centre for Politics and Public Policy available at [http://www.thehinducentre.com/multimedia/archive/01587/Indian\\_Parliament\\_\\_1587590a.pdf](http://www.thehinducentre.com/multimedia/archive/01587/Indian_Parliament__1587590a.pdf); last accessed on Oct 7, 2016

<sup>7</sup><http://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/speakers-power-to-suspend-members-suffers-constitutional-infirmities/article5110868.ece> The Hindu, Sep 10, 2013; last accessed on Oct 6, 2016

Speaker to act as the Speaker in case the post of Speaker was vacant and used the term “duties of the office of Speaker”. The word “power” was missing whereas Article 65(3) used the word “powers” in the context of the office of the President.

Therefore, according to him, as the Speaker had no penal powers to punish a member by way of suspension or expulsion, rule 374A went against the established practices and conventions.<sup>7</sup>

### **Powers of the Chairman in Rajya Sabha**

The Rules of Procedure and Conduct of Business in the Council of States formulated under Article 118 of the Constitution provide for withdrawal of member, suspension of member and details the Power of Chairman to adjourn Council or suspend sitting under Rules 255, 256, 257 respectively.<sup>8</sup> In an extreme case of misconduct, the House may expel a member. According to a comment in the Rules of Conduct and parliamentary Etiquette, Chap 9, of the Rajya Sabha, *“The purpose of expulsion is not so much disciplinary as remedial, not so much to punish members as to rid the House of persons who are unfit for membership.”*

There have been many instances when the Council of States has exercised its right to punish members by expelling them. In July 1966, Raj Narain and Godey Murahari were suspended for one week by two separate motions moved by the Leader of the House and adopted by the House. After they refused to withdraw, they were removed by the Marshal of the House. Next day, the Chairman expressed his distress and leaders of parties expressed their regret at the incident.

Dr Subramanian Swamy was expelled on November 15, 1976 on the basis of the Report of the Committee on Ethics appointed to investigate his conduct and activities. The Committee found his conduct derogatory to the dignity of the House and its members and inconsistent with the standards expected from its members. Swami Sakshi Ji Maharaj was expelled on March 21, 2006, for his gross misconduct which brought the House and its members into disrepute and contravened the Code of Conduct for members of Rajya Sabha.<sup>9</sup>

In 2011-12 the Chairman exercised his power under Rule 256 when he named seven MPs of Samajwadi Party, Janata Dal (U), Rashtriya Janata Dal and Lok Janshakti Party, who were subsequently suspended and physically thrown out of the House to facilitate the passing of Women’s Reservation Bill.<sup>10</sup>

### **Incidence of Disruptions- In the Speakers’ Opinion**

Smt. Sumitra Mahajan in the conference of Presiding Officers of Legislative Bodies in India, held at Lucknow on Jan 31, 2015, had said that the role of presiding officers-whether in Parliament or state assemblies-is not only to run the House peacefully, but also to follow up on the new laws promulgated and the promises of the party in power.

<sup>8</sup>Rules of Procedure and Conduct of Business in the Council of the House, Page 90, Eighth edition, RS Secretariat

<sup>9</sup><http://www.prsindia.org/theprsblog/?tag=indiscipline-in-parliament>; last accessed on Oct 6, 2016

<sup>10</sup><http://www.prsindia.org/media/articles-by-prs-team/rajya-sabha-merely-enforced-its-code-in-suspending-7-mps-1048/> last accessed on Oct 6, 2016

<sup>11</sup> <http://www.deccanherald.com/content/492923/frequent-parliament-disruptions-agonising-former.html>, Deccan Herald, Oct 6, 2016

"The nation has a federal system and political parties of different hues may rule at different places. There could be ideological differences too. But, for progress and development, the ideological differences should not be a barrier," she said. She wished for a law for automatic suspension of a member for disruption of proceedings on his entering the well of the House. Shri Somnath Chatterjee who was Speaker of Lok Sabha between 2004-2009, on August 2, 2015, described as "very agonizing" the frequent disruptions of Parliament and lamented the "inadequacy" of the position of the presiding officer who is unable to run the House because of circumstances beyond his control.<sup>11</sup>

Speakers have also differed in their approaches in dealing with daily disruptions that lead to the dire scenarios of ineffective parliamentary democracy. Speaker Meira Kumar would make repeated requests to the House to return to order before adjourning it. Managing disruptions in an exquisite manner, the late P A Sangma would turn a deaf ear to requests that were not presented as per the rules of the House. He would continue to preside over a disorderly house till members tired themselves into resignation. They would approach him with chits requesting him to demand the house resume order.<sup>12</sup>

### **Powers of Expulsion and Interpretation by Judiciary**

In India, legislatures' power to punish a member by suspending or expelling him or her from the legislature is derived from Article 105 (3) in case of Parliament and Article 194 (3) in the case of state legislatures.

