

Parliament and the Executive

Background Note for the Conference on Effective Legislatures

The Constitution provides for the: (i) Legislature to make laws, (ii) Executive to implement laws, and (iii) Judiciary to interpret and enforce these laws. While the Judiciary is independent from the other two branches, the Executive (Council of Ministers) is formed with the support of a majority of members in the Legislature. Therefore, the Executive is collectively responsible to Parliament for its actions. This implies that Parliament can hold the government accountable for its decisions, and scrutinise its functioning.

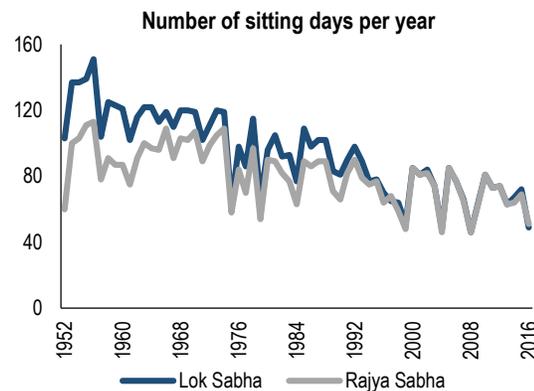
A Member of Parliament (MP) is primarily responsible for: (i) debating and passing laws, (ii) scrutinising government policies and their implementation, (iii) approving government expenditure, and (iv) representing the interests of people. In this note we look at the relationship between the Executive and the Legislature.

Powers of the Executive

Convening Parliament

Under the Constitution, Parliament must be convened by the President at least once in every six months. Since the President acts on the advice of the Executive, the duration of the session is decided by the government.

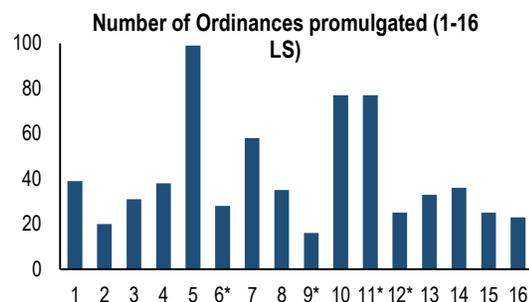
Over the years, there has been a decline in the sitting days of Parliament. While Lok Sabha met for an average of 130 days in a year during the 1950s, these sittings came down to 70 days in the 2000s. This implies that Parliament was able to transact less business compared to previous years. To address this, the National Commission on the Working of the Constitution (NCRCW) has recommended that Lok Sabha should have at least 120 sittings in a year, while Rajya Sabha should have 100 sittings.¹ Some countries such as the United Kingdom (UK) and Australia release an annual calendar of sittings at the beginning of the year. It may be argued that given the Legislature’s role in keeping the Executive accountable for its actions, the government should not have the power to convene Parliament. Instead, Parliament should convene itself, if a certain number of MPs agree, so that it can effectively exercise its oversight functions and address issues without delay.



Sources: Lok Sabha and Rajya Sabha websites as on August 12, 2016; PRS.

Promulgating Ordinances

The Constitution allows the Executive to promulgate an Ordinance (temporary law) in case of an emergency, when either House of Parliament is not in session. An Ordinance remains in force for a maximum period of six months, unless it is approved by Parliament. Some Members of the Constituent Assembly had observed that law making powers should vest only with the Legislature, and not the Executive.² In case of an emergency, the Parliament should be summoned, as is the case in most democracies. Note that while countries such as Pakistan and Bangladesh allow the Executive to promulgate Ordinances, other countries such as the United States of America (US), Canada and Australia do not vest similar legislative powers in the government.



Note: (i) *Lok Sabha did not complete full term, (ii) 16th Lok Sabha data as on August 12, 2016. Sources: Lok Sabha and Rajya Sabha websites; PRS.

