

The Executive versus the Legislature

Background Note for the Conference on Effective Legislatures

The Constitution of India states that the Executive branch of the State (Council of Ministers) shall be collectively responsible to the Legislature (House of the People). This implies that Parliament should oversee the work of the government and hold it responsible for its actions and omissions. Members of Parliament also have the responsibility of passing laws, authorising the expenditure of the government, and representing the interests of their constituencies.

Several instances in the recent past indicate the abdication of responsibility by Parliament to fulfil some of these responsibilities. For instance, on the last day of 2008, eight bills were passed in Lok Sabha in a span of 17 minutes, without any discussion. Also, Parliament met for just 46 days that year – the lowest ever in a calendar year -- thereby drastically reducing the time available to meaningfully scrutinise the Executive. Large parts of the annual budget are guillotined each year, without adequate discussion.

These examples highlight several structural issues. For instance, is there a way to force the government to hold sessions if MPs make such a demand? Does the anti-defection law reduce the ability of MPs to hold the government to account? Does that law deter effective scrutiny of government bills, especially by the ruling party MPs? Is there an overlap of the legislative and executive functions when MPs are allocated funds for local area development schemes (MPLADS)? Does Parliament effectively oversee the working of regulatory bodies?

The Report of the National Commission to Review the Working of the Constitution (Chairperson: Justice M.N. Venkatachalaiah, 2002) made recommendations on strengthening the role of the Legislature. Some of the recommendations were: (a) establish new committees on the Constitution, National Economy and Legislation; (b) discuss major reports of committees in Parliament; (c) plan legislation in a more systematic manner so that major social and economic Bills are circulated for public discussion; and (d) Control treaty power of government.

In this note, we examine the balance of power between the Legislature and the Executive. Table 1 lists important procedural features of three parliamentary democracies. Table 2 shows the various ways in which Parliament exercises its authority, while Table 3 lists the powers of the Executive. Finally, we show some charts that illustrate the functioning of the Indian Parliament on some of these aspects.

Table 1: Experience of some countries with parliamentary system of governance

United Kingdom	Australia	Canada
The House of Commons questions ministers in the Chamber and in the Select Committee system.	MPs ask ministers questions related to their ministry during question hour every day. There is no notice for oral questions.	Statements by Members where 15-minutes are allotted each day.
Reserves 20 days in each session for Opposition parties to choose the business to be discussed. 17 are allotted for the leader of Opposition and 3 for the second largest opposition party.	Private member business (petitions, bills, debate on committee reports) are taken up every Monday.	Any MP is permitted to address the House for up to one minute on virtually any matter. Party Whips provide a list of Members to speak and the Chair attempts to represent Opposition and Governing Members equally.
All Bills are automatically assigned to a Standing Committee except in special circumstance. Committees have the power to amend a Bill before returning it to the House.	Government Bills may be referred to a Committees, which may recommend action. However, the committee may not amend the Bill itself.	Take Note Debates allows MPs to participate in the development of government policy. However, the debate must be initiated by a Minister of the Crown, following consultation with the House Leaders of the other parties.

Sources: UK: Standing Orders of the House of Commons – Public Business 2007; Australia: Infosheets, House of Representatives, Parliament of Australia; Canada: Compendium; House of Commons, Procedure