In 2006, 11 members of Parliament (10 of the Lok Sabha and one of Rajya Sabha), were expelled after the 'cash-for-query' sting operation by a private television channel. They had been expelled for accepting money as consideration for raising questions in Parliament. The two Houses constituted special committees for the purpose, sent them notices, asking them for their defence and eventually found them guilty. The respective Houses then expelled the MPs by a simple majority.

The members moved the Supreme Court (SC) to challenge their expulsion. They argued that Article 105 (3) does not specifically spell out Parliament's powers to expel a member. The SC examined the powers of the House of Commons and held that Indian legislatures too had the power to expel members found "unfit".

MPs therefore cannot be punished for such misdemeanours in a court of law, as whatever members do within the House is beyond the jurisdiction of the courts. Article 102 of the Constitution, however, does specify the grounds for disqualification of an MP. These are: if the member of unsound mind, holds an office of profit other than an office declared by Parliament by law not to disqualify its holder, if s/he is an un-discharged insolvent, not a citizen of India, etc. Recently, in April 2016, the Ethics Committee of the Rajya Sabha decided to expel industrialist Vijay Mallya from the House.<sup>13</sup>

<sup>11</sup><http://www.deccanherald.com/content/492923/frequent-parliament-disruptions-agonising-former.html>, Deccan Herald, Oct 6, 2016

<sup>12</sup>[http://www.thehinducentre.com/multimedia/archive/01587/Indian\\_Parliament\\_\\_1587590a.pdf](http://www.thehinducentre.com/multimedia/archive/01587/Indian_Parliament__1587590a.pdf) ; last accessed on Oct 7, 2016

<sup>13</sup><http://www.rediff.com/news/report/mallya-not-first-mp-to-be-expelled-from-house/20160427.htm>; last accessed on Oct 7, 2016



## Functioning of the State Legislative Assemblies- An Overview in Terms of Disruptions & Logjams

If disruptions are noisy in Parliament they are quite often rowdy and bizarre in State Assemblies. Some of the infamous episodes of disruptions in Parliament and State Assemblies are described below:

In February 2014, during a heated debate on the creation of Telangana, an MP from Vijaywada, used pepper spray on fellow parliamentarians, to protest the tabling of the 'Andhra Pradesh Reorganisational Bill', marking a new low in parliamentary behaviour. A few days later, the government was forced to 'black out' the proceedings in the House, on account of unparliamentary behaviour on part of protesting MPs, on the same issue. The government called it a 'technical error'.

In July 2008, the parliamentary debate on a motion of confidence descended into chaos after three opposition MPs, rushed to the House floor and began waving large bundles of currency notes. They alleged that the money had been paid to them in bribe to abstain from voting and help the then government survive the confidence vote.<sup>14</sup> This incident is infamously identified as the *cash for votes* scandal. Among the very recent incidents of violence in State Legislative Assemblies, in September, 2016 the Punjab Vidhan Sabha saw uproarious scenes on the concluding day of Monsoon Session when a shoe was hurled at a minister. The protesting Congress MLAs, wanted a no-confidence motion to be taken up and threw papers at the Speaker sparking outrage and a war of words between the treasury and opposition benches.<sup>15</sup>

In 2014, the final session of the 15th Legislative Assembly in Bihar witnessed the then Speaker Shri Uday Narayan Chaudhary adjourning the House sine die with a rider that not a single question could be taken up during the five days-long session. Referring to repeated disruptions in the House, Shri Chaudhary said that no other pressing issues could be taken up for debate and urged the members that it was their responsibility to maintain the sanctity of the House and safeguard parliamentary democracy.

In July 2011, the Uttar Pradesh (UP) State Assembly witnessed violent scenes, with mikes being pulled out by legislators and flung at each other. The violence was unprecedented and was described in the media as a shameful blot on our democracy.<sup>16</sup> Previously, in October 1997, riots had broken out in the UP Legislative Assembly with MLAs using microphones, chairs as weapons during a debate on a vote of confidence.<sup>17</sup> In November, 2009, a member of the Maharashtra Legislative Assembly was assaulted in the State Assembly. One of the members 'who couldn't speak Marathi' took the oath in Hindi. This was objected to by Maharashtra Navanirman Samithi on the ground that Marathi should be the official language in the state. Four members of the Maharashtra Navanirman Samithi were immediately suspended for 4 years.