The number of Ordinances that were promulgated has reduced from 77 during the 10th Lok Sabha to 25 in the 15th Lok Sabha. However, there have been instances when Ordinances have lapsed as they have not been approved by Parliament. In some of these cases, the government has re-promulgated the lapsed Ordinance. For example, the Enemy Property (Amendment) Ordinance has been promulgated four times, and an Ordinance related to Land Acquisition has been promulgated thrice. The Supreme Court in a 1986 judgement had observed that the power to

promulgate Ordinances is meant to be used in extraordinary circumstances, and not as a substitute for the law making powers of the Legislature.³

Regulators

Various regulators are established by Parliament to regulate competition and set standards in a sector. Though independent in their functioning, these regulators are a branch of the Executive, and are therefore accountable to Parliament. Typically, they are required to present their annual reports to Parliament. However, these reports are rarely discussed. The functioning of regulators is also scrutinised during Question Hour. However, any questions surrounding their functioning are answered by the concerned minister, and not by the regulators themselves.

Parliamentary committees also examine the performance of regulators. For example, the Standing Committee on Health has examined the functioning of regulators such as the Medical Council of India, and the Standing Committee on Energy is currently examining the role of regulators in the Power sector. While a committee can summon regulators to depose before them, these interactions are not regular. In countries such as the UK, regulators may be frequently called to appear before Parliament.⁴ The officers of the Bank of England appear regularly before the Treasury Committee of the House of Commons.⁵ In the US, the Federal Reserve is required to send semi-annual reports to banking committees of both Houses.⁶

Subordinate Legislation

While the Legislature is responsible for making laws, the Executive specifies operational details in rules and regulations for their implementation. It is important to scrutinise these rules to ensure that they are within the limits prescribed in the law. Rules are laid in Parliament, where they may be scrutinised through: (i) debates, (ii) statutory motions to amend or annul them, (iii) Question Hour, or (iv) the Committee on Subordinate Legislation.

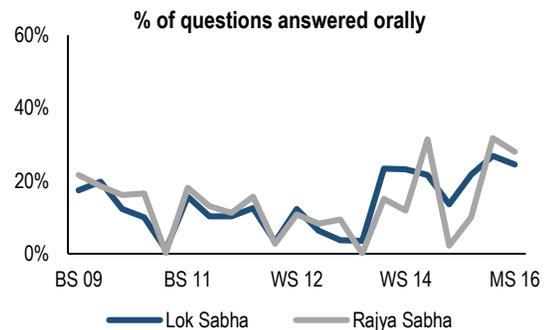
Note that statutory motions to amend or annul rules are rarely moved in Parliament. During the 15th Lok Sabha, statutory motions were moved on three occasions to discuss the Civil Liability for Nuclear Damage Rules, 2011, the Information Technology Rules, 2011, and the Airports Authority of India (Major Airports) Development Fees Rules, 2011. There have been no such motions in the current Lok Sabha (16th Lok Sabha) till now.

Accountability of the Executive to Parliament

Question Hour

During Question Hour, MPs may pose questions to ministers to hold the Executive accountable for implementing laws and policies. While for unstarred questions a written reply is given, starred questions require an oral answer to be given by the concerned minister. MPs are allowed to ask two follow-up questions to the minister based on his answer.

In the 16th Lok Sabha, question hour has functioned in Lok Sabha for 82% of the scheduled time, while in Rajya Sabha it has functioned for 43%. A lower rate of functioning may reflect time lost due to disruptions which reduces the number of questions that may be answered orally. While Parliament may sit for extra hours to transact other business, time lost during Question Hour is not made up.



Note: Oral questions listed in Rajya Sabha were decreased from 20 to 15 in winter session of 2014.

Sources: Lok Sabha and Rajya Sabha websites as on August 12, 2016; PRS.

Currently, there is no mechanism for answering questions which require inter-ministerial expertise or relate to broader government policy. Since the Prime Minister does not answer questions other than the ones pertaining to his ministries, such questions may either not get adequately addressed or remain unanswered. Note that in the UK, the Prime Minister's Question Time is conducted on a weekly basis. During the 30 minutes the Prime Minister answers questions posed by various MPs. These questions relate to broader government policies, engagements and issues affecting the country.⁷

Debates and Motions

Issues may be raised in Parliament to examine the functioning of the government through: (i) a debate, which entails a reply by the concerned minister, or (ii) a motion which entails a vote. The time allocated for discussing some of these debates or Bills is determined by the Business Advisory Committee of the House, consisting of members from both the ruling and opposition parties.