Table 2: Powers of the Indian Parliament

Activity of Legislature	Remarks
Legislation	
Government Bills: At the time of introduction, MPs can raise objections. Also, all bills need to be passed by both Houses.	Of the 219 Bills introduced in the 14 th Lok Sabha, 14 saw objections at the introduction stage. All these objections were voted down.
	Most government bills are passed as the governing party can issue a whip. In the 14 th Lok Sabha, 92% of all speeches were in support of government Bills. 85% of speeches by the principal opposition party supported government bills.
Private Member Bills: Any private member can introduce a Bill.	Only 14 private member bills have been passed, the last one in 1970.
Oversight	
Question Hour: MPs can ask Ministers starred questions (oral answers, with follow-up questions), or unstarred questions (written answers). The first hour of each day is reserved for Questions.	If the House runs out of time, written answers are given for starred questions. In the 14 th Lok Sabha, only 15% of the starred questions were answered orally.
Zero Hour: MPs can raise issues that are of public importance under rule 377; Ministers give them written responses. They can also “call attention” to important issues, which are debated.	Most issues under Rule 377 receive response: As of end-March, about 95% of issues raised in the 14 th Lok Sabha till end-2008 had received responses.
Adjournment Motion: An MP can give a notice to defer the normal business of the house and discuss an issue on a matter having serious consequences. Ministers reply to the motion and there is a vote.	Adjournment motions are seen as censuring the government. None of the adjournment motions in the 14 th Lok Sabha were passed.
Representation	
Both question hour and zero hour can be used by MPs to raise issues related to their constituencies and regions.	In the 14 th Lok Sabha, over half the issues raised by MPs in the zero hour related to their constituencies.
Financial Functions	
Budget Approval: All government expenditure (except a few items specified in the Constitution) need to be sanctioned by the legislature. This is usually done as part of the annual budget process. Additional expenditure may also be sanctioned through supplementary demand for grants.	The time spent on discussion the Budget has reduced over the years, from an average of 123 hours in the 1950s to 34 hours in the last decade. The Standing Committees examine the budget: this process was bypassed in 2009 as Committees were not formed in time.
MP Local Area Development Scheme: MPs may identify projects and sanction upto Rs 2 crore per year for public works in their constituencies.	This scheme has been criticised as it provides executive authority to MPs. The Supreme Court has admitted a Public Interest Litigation to declare this unconstitutional.
Committees	
Parliamentary Committees examine issues in detail. They may invite public feedback.	Standing Committee chairpersons may belong to treasury or opposition benches.
Standing Committees examine bills and financial demands of the government. They also examine important issues related to ministries and PSUs. The Public Accounts Committee oversees the financial functioning of the government based on audits by the Comptroller and Auditor General.	Though most Bills are referred to Standing Committees, their recommendations are not binding. In several instances, these have not been accepted. About 75% of the recommendations of the Public Accounts Committees were accepted by the government during the period of the 14 th Lok Sabha.

Table 3: Powers of the Executive

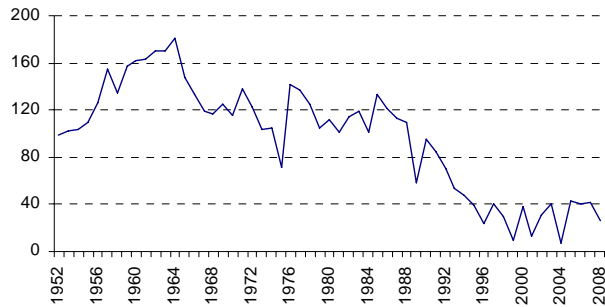
Executive Activity	Remarks
Power to convene Parliament	
The President, on the advice of the Cabinet, summons the sessions of Parliament. The Constitution specifies that there should not be a gap of more than six months between two sessions.	The government (and not MPs) decides the dates of Parliament sessions, provided it abides by the six-month rule. In 2008, Parliament met for just 46 days (the lowest ever in a year), and had only two sessions, instead of the customary three sessions.
Power to dissolve Lok Sabha	
The Prime Minister may recommend to the President that Lok Sabha be dissolved.	The President has to act on the advice of the Prime Minister. This power is usually used either when the government wants a mid-term poll which it believes it will win, or is likely to lose a confidence vote.
Legislation	
Government may introduce bills, which are then considered by Parliament. Bills also contain an explanatory memorandum on various clauses, and a financial memorandum detailing the expected financial implications.	Most govt Bills are passed because MPs are required to vote on party lines. Explanatory memorandum rarely detail the purpose of each clause and the overall structure of the legislation. In some cases, the financial implications are not provided.
Many Acts authorise the government to formulate rules and regulations. These are tabled in parliament and usually MPs may raise objections within 30 days.	In the 14 th Lok Sabha, there was not even a single instance when these rules were discussed in Parliament.
Many Acts permit the government to announce the date when particular sections of the Acts come into effect.	In some cases, these Acts, or parts of Acts have not been notified for a long time. For example, the Delhi Rent Act was passed in 1995 but has not yet been notified.
Ordinances	
When Parliament is not in session, the President can, on the advice of the Prime Minister, promulgate an Ordinance. They are valid for six months, or for six weeks after the commencement of the next session of Parliament, whichever is earlier.	Use of ordinances increase during times of governmental instability. Between 1990-1999, an average of 20 Ordinances were promulgated per year. It came down to 7 per year between 2000-2007.
Precedence of government business	
Except specified time on Friday, rest of the time is allocated for government business.	Private members hardly get a chance to initiate Bills or resolutions since time allotted is less while the numbers of members are high.
Treaty making power	
The government has the power to sign or ratify an international treaty without approval from Parliament.	If any treaty requires a new law, that law has to be passed by Parliament.