<sup>14</sup><http://www.telegraph.co.uk/news/worldnews/asia/india/2445010/Bundles-of-cash-in-Indian-parliament-bribe-furore.html> ( July 22, 2008, The Telegraph, last accessed on Oct 6, 2016

<sup>15</sup> <https://www.thequint.com/politics/2016/09/14/chaos-in-punjab-assembly-congress-mla-throws-shoe-at-bikram-singh-mijithia-tarlochan> ;Sep 14, 2016, the quint; last accessed on Oct 6, 2016

<sup>16</sup><http://www.mapsofindia.com/my-india/politics/does-parliamentary-disruption-represent-true-democracy>

<sup>17</sup>[https://en.wikipedia.org/wiki/Legislative\\_violence](https://en.wikipedia.org/wiki/Legislative_violence) ; last accessed on October 6, 2016

<sup>18</sup>Ibid

On 26 March 1989, a riot broke out in the state Legislative Assembly in Tamil Nadu between members of the then ruling DMK and the opposition AIADMK over the reading of the state budget. In the melee, a member tried to disrobe Ms. Jayalalithaa, Karunanidhi had his sunglasses broken and the budget was torn up by angry rioters.

In January 1988 too, there was a riot in the Tamil Nadu State Legislative Assembly over a vote of majority for Mrs. Janaki Ramachandran, who was serving as Chief Minister following the death in December 1987 of her husband MGR. The ADMK party had split, with most MLAs supporting her and some supporting Ms Jayalalithaa's bid to become Chief Minister instead. During voting, a riot ensued in the legislature, with members clubbing each other with microphone stands and footwear, which was finally ended by riot police who stormed the legislature and beat up everybody with their batons.<sup>18</sup>

Unfortunately, these are only a few instances amongst many. Speaker after Speaker, both in the Parliament and those of the State Legislative Assemblies, have been demanding that all political parties rein in their respective MPs and allow the Parliament/Legislatures to function. In a resolution adopted more than two decades ago, at a Conference of Presiding Officers', Leaders of Parties, Whips, Ministers of parliamentary Affairs, Secretaries/Senior Officers of Parliament and State Legislatures, it was suggested that the political parties evolve a code of conduct for their legislators and ensure its observance by them. It was urged that the political parties, Centre/State governments and the press should help create a climate conducive to the healthy growth of parliamentary system in the country.<sup>19</sup> Unfortunately, there has been a common lack of political will amongst political parties to follow the laid down norms of parliamentary behavior and as a consequence, such incidents continue to occur.

## Conclusion

Dissent is a critical component of any democracy and disruptions are very much part of established parliamentary practice. To wish it away is unrealistic and even undemocratic. Looking at international examples of disciplinary procedures, the Australian Parliament does not sanction expulsions any longer but the British and US Houses do under certain circumstances. In the United States, the Speaker of the House of Representatives unlike Indian, Australian and British Speakers, does not possess disciplinary powers over members of the House. He cannot expel a member who is rowdy and does not obey the Chair. Only the House can take action against the recalcitrant member.

Coming back to our Parliament and Legislative Assemblies is it too much to expect the political parties to rise over their partisan interests and participate constructively in the deliberations? Even the Supreme Court refused to be drawn into this debate when it dismissed a petition in August 2015 which sought guidelines to ensure that proceedings in Parliament do not get stalled or disrupted, on the ground that intervention in the parliamentary affairs would amount to crossing the '*lakshmanrekha*'.

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***\*Anumeha is a Senior Research Analyst at Common Cause.***

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<sup>19</sup>[http://rajyasabha.nic.in/rsnew/publication\\_electronic/decipline.pdf](http://rajyasabha.nic.in/rsnew/publication_electronic/decipline.pdf); last accessed on Oct 6, 2016.

**APPLICATION FORM FOR MEMBERSHIP OF COMMON CAUSE.**

1. Name: \_\_\_\_\_
2. Father's Name: \_\_\_\_\_
3. Mother's Name: \_\_\_\_\_
4. Date of Birth: \_\_\_\_\_
5. Educational Qualification: \_\_\_\_\_
6. Occupation: \_\_\_\_\_
7. Permanent Address: \_\_\_\_\_  
\_\_\_\_\_
8. Mailing Address: \_\_\_\_\_  
\_\_\_\_\_
9. (a) Email ID : \_\_\_\_\_  
(b) Phone : \_\_\_\_\_ Mobile: \_\_\_\_\_
10. Next of Kin (Name & Address): \_\_\_\_\_

11. Membership Sought. (Tick any one block):

Categories	Ordinary	Life
Individual (with voting rights)	Rs. 500.00 P.A. <input type="checkbox"/>	Rs. 5000.00 <input type="checkbox"/>
Associate (without voting rights)	Rs. 100.00 P.A. <input type="checkbox"/>	Rs. 500.00 <input type="checkbox"/>

12. Why do you wish to join COMMON CAUSE (up to 80 words)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. Your expectations from COMMON CAUSE (up to 40 words)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Place & Date:

Signature