Using these methods, MPs may discuss important matters, policies, and topical issues. The concerned minister while replying to the debate may make assurances to the House regarding steps that will be taken to address the situation. As of August 2016, 40% of the assurances made in the 16th Lok Sabha have been implemented.⁸

Alternatively, MPs may move a motion to discuss matters such as inflation, drought, and corruption. These motions may be moved for: (i) discussing issues (Rule 184 in Lok Sabha and Rule 167 in Rajya Sabha), (ii) adjournment of business in a House in order to express displeasure over a government policy, or (iii) expressing no confidence in the government leading to its resignation. The 16th Lok Sabha has discussed one adjournment motion so far.

To improve government accountability in Parliament, the opposition in some countries such as the UK, Canada, and Australia forms a shadow cabinet.^{9,10} Under such a system, opposition MPs track a certain portfolio, scrutinise its performance and suggest alternate programs. This allows for detailed tracking and scrutiny of ministries, and assists MPs in making constructive suggestions.

Parliamentary Committees

Parliamentary committees are responsible for scrutinising actions of the government. Since Parliament has limited time to discuss a legislation or issues, these committees provide a forum for detailed scrutiny and deliberations. Parliamentary standing committees examine: (i) Bills referred to them, (ii) demands for grant of ministries, or (iii) other subjects. Parliament also has three financial committees which examine if government expenditure conforms to its budgetary estimates, and if such expenditure is for the purpose for which approval had been sought. Recommendations made by these committees may or may not be accepted.

In the 16th Lok Sabha, 33% of Bills introduced in Parliament have been referred to a committee, which is low when compared to earlier Lok Sabhas. In countries such as the UK, Bills are mandatorily referred to committees of both Houses of Parliament. These committees have the power to amend Bills. However, their amendments may be overturned by MPs during a discussion on the Bill.¹¹ The NCRCW has recommended that all Bills should be referred to committees.¹

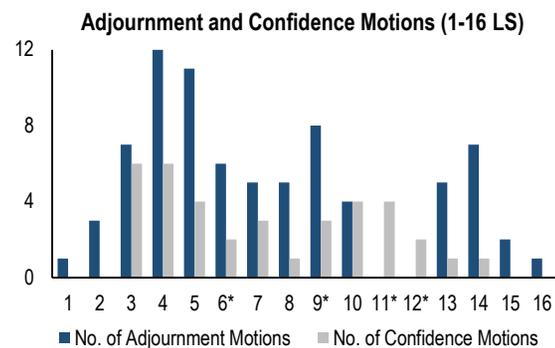
Scrutiny of financial business

Parliament is responsible for scrutinising the finances of the Executive by: (i) approving the levy of taxes and expenditure of the government, and (ii) examining if the approved expenditure has been spent properly. This scrutiny is undertaken during discussions: (i) on the general budget, (ii) on the department-wise demand for grants, and (iii) in parliamentary committees.

Parliamentary committees generally examine proposed government expenditure before it is approved by Parliament, and subsequently scrutinise if funds have been spent for the sanctioned purposes. However, they do not examine the Finance Bill, which contains the government's tax proposals.

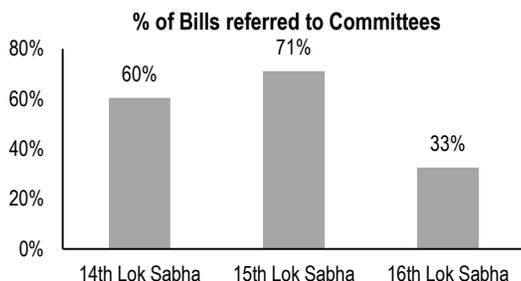
Over the years, time spent by Parliament on discussing the general budget (including discussions on the demand for grants) has reduced from 135 hours in 1985 to 44 hours in 2016. As a result, less than 10% of the total budget is discussed in most years. Further, there have been instances when reports by parliamentary committees are presented either after the demands have been discussed, or on the day of discussion. For example, in 2016, the Standing Committee Report on the demands for the North-Eastern Region was presented on the day of the discussion.¹² It is unlikely that MPs discussing the demands had sufficient time to study the Committee's recommendations.