Sources for Tables 2 and 3: Parliamentary Procedure - Law, Privileges, Practice And Precedents, Subhash Kashyap, New Delhi, 2007; Rules of Procedure and Conduct of Business in Lok Sabha and Rajya Sabha; Directions of the Speaker/Chairman; "The Indian Parliament as an Institution of Accountability," Devesh Kapur and Pratap Bhanu Mehta, UNRISD, Jan 2006; "Cheating Parliament," A.G. Noorani, Economic and Political Weekly, Aug 10, 2002; "Legislature's Supremacy and Executive's Excess," Dharam Vir, Economic and Political Weekly, Feb 17, 2007; PRS.

Appendix: Some indicators on issues discussed in Tables 2 and 3

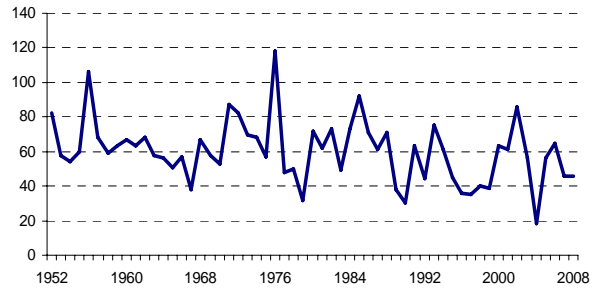
Parliament meets less frequently

Number of Session Days in Lok Sabha



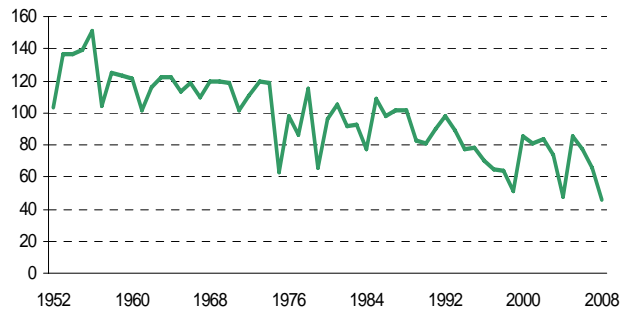
Fewer laws were enacted in recent years

Number of Bills Passed



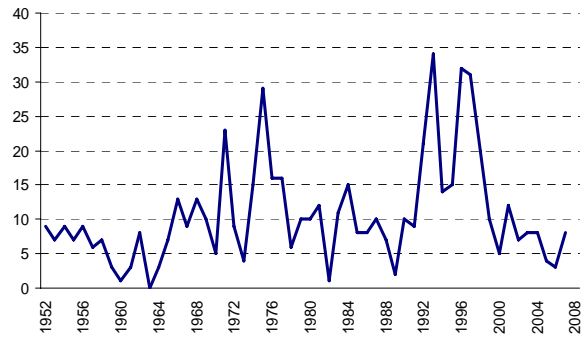
Decline in time spent scrutinising the budget

Time Taken on Discussing General Budget in Lok Sabha



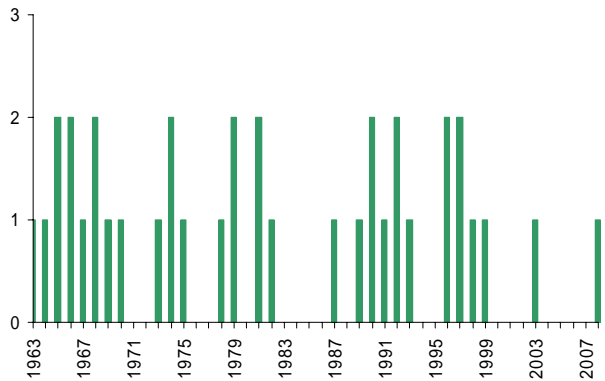
Fewer Ordinances in recent years

Number of Ordinances Promulgated



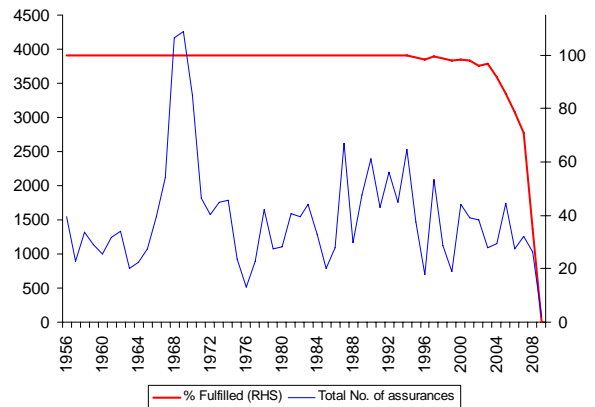
Lower frequency of Trust Votes

Number of Confidence/No Confidence Motions Discussed



Assurances take a few years to be fulfilled

Govt. Assurances in Lok Sabha: Given and Fulfilled



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