In addition to scrutiny of individual demands by standing committees, the financial committees such as the Estimates Committee and the Public Accounts Committee examine whether the funds have been spent as estimated at the time of approval, and for sanctioned purposes. However, reports given by these financial committees are rarely discussed in Parliament.

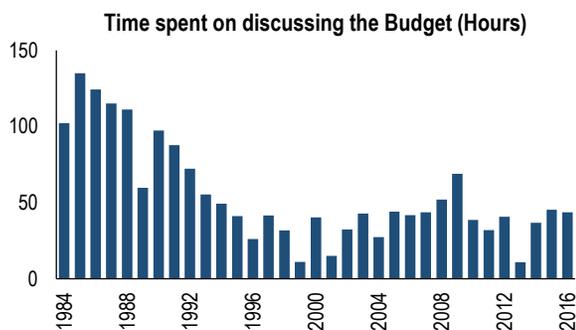


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Independence of the Legislature from the Executive

Office of profit

To ensure that legislators scrutinise the Executive without any influence, the Constitution provides that an MP may be disqualified for holding an office of profit under the government. A person would be disqualified if: (a) he holds an office which entails profit (i.e. it carries a remuneration), (b) the office is under the central or state governments, and (c) the office is not excluded in a list made by Parliament.

The Second Administrative Reforms Commission in 2007 noted that over time an office of profit has come to be associated with whether or not the ‘office’ entails remuneration. This ignores whether the office allows the Executive to exert its influence on MPs and their decisions.¹³

Given that ministers have to be drawn from among MPs, the Constitution exempts the post of a ‘Minister’ from being an office of profit. It also permits Parliament to make laws to exempt other offices. This list of exempted offices has been amended a number of times to include various academic and executive offices such as the Indian Statistical Institute, Calcutta, West Bengal Fisheries Corporation Limited, and Irrigation and Flood Control Commission, Uttar Pradesh.¹⁴ It may be argued that exempting a wide range of bodies functioning under the government may be contrary to the principle of separation of powers, and may involve legislators performing Executive functions.

Member of Parliament Local Area Development Scheme

The Member of Parliament Local Area Development Scheme (MPLADS) allocates five crore rupees to each MP per year, for sanctioning development activities in their constituencies. The role of executing project work is in the domain of the Executive, and MPLADS violates this principle. Expert bodies have suggested that MPLADS should be discontinued as it requires a legislator to perform the functions of the Executive, whereas their primary role is to scrutinise the functioning of the Executive.^{1,13}

Anti-defection law

The Constitution was amended in 1985 to provide for an MP to be disqualified if he votes against the party’s direction in Parliament or leaves the party. It has been argued that such a provision restricts a legislator from voting in line with his conscience, judgement and interests of his electorate.¹⁵ Since the majority party in Lok Sabha forms the government, the anti-defection law ensures that the Executive receives support from all party MPs for its policies and decisions. This may impede the oversight function of the Legislature over Executive functioning, and restrict an MP from effectively scrutinising the functioning of the government.

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2. Constituent Assembly Debates, November 5, 1948; Constituent Assembly Debates, November 8, 1948.
3. Dr. D.C. Wadhwa & Ors vs State Of Bihar & Ors, December 20, 1986, <https://indiankanoon.org/doc/504006/>.
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11. General Committees, House of Commons, Parliament of the United Kingdom, <https://www.parliament.uk/documents/commons-information-office/106.pdf>.
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14. The Parliament (Prevention of Disqualification) Act, 1959.
15. Kihoto Hollohan vs Zachillhu And Others, February 18, 1992, <https://indiankanoon.org/doc/1686885/>.